ISSN 2147 – 558X

ELİG
GÜRKAYNAK
Attorneys at Law

LEGAL INSIGHTS QUARTERLY

June 2026 – August 2026

LEGAL INSIGHTS QUARTERLY

June 2026 – August 2026

Haziran/June 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

Av. Dr. Gönenç Gürkaynak
Çitlenbik Sokak No: 12,
Yıldız Mahallesi
Beşiktaş 34349,
ISTANBUL, TURKIYE

ISSN 2147 – 558X

Preface to the June 2026 Issue

This June 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 Türkiye.

The Corporate Law section examines the legal framework governing supplementary liquidation and focuses on the exceptional circumstances in which companies may be temporarily re-registered for the limited purpose of completing outstanding liquidation transactions and safeguarding the interests of shareholders and creditors.

The Banking and Finance Law section then turns to factoring transactions as an important financing and liquidity instrument under Turkish law, addressing their tripartite legal structure, core financing and security functions, and the assignment-based nature of factoring relationships. In a similar vein, the Capital Markets Law section provides an overview of lease certificates as an alternative financing instrument, with particular focus on the regulatory framework applicable to asset leasing companies and the various structures through which lease certificates may be issued in Türkiye.

The Competition Law section of this issue focuses on recent developments in merger control, competition in digital markets, and procedural safeguards under Turkish competition law. In this respect, the section examines the assessment of *de facto* control and gun-jumping risks, the competition law implications of pricing algorithms in e-marketplaces, and the Constitutional Court's changing approach to the Turkish Competition Authority's on-site inspection powers.

Moving on, the Dispute Resolution section reviews a recent Constitutional Court decision on whether dismissing a lawsuit filed against the incorrect legal entity within a group company structure violates the right of access to court, while examining the separate legal personality concepts and organic ties under Turkish civil procedure law.

The Data Protection Law section examines recent principal decisions of the Turkish Personal Data Protection Board on loyalty programs and consent management, focusing on compliance obligations, verification mechanisms, and the separation of privacy information notices from explicit consent declarations under Law No. 6698. The Internet Law section analyses recent amendments to Law No. 5651 concerning digital games and social network providers, with particular emphasis on child protection, age verification obligations, parental control mechanisms. Finally, the Telecommunications Law section evaluates the draft regulatory framework introducing a high-security digital identity and subscription management model, focusing on verification requirements and related data protection implications.

Furthermore, the Employment Law section examines a landmark High Court of Appeals decision on payroll fraud and the evidentiary value of signed payroll records in determining actual wages, overtime claims, and employees' statutory receivables. Finally, the IP Law section reviews a recent Constitutional Court decision on calculating loss of profit based on the infringer's net profit, focusing on deterrence, compensation principles, and competing property interests in intellectual property disputes.

June 2026

Corporate Law

Supplementary Liquidation and Temporary Re-Registration under Turkish Corporate Law

I. Introduction

Turkish laws regulate the voluntary liquidation process of companies in two main stages: (i) entry into liquidation and (ii) removal of the company from the trade registry upon completion of the liquidation.

For a company to enter into liquidation, a general assembly resolution must be adopted. This resolution must clearly state that the company will enter into liquidation, and that a liquidation officer has been appointed for the purpose of enabling the company to reach a "zero debt, zero asset" status, ***i.e.,*** where all company debts are paid off and all assets are liquidated. The resolution is subject to registration with the trade registry. Upon registration, three separate announcements are made to the company's creditors in the Turkish Trade Registry Gazette at one week intervals, notifying them of the liquidation and asking them to submit their claims within a certain timeframe; while known creditors are also contacted via registered mail. To finalize the liquidation, a minimum period of three (3) months must elapse following the date of the last announcement.

Following the expiry of this period, the general assembly must adopt a further resolution regarding the completion of the liquidation process and the de registration of the company. This resolution must be submitted to the trade registry together with a balance sheet approved by the general assembly confirming that the company has no assets or liabilities. Upon registration of this resolution, the liquidation is concluded and the company is removed from the trade registry. Where the liquidation process has not been duly completed due to procedural deficiencies or omissions, this may necessitate a provisional re-registration of the company to the trade registry for a limited period, and initiating a supplementary liquidation process. This mechanism aims to ensure the proper completion of outstanding transactions and to safeguard the rights of shareholders and third parties.

The former Turkish Commercial Code No. 6762 did not include an express provision on supplementary liquidation. Nevertheless, this mechanism was frequently applied in practice based on legal doctrine and court precedents. To address this legislative gap, Article 547 was introduced under the Turkish Commercial Code No. 6102, which entered into force in 2012 (the "***TCC***"). Pursuant to Article 643 of TCC, Article 547 also applies to limited liability companies.

Under Article 547 and its preamble, supplementary liquidation may only be requested where shareholders and/or creditors have a legitimate and compelling legal interest. Accordingly, the existence of an exceptional circumstance is required. Such circumstances may include, among others:

a) certain company assets having been omitted from liquidation or disposed of, in violation of applicable law;

b) initiation of a lawsuit for and on behalf of the company;

c) excessive payments having been made to shareholders, requiring the filing of a restitution claim;

d) initiation of a lawsuit concerning the liability of board members; or

e) a disputed debt that was secured under a special provision is resolved in favour of the company and the reserves for such debts are left unutilized.

A request for temporary registration for the purposes of supplementary liquidation may only be filed before the commercial court of first instance where the company's registered headquarters is located. Such request may be submitted exclusively by the liquidation officer(s), members of the board of directors, shareholders, or creditors. This is an exhaustive list set out under Article 547 of the TCC.

If the court finds the request justified, it orders the temporary registration of the company and appoints the liquidation officer(s). The court decision is registered with the trade registry and announced in the Turkish Trade Registry Gazette. The appointed liquidation officer(s) are authorized to complete the outstanding liquidation transactions and required to strictly limit their acts to the scope of the court decision.

The temporary re-registration of the company does not result in re-establishment of the company as an ongoing legal entity. It is a limited and exceptional measure aimed solely at completing the supplementary liquidation. Once these transactions are finalized, the supplementary liquidation process is concluded automatically, and the company is again de-registered from the trade registry.

Banking and Finance Law

An Effective Liquidity Tool: Factoring Transactions

The collection of receivables arising from goods sold and services rendered is of critical importance in commercial life. In this regard, factoring constitutes an effective financing instrument for businesses that face challenges in collecting their trade receivables and maintaining a stable cash flow.

In general, a factoring transaction involves three parties: (i) the customer, (ii) the debtor, and (iii) the factoring company. The *customer* is the party that has sold goods and/or rendered services to the debtor and seeks factoring services. The *debtor* is the party obliged to pay the customer as a result of the underlying commercial relationship. The *factoring company* is the entity that provides financing to the customer by acquiring the customer's receivables from the debtor. In this tripartite structure, the factoring company pays the receivables —either in whole or in part—to the customer, assumes the risk of non collection, and provides certain ancillary services. Accordingly, factoring transactions are fundamentally based on the assignment of receivables.

The nature of a factoring transaction essentially encompasses three functions: (i) a security function, (ii) a financing function, and (iii) a service function. Through the security function, the factoring company assumes the risk of the debtor's non performance and generally waives any right of recourse

against the customer. The financing function enables the customer to obtain funds prior to the maturity of the receivable, typically through an advance payment made upon submission of valid invoices and supporting documentation. In addition, the service function encompasses operational activities such as bookkeeping, monitoring receivables, and managing collection and enforcement procedures.

In a factoring transaction, the customer's primary obligation is to certify that it has duly fulfilled its contractual obligations vis à vis the debtor and that the receivable is free from any counterclaims, set off rights, or deductions. The customer shall be required to provide evidence of the assigned receivables through invoices or invoice equivalent documents, and to pay the agreed factoring fees. In return, the factoring company shall be obliged to pay in advance a certain percentage of the documented receivables and to carry out the necessary procedures for their collection. The amount to be paid by the factoring company may not exceed the value indicated in the relevant invoices or invoice equivalent documents. Upon maturity, the factoring company collects the receivable, deducts its advances and commissions, and transfers the balance to the customer. Once the debtor is duly notified of the assignment, the factoring company becomes the sole creditor, without requiring the debtor's consent, while the debtor's obligation remains unchanged.

Factoring transactions may also cover the assignment of future receivables under certain conditions. In such cases, the factoring company and the customer first enter into a framework agreement determining the scope and maximum limit of the receivables to be assigned. The legal validity of the assignment of future receivables further depends on the documentation of the underlying commercial relationship through instruments such as order forms or proforma invoices. Once the receivable comes into existence, its final documentation by way of a definitive invoice becomes essential for the legal completion and enforceability of the transaction.

Depending on the structure of the agreement and the commercial needs of the parties, factoring transactions may be structured in various forms including: (i) *recourse factoring*, where the factoring company does not assume the security function; (ii) *domestic factoring*, in which all parties are located in the same jurisdiction; and (iii) *international factoring*, where receivables arising from cross-border transactions are assigned to an export factoring company, which may subsequently cooperate with an import factoring company located in the debtor's country.

In conclusion, although factoring is a composite transaction involving multiple contractual performances, it is essentially grounded in the assignment of receivables. Through this assignment, the customer's receivables are transferred to the factoring company and become part of its assets. As a result, the factoring company becomes the creditor. From that moment onward, factoring company assumes responsibility for the accounting, monitoring, and collection of the receivables, thereby relieving the customer from the administrative and collection burden associated with such claims.

Capital Markets Law

Beyond Traditional Finance: The Legal Framework of Lease Certificates in Türkiye

I. Introduction

Lease certificates, which are known as "sukuk" in the Islamic finance practice, are one of the alternative financing instruments used by domestic and foreign companies and entrepreneurs to secure funding of major projects. Lease certificates are securities issued by asset leasing companies to finance all types of assets and rights, enabling their holders to receive a share of the income generated from such assets or rights in proportion to their ownership stake.

Lease certificates are generally regulated under the Capital Markets Law No.6362 and mainly under the Communiqué on Lease Certificates No. III-61.1 ("**the *Communiqué***") published by the Capital Markets Board ("***Board***") in 2013. The Communiqué sets forth regulations regarding the types of lease certificates, the incorporation of asset leasing companies (which act as special purpose vehicles required to issue these certificates) ("***ALC***") and the requirements for issuance of lease certificates by an ALC.

II. Asset Leasing Companies

An ALC is a capital markets institution that must be established as a joint stock company for the sole purpose of issuing lease certificates. The primary function of an ALC is to acquire the assets or rights underlying the lease certificates and to ensure that the income arising therefrom is distributed to investors in proportion to their shares in a timely manner.

The institutions authorized to establish an ALC are listed exhaustively in the Communiqué, as follows: **(i)** banks, **(ii)** intermediary institutions engaged in any of the activities of portfolio brokerage, general custody services or brokerage underwriting, **(iii)** mortgage financing institutions, **(iv)** real estate investment companies whose shares are traded on the stock exchange, **(v)** publicly traded corporations classified in the first and second groups as defined under the Board's regulations on corporate governance, **(vi)** companies that receive a long-term rating from rating agencies, upon request, equivalent to investment grade in the currency of the issue, according to the rating scale, and **(vii)** companies in which 51% or more of the capital is directly owned by the Undersecretariat of the Treasury.

An ALC may operate exclusively within the scope of its purpose and field of activity set out in its articles of association, which must be approved by the Board before its incorporation. Accordingly, an ALC is prohibited from engaging in any commercial activity that is beyond this scope.

Pursuant to the Communiqué, an ALC must also obtain permission from the Board for any amendments to its articles of association, participation in merger and demerger transactions, share transfers exceeding the thresholds set out in the Communiqué, and the transfer of shares conferring management and voting privileges (regardless of their percentage).

