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Cartels

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Turkey

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Overview of the law and enforcement regime relating to cartels

The national competition authority for enforcing the cartel prohibition and other provisions of the Competition Law in Turkey is the Competition Authority. The Competition Authority has administrative and financial autonomy. It consists of the Competition Board (***"Board"***), Presidency and service departments. Five divisions, with sector-specific work distribution, handle competition law enforcement work through approximately 120 case handlers. The other service units comprise the following: (i) the department of decisions; (ii) the economic analysis and research department; (iii) the information management department; (iv) the external relations, training and competition advocacy department; (v) the strategy development, regulation and budget department; and (vi) the cartel and on-site inspections support division (Leniency Division).

The statutory basis for cartel prohibition and the enforcement regime is Law No. 4054 on the Protection of Competition of December 13, 1994 (***"Competition Law"***). Competition Law finds its underlying rationale in article 167 of the Turkish Constitution of 1982, which authorises the state to take appropriate measures to secure the functioning of the markets and to prevent the formation of monopolies or cartels. The Turkish cartel regime by nature applies administrative and civil (not criminal) law. Competition Law applies to individuals and companies alike and even to public corporations if they act as an undertaking within the meaning of Competition Law.

Article 4 of Competition Law is the applicable provision for cartel-specific cases and provides the basic principles of the cartel regulation. The provision is akin to and closely modelled on article 101(1) of the Treaty on the Functioning of the European Union (***"TFEU"***). Article 4 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have (or may have) as their object or effect the prevention, restriction or distortion of competition. Similar to article 101(1) of the TFEU, the provision does not define the term "cartel" explicitly. However, article 4 prohibits all kinds of restrictive agreements, including any form of cartel agreement.

Unlike the TFEU, article 4 does not refer to additional requirements such as "appreciable effect" or "substantial part of a market" and consequently does not provide for any *de minimis* exception. Therefore, article 4 applies even to violations with minor effects on any market. The practice of the Board has not recognised any *de minimis* exceptions either. However, the enforcement trends and proposed changes to the legislation are increasingly focusing on *de minimis* defences and exceptions.

Article 4 also prohibits any form of agreement that has the 'potential' to prevent, restrict or distort competition. Again, this is a specific feature of the Turkish cartel regulation system,

recognising a broad discretionary power to the Board. Additionally, article 4 brings a non-exhaustive list which provides examples of possible restrictive agreements.

The prohibition on restrictive agreements and practices does not apply to agreements that benefit from a block exemption or an individual exemption issued by the Board. Vertical agreements are also caught by the prohibition laid down in article 4, to the extent they are not covered by block exemption rules or individual exemptions.

The Competition Board's general practice shows that horizontal restrictive agreements such as price fixing, market allocation, collective refusals to deal (group boycotts) and bid rigging, have consistently been deemed to be *per se* illegal.

The Turkish competition regime also condemns concerted practices. The Competition Authority may apply "the presumption of concerted practice" and thus easily shift the burden of proof in connection with concerted practice allegations to the investigated parties. Similar to the EU competition law, a concerted practice is defined as a form of coordination between undertakings which, without having reached the stage where a so-called agreement has been properly concluded, knowingly substitutes practical cooperation between them for the risks of competition. Therefore, this is a form of coordination, without a formal "agreement" or "decision", by which two or more companies come to an understanding to avoid competing with each other. The coordination does not need to be in writing; it is sufficient if the parties have expressed their joint intention to behave in a particular way, perhaps in a meeting, via a telephone call or through the exchange of letters.

Overview of investigative powers in Turkey

Competition Law provides vast investigative powers to the Competition Authority such as the power to conduct dawn raids and to apply other investigatory tools (e.g., formal information request letters). The Board only needs a judicial authorisation if an undertaking refuses to allow the dawn raid. The prevention or hindering of a dawn raid could result in the imposition of an administrative monetary fine.

Article 15 of Competition Law authorises the Board to conduct on-site investigations. Accordingly, the Board is entitled to:

- examine the books, paperwork and documents of undertakings and trade associations, and, if necessary, take copies of the same;
- request undertakings and trade associations to provide written or verbal explanations on specific topics; and
- conduct on-site investigations with regard to any asset of an undertaking.

Refusal to grant the staff of the Competition Authority access to business premises may lead to the imposition of a fixed fine of 0.5% of the annual turnover. It may also lead to the imposition of a fine of 0.05% of the turnover for each day of the violation.

