

On The Verge Of Change: Turkish Competition Law

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Long-awaited amendments to the Law on Protection of Competition No. 4054 ("***Competition Law***") became a hot topic when the Turkish Parliament announced that the draft law containing the amendments ("***Draft Law***") was officially added to the drafts and proposals list. The Prime Ministry sent the Draft Law to the Presidency of the Turkish Parliament on January 23, 2014. The Draft Law is expected to be discussed in the Turkish Parliament's Industry, Trade, Energy, Natural Sources and Information Technologies Commission ("***Parliament Commission***") during the first half of February.

The Draft Law is designed to be more compatible with the way the law is actually being applied. It also aims to further comply with the EU competition law legislation on which it is closely modeled. It adds several new dimensions and changes which promise a procedure that is more efficient in terms of time and resource allocation.

To start with, one of the most important new additions introduced by the Draft Law is the *de minimis* rule. By this new provision, the Board may disregard agreements, concerted practices and decisions which do not exceed a certain market share and/or turnover threshold. Importantly, the draft provision does not exclude the cartel cases. This addition aims to enable the Competition Board to concentrate on serious infringements and avoid trivial cases such as the recent local bakeries and driver schools investigations.

The Draft Law proposes several significant changes in concentration provisions. First, the substantive test for concentrations will be changed. The EU's SIEC Test (*significant impediment of effective competition*) will replace the current dominance test. Secondly, in accordance with the EU competition law legislation, the Draft Law adopts the term of "concentration" as an umbrella term for mergers and acquisitions. Thirdly, the Draft Law eliminates the exemption of acquisition by inheritance. Fourthly, the Draft Law abandons the Phase II procedure, which was similar to the investigation procedure, and instead provides a four-month extension for cases requiring in-depth assessments. During in-depth assessments, the parties can deliver written opinions to the Board, which will be akin to written defenses. Finally, the Draft Law extends the appraisal period for concentrations from the current 30 calendar days period to 30 working days, which equates to approximately 40 calendar days in total.

The Draft Law introduces three tools, known in many other jurisdictions but new to the Turkish competition law, to end investigations without completion of the entire procedure. First of these is the settlement procedure, which enables the Board to settle with those parties subject to investigation that admit their infringements before the investigation report is served to them. The second is the commitment procedure, which paves the way for the Board to accept reasonable commitments submitted by the parties during preliminary investigations or investigations, and decide not to launch an investigation or to end an ongoing one. The Board will provide the details of these new procedures by secondary legislation. Thirdly, the Board may decide to end an

investigation, wholly or partially, before the investigation report is served to the parties, if it is convinced by the case handlers' recommendations that the parties did not violate the law.

The Draft Law also proposes significant changes in the investigation procedures for competition law violations. First of all, the six-month investigation period will be reduced to four months. This period may be extended up to four months, compared to an extension limit of six months now. Secondly, the Draft Law removes the first written defense mechanism, which is the defensive response to the investigation notice. Therefore, the parties will have two written defense rights instead of three. The Draft Law also extends the deadlines for defense submissions and the case handler's additional opinion. Moreover, it sets a one-month deadline for the Board's final decision announcement following the oral hearing meeting or the end of the written defense rights period. Additionally, the Draft Law proposes that the reasoned decision be served within two months after the final decision is made.

The Draft Law proposes to abandon the fixed rates for certain procedural violations, including failure to notify a concentration and hindering on-site inspections, and set upper limits for the monetary fines for these violations. This new arrangement gives the Board discretionary space to set monetary fines by conducting case-by-case assessments. On the other hand, the Turkish Competition Act's other provisions on monetary fines are left untouched.

All of these proposals will enter into force if the Turkish Parliament approves the Draft Law. As the Draft Law has been submitted to the Presidency of the Turkish Parliament on January 23, 2014, the Parliament's Commission is expected to be discussing it within the first half of February. Therefore, even though the specific effective date remains unknown, it seems fair to expect it in the not-so-distant future.

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