The Communiqué provides for certain mechanisms to protect the rights of the

investors: In accordance with Article 12/5 of the Communiqué, the ALC cannot establish rights *in rem* over the assets and rights transferred to it, nor can it utilize these assets and rights in a manner that would prejudice the interests of the certificate holders. Furthermore, the ALC cannot obtain credit, incur debt, or use these assets and rights for any purpose other than those explicitly specified in its articles of association.

The ALC's board members are responsible for ensuring that the income generated by the ALC is distributed to lease certificate holders in proportion to their shares. ALC may only incur expenses related to the issuance of lease certificates, the execution of transactions underlying the issuance, and the continuation of its activities in accordance with legislation. In this context, the ALC cannot make expenditures that are not in line with market standards. Responsibility for such expenditures lies with the ALC's board of directors.

The foregoing aims to prevent ALC from misusing the assets it holds and to protect the certificate holders.

III. Types of Lease Certificates

Lease certificates may be issued based on **(i)** ownership, **(ii)** a management agreement, **(iii)** the purchase and sale of assets or rights, **(iv)** a partnership or **(v)** a contract for work.

An *ownership-based lease certificate* is a type of lease certificate issued for the purpose of generating rental income, which involves a sourcing institution that needs urgent financing transferring its assets to an ALC, and the ALC leasing these assets to the sourcing institution or third parties. Subsequently, certificate holders shall be paid out of the revenues derived from the leased assets. At maturity, the assets and rights are sold by the ALC to the sourcing institution or third parties, and the sale price is paid to the lease certificate holders in proportion to their shares, thus the certificates redeemed.

In *lease certificates based on a management agreement*, a contract is executed between a sourcing institution in need of funds and the ALC, stipulating that the specified assets or rights will be managed for and on behalf of the ALC. The sourcing institution secures financing without transferring its assets and this financing is raised through the issuance of lease certificates. Investors holding these certificates earn a return from the income generated by the assets or rights which are being managed on behalf of ALC.

In the case of *lease certificates based on purchase and sale of assets or rights*, the main purpose of issuance is to finance the acquisition of an asset or right by ALC and its subsequent sale on a deferred payment basis to companies whose qualifications are specified in the Article 12 of the Communiqué, while the ALC remains the owner of the assets and rights until the end of the term. At maturity, the sourcing institution becomes the owner, provided it has made all payments in full and on time.[1] In addition, pursuant to the Article 7 of the Communiqué, if the ALC is unable to purchase the assets or rights, or fails to sell them to the sourcing institution within the next business day following the transfer of funds, the funds collected by the ALC must be returned to

[1]Kulak, Sermaye Piyasası, at page 88; Lahsasna, Hassan ve Ahmad, *Forward Lease Sukuk*, at page 81.

the certificate holders. The reason for stipulating such a short period is to protect the certificate holders by ensuring the ALC has arranged the buyer and seller in advance.[2]

Partnership-based lease certificates are issued by the ALC to participate in a joint venture. The profits generated from the projects undertaken by this joint venture are distributed to investors in proportion to their shares. The ALC can participate in this joint venture in two ways: either by exclusively providing capital or by contributing cash while the other partners contribute non-cash capital (excluding personal labour and commercial reputation). For these two different types, Article 8 of the Communiqué sets out different provisions regarding management structures and the distribution of profits derived from the joint venture. In this type of lease certificate issuance, certificate holders are paid at the agreed rate if the joint venture generates a profit. Furthermore, if certificate holders fail to obtain the promised profit at maturity due to the bad faith or unlawful acts of the investor, the partners of the joint venture other than ALC, or third persons appointed by them, the ALC will pay the certificate holders' claims through foreclosure.[3]

Lastly, *lease certificates based on a contract for work* are issued pursuant to Article 9 of the Communiqué to provide the financing necessary for the creation of the work (***e.g.,*** a building/facility) under a construction contract to which the ALC is a party as the Principal/Owner. At the end of the certificate's term, and therefore after the completion of the work, ALC may lease the work for a certain period, or sell it directly without leasing, collect the sale price and make payments to the lease certificate holders.

IV. Issuance of Lease Certificates

This Communiqué sets out certain rules regarding issuance of lease certificates. Since the lease certificates are considered as capital market instruments, the matters that are not regulated under this Communiqué are subject to the provisions of the Communiqué on the Sale of Capital Market Instruments No. II-5.2.[4]

According to Article 10 of the Communiqué, issuance of lease certificates may be carried out either through a public offering or privately, without a public offering.

If the public offering method is adopted, the ALC must obtain approval from the Board for the issuance certificate for the sale of each tranche throughout the validity period of the prospectus and for trading on the stock exchange. In the case of private sales, approval must be obtained from the Board prior to each sale.

Furthermore, lease certificates can be issued domestically or internationally. According to the Article 17 of the Communiqué, the domestic issuance of lease certificates must be recorded electronically by Central Registry Agency ("***CRA***") and tracked on a right holder basis. Lease certificates issued abroad must also be registered with the

[2] Gölcüklü, Kira Sertifikaları, at page 224.
[3] Kulak, Sermaye Piyasası Aracı Olarak Kira Sertifikası, at page 90.
[4] Kulak, Sermaye Piyasası Aracı Olarak Kira Sertifikası, at page 73.

CRA, but the Board may grant an exemption upon the issuer's request. If an exemption is granted, information regarding the issuance must be submitted to the CRA within 3 (three) business days following the issuance.

V. Conclusion

Lease certificates have emerged as a highly anticipated alternative financing instrument in Türkiye, granting investors the right to receive a share of the income generated from underlying assets or rights. The rapid growth of this capital market instrument in a relatively short period indicates its strong appeal as an alternative investment option.[5] This rapid development has been supported by the Communiqué issued by the Board. To maximize investor protection, Communiqué strictly regulates both the issuance procedures of lease certificates and the operational boundaries of ALCs.

Competition / Antitrust Law

An Assessment on Acquisition of De Facto Control Prior to Approval: The Turkish Competition Board's Can Grubu / Tekfen Decision

On March 16, 2026, the Turkish Competition Authority (the "***Authority***") published the Turkish Competition Board's (the "***Board***") reasoned decision[6] concerning the acquisition of sole control over Tekfen Holding A.Ş. ("***Tekfen***") by Can Group through its subsidiary Can Kültür Sanat Eğitim Kurumları İşletmeciliği AŞ ("***Can Kültür***") (the "***Decision***").

[5] Kulak, Sermaye Piyasası Aracı Olarak Kira Sertifikası, at page 122.
[6] The Board's decision dated 26.06.2025 and numbered 25-23/589-371.

I. Background of the Decision

The Decision arose from a notification filed on 15 April 2025 for Can Kültür's proposed acquisition of a 25.24% stake in Tekfen from members of the Berker Family. In parallel, the Authority was already examining complaints concerning ARY Holding AŞ ("***ARY***"), which had previously acquired Tekfen shares directly and indirectly, and was alleged to have obtained *de facto* control over Tekfen without prior clearance from the Board. The complaints further claimed that ARY's voting arrangements with other shareholders increased its effective voting power beyond 35%, that the transactions should therefore have been notified under Law No. 4054 on the Protection of Competition ("***Law No. 4054***") and Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board ("***Communiqué No. 2010/4***"), and that they risked hindering competition in certain overlapping markets, particularly fertilizer and port operations.

ARY argued that it had not acquired control of Tekfen, and that it remained only a minority shareholder in a company with a dispersed ownership structure, that no shareholder had majority voting power or strategic veto rights, and that Tekfen had no controlling shareholder before or after ARY's acquisitions. ARY also objected to the Berker Family transaction and argued that, once combined with Can Kültür's existing stake, the acquisition would raise Can Kültür's shareholding above 41%, making it the largest shareholder and enabling it to obtain sole control over Tekfen.

Following its review, the Board concluded that the Can Group (consisting of Can Kültür, MCN Gayrimenkul A.Ş., KCN Gayrimenkul A.Ş., and Doğa Okulları İşletmeciliği A.Ş.) was already a shareholder in Tekfen, and that its direct and indirect acquisition of additional Tekfen shares was a notifiable transaction requiring prior merger control approval. The Board further found that the transitional provisions in the Share Transfer Agreement dated 10 April 2025 executed by and between Can Kültür and the Berker Family, had effectively caused the transaction to be implemented before clearance, which justified the imposition of an administrative monetary fine on the Can Group under Articles 11(1) and 16(1)(b) of Law No. 4054.

On the other hand, the Board has yet to reach a final substantive conclusion on whether the Berker Family transaction ultimately violated Article 7 of Law No. 4054. Instead, it stated that the file was still under review and that a final decision would be adopted only once the investigation was completed. Pending that final decision, the Board held that, under Article 7(2) of Law No. 4054 and Article 10(4) of Communiqué No. 2010/4, the acquisition of sole control over Tekfen by Can Kültür was not yet legally valid.

II. Legal Background on the Assessment of *De Facto* Sole Control Under Turkish Merger Control Regime

The rules governing *de facto* sole control under Turkish merger control regime are akin to the rules under the EU Merger Regulation ("***EUMR***"), as the relevant legislation in Türkiye is closely modelled on the EUMR and the European Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 ("***CJN***").

Paragraph 45 of the Authority's Guidelines on Cases Considered as a Merger or Acquisition and the Concept of Control ("***Control Guidelines***") indicates that a minority shareholder may also be deemed to have *de facto* sole control. This would be the case where, in particular, if a minority shareholder is highly likely to achieve a majority vote at the shareholders' meetings, given the level of its shareholding and the evidence resulting from the presence of shareholders in the shareholders' meetings in previous years. Accordingly, the Board conducts a prospective analysis based on the past voting patterns, and takes into account foreseeable changes in the shareholders' presence that might arise following the transaction. In this respect, where - on the basis of its shareholding, the historic voting pattern at the shareholders' meeting and the position of other shareholders - a minority shareholder is likely to have a stable majority of the votes at the shareholders' meeting, then that large minority shareholder is considered to have sole control.

There are also various cases where the Board analysed whether a shareholder is highly likely to achieve a majority at the shareholders' meetings, taking into account the historic voting patterns at the general assemblies and the position of other shareholders, and therefore acquires *de facto* sole control over the relevant undertaking.[7]

[7]See, ***e.g.,*** the Board's WorxInvest/Gimv decision dated 21.02.2024 and numbered 24-09/154-64, DP/JFL decision dated 02.12.2021 and numbered 21-58/820-402,

III. Assessment of Tekfen's Post-Transaction Control Structure

The Board assessed whether the Berker Family transaction would change control over Tekfen by examining Tekfen's historical general assembly attendance rates, the participation levels of its principal shareholders, and the company's dispersed ownership structure. It found that, although Tekfen has no single shareholder with a legal majority, a relatively small number of major shareholders have historically accounted for a substantial portion of the votes represented at general assemblies, while the remaining shares are widely dispersed. On that basis, the Board emphasized that, in publicly listed companies with fragmented ownership, *de facto* control may arise even without a formal majority, if a shareholder or group can reliably command enough votes at meetings to determine strategic decisions.

Looking at attendance patterns between 2018 and 2024, the Board noted that the Berker Family was represented at general assemblies at around 22-31%, the Gökyiğit Family at around 14-22%, and the Akçağlılar Family at around 6%. It also observed that attendance was comparatively high in 2018, 2019, and 2025, but lower in 2020-2024, with attendance at the 2023 extraordinary general assembly falling to 58%. From these figures, the Board concluded that, depending on turnout, even a stake well below 50% could be sufficient to secure decision-making power. For example, at Tekfen's lowest attended meeting, 29.48% plus one vote would have sufficed, while at the highest attended meeting other than the most recent one, 40.83% plus one vote would have been enough.

Against that background, the Board found that the Can Group's existing 17.52% stake, when combined with the 25.24% Berker Family stake to be acquired, would give it 42.76% of the voting rights, which exceeds the level that has historically been sufficient to obtain a majority at Tekfen's general assemblies. Although no single family or group could unilaterally control Tekfen on a purely legal shareholding basis, the Board considered that effective control could realistically be achieved through combinations of major shareholder groups, namely (i) Berker and Can, (ii) Berker and ARY, or (iii) Can and ARY. In this case, it concluded that the notified transaction would allow the Can Group to secure a majority at general assemblies, shape resolutions adopted by majority vote, and determine the composition of Tekfen's board of directors, thereby bringing about a change in control in practice.