Although Competition Law obliges employees to provide verbal testimony during the dawn raid, case handlers usually allow providing for an answer post-dawn raid. Therefore, in practice, employees can avoid providing answers on issues that are uncertain to them, provided that a written response is submitted in a mutually agreed timeline. Case handlers of the Competition Authority may fully examine computer records, including, but not limited to, the deleted mail items.

Officials conducting a dawn raid must be in possession of a deed of authorisation issued by the Competition Board. The deed of authorisation must specify the subject matter and purpose of the investigation. The inspectors are not entitled to exceed their authorisation.

Hence, inspectors must not exercise their investigative powers in relation to matters that do not fall within the scope of the investigation specified in the deed of authorisation. Therefore, Competition Authority officials may not copy documents or record verbal testimonies which are not related to or covered by the scope of the investigation.

At the site of a dawn raid, Competition Authority staff are not obliged to wait for a lawyer to arrive. However, the staff usually agree to wait for a short while for a lawyer to come but may impose certain conditions (e.g., to seal file cabinets or disrupt email communications).

The Competition Authority may also request all information it deems necessary from all public institutions and organisations, undertakings and trade associations. Officials of these bodies, undertakings and trade associations are obliged to provide the necessary information within a fixed period of time. Failure to comply with a decision ordering the production of information may lead to the imposition of a turnover-based fine of 0.1% of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). The Competition Board may impose the same amount of fine if an undertaking provides incorrect or incomplete information in response to the Competition Authority's request for information.

Overview of cartel enforcement activity during the last 12 months

The Competition Authority's annual report for 2014 provides that the Competition Board finalised a total of 91 cases relating to anti-competitive agreements; 65 of these cases concerned horizontal agreements. The Competition Board issued monetary fines amounting to a total of TL 14,662,151 (approx. €4,363,735) for anti-competitive agreements. This figure constitutes a remarkable drop in the Board's overall fining for article 4 violations which amounted to TL 1,126,817,183 in 2013 (approx. €335,362,256) and TL 59,570,665 (approx. €17,729,364) in 2012.

Developments in cartel enforcement in Turkey may be illustrated with an overview of the most notable cartel cases that the Board has examined in the recent years. The Board is usually reluctant to identify a violation as a cartel and prefers to use terms such as 'concerted practice' instead. The reasons for this approach are not totally clear; however, it appears that the Competition Board may be aiming to avoid the risk of having to impose astronomical monetary fines which could be deemed as disproportionate compared to the respective case at hand.

In the Hyundai dealers case (16.12.2013; 13-70/952-403), the Competition Board launched an investigation to determine whether 21 Hyundai dealers violated article 4 of Competition Law through an agreement to fix the resale prices and sale conditions of Hyundai branded new cars. Although one of the investigated dealers applied for leniency, the Board evaluated this application under Regulation on Fines within the scope of active-cooperation on the grounds that the conducts in question do not amount to a cartel violation. Leniency is only available for cartelists. The Board granted a reduction of one quarter of the fine to be imposed on the applicant dealer due to its active cooperation whereas a monetary fine equal to 3% of their annual turnover was imposed on the other dealers.

Another important issue concerning cartel enforcement relates to the applicability and legality of the Regulation on fines. In its Steel Straps decision (12-52/1479-508, 30.10.2012), the Competition Board fined two companies active in the market for steel straps on the grounds that they infringed competition law by entering into a cartel agreement. The 6th Administrative Court in Ankara Court repealed the Board's fining decision on May 27,

2014, although it acknowledged that the investigated companies violated competition law through an anticompetitive agreement. The Court found that the Regulation on Fines, which is the legal basis for determining the amount of the fines, is inconsistent with Competition Law because it sets (i) a minimum fine limit that Competition Law does not contain, by creating new types of infringements, and (ii) a base level of applicable fine rates. The Court decided that the Board should have calculated the fine per article 16 of Competition Law by considering the aggravating and mitigating factors, and therefore repealed the Board's decision. However, the High State Court decided to overrule the Administrative Court's decision by stating that the Competition Board's decision was lawful and that there was no legal ground for repealing the Board's decision. Although the Administrative Court decision which repealed the Board's Steel Straps decision intensified the discussions about the applicability of the Regulation on Fines, which is the legal basis for determining the amount of the fines, the High State Court appears to have settled this debate for now by implying that the Regulation on Fines is not against the law.

