

The Handbook of Competition Enforcement Agencies

2012

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Overview

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The Law on Protection of Competition No. 4054 (Competition Law), which entered into force on 13 December 1994, is designed to prevent agreements, decisions and practices that have, as their purpose or effect, the prevention, restriction or distortion of competition in the markets for goods or services within Turkey; the abuse of dominance by undertakings dominant in a relevant market; and concentrations creating or strengthening a dominant position and significantly lessening the competition in the whole territory of Turkey or a part thereof.

The Competition Board is the decision-making body of the Competition Authority.

In 2011, the Competition Board introduced two new guidelines: Guidelines on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions; and Guidelines on Remedies that are Acceptable by the Turkish Competition Authority in Merger/Acquisition Transactions. The former was introduced with a view to increase the certainty and predictability of the application of Communiqué No. 2010/4 on Mergers and Acquisitions Calling for the Authorization of the Competition Board. It sets out explanations for understanding concepts such as ‘undertakings concerned’ and ‘ancillary restraints’, as well as the method of calculating turnover thresholds. The latter guidelines on remedies acceptable by the Turkish Competition Authority were introduced with a view to providing guidance on remedies that could be proposed by the parties to the Turkish Competition Authority in order to eliminate competition law concerns surrounding a transaction in the event where such transaction may be prohibited under article 7 of the Competition Law.

The Competition Authority is also expected to draft a guideline for competitive effects analysis in order to assist public authorities in implementing public regulations. There is also a draft Competition Law, which is expected to bring about significant amendments to some of the fundamental competition rules.

The Competition Authority

The Competition Authority has public legal personality, as well as administrative and financial autonomy. The authority consists of the board, presidency and service units. A total of approximately 328 people are employed in the authority, including competition experts, assistant experts, lawyers, board members, reporters and technical personnel. Five divisions with sector-specific work distribution handle competition law enforcement work through around 120 case handlers. The annual budget of the authority for 2010 was around 42.2 million Turkish liras.

The Competition Board

The Competition Board is composed of seven members, including a chairman and a deputy chairman. The term of office of the chairman, deputy chairman and members of the board is six years. A member whose term has expired is eligible for re-election.

The duties and the powers of the Competition Board can be categorised into three main areas:

Preventing the violation of competition

- Agreements, decisions and concerted practices that have as their purpose or effect the prevention, restriction or distortion of competition are, in principle, deemed illegal (Competition Law, article 4).
- Any abuse on the part of one or more undertakings, individually or through joint agreements or practices, of a dominant position in a market for goods or services is also unlawful and prohibited (Competition Law, article 6).

Undertakings and associations of undertakings condemned by the board for violating articles 4 and 6 of the Competition Law may be given administrative fines of up to 10 per cent of their Turkish turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, in the financial year nearest the date of the fining decision). Employees or members of the executive bodies of the undertakings or

association of undertakings that had a determining effect on the creation of the violation would also be fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. The Competition Board may also order structural or behavioural remedies, or both, to protect competition and restore it to its state before the violation.

Merger control

A merger filing is required before the Competition Board where (i) the entire Turkish turnover of the parties to the transaction exceeds 100 million Turkish liras and their Turkish turnovers exceed 30 million Turkish liras, separately; or (ii) the entire worldwide turnover of one of the parties to the transaction exceeds 500 million Turkish liras and the Turkish turnover of at least one of the other parties to the transaction exceeds 5 million Turkish liras. Except for joint ventures, transactions that do not result in an affected market are not notifiable, even if the thresholds are exceeded.

The Competition Law provides for a suspension requirement. If the parties to a transaction that requires the approval of the Competition Board close the transaction without approval of the board, a fixed monetary fine of 0.1 per cent of the acquirer's Turkish turnover generated in the financial year preceding the date of the

fining decision (if this is not calculable, in the financial year nearest the date of the fining decision) applies. In the event of a merger, the fine applies to both merging parties. The minimum fine is 13,591 Turkish liras. If the Competition Board reaches the conclusion that the transaction closed before clearance creates or strengthens a dominant position and significantly lessens competition in any relevant product market, the undertakings concerned may also receive administrative monetary fines of up to 10 per cent of their Turkish turnover generated in the financial year specified above. In such a situation, employees or members of the executive bodies of the undertakings or association of undertakings that had a determining effect on the creation of the violation would also be fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In any case, a notifiable merger or acquisition not notified to and approved by the Competition Board shall be deemed as legally invalid with all its legal consequences.

Exemptions and negative clearances

The Competition Board may decide to exempt agreements, decisions of associations of undertakings and concerted practices from the application of the provisions of the Competition Law, article 4.

Exemption decisions may be granted for a



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ELİG, Attorneys-at-Law aims at providing its clients with high-quality legal services in an efficient and business-minded manner. We focus on the interests of our clients and strive to find flexible legal solutions that fit the ever-changing needs of our clients in their international and domestic operations.

We have a legal team of around 30 persons. While we take pride in being able to assist our clients in almost all fields of law, the main focus of our practice consists of competition law, corporate law, mergers and acquisitions, EU law, banking and finance, litigation, energy, oil and gas law, administrative law, real estate law, and intellectual property law.

As an independent Turkish law firm, ELİG, Attorneys-at-Law collaborates with many international law firms on various projects.

Furthermore, Gönenç Gürkaynak is qualified to practise law in a number of jurisdictions. In addition to his membership of the Istanbul Bar, Mr Gürkaynak is also a qualified attorney at the New York Bar, a member of the Law Society of England and Wales (currently non-practising) and a member of the Brussels Bar (B List).

certain period of time or for an indefinite period. They may also be conditional upon the satisfaction of particular conditions or obligations (or both), such as structural or behavioural remedies.

Certain categories of agreements and decisions are subject to a block exemption regime under block exemption communiqués (Communiqués No. 2002/2, 2003/2, 2005/4, 2008/2 and 2008/3).

Appeal

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be

submitted to judicial review before the High State Council by filing an appeal case within 60 days upon receipt by the parties of the justified decision of the board. Filing an administrative action does not automatically stay the execution of the board's decision. However, upon request of the plaintiff, the court, on providing its justifications, may decide to stay the execution if the implementation of the decision is likely to cause irreparable damage; and if the decision is highly likely to be against the law.

ABOUT THE AUTHORS



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Mr Gönenç Gürkaynak holds an LLM degree from Harvard Law School, and he is qualified in Istanbul, New York and England & Wales (currently a non-practising Solicitor). Mr Gürkaynak heads the competition law and regulatory department of ELİG, which currently consists of 12 associates. He has unparalleled experience in all matters of Turkish competition law counseling with over 14 years of competition law experience, starting with the establishment of the Turkish Competition Authority. Prior to joining ELİG as a partner more than seven years ago, he worked at the Istanbul, New York, Brussels and again in the Istanbul offices of White & Case LLP for more than eight years.



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