Accordingly, the Board held that the transaction would result in a lasting change of control over Tekfen and therefore qualifies as an acquisition under Article 5 of Communiqué No. 2010/4. Since the parties' turnovers also exceeded the applicable thresholds, the Board concluded that the transaction was subject to a mandatory merger control filing and approval in Türkiye and cannot become legally valid without the Board's clearance.

Çiftay/Batıçim decision dated 08.07.2021 and numbered 21-34/477-239, METRO/EPGC decision dated 17.12.2020 and numbered 20-54/756-336, Venator/SK decision dated 26.11.2020 and numbered 20-51/703-311, Koç/KFS/YKB decision dated 28.01.2020 and numbered 20-07/71-39, ACCIONA/Nordex decision dated 10.02.2016 and numbered 16-04/65-23.

IV. Assessment of the Violation of the Suspension Requirement Under Articles 10 and 11 of Law No. 4054

In terms of the legal framework governing notifiable mergers and acquisitions under Turkish competition law, under Communiqué No. 2010/4, a notifiable transaction does not become legally valid until the Board approves the transaction, explicitly or implicitly.

The Board clarified that the key issue is not only whether a transaction was notified, but also when it was implemented. As implementation occurs on the date when control changes, and this includes both legal control and *de facto* control, if control transfers before the approval decision, the transaction is considered to have been implemented without approval, which gives rise to administrative fines. The Board also noted that, although the signing of a transfer agreement does not automatically mean that control has passed, it remains possible for an acquirer to obtain *de facto* control during the interim period before closing, whether deliberately or inadvertently.

The Board further explained the consequences of failing to notify a transaction subject to a mandatory merger control filing in Türkiye, stating that if the Board later determines that the transaction does not violate Article 7, it may still approve the transaction but will impose a fine for failure to notify. If, however, the transaction is found to violate Article 7, the Board may impose not only a fine but also restorative measures, such as terminating the transaction, eliminating the unlawful situation created, returning the acquired shares or assets, or preventing the acquirer from participating in the management of the target pending divestiture.

The Board noted that this approach is consistent with EU merger control principles, including the European Commission's power to impose significant fines for failure to notify or "gun jumping" cases. To illustrate its approach, the Board also referred to its Elon R. Musk/Twitter[8] and Param/Kartek[9] decisions, both of which involved fines for transactions that had been closed without prior approval, including cases where *de facto* control had already passed before clearance.

Against that background, the Board returned to the Tekfen case and identified the central issue as whether the Share Transfer Agreement signed on 10 April 2025 between the Can Group and the Berker Family itself caused the transaction to be implemented before clearance. In other words, the Board considered that the decisive question is whether that agreement brought about a change of control over Tekfen before the Board granted approval.

V. Assessment of the Share Transfer Agreement

The Board examined the "Transitional Period" provisions of the 10 April 2025 Share Transfer Agreement between the Can Group and the Berker Family and concluded that these clauses effectively allowed the Can Group to direct the Berker Family's voting rights before Board approval. Under these provisions, the Berker Family undertook to vote in

[8] The Board's Elon R. Musk/Twitter decision dated 02.03.2023 and numbered 23-12/197-66.

[9] The Board's Param/Kartek decision dated 04.04.2024 and numbered 24-16/390-148.

line with Can Kültür on all agenda items at Tekfen's general assemblies, support its motions, back its nominees for the board of directors and committees, and align on matters such as the approval of financial statements and the discharge of board members. The agreement also specifically contemplated a joint board list for the 7 May 2025 general assembly, and compliance with these arrangements was reinforced by a penalty clause.

In the Board's view, these provisions meant that the Can Group obtained the ability to exercise decisive influence over Tekfen before the Board's approval, which was sufficient to amount to a *de facto* change of control. The Board relied not only on the wording of the agreement, but also on the outcome of the general assembly of May 7, 2025, where a joint board list supported by the Berker Family and the Can Group was adopted by majority vote. It rejected the argument that the clauses had not produced actual effects in practice, emphasizing that under the Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control, it is sufficient that the acquirer had the capacity to exercise decisive influence, and actual exercise is not necessarily required.

The Board also rejected the notion that the Can Group could not have foreseen that these arrangements would result in *de facto* control, considering that, given Tekfen's dispersed shareholder structure, historical attendance rates, and voting patterns, the Can Group should have known that the agreement would place effective control. On that basis, the Board concluded that the acquisition was subject to mandatory approval by the Board, that it had been implemented before the approval of the Board, and that the Can Group should therefore be fined under Article 16(1)(b) of Law No. 4054 at 0.1% of its turnover in the preceding financial year.

At the same time, the Board clarified that the separate substantive question of whether the transaction ultimately violates Article 7 of Law No. 4054 had not yet been finally resolved. Until that final decision is taken, the transaction remains legally invalid. The opinion of the Authority's Legal Consultancy Department confirmed this approach, stating that the transaction is in a state of "provisional ineffectiveness" until approved, and that the contractual clauses requiring the Berker Family to vote in line with Can Kültür before the Board had issued its approval have no legal validity and should not be exercised while the Board's review remains ongoing.

VI. Conclusion

The Decision is significant as it confirms that under the Turkish merger control regime, the concept of control is not confined to formal legal majority or registered ownership but also extends to situations where a party acquires the practical ability to exercise decisive influence over a target undertaking. In that respect, the Board's analysis is especially important for publicly listed companies with dispersed shareholding structures, where relatively limited shareholdings, when combined with historical attendance patterns at general assemblies and contractual voting arrangements, may suffice to confer *de facto* sole control.

The Decision is also notable for the Board's strict approach to gun-jumping as it shows that the Board tends to treat

clauses resulting in voting alignment as evidence that a transaction has been closed prior to the Board's approval, even where legal closing has not yet occurred. More broadly, the case underscores that parties to notifiable transactions must preserve their status as separate economic units until approval is obtained and refrain from any conduct that may be seen as transferring control in practice.

Accordingly, the Decision is likely to serve as an important precedent in Türkiye both for the assessment of *de facto* control and for the enforcement of the suspension requirement.

Code, Cartels, and Competition: Turkish Competition Board Concludes No Infringement in Amazon Automatic Pricing Investigation

I. Introduction

The Turkish Competition Board ("***Board***") concluded the investigation into the pricing algorithm practices of multi-category e-marketplaces and determined that the pricing algorithms used on the e-marketplace platform of Amazon Turkey Perakende Hizmetleri Limited Şirketi ("***Amazon Türkiye***") did not violate Article 4 of Law No. 4054 on the Protection of Competition ("***Law No. 4054***").[10] While the Board ultimately found no infringement, Amazon Türkiye nevertheless opted to discontinue the relevant tool, committing to its complete shutdown by April 11, 2025.

The investigation focused on whether the automatic pricing algorithms available to sellers on Amazon Türkiye's platform infringed Article 4 of Law No. 4054 by facilitating a hub-and-spoke cartel, anti-competitive agreements, or the exchange of competitively sensitive information between the sellers. Following its assessment of both the technical functioning of the mechanism and its market effects, while acknowledging that pricing algorithms may raise significant competition law concerns, the Board found that the automatic pricing tool in question is not mandatory to use, it operates in line with the parameters set by the sellers (***i.e.***, it is rule-based, rather than learning-based) and therefore, it did not, at this stage, possess the characteristics or function necessary to be considered restrictive of competition. The Decision sheds light on the Board's approach to theories of harm about pricing algorithms within the design and functionality nexus, where it prioritizes whether an algorithm is rule-based rather than learning-based, and whether it lacks reciprocal dynamic learning that could facilitate coordinated anti-competitive effects.

II. Background

The Turkish Competition Authority's ("***TCA***") scrutiny began with a preliminary investigation into whether D-Market Elektronik Hizmetler ve Ticaret A.Ş. ("***Hepsiburada***") had infringed Law No. 4054 in relation to two key concerns: (i) alleged discriminatory practices and Most Favoured Customer ("***MFC***") clauses, and (ii) the automatic pricing mechanism. During the preliminary investigation, the TCA identified that DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ ("***Trendyol***") and Amazon Türkiye also offered automatic pricing mechanisms. Accordingly, the Board expanded its investigation to include Hepsiburada, Trendyol, and Amazon

[10] Amazon Türkiye decision dated 18.04.2025 and numbered 25-15/348-164.

Türkiye in relation to pricing algorithms, while discontinuing its inquiry into the MFC clauses.

During the investigation, Hepsiburada, Trendyol, and Amazon Türkiye initiated commitment procedures to address the TCA's concerns. While Hepsiburada and Trendyol concluded the investigation through commitments on their part, Amazon Türkiye terminated the commitment procedure by maintaining that (i) the automatic pricing mechanism is optional and designed to enhance competition for the benefit of both customers and third-party sellers, (ii) it does not give rise to the alleged competition concerns, however (iii) it would nevertheless discontinue the mechanism in Türkiye.

III. The Board's Approach to Theories of Harm Concerning Pricing Algorithms

According to the Decision, undertakings increasingly leverage algorithms to refine pricing models, personalized services, and forecast market trends in the digital economy. These tools serve diverse functions, including data collection, consumer-based personalization, and dynamic pricing.

Algorithms can generate pro-competitive effects by improving efficiency (***e.g.,*** fostering disruptive innovation that results in new or improved products) and by reducing transaction costs (***e.g.,*** through optimized production processes or increased worker productivity) on both the supply and demand sides. They can also lower consumer search costs and facilitate supply-demand balancing through dynamic pricing mechanisms that provide a suitable range of products and comparable information on key competitive parameters such as price, quality, and consumer preferences.

However, despite the benefits, the Decision highlights that pricing algorithms may raise significant competition concerns. By automating the decision-making process, pricing algorithms can increase market transparency, making it easier for competitors to monitor each other, align on strategic factors such as pricing, detect deviations from any implicit coordination, and ultimately respond to or discipline such deviations. Algorithms can also enable self-preferencing, predatory pricing, price discrimination, or traditional anti-competitive practices such as price-fixing or market sharing.

Algorithms may generally facilitate coordination between undertakings in three ways. First, automated pricing systems based on existing pricing data may stabilize coordination by detecting and responding to deviations (***e.g.,*** monitoring compliance with resale price maintenance or price-fixing arrangements). Second, they may enable a hub-and-spoke mechanism by facilitating information exchange (***e.g.,*** where undertakings rely on the same third-party pricing software to set prices). Third, they may lead undertakings to coordinate, or at least avoid competitive outcomes, through self-learning autonomous algorithms, even in the absence of explicit coordination or information exchange.

Against this background, the Board assessed the different theories of harm scenarios centred on pricing algorithms. The Board first examined the hub-and-spoke cartel model, noting that such an

arrangement requires five cumulative conditions[11] to be met, including the intentional sharing of future pricing information through a common provider and the use of that information by competitors to determine their own prices. The Board also considered the risk of tacit collusion, where the awareness that competitors are using similar algorithms allows them to more effectively predict and interpret each other's pricing behaviours.

The assessment further addressed scenarios of unintentional coordination and conscious parallelism facilitated by third-party service providers, where liability may depend on whether the parties were aware of, or could reasonably foresee, potential anti-competitive outcomes. In this context, the Board emphasized the need for a case-specific analysis, taking into account factors such as the reason for the algorithm's application, the identity of the developer, and whether multiple competitors rely on the same third-party software.

IV. The Assessment of Amazon's Pricing Algorithms

Amazon's automatic pricing mechanism was designed primarily to automate how sellers compete for the *Buy Box*. Since multiple sellers may offer the same product on an e-marketplace, the Buy Box system groups identical offers under a single listing and highlights the seller whose offer is deemed most advantageous according to Amazon's algorithmic criteria. Consequently, when a customer clicks "*Add to Cart*" or "*Buy Now*," the product from the Buy Box winner is the one selected. This system allows sellers to automate price adjustments based on predefined rules to improve their chances of winning the Buy Box.