One of the Competition Authority's most important decisions in 2014 is the Mauri Maya decision (14-42/738-346, 22.10.2014) which concerns four undertakings operating in the market for fresh yeast. The Board investigated whether Dosu Maya Mayacılık A.Ş., Mauri Maya San. ve Tic. A.Ş., Öz Maya Sanayi A.Ş., and Pak Gıda Üretim ve Pazarlama A.Ş. violated article 4 of Competition Law by colluding to set sale prices of fresh bread yeast. Mauri Maya applied for leniency on May 27, 2013. The Board resolved that the investigated companies violated article 4 and imposed administrative monetary fines on three of them while granting full immunity to Mauri Maya by virtue of the added value and sufficient content of its leniency application. Mauri Maya could otherwise receive a monetary fine of 4.5% of its annual turnover. By virtue of this decision, the Board implicitly opened the door for more leniency applications, even for those cases where a pre-investigation is already initiated and dawn raids were conducted.

The Competition Board's other article 4-related investigations concern very small-sized undertakings such as bakeries, driving licence schools and private teaching institutions. Most of these investigations are concluded with fines imposed on the infringing undertakings. The Competition Board usually considers the small size of these undertakings and the restrictive effect of the infringement in the market at the time of fining.

Recently launched investigations clearly show that the Competition Authority does not focus on specific sectors when it comes to the investigation of cartel behaviour but rather aims to tackle any conduct or practice which might point to a restriction of competition, provided that the allegations are bolstered with sufficient evidence. The Competition Authority's recent areas of focus are: (i) the consumer electronics sector, including the personal computer and game console sector; and (ii) the cement and ready mixed concrete sector. Very recently, the Competition Authority launched an investigation against numerous consumer electronics products suppliers and retail technology superstores, including major global players. The investigation has been launched in order to determine whether the investigated parties engaged in anti-competitive agreements. The Competition Authority's investigation concerning the ready mixed concrete sector includes price-fixing allegations against five ready mixed concrete suppliers in the region of Sinop.

Key issues in relation to enforcement policy

The Turkish Competition Authority places equal emphasis on all areas of enforcement. The significance of the cartel enforcement regime under Competition Law has nonetheless

been repeatedly underlined by the Presidency of the Competition Authority. In its recent enforcement track, the Turkish Competition Board shifted its focus from merger control cases to concentrate more on the fight against cartels and cases of abuses of dominance.

There are no industry-specific offences nor defences which lead to a particular scrutiny. Competition Law applies to all industries, without exception. In terms of cartel enforcement, cement, bread yeast, driving schools and bakeries have recently been under investigation for cartel and concerted practice allegations.

It is fair to say that the Competition Board may at times consider policies which are not directly related to the protection of competition on the markets. The Turkish paper sector investigation (13-42/538-238, 08.07.2013) marks one of those extremely rare files in Turkey where a policy concern not directly related to competition law (i.e. a policy concern relating to minimising trade deficit) may have played a role in the ultimate decision, together with a state action defence of the parties concerned, as the parties' collective behaviour was influenced by a set of rules brought by the relevant ministry tackling trade deficit. The Competition Board found that seven paper recycling companies violated competition laws by harmonising their commercial behaviours and colluding against waste paper producers that aim to export waste paper. However, the Board did not levy turnover-based monetary fines against the defendants and granted three-year exemptions under objective criteria.

Key issues in relation to investigation and decision-making procedures

As the competent body of the Competition Authority, the Board is responsible for, *inter alia*, investigating and condemning cartel activity. A cartel matter is primarily adjudicated by the Competition Board.

The Board may *ex officio,* or as a result of a notice or complaint, launch a preliminary-investigation prior to opening a fully fledged investigation. At this preliminary stage, the undertakings concerned are usually not notified that they are under investigation, unless the Competition Authority decides to conduct a dawn raid or apply other investigatory tools (i.e., formal information request letters).

The Competition Authority experts will submit a preliminary report to the Competition Board within 30 days after the Board decides to launch a preliminary investigation. The Board will then decide within 10 days whether it will launch a fully fledged formal investigation or not. If the Board decides to initiate an investigation, it will send a notice to the undertakings concerned within 15 days. The investigation will be completed within six months. If deemed necessary, this period may be extended by the Board only once, for an additional period of up to six months.

Once the investigation notice has been formally served, the investigated undertakings have 30 days to prepare and submit their first written defences. Subsequently, the main investigation report is issued by the Competition Authority. Once this is served on the defendants, they have 30 calendar days to respond, extendable for a further 30 days (this is the second written defence). The investigation committee will then have 15 days to prepare an additional opinion concerning the second written defence. The defending parties will have another 30-day period to reply to the additional opinion (third written defence). When this reply is served on the Competition Authority, the investigation process will be completed (i.e., the written phase of investigation involving the claim/defence exchange will close with the submission of the third written defence).