Amazon introduced the tool in April 2020 as the first platform to introduce such tools. Sellers can choose from these four options: (i) Competitive Featured Offer which aligns based on the price of the buy box product (matches, beats, or stays above the current Buy Box price), (ii) Competitive Lowest Price, which aligns based on the lowest price (matches, beats, or stays above the lowest price on the platform), (iii) External Competitive Price which allows sellers to match or stay below the lowest place observed in other channels, (iv) Sales-Based Pricing which creates price changes based on sellers' own sales volume rather than competitors' prices. Among these tools, the competitive featured offer has a significant difference, since the Buy Box winner is determined by a dynamic and non-transparent algorithm that considers factors beyond price, such as stock availability, delivery performance, and seller reliability. Therefore, matching the Buy Box price does not guarantee winning the position, as non-price parameters play a significant role.

During the investigation, the TCA consulted its Department of Economic Analysis and Research, which assessed that the automatic pricing service in question is based on a rule-based algorithm, does not involve an in-depth analysis of competitors' prices, and does not establish a structure based on mutual dynamic learning. It further noted that the

[11] According to the Competition Law Glossary of Terms, which refers to the Competition Appeal Tribunal's Tesco decision dated 20.12.2012 and numbered 1188/1/1/11.

system is not designed using machine learning; rather, it allows sellers to define parameters limited to setting prices below, above, or equal to a specified level. On this basis, the competitive concerns arising from the system were considered more limited compared to those associated with machine learning-based automated pricing.

All in all, the Board assessed whether Amazon Türkiye's automatic pricing mechanism could give rise to concerns like a hub-and-spoke cartel, specifically where competing sellers rely on the same tool in setting their prices. That said, the Board recalled that, to mention a hub-and-spoke type infringement, a number of cumulative conditions must be met (notably, the intentional sharing of strategic pricing information via the platform, its onward transmission to other sellers, awareness of its source, and reliance on such information in determining future pricing).

Further, the Board underlined that pricing algorithms are not problematic *per se* and may generate efficiencies and consumer benefits in certain circumstances. In this vein, the Board emphasized that the key question is whether such tools facilitate coordination in practice. To that end, the Board noted that sellers set their prices based on parameters such as the "Competitive Featured Offer," "Competitive Lowest Price," and "External Competitor Price," without any direct or indirect contact between them. It also noted that the mechanism is not mandatory, that no evidence of coordination or alignment was identified, and that sellers retain discretion to define and adjust their own rule sets, including their duration. Finally, the system was found to be rule-based rather than learning-based. Considering these factors the Board concluded that, at this stage, the mechanism does not give rise to a restriction of competition under Article 4 of Law No.4054.

V. Conclusion

In conclusion, the Board determined that Amazon did not violate Article 4 of Law No. 4054 through its automatic pricing mechanism. The TCA's approach to this investigation was based on the relevant tool's characteristics and its effects on the market. The Board took into account that the tool is based on predefined rules rather than machine learning facilities. It was a voluntary system with very low and inconsistent usage rates among sellers. Economic analysis on price movements showed dynamic pricing behaviours, providing no evidence of an anti-competitive agreement or exchange of competitively sensitive strategic information which can be an indicative of a hub-and-spoke cartel.

Evaluating Gun-Jumping Risks: The Dgpays / Provision Acquisition under the Spotlight

This case summary concerns the acquisition of sole control over Provision Bilgi İşlem Sanayi ve Ticaret AŞ ("***Provision***") by Dgpays Bilişim Hizmetleri AŞ ("***DGPAYS***") through Dgpaysit Bilişim Teknolojileri AŞ ("***DGPAYSIT***"), and the Turkish Competition Board's ("***Board***") assessment as to whether the transaction was implemented prior to obtaining approval decision, in breach of the suspension requirement under Law No.

4054 on the Protection of Competition ("***Law No. 4054***").[12]

I. Background and Procedural History

The transaction was notified to the Turkish Competition Authority ("***Authority***") on August 21, 2025. During the review process, the Authority received complaints dated September 10, 2025, and September 19, 2025, alleging that DGPAYS had already begun marketing and offering Provision's acquiring services to customers and that the transaction had been *de facto* implemented prior to obtaining the Board's approval. In response to these allegations, the Authority conducted on-site inspections on October 27, 2025, at the premises of DGPAYS, DGPAYSIT and Provision to assess whether control had been transferred prior to an approval decision.

II. Legal Framework on Gun-Jumping

In its decision, the Board set out the legal framework applicable to gun-jumping under Turkish merger control rules. In this respect, the Board stated that concentration is deemed to be realized on the date when control is transferred to the acquiring undertaking. Accordingly, the Board underlined that the central question in the case is whether the acquiring party obtained the ability to exercise decisive influence over the target undertaking prior to obtaining the Board's approval.

The Board further explained that control change may arise either *de jure* or *de facto* through rights, agreements or other means that enable the exercise of decisive influence over the target undertaking. In this context, the Board outlined a number of examples of conduct which may indicate that a transaction has been implemented prior to the approval decision of the Board concerning the notified transaction. The Board stated that a change of control may arise where the acquiring undertaking obtains the ability to exercise decisive influence over the target's commercial and operational decisions. In this context, the Board indicated that such influence may be inferred, inter alia, where (i) the target's key business decisions (***e.g.***, pricing, discounts, customer offers) are subject to the acquirer's approval, (ii) the acquirer is involved in or directs the target's operational and managerial processes, (iii) commercially sensitive information is shared and customer contracts are reviewed or shaped by the acquirer, (iv) sales or management functions are integrated, or (v) the parties act or present themselves as a single economic entity vis-à-vis customers.

III. Assessment of the Findings Obtained through the On-site Inspections

In its assessment of the findings obtained during the on-site inspections, the Board examined whether the interactions between DGPAYS and Provision could be considered conferring decisive influence over the target undertaking. The Board noted that the findings on file revealed a certain level of interaction and coordination between the parties. In particular, it was observed that DGPAYS and Provision were in contact on various matters, including investor-related communications as well as operational and technical issues. In this context, certain correspondence included

[12] The Board's decision dated 14.12.2025 and numbered 25-45/1123-631.

information such as transaction volumes, customer numbers, and other operational data. Upon reviewing these findings together with the parties' explanations, the Board concluded that such information exchanges were intended to inform DGPAYS' foreign investors and to assess Provision's performance and therefore fell within the scope of information that may reasonably be requested during an acquisition process.

At the same time, the Board identified additional correspondence indicating that the parties had interacted in relation to customer-facing activities. In particular, the findings suggested that the parties had jointly discussed price quotations, discount structures and cost analyses, participated together in communications with customers, and in certain instances presented their services as a combined offering. The Board also noted that some internal communications reflected a degree of coordination in approaching customers.

While acknowledging that such conduct could be indicative of a transfer of control, particularly as it may involve commercially sensitive coordination and joint decision-making, the Board emphasized that these elements must be assessed within the framework of the decisive influence aspect. In this regard, the Board underlined that not every form of coordination or cooperation during a transaction process constitutes gun-jumping.

IV. Reasons for the Absence of Gun-Jumping

Following its assessment of the findings and the parties' explanation on this front, the Board concluded that the conduct identified in the file did not amount to early implementation of the transaction and, therefore, did not constitute a violation of the suspension requirement.

In reaching this conclusion, the Board considered that the cooperation between DGPAYS and Provision stemmed primarily from the complementary nature of their activities and the need to ensure technical compatibility between their respective products and services. While DGPAYS provides end-to-end infrastructure and operational services, Provision operates as a supplier of specific software components. Accordingly, the Board found that the interactions between the parties largely reflected a technical and preparatory collaboration rather than an exercise of control. Second, the Board evaluated the nature of the information exchanged between the parties and concluded that it mainly consisted of historical and operational data used for performance evaluation and investor-related purposes. The Board considered that such exchanges are typical in acquisition processes and do not, in themselves, demonstrate that the acquiring undertaking has assumed control over the target. Third, although certain instances of coordination were identified, particularly in relation to customer communications and commercial discussions, the Board determined that these did not reach the level of enabling DGPAYS to exercise decisive influence over Provision's strategic decisions. In particular, the evidence did not demonstrate that Provision's key business decisions were subject to DGPAYS' binding approval or instructions. Finally, the Board also took into account the overall conduct of the parties throughout the transaction process. The Board noted that the parties

continued to follow the notification and approval procedure before the Authority and adjusted their contractual arrangements in light of the anticipated timing of the Board's decision. In the Board's view, this indicated that the parties did not act with the intention of implementing or closing the transaction prior to obtaining clearance. On the basis of these considerations, the Board concluded that the findings on file did not support the existence of a gun-jumping violation.

V. Conclusion

Following its comprehensive assessment of both the transaction and the findings obtained during the on-site inspections, the Board concluded that the transaction constitutes a notifiable acquisition within the scope of Law No. 4054 and Communiqué No. 2010/4. However, the Board found that the transaction had not been implemented prior to obtaining its approval and, therefore, that no administrative monetary fine should be imposed. Accordingly, the Board rejected the complaint and determined that there had been no infringement of the suspension requirement. This decision is particularly noteworthy as it provides important guidance on the boundaries between permissible pre-closing activities and conduct that may amount to a gun-jumping violation. By classifying the relevant communications as routine technical coordination for a mutual customer, the Board clarified that mere collaboration between the transaction parties does not necessarily result in the exercise of decisive influence over the target undertaking prior to regulatory approval.

On-Site Inspections Under Scrutiny: The Constitutional Court's Changing Approach to the Authority's On-Site Inspection Powers

I. Introduction

The Constitutional Court of the Republic of Türkiye (the "***Court***") has recently ruled on the constitutional compatibility of the Turkish Competition Authority's (the "***Authority***") on-site inspection powers specified under Article 15 of Law No. 4054 on the Protection of Competition ("***Law No. 4054***"). The Court's decision dated November 6, 2025, and numbered E.2023/174, K.2025/224, published in the Official Gazette dated February 17, 2026 and numbered 33171 (the "***Decision***"), constitutes a significant development in the ongoing debate on the constitutional limits of the Authority's on-site inspection powers.

The Decision should be read together with the Court's earlier individual application decision dated March 23, 2023 and numbered 2019/40991 (the "*Ford Judgement*"), in which the Court had concluded that the current legal framework governing the Authority's on-site inspection powers resulted in a violation of the applicant's right to inviolability of domicile under Article 21 of the Constitution.

The Decision, however, followed a different methodological approach. While Court did not expressly depart from its earlier reasoning, it did not engage with the same constitutional safeguards that formed the basis of its findings in the Ford Judgement. Such different approaches inevitably created a certain tension between the Court's earlier Ford Judgement, and its more

limited review in the present Decision. Accordingly, this article aims to focus on examining the Court's different approaches when assessing the constitutional limits of on-site inspections, as well as the practical implications of the Decision.

II. The Ford Judgement: Constitutional Limits of On-Site Inspections

The Ford Judgement constituted a landmark ruling in which the Court assessed the Authority's on-site inspection powers specified under Article 15 of Law No. 4054 within the framework of the right to inviolability of domicile under Article 21 of the Constitution. In terms of background information, the individual application leading to the Ford Judgement arose from an administrative monetary fine imposed following an on-site inspection conducted at the applicant's premises, following which the applicant challenged the compatibility of the Authority's on-site inspection with the constitutional rules governing entry into and search of premises.

In its Ford Judgement, the Court first clarified that the scope of the term "domicile" is not limited to private residences, but also extends to business premises, such as company headquarters. Importantly, the Court distinguished between publicly accessible areas and internal areas that are not open to the public (such as management offices and employee workspaces where professional activities are carried out) and concluded that non-public internal areas are covered by the protection provided under Article 21 of the Constitution. Accordingly, by taking into account the fact that the Authority obtained documents from company computers during the on-site inspection, the Court concluded that the on-site inspection was carried out in a non-public area of the company's premises and thus this constitutes an interference with the applicant's right to inviolability of domicile under Article 21 of the Constitution.

On this basis, the Court found that on-site inspections conducted by the Authority without a judicial warrant are incompatible with Article 21 of the Constitution. In this context, the Court underlined that, under Article 21 of the Constitution, entry into premises, search and seizure, as a rule, require a judicial warrant, and that this safeguard applies to all situations where public authorities seek to enter non-public premises without the consent of the individual concerned.

The significance of the Ford Judgement lies not merely in the finding of a violation in the individual case, but in the Court's conclusion that the constitutional deficiency was structural in nature, which implied a systemic failure of the legislative framework governing on-site inspections. As a result, the Court indicated that the issue required legislative intervention and ordered that the matter be brought to the attention of the Turkish Grand National Assembly.

All in all, the Ford Judgement was considered to have a limiting effect on the Authority's on-site inspection powers. It raised multiple questions and uncertainties in practice, especially with regard to its potential impact on the Board's previous hindrance/obstruction of on-site inspection decisions, ongoing annulment proceedings before administrative courts, and the Authority's future on-site inspection practices.

III. The Decision: A Limited Review Focused on Legal Certainty and Public Interest

Against this background, the Court's recent Decision approaches the same issue in a different procedural setting. More specifically, in the Decision, the Court conducted a "concrete norm review" upon referrals by the 13th Chamber of the Council of State and the 11th Administrative Court of Ankara.

In its assessment, the Court reviewed two distinct parts of Article 15 of Law No. 4054. The first part was the phrase "*in cases it deems necessary*" in the first paragraph of Article 15 of Law No. 4054 in the following sentence: "*In carrying out the duties assigned to it by Law No.4054, the Board may perform inspections at undertakings and associations of undertakings in cases it deems necessary*." The second part was the sentence under the third paragraph of Article 15 of Law No. 4054, which states that "*in case an on-site inspection is hindered or likely to be hindered, the on-site inspection is performed with the decision of a criminal magistrate*."

However, at the outset, the Court significantly narrowed the scope of its review, by deciding that the third paragraph of Article 15 of Law No. 4054 was not an "applicable rule" in the cases before the referring courts. The Court's reasoning was that, since the underlying disputes concerned administrative fines imposed for obstruction of on-site inspection and no warrant had in fact been obtained in those cases, the third paragraph of Article 15 could not affect the outcome of the pending proceedings. Therefore, the Court rejected that part of the referral.

As a result, the Court's substantive review was limited to the phrase "*in cases it deems necessary*" under Article 15(1) of Law No.4054. In its review, the Court assessed this phrase mainly based on the principles of legal certainty and public interest, and also considered Article 167 of the Constitution in its assessment.

As regards legal certainty, the Court first emphasized that the Authority's on-site inspection powers are not unlimited. The Court noted that on-site inspections (i) may only be carried out within the scope of the duties assigned to the Authority under Law No. 4054, (ii) must be based on an authorization decision of the Turkish Competition Board indicating the subject and purpose of the inspection, and (iii) are carried out by authorized experts. Importantly, the Court underlined that the legislative framework cannot be expected to identify in advance all situations in which an inspection may be necessary, given the variety of possible circumstances. For these reasons, the Court concluded that the scope of the Authority's on-site inspection power and the conditions for its exercise had been regulated with sufficient clarity under Law No.4054 and that the phrase "*in cases it deems necessary*" was not contrary to the principle of legal certainty.

As regards public interest, the Court referred to Article 167 of the Constitution, which sets out the State's duty to ensure proper market functioning and prevent anti-competitive conduct. In this context, the Court first noted that the phrase "*in cases it deems necessary*" forms part of a statutory mechanism designed to enable the collection of evidence concerning anti-competitive practices referred to under Article 167 of

the Constitution. The Court further emphasized that, in fulfilling such positive obligations under Article 167 of the Constitution, the legislature enjoys a certain discretion in determining the tools and procedures to be employed, provided that these are not contrary to the Constitution. Accordingly, the Court held that a rule authorizing the Authority to conduct on-site inspections "*in cases it deems necessary*" falls within the legislature's margin of discretion and serves a legitimate public-interest objective. As a result, the Court held that this phrase is also not contrary to the relevant articles of the Constitution.

It is important to note, however, that despite the referrals, the Court did not carry out a substantive assessment under Article 13 (Restriction of Fundamental Rights and Freedoms) or Article 21 (Inviolability of Domicile) of the Constitution. Although the referring courts had expressly alleged incompatibility with Articles 13 and 21 of the Constitution, the Court did not undertake any substantive review based on these provisions and simply stated that the rule was not related to these provisions.

This aspect of the Decision is quite central. Unlike the Ford Judgement, the Court did not examine whether on-site inspections carried out under Article 15 of Law No.4054 interfere with the inviolability of domicile, whether prior judicial decision is constitutionally required as a rule for on-site inspections, or whether the existing legal framework satisfies the guarantees specified under Article 21 of the Constitution. Instead, the Court addressed the issue in terms of legal certainty, public interest, and legislative discretion. In this respect, the Decision reflects a materially narrower and methodologically different approach from that of the Court's previous Ford Judgement.

IV. A Clear Divergence in Method and Scope of Review

A comparison between the Ford Judgement and the Decision reveals a clear divergence in the Court's analytical approach to on-site inspections under Article 15 of Law No. 4054.

In the Ford Judgement, the Court approached the issue from a fundamental rights perspective, by primarily examining (i) whether on-site inspections conducted in non-public areas of business premises constitute an interference with the right to inviolability of domicile, and (ii) whether on-site inspections require a prior judicial warrant. On that basis, it concluded that the applicable legislative framework governing on-site inspections was constitutionally deficient. By contrast, in the Decision, the Court did not engage in a similar line of analysis. Instead, it confined its review to the principles of legal certainty and public interest under Articles 2 and 167 of the Constitution.

This divergence cannot be explained solely by the distinction between individual application and concrete norm review. While the procedural frameworks differ, the underlying constitutional question, namely, whether on-site inspections conducted in non-public business premises fall within the scope of Article 21, remains identical. Moreover, both decisions concern the same statutory provision, ***i.e.,*** Article 15 of Law No. 4054.

In this respect, the most notable aspect of the Decision is the Court's refusal to engage with Articles 13 and 21 of the

Constitution. Despite the fact that the referring courts had expressly raised incompatibility with these provisions, the Court simply stated that the rule was not related to them, without providing any further reasoning. This stands in contrast to the Ford Judgement, where the Court devoted a substantial part of its reasoning to the interpretation and application of these provisions.

The divergence between the two decisions is also reflected in their broader context. While the Ford Judgement contained a detailed and structured constitutional analysis extending over a substantial length, the Decision is significantly more concise and does not address the fundamental rights dimension of the issue in depth. In addition, members of the Court, who had previously found a violation of Article 21 in the Ford Judgement, did not maintain that position in the Decision. Indeed, the presence of multiple dissenting opinions shows that different views existed within the Court.

Taken together, these elements suggest that the Court has not expressly overturned its earlier case law but has instead shifted its method of review. While the Ford Judgement establishes a constitutional framework grounded in the protection of domicile and procedural safeguards, the Decision upholds the same statutory provision without engaging with that framework. This leaves the constitutional boundaries of on-site inspections only partially clarified, as it remains unclear how the safeguards identified under Article 21 of the Constitution in the Ford Judgement should be applied within the current inspection framework.

V. Practical Implications of the Decision

The Decision is likely to have immediate and important consequences for competition law enforcement in Türkiye.

First and most notable consequence is that the Decision will significantly reduce the likelihood of a successful constitutional challenge, based solely on the absence of prior judicial warrant. While the Ford Judgement had opened the door to challenges grounded in Article 21 of the Constitution, the Decision suggests that such challenges may be less likely to succeed.

Second, the Decision provides a measure of comfort for the Authority as it leaves the current framework largely in place, at least with respect to the reviewed phrase. By upholding the phrase "*in cases it deems necessary*" and declining to examine the inspection power through Articles 13 and 21 of the Constitution, the Court has removed an important uncertainty surrounding the current applicable framework of Article 15 of Law No. 4054.

Third, the Decision has a further consequence in terms of future constitutional review. Article 152 of the Constitution provides that "*[n]o claim of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits*." In light of this rule and given that the Decision was published in the Official Gazette on February 17, 2026, the possibility of bringing the same provision before the Court again by way of concrete norm

review is closed for ten years, at least in theoretical terms.

VI. Conclusion

The Decision marks a notable development in the Court's approach to on-site inspections under Turkish competition law. While the Ford Judgement established a constitutional framework in light of a rights-based perspective, the Decision adopts a different approach, focusing on legal certainty, legislative discretion, and public interest aspects without engaging with the fundamental rights dimension.

In this sense, while the ultimate outcome remains the same, the same Court appears to have shifted its method of review, leading to a methodological contradiction in terms of its assessment on the constitutional compatibility of Authority's on-site inspection powers specified under Article 15 of Law No. 4054. This is further reflected in the presence of multiple dissenting opinions and the fact that certain Court members who had previously found a violation in the Ford Judgement did not maintain their position in the Decision.

Nevertheless, there is still a pending individual application on the same issue filed by another party, which may provide further clarification on the matter. Unless and until the Court addresses this more directly in its upcoming review, the issue will remain only partially settled, and the limits of on-site inspections are likely to continue to be discussed in practice.

Dispute Resolution

The Constitutional Court Rules That Dismissal Based on Defendant's Lack of Passive Standing Does Not Violate the Right to Access to Court

I. Introduction

Under Turkish law, different legal entities having separate corporate identities is a fundamental principle, in order to establish the respective liabilities of each legal entity and to avoid being burdened by consequences that arise due to the actions of others. This principle becomes especially important when the subject-matter concerns companies that have multiple subsidiaries and affiliates, such as holdings or international companies.

The Constitutional Court confirmed in a very recent decision that dismissal based on the procedural ground of defendant's lack of passive standing (due to the claimant's failure to determine the correct counterparty) is a legitimate limitation of fundamental rights and does not violate the claimant's right to access to court.

II. Background of the Dispute

In the dispute, the Applicant had initiated a reinstatement lawsuit against her employer, arguing that the termination of her employment was unlawful. However, the Applicant filed this claim not against the company that was indicated as her employer under the written employment agreement and the social security records, but against another company in the same group, whom the Applicant claimed to be her actual employer.

Having reviewed the available evidence, the first instance court dismissed the

lawsuit based on lack of passive standing in favour of the defendant company, on the grounds that the reinstatement claim must be directed against the actual employer. In its decision, the first instance court also noted that the actual employer and the defendant were group companies, but it was not possible to file the lawsuit against the other company instead of the employer company; and that it would not be possible to change the parties during the lawsuit as the mandatory mediation procedure prior to filing employment lawsuits was also held with the wrong company.

Upon the Applicant's objection, the Regional Court of Appeals accepted the Applicant's objections and indicated that the two companies were registered and located at the same address, and their representatives were the same individuals, and that there was an organic link between these two companies; and also that the Applicant was not in a position to know the specific employer in her social security records. So, the first instance court complied with this decision and accepted the lawsuit.

This latter first instance court decision was objected by the defendant company this time, arguing that it is common for group companies to be at the same address and it cannot be interpreted that there is an organic link between separate legal entities solely based on these findings. Upon this second objection, the Regional Court of Appeals dismissed the lawsuit in favour of the defendant company on grounds of lack of passive standing, noting that the Applicant's mistake in filing the lawsuit against the wrong company cannot be considered as a reasonable mistake as per Article 124 of Civil Procedure Law.

Upon Regional Court of Appeals' final decision, the Applicant has applied to the Constitutional Court, arguing that her right to access the court was violated.

III. The Decision of the Constitutional Court

With its decision numbered 2022/72101 dated January 6, 2026, the Constitutional Court evaluated the legal provisions regulating dismissals due to lack of passive standing and whether they constitute a legitimate limitation of fundamental rights as per Article 13 of the Turkish Constitution. Accordingly, the Constitutional Court first determined that dismissal of the Applicant's lawsuit based on lack of passive standing is indeed an interference to the right to access to court. Following this determination, the Constitutional Court proceeded to examine whether the interference to right to access to court had been legitimate.

As a first step, the Constitutional Court assessed whether the interference is prescribed by law. As the mechanisms regarding dismissal based on lack of standing and change of parties to a case are regulated under Code of Civil Procedure, it is concluded that interference was duly prescribed by law.

Next, the Constitutional Court evaluated whether such interference could be deemed to have a legitimate purpose; and confirmed that it did, as the purpose of this interference is to ensure that the lawsuit has been filed against the correct counterparty, and thus avoid unnecessary delay in proceedings.

Finally, the Constitutional Court considered the proportionality of the interference and specifically focused on whether the interference creates an

exorbitant burden on the Applicant. It assessed that requiring the Applicant to adhere to the procedural rules laid out in Articles 115 and 124 of Civil Procedure Law is not an exorbitant burden. The Constitutional Court also noted that these provisions were evaluated during the lawsuit, and therefore the interference was proportional.

Accordingly, the Constitutional Court ruled that the right to access to court of the Applicant, safeguarded under Article 36 of Turkish Constitution, was not violated.

IV. Conclusion

This decision is important to lay out that it is the duty of the plaintiff to correctly determine the proper counterparty to file the lawsuit against; and that the defendant being a part of a group of companies is not an exception. This requirement, in fact, does not harm the plaintiff's right to access to court but serves the respective rights for fair trial of both parties, as it ensures that the proceedings to be concluded in a reasonable amount of time and avoids the defendant potentially being held liable for the actions of a separate third party.

Data Protection Law

The Turkish Data Protection Board's Recent Principle Decisions

In the first quarter of 2026, the Turkish Personal Data Protection Board ("***Board***") published two pivotal principle decisions aimed at correcting widespread operational missteps in how data controllers handle personal data. These decisions focus on establishing strict verification processes for retail loyalty programs and strictly separating the privacy notices from consent declarations.

I. Decision on Loyalty Programs

The first of these principle decisions was published in the Official Gazette on February 28, 2026, and focused on data processing activities performed within the context of data controllers' loyalty programs. The Board's Principle Decision[13] Regarding the Use of a Loyalty Card Member's Mobile Phone Number or Loyalty Card Number by a Third Party During a Transaction is expected to introduce changes mostly for retail companies and how their business operations handle customer data at checkout for loyalty/membership programs. The relevant decision was rendered upon the complaints the Board has received regarding the issue. As per the decision, the Board was informed that cashiers were allowing third parties to use a loyalty card member's phone number or card number during checkout and this occurred without the actual cardholder being present, and without their knowledge or consent. The Board notes that it is a common practice with loyalty programs and that people can verbally provide phone / membership numbers of other persons during checkout without any further controls on whether the person buying the product / service is actually the member of the loyalty program.

The Board found that this practice leads to risks for personal data safety, since third parties may use someone else's data. The Board found that due to the incorrect use, invoices were issued in the actual cardholder's name despite the fact

[13] The Board's Principle Decision numbered 2026/266 and dated 11.02.2026.

that they were not the ones making the actual payment, and incorrect customer transaction details such as information on the purchased product were recorded in the actual cardholder's account, resulting in data pollution. It was evaluated that this practice violates the main principles regulated under Article 4 of Law No. 6698 on Protection of Personal Data ("***Law No. 6698***"), which stipulates that personal data must be accurate and up to date. In addition to violating the main principles, the Board concluded that such data processing activity lacks any valid legal ground as per Article 5 of Law No. 6698 when a cardholder's personal data (***i.e.,*** their phone number or membership number) is processed without their knowledge or consent, and therefore rendering the processing activity unlawful.

Upon the evaluation explained above, the Board decided that data controllers must cease practices that allow benefiting from loyalty programs by only stating the phone or loyalty card number at the cashier verbally and implement adequate verification mechanisms to confirm that the transaction is carried out with the actual member's knowledge and consent. The Board also provided alternative methods as examples for adequate verification. These alternatives include (i) communicating to the cashier a one-time verification code sent via SMS to the data subject's mobile phone number, (ii) scanning a barcode or a QR code at the checkout generated through a mobile application or website, (iii) presenting the physical loyalty card at the checkout, (iv) entering the loyalty card password into the transaction device at the checkout, (v) within the scope of loyalty card programs, offering an 'opt-in' option through an online membership account that allows the data subject to approve which transactions may be performed during shopping when only the mobile phone number is provided. These methods are not exhaustive, and data controllers can implement other measures that ensure the objective of the decision is met.

Further, the Board also advises data controllers to implement different mechanisms for different data subject groups or different transaction types, depending on the types and level of risks, highlighting that the main purpose of this is to ensure data privacy and safety as required by the legislation. Accordingly, data controllers may consider alternative ways to comply with the decision depending on the age, level of education, economic status, and level of technological literacy of data subjects.

As a grace period for compliance, the Board granted the data controllers a period of 6-months for revising their loyalty processes and bring them in line with the requirements of this decision, starting from the date of its publication in the Official Gazette. The Board states that those who continue their unlawful practices beyond the grace period will be subject to administrative fines.

II. Decision on Information Notices and Consent Texts

The second principle decision published by the Board in the first quarter of 2026 is the Board's Principle Decision[14] Regarding the Requirement for Data Controllers to Draft Explicit Consent Texts and Privacy Notices Separately. This decision was published in the

[14] The Board's Principle Decision numbered 2026/347 and dated 18.02.2026.

Official Gazette dated March 24, 2026 and numbered 33203.

The Board states that this principle decision was initiated in response to the high-volume of complaints regarding the intertwined presentation of explicit consent texts and information notices. The Board explains that obligation to inform data subjects is stipulated under Article 10 of Law No. 6698 and aims to notify the data subjects about personal data processing activities carried out by the controller. Explicit consent, on the other hand, is a legal ground required for processing personal data lawfully as per Article 5 of Law No. 6698. Considering this fundamental difference between the two documents and the fact that they represent different legal concepts, the Board highlights that these need to be submitted as two different documents.

The Board emphasizes that explicit consent must be specific, freely given and rely on an informed decision by referring to the Constitution and Law No. 6698. Consequently, explicit consent declarations must clearly demonstrate the data subject's approval for the relevant processing activity based on the specified purposes and legal grounds, with the burden of proof resting on the data controller. On the other hand, obligation to inform requires data controllers to disclose their identity, the purposes of processing, data transfer details, data collection methods, and the legal reasons for processing, along with data subject's rights. The Board explicitly states that information notices are not contracts. Therefore, soliciting approvals from the data subject such as, "I have read and accepted," "I have read and given explicit consent," or "I have read and approved" at the bottom of an information notice is unlawful. As per the decision, the legally appropriate phrasing is simply stated as "I have read and understood". Furthermore, as dictated by Article 5 of Communiqué on the Principles and Procedures to be Followed While Fulfilling the Obligation to Inform, if data processing relies on the data subject's explicit consent, the relevant obligations to inform the data subject and obtaining their consent must be executed separately. The obligation to inform is an independent requirement that must be fulfilled before any processing begins, regardless of the underlying legal ground for the relevant processing. Even if presented on a single digital or physical page, the texts must be distinctly separated top-to-bottom and require individual declarations.

The Board underlined several widespread malpractices in its decision, including merging the two texts, requesting consent merely for providing information, using exact copies of other data controllers' documents, and drafting overly complex, misleading, or vague texts. To rectify this, the Board formally ruled that information notices and explicit consent texts must be separated under different headings with independent declarations. The Board also ruled that if processing is based on a legal ground other than explicit consent, an explicit consent text must not be presented to the data subject at all. Data controllers are instructed to obtain only an acknowledgment of reading for information notices, to tailor their texts to their specific operations rather than copying other data controllers, and to utilize clear, concise, and simple language. For instance, rather than pasting the entirety of Article 11 of Law No. 6698, data controllers are advised to briefly summarize the associated rights to prevent excessive text

length. Additionally, the data categories, purposes, and legal grounds must be explicitly stated.

Finally, the Board declared that these requirements fall under the administrative and technical measures necessary to ensure data security under Article 12 of the Law No. 6698 and therefore non-compliance with these principles will result in administrative fines as per Article 18 of Law No. 6698. To provide practical guidance, the Board also annexed Good Practice Templates and a Bad Practice Template to the principle decision for data controllers' ease of reference.

III. Conclusion

In conclusion, the principle decisions on loyalty programs, as well as the wording of information and consent texts issued by the Board, represent a definitive regulatory stance against pervasive operational malpractices in personal data processing that the Board has most frequently encountered in the cases brought before it. For data controllers, these decisions reinforce that fulfilling the obligations under Law No. 6698 requires practical, technical, and administrative measures embedded directly into the daily operations, as dictated by Article 12 of Law No. 6698. Ultimately, data controllers must audit both their digital and physical customer touchpoints as soon as possible to align with these obligations, as any continued non-compliance will directly result in administrative fines under Article 18 of the Law No. 6698.

Internet Law

New Rules for Digital Games and Social Network Providers Under Law No. 5651

The *Law Proposal on Amendments to the Social Services Law and Certain Other Laws*, which included amendments to Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts ("***Law No. 5651***"), was accepted by the Health, Family, Labor and Social Affairs Commission, adopted by the General Assembly of the Grand National Assembly of Türkiye. These amendments subsequently came into force upon publication in the Official Gazette dated May 1st, 2026 and numbered 33240, within the Law No. 7578 on Amendments to the Social Services Law and Certain Other Laws ("***Law No. 7578***").

Law No. 7578 introduces new definitions regarding digital games and sets out the preliminary obligations for game platforms under Law No. 5651. It also includes significant amendments concerning digital safety and protection of children, and amends and expands certain obligations applicable to social network providers.

I. New Definitions Regarding Games

Law No. 7578 introduces several new definitions to Law No. 5651 concerning digital games.

"Game" is defined as digital games distributed or updated via the internet and playable in an electronic environment, whether online or offline.

"Game developer" refers to natural or legal persons who design digital games

or game content, develop the software, or manage the development process.

"Game distributor" is defined as natural or legal persons who manage the relationship with sales channels for delivering digital games to end-users, coordinate licensing processes and provide financial or technical intermediary services.

"Game platform" is defined as natural or legal persons who provide the infrastructure enabling the display, sale, distribution, downloading, or playing of digital games and related content, and who facilitate user access and interaction.

These definitions set out the roles of different actors involved in digital games.

II. Amendments Affecting Social Network Providers

Law No. 7578 introduces several amendments to the obligations of social network providers under Additional Article 4 of Law No. 5651.

First, the scope of the 48-hour response obligation is expanded. Social network providers with more than one million daily accesses from Türkiye will be required to respond to all requests made by individuals, either positively or negatively, within 48 hours. Negative responses must include justification. This obligation was previously limited to requests under articles 9 and 9/A, and is now broadened to cover all requests.

New obligations are introduced regarding protection of children. Social network providers will not be allowed to provide services to children under the age of fifteen and will be required to implement age verification measures. They must also provide tailored services for users between the ages of fifteen and eighteen and these measures must be published on their websites.

Another amendment concerns the deadline for responding to information requests from the Information and Communication Technologies Authority (ICTA). Social network providers will be required to provide the requested information and documents immediately and within a period not exceeding fifteen days. In the previous version, this period was three months.

The Proposal further requires social network providers to implement parental control tools. These tools must allow users to control account settings, require parental approval for paid transactions, and monitor and limit usage duration.

Social network providers are also required to take measures to prevent deceptive advertisements.

For social network providers with more than ten million daily accesses from Türkiye, stricter obligations are introduced. These include compliance with urgent content removal decisions within one hour and taking necessary measures to prevent the re-publication of content subject to removal or access blocking decisions.

Finally, the sanction regime is expanded. Social network providers that fail to comply with certain obligations may be subject to administrative fines of up to three percent of their global turnover. Continued non-compliance may result in advertisement bans and bandwidth throttling measures.

III. Obligations Introduced for Game Platforms

Law No. 7578 introduces a new Additional Article 5 regulating game platforms.

Game platforms are required to ensure that games offered on their platforms are duly rated for age. Unrated games may only be offered if they are classified under the highest age rating. Platforms are also obliged to remove content that does not comply with rating requirements.

Foreign-based game platforms with more than one hundred thousand daily access from Türkiye must appoint a representative in Türkiye and notify the Information Communications and Technologies Authority ("***Authority***"). The contact details of the representative must be clearly displayed on the platform's website.

Game platforms are required to implement parental control tools, including mechanisms for monitoring account activity and requiring parental approval for paid transactions.

The Authority is granted the power to request information from game platforms regarding their compliance, including information on corporate structure, information systems, and data processing mechanisms.

The Proposal also introduces a sanction regime for game platforms. Administrative fines may range from 1 million Turkish Liras to 10 million Turkish Liras for initial non-compliance, and from 10 million Turkish Liras to 30 million Turkish Liras for continued violations.

If obligations are still not fulfilled, bandwidth throttling measures may be applied at a rate of thirty percent, and if non-compliance continues for another thirty days, this rate may be increased up to fifty percent.

IV. Conclusion

Law No. 7578 introduces a comprehensive set of amendments to Law No. 5651 affecting both social network providers and digital gaming sector in Türkiye.

The new definitions on digital games set out the main actors covered by Law No. 7578, while the amendments concerning social network providers introduce additional obligations on user requests, reporting, child safety, parental controls, deceptive advertisements, and urgent content removal decisions.

The amendments under Law No. 7578also introduce important steps regarding digital safety and child protection. In this respect, it includes new rules on age verification, differentiated services based on age the of users, parental control tools and age ratings for games.

At the same time, the newly introduced framework for game platforms establishes specific compliance requirements, particularly regarding age ratings, representation in Türkiye, and parental controls.

Telecommunications Law

A Strategic Transformation in Turkish Electronic Communications: Analysing the New Regulatory Framework for Identity Verification and Subscription Management

I. High-Security Digital Identity Model

The Turkish electronic communications landscape is undergoing a significant transformation following the Information and Communication Technologies Authority's (ICTA) draft regulatory package published for public consultation on March 6, 2026, under Board Decision No. 2026/İK-THD/67. This draft constitutes secondary legislation implementing the amendments introduced by Law No. 7571 to Electronic Communications Law No. 5809. Rather than completely abolishing traditional methods, the draft restructures and significantly restricts paper-based verification mechanisms, replacing them with a layered, technology-driven identity verification model. This shift signals a transition toward what can be described as a "high-security digital identity model," in which the entire lifecycle of a subscription, from onboarding to ongoing verification, is subject to continuous and technologically enhanced authentication processes. This approach aligns with broader policy objectives relating to digital sovereignty, fraud prevention, and cybersecurity resilience.

II. Multi-Layered Identity Verification: NFC, Biometrics, and Video-Based Controls

The most transformative dimension of the draft lies in its introduction of multi-factor identity verification mechanisms at the subscription stage. Operators are required to support verification methods that include:

- Near Field Communication (NFC)-based authentication using electronic identity documents (YAKB).
- Video verification performed either by authorized personnel or via artificial intelligence (AI) exclusively when used in conjunction with YAKB.
- Electronic signature-based processes (TEKB) or e-Government authentication channels.

Importantly, artificial intelligence is not a standalone verification method but is integrated into the process to support visual verification during NFC-based (YAKB) onboarding. Through NFC-enabled verification, operators must extract and validate data directly from the secure chip embedded in identity documents, using internationally recognized standards such as ICAO 9303. This includes active authentication mechanisms, certificate validation, and cryptographic consistency checks, which collectively ensure the authenticity and integrity of identity data. In remote onboarding scenarios, identity verification is reinforced through biometric comparison or real-time video interaction, redefining onboarding as a high-assurance procedure.

III. From Registration to Lifecycle Governance: Continuous Monitoring Obligations

A key structural innovation introduced by the draft is the transformation of identity

verification from a one-time onboarding requirement into a continuous compliance obligation. Operators are now required to verify subscriber data every three months by cross-checking identity information against official databases, such as the Identity Sharing System (KPS) maintained by the General Directorate of Population and Citizenship Affairs. Where discrepancies arise, a structured, graduated enforcement mechanism is triggered:

- **24-hour window**: Immediate notification to the subscriber via SMS.
- **7-day window:** Restriction of services (***e.g.,*** outgoing calls and data) if the inconsistency is not resolved.
- **30-day window:** Full disconnection of the line from the network.

This systematic approach ensures that inactive or improperly registered lines are removed, repositioning operators as active compliance agents.

IV. Quantitative Restrictions and the Elimination of Excess Subscriptions

The draft introduces strict numerical limits on subscriptions registered under a single individual or legal entity. While a baseline cap of 50 lines is established for standard corporate subscriptions, the framework incorporates tiered thresholds:

- Small enterprises: up to 200 lines
- Medium-sized enterprises, Political Parties, and NGOs: Up to 1,000 lines.
- Exemptions: Large enterprises exceeding medium-sized criteria, and subscribers with a State Organization Central Registry System (DETSİS) number are exempt from these limits. Additionally, accredited diplomatic missions are exempt unless otherwise advised by the Ministry of Foreign Affairs.

Subscribers exceeding these limits must terminate or transfer excess lines within a six-month transition period starting June 25, 2026, without financial penalties. Failure to comply results in the operator disconnecting surplus lines.

V. Foreign Subscribers and the Phased Compliance Window

Under transitional provisions, foreign subscribers are granted a six-month period starting June 25, 2026, to update and verify their identity. However, enforcement follows a specific phased calendar:

- **Starting September 16, 2026:** Service restrictions will begin daily for lines based on the last two digits of the service number (starting with "00" and increasing by one each day).
- **Completion by December 24, 2026:** All unverified lines must be restricted by this date, followed by full disconnection within one month after the application period ends.

The verification process may involve the Immigration Authority's digital systems, biometric comparison, or NFC-based checks.

VI. Data Protection and the Expanding Scope of Biometric Processing

One of the most critical legal implications lies in the extensive reliance on biometric data processing, including facial recognition and fingerprint-derived data. Under Turkish data protection law (KVKK), biometric data qualifies as special category personal data, subject to stricter processing conditions. The draft necessitates a careful reconciliation between telecom regulation and data protection law, particularly regarding explicit consent, data minimization, and the security of sensitive datasets. Furthermore, specific verification processes involving the Immigration Authority may entail processing location data, intensifying compliance requirements.

VII. Conclusion: Toward a High-Assurance Digital Identity Ecosystem

The 2026 draft regulation, with its primary enforcement beginning June 25, 2026, and early notification obligations starting May 1, 2026, represents a decisive shift in Türkiye's approach to subscriber identity management. By integrating multi-factor authentication, continuous monitoring, and strict limits, the framework aims to ensure every active line is linked to a verifiable user. This prioritizes security and traceability, while it is important to highlight balancing technological enforcement with data protection safeguards and operational feasibility.

White Collar Irregularities

When Self-Disclosure Pays Off: The DOJ's New Playbook for Corporate Enforcement in White Collar Crimes

The United States Department of Justice ("***DOJ***"), which already places significant emphasis on corporate self-disclosure in criminal matters, has formalized its approach on March 10, 2026, by releasing a unified Corporate Enforcement and Voluntary Self-Disclosure Policy (*"**CEP***") that effectively establishes a unified framework for corporate self-disclosures, cooperation, and remediation measures applicable to all criminal matters handled by the DOJ, except for those that are related to violations of federal antitrust laws.[15]

CEP will be read in conjunction with the Justice Manual ("***JM***"), which already standardizes the internal guidelines for federal prosecutors in the United States when conducting investigations, bringing charges, and resolving cases.[16] As such, in accordance with the JM, any prosecutorial resolution brought forth pursuant to CEP will still be subject to the approval of the Assistant Attorney General for the relevant Division of the DOJ or United States Attorney of the relevant district and will not override prosecutorial discretion principles outlined under the JM.

While similar principles have existed within individual DOJ units, this policy

[15] *See:* https://www.justice.gov/dag/media/1430731/dl?inline (Last accessed Apr 29, 2026)
[16] *See:* https://www.justice.gov/jm/justice-manual (Last accessed Apr 29, 2026)

consolidates them into a single, Department-wide framework.

At its core, the CEP seeks to create a more predictable enforcement environment while encouraging companies to identify, disclose, and remediate wrongdoing. By formalizing incentives for cooperation, the DOJ emphasizes individual accountability.

I. Declination to Prosecute Corporate Misconduct Under the CEP

The CEP outlines four (4) factors for when the DOJ may decline to prosecute a company for criminal conduct. These factors are further elaborated on in Appendix B of the CEP. The relevant factors and how they have been elaborated under Appendix B are as follows:

a. The company voluntarily self-discloses the misconduct to an appropriate Department criminal component;

As per Appendix B, a disclosure qualifies as "voluntary" if it is made in good faith to the appropriate DOJ component, concerns misconduct not already known to the Department, is not subject to a preexisting disclosure obligation, occurs before any imminent threat of investigation or exposure, and is made within a reasonably prompt timeframe after the company becomes aware of the issue.

Importantly, the policy also addresses whistleblower scenarios: even if a whistleblower reports the misconduct to the DOJ before the company does, the company may still benefit from a declination, provided it self-reports within a defined window (generally within 120 days of receiving the internal report) and satisfies the other criteria. This carve-out preserves incentives for internal reporting systems while ensuring companies are not penalized for acting promptly after a whistleblower escalation.

b. The company fully cooperates with the Department's investigation;

Building on the standards set out in the JM, "full cooperation" requires companies to provide timely, accurate, and comprehensive disclosure of all relevant non-privileged facts and evidence, including detailed information about individuals involved in the misconduct regardless of their position. This includes proactively sharing information (even if not specifically requested), preserving and producing relevant documents—both domestic and overseas—and facilitating access to witnesses, including employees and, where possible, third parties.

The policy also emphasizes procedural coordination with the DOJ, such as de-conflicting internal investigations to avoid interference with government inquiries, while clarifying that companies retain autonomy over their investigative steps. Importantly, companies are not required to waive attorney-client privilege to receive cooperation credit. Cooperation is assessed on a case-by-case basis, with companies "earning" credit based on the scope, quality, timing, and impact of their assistance. This evaluation can significantly influence the form of resolution and the level of penalties imposed, including potential reductions in fines.

c. ***The company timely and appropriately remediates the misconduct;***

Under the CEP, companies are expected to carefully analyse what caused the misconduct and take clear steps to fix these issues. An important part of this process is to establish an effective compliance and ethics program. This program should be designed based on the company's size, resources, and risk level, and it should be supported by enough resources, qualified staff, and a compliance function that has real independence and authority within the company.

Companies are also expected to take disciplinary action against the individuals responsible for the misconduct, including managers who failed to properly supervise. In addition, the policy highlights the importance of proper record-keeping, especially having controls over the use of personal messaging tools that could lead to loss of important business records. Overall, the company must show that it understands the seriousness of the issue, accepts responsibility, and has taken real steps to prevent similar problems in the future.

d. ***There are not aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct.***

Even where such factors exist, prosecutors retain discretion to consider whether a declination remains appropriate in light of the company's overall conduct. However, a declination does not eliminate financial consequences; companies are still expected to return all disgorgement/forfeiture as well as restitution/victim compensation payments resulting from the misconduct at issue. These outcomes are also made public, reinforcing transparency.

II. "Near Miss" Voluntary Self Disclosures or Aggravating Factors Warranting Resolutions

Not all cases meet the strict criteria for declination. The CEP addresses this by providing a structured approach for situations where companies have acted in good faith but fall short of full eligibility because (i) the self-report did not qualify as a voluntary self-disclosure, or (2) it had aggravating factors that warrant a criminal resolution.

In these cases, the DOJ may offer a Non-Prosecution Agreement (NPA). These agreements will allow a term of length of fewer than three years, do not typically require independent compliance monitors, and include meaningful reductions in financial penalties (at least %50 but not more than %75). This approach ensures that cooperative behaviour is still recognized, even where a full declination is not justified.

III. Other Enforcement Outcomes

Where a company does not qualify under the first two categories, prosecutors retain full discretion in determining the appropriate resolution. Cooperation and remediation remain relevant, but the

benefits are more limited, particularly in terms of financial penalty reductions.

This tiered structure reinforces the policy's underlying logic: the extent of leniency is directly linked to the company's conduct in identifying, disclosing, and addressing misconduct.

IV. Core Elements of the Policy

The CEP places significant emphasis on voluntary self-disclosure. To qualify, disclosures must be made in good faith, before the misconduct becomes known to authorities, and without any prior legal obligation to report. Timing is critical, and delays may undermine eligibility.

Cooperation is treated as an active and ongoing obligation. Companies are expected to provide complete and accurate information, identify individuals involved, preserve and produce relevant documents, and facilitate access to witnesses. Importantly, cooperation is not confined to a one-off act; in other words, companies must continue to provide updates as investigations progress.

In this scope, remediation is also essential. Companies must demonstrate that they have identified the root causes of misconduct and taken meaningful steps to address them. This includes strengthening compliance programs, disciplining responsible individuals, and improving internal controls. The effectiveness of these measures is assessed in light of the company's size and risk profile, with a focus on preventing future violations.

V. Practical Implications

The CEP introduces greater clarity into corporate enforcement, enabling companies to better assess potential outcomes when misconduct arises. This increased predictability, however, also raises expectations. Effective compliance systems, early issue detection, and coordinated internal responses are foremost among the features that DOJ will expect to see.

Companies must ensure that legal, compliance, and investigative functions operate cohesively, as delays or fragmented responses may directly impact the availability of favourable outcomes under the policy.

VI. Conclusion

The DOJ's CEP represents a structured change in corporate criminal enforcement in the United States. By explicitly linking favourable treatment to proactive behaviour, the policy encourages companies to engage early, cooperate meaningfully, and remediate effectively.

While prosecutorial discretion remains intact as before, the CEP introduces a level of transparency and consistency that reshapes how enforcement risk is managed. Ultimately, it signals that how a company responds to misconduct is just as important as the misconduct itself.

Employment Law

Landmark Decision on the Effects of Employee's Signature on Payroll in case of Payroll Fraud

I. Introduction

Under Turkish Labor Law No.4857, safeguarding the integrity of the employee's wage is a fundamental principle, as it serves as the basis for calculating various receivables regarding the employment relationship, such as severance and notice pay, overtime, and

annual leave. While payroll records signed by an employee generally prove that the payments have been made, disputes frequently arise regarding whether these records correctly reflect the terms and the actual wage agreed between the parties.

II. The First Instance Court's Stance and the Point of the Dispute

The dispute involved an electrical technician working at an overseas construction site who claimed that his actual net monthly salary was 1,800 USD. The defendant employer, however, argued that the wage was 4.50 USD/hour, as reflected in the payroll records, and asserted that the employee had signed a release letter, accepting that no other employment receivables remained outstanding.

The first instance court and the Regional Court of Appeals initially rejected the employee's claims. Both courts ruled that as the payrolls were signed by the employee without any reservation (as to any objections or right to further receivables) and included specific accruals for overtime and holidays; the employee could only prove higher earnings through written evidence. Furthermore, they accepted the validity of the signed release letter and ruled for the deduction of payments mentioned therein.

III. Decision of the High Court of Appeals

Upon appeal, the 9th Civil Chamber of the High Court of Appeals reversed the decision[17], emphasizing that the formal appearance of the payrolls must not override the material truth in the presence of fraud.

The High Court of Appeals elaborated on a precise categorization of the matter, based on possible scenarios:

i. If payrolls are signed, then the overtime work figures indicated in the payrolls bind the employee, and any claims to the contrary can only be proven through written evidence.

   a. If there is written evidence refuting the payroll records and proving the employee worked longer than the period indicated therein, the overtime wages stated as paid in the payroll shall be set off against the receivables calculated based on the employee's actual wage.

   b. If it cannot be proven through written evidence that more overtime work was performed than the amount indicated in the signed payroll, the assessment shall be made based on the overtime hours stated in the payroll. In this case, the overtime duration indicated in the payroll reflects the employee's actual overtime work; however, the corresponding payment does not reflect the true overtime wage. Accordingly, the overtime pay corresponding to the overtime hours stated in the payroll is recalculated based on the employee's actual wage.

ii. If the payrolls are not signed, the employee may prove by any means of evidence, including witness testimony, that they worked more overtime than the amount shown in the payroll.

[17] High Court of Appeals, 9th Civil Chamber, E. 2025/7807, K. 2025/10455, T. 29.12.2025.

The High Court of Appeals also ruled that, in cases where payroll fraud is at issue, the accruals shown in the payroll such as overtime pay, weekly rest day pay, and national holiday and general holiday pay should be deemed not to be payments genuinely corresponding to those types of work, but rather as forming part of the employee's base wage. In cases of payroll fraud, since the total amount shown as wage in the payroll and the payments for overtime and/or weekly rest day, national holiday, and general holiday work reflects the employee's actual wage, the existence of such work may be proven by any means of evidence.

IV. Conclusion

The High Court of Appeals' ruling reinforces the effect of payrolls being signed or not. By carefully evaluating the authenticity of the payrolls and whether they are signed or not, the High Court of Appeals ensures that employees are not deprived of their rightful severance and receivables due to payroll manipulations and fraud.

Intellectual Property Law

The Constitutional Court Ruled That a Fair Balance Between the Competing Interests of the Parties Must Be Maintained Where the Infringer's Net Profit Is Claimed as Lost Profit.

I. Introduction

The realm of intellectual property protection in Türkiye was reshaped with the enactment of the Intellectual Property Law No. 6769 ("***IPL***"), which came into force on January 10, 2017. The IPL unified the legal framework previously governed by several Decree-Laws covering trademarks, patents, designs, and geographical signs. The primary objective of the IPL is to safeguard intellectual property rights effectively, thereby fostering technological, economic, and social advancement.

Central to this protective regime is the ability of a right holder to seek compensation for damages resulting from infringement. Under Article 151 of the IPL, the damages incurred by a right holder includes both "actual loss" and "loss of profit". In terms of loss of profit, the legislature allows the right holder to choose from three specific methods for calculating lost profits: (i) the probable income the right holder would have earned without the competition of the infringer, (ii) the net profit obtained by the infringer, or (iii) a hypothetical license fee that would have been paid under a valid agreement.

Recently, upon the application of Ankara 1st Intellectual Property (IP) Court, the Constitutional Court evaluated the constitutionality of calculating the loss of profit based on the infringer's net profit in the decision numbered 2024/176 M, 2025/42 D. dated February 11, 2025.

II. The Grounds for Application of Ankara 1st IP Court

The application to the Constitutional Court targeted the phrase "*...net profit obtained (by the infringer)"* in Article 151/2-b of the IPL, which serves as one of the alternative methods for calculating lost profits. Ankara 1st IP Court argued that this provision violated the IP right and the right to legal remedies under Articles 35 and 36 of the Constitution based on the following grounds:

- The contested provision allows the net profit obtained by the infringer

in cases of infringement of IP right to be taken as a basis for calculating the loss of profit, and

- This results in including, within compensation, profits earned by the person through commercial activities conducted in accordance with the principles of good faith.

- Where the act is committed against multiple persons, it is unclear to which right holder the profit obtained should be paid,

- Compensation should not lead to the unjust enrichment of the injured party, and

- This situation constitutes a disproportionate interference with the right to property.

III. Dispute Subject to the Decision

In its detailed analysis dated February 11, 2025, the Constitutional Court first established that intellectual property rights undeniably fall under the right to property, as they represent economic values that can be measured in monetary terms. According to the Constitutional Court, under Articles 5 and 35 of the Constitution, the state has a positive obligation to establish effective judicial and legal systems to protect individuals' property rights against interferences by third parties.

A significant portion of the Constitutional Court's reasoning focused on the necessity of deterrence in intellectual property protection. The Constitutional Court emphasized that while compensating the actual loss of a victim is a standard remedy, it might be insufficient to deter potential infringers from illegal use of IP rights. Therefore, the legislature has the discretion to impose additional financial burdens on the infringer to ensure the effectiveness of the protective regime.

In addition, the Constitutional Court noted the current loss of profit calculation creates a situation in which the property rights of the right holder and the infringer inevitably come into conflict; and explains that in such cases, the state must provide for mechanisms that balance the interests of these two parties. Accordingly, the Constitutional Court highlighted the safeguarding mechanisms embedded within Article 151 of the IPL itself.

Specifically, the Constitutional Court pointed out that Article 151/3 states that the factors to be taken into account in determining the loss of profit are listed by way of example, and also specifies the criteria according to which the first instance court assessing the damage may make this determination. Accordingly, after making an assessment pursuant to paragraph (2), the first instance court determining the amount of loss of profit shall also take those factors into consideration. Therefore, once the first instance court determines the net profit obtained by the infringer, it shall establish the amount of loss of profit caused by the infringing act by considering these criteria in conjunction with the general principles of compensation law.

Considering that the safeguards aimed at balancing the interests of both parties, the Constitutional Court concluded that the relevant provision, does not impose an excessive burden on the infringer or disrupt the balance of interests between the parties. As a result, the Constitutional Court held that allowing the right holder

to request that the infringer's net profit obtained via use of the infringed IP right be used as the basis for calculating loss of profit is constitutionally permissible.

IV. Conclusion

Although the Constitutional Court found the provision requiring the payment of the infringer's net profit to the right holder complies with the Constitution, it also provided further guidance on how such calculation should be carried out. Indeed, the Constitutional Court addressed that the first instance court should tailor the net profit of the infringer based on the case-specific conditions in order to avoid undermining fundamental principles of compensation, such as the prohibition of unjust enrichment.

Ultimately, the ruling underscores the Constitutional Court's position that utilizing the infringer's gain as a benchmark for damages is a constitutionally valid mechanism, provided that the judiciary continues to apply the statutory balancing criteria to maintain a fair balance between the competing interests of the parties.

ELIG Gürkaynak Attorneys-at-Law is an eminent, independent Turkish law firm based in Istanbul. The firm was founded in 2005.

ELIG Gürkaynak is committed to providing its clients with high-quality legal services. We combine a solid knowledge of Turkish law with a business-minded approach to develop legal solutions that meet the ever-changing needs of our clients in their international and domestic operations.

Our legal team consists of 95 lawyers. We take pride in being able to assist our clients in all fields of law. Our areas of expertise particularly include competition law, corporate law, M&A, contracts law, white collar irregularities and compliance, data protection and cybersecurity law, litigation and dispute resolution, Internet law, technology, media and telecommunications law, intellectual property law, administrative law, real estate law, anti-dumping law, pharma and healthcare regulatory, employment law, and banking and finance law.

As an independent Turkish law firm, ELIG Gürkaynak collaborates with many international law firms on various projects.

For further information, please visit www.elig.com

ELİG
GÜRKAYNAK
Attorneys at Law

Çitlenbik Sokak No: 12 Yıldız Mah. Beşiktaş 34349, Istanbul / TURKIYE
Tel: +90 212 327 17 24 – Fax: +90 212 327 17 25
www.elig.com