An oral hearing may be held upon the request of the parties. The Board may also *ex officio* decide to hold an oral hearing. Oral hearings are held between 30 and 60 days following the

completion of the investigation process under the provisions of Communiqué No. 2010/2 on Oral Hearings before the Competition Board. The Board will render its final decision within 15 days from the hearing, if an oral hearing is held. Otherwise, the decision is rendered 30 days from the completion of the investigation process. It usually takes around two to three months (from the announcement of the final decision) for the Competition Board to serve a reasoned decision on the counterpart.

The Competition Authority's administrative enforcement is also supplemented with private lawsuits. Accordingly, in case of private suits, cartel members are adjudicated before the courts. Due to a treble damages clause allowing litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the cartel enforcement arena. Most courts wait for the decision of the Competition Authority and build their own decision on the Competition Board's decision.

Leniency/amnesty regime

The Competition Law underwent significant amendments in February 2008. The current legislation brings about a stricter and more deterrent fining regime, coupled with a leniency programme for the undertakings. The secondary legislation specifying the details of the leniency mechanism is the Regulation on Active Cooperation for Discovery of Cartels (***"the Regulation on Leniency"***). The Guidelines on Explanation of the Regulation on Leniency were published in April 2013. With the enactment of the Regulation on Leniency, the main principles of immunity and leniency mechanisms have been set.

The Regulation on Leniency provides that the leniency programme is only available for cartelists. It does not apply to other forms of antitrust infringements. A definition of cartel is also provided in the Regulation on Leniency for this purpose.

A cartelist may apply for leniency until the investigation report is officially served. Depending on the application order, there may be total immunity from, or reduction of, a fine. This immunity/reduction includes both the undertakings and its employees and managers, with the exception of the 'ring-leader' which can only benefit from a second degree reduction of fine. The conditions for benefiting from the immunity/reduction are also stipulated in the Regulation on Leniency. Both the undertaking and its employees and managers can apply for leniency. A manager or employee of a cartelist may also apply for leniency until the 'investigation report' is officially served. Such an application would be independent from applications by the cartelist itself, if there are any. Depending on the application order, there may be total immunity from, or reduction of a fine for such manager or employee. The requirements for such individual application are the same as stipulated above.

As of December 31, 2014, the Turkish Competition Authority received 14 leniency applications since 2009. However, statistics show that the Competition Board is very reluctant to grant full immunity to leniency applicants.

A recent and notable Competition Board decision where the Board granted full immunity is the Yeast Cartel case (22.10.2014, 14-42/783-346). The Board launched an investigation against four fresh yeast producers to determine whether they had violated article 4 of the Competition Law through colluding to set prices for fresh bread yeast. After the investigation was concluded, the Board imposed a total fine of approximately TL 14 million on three undertakings. The fourth undertaking, Mauri Maya, obtained full immunity, though it submitted its application for leniency after the preliminary investigation was initiated and following the dawn raids conducted at the premises of the undertakings. The Board considered the value and sufficient content of Mauri Maya's leniency application.

Overall, the Turkish leniency regime requires high standards for cooperation in the leniency procedure. In the Steel Ring Manufacturers case (30.10.2012, 12-52/1479-508) the Board stated that the undertakings, MPS Metal Plastik Sanayi Çember ve Paketleme Sistemleri İmalat Tic. A.Ş. (MPS) and BEKAP Metal İnş. San. ve Tic. AŞ (BEKAP), fixed prices of steel strapping materials and were acting in collusion regarding certain tenders, and decided that both undertakings had violated article 4 of Competition Law. The Board considered the leniency application of MPS and imposed a fine equal to 1% of its annual gross income in 2011. The reason for the granting of partial immunity was that the documents gathered at the on-site inspection allegedly already proved a cartel. However, it could be said that in this case the Board set a high standard for cooperation in the context of the leniency programme.

Another decision where the Board sent a negative message to the business community by showing that leniency applications might not always be beneficial was the 3M case (27.09.2012, 12-46/1409-461). In that case, the investigation team recommended to the Board to revoke the applicant's full immunity on the grounds that the applicant did not provide all the documents that could be discovered during a dawn raid. Unfortunately, the Board's reasoned decision did not go into the details of the matter, as the case was closed without a finding of violation. It remains to be seen whether the Board will apply this approach again in the future.

In the Sodium Sulfate case (16.05.2012, 12-24/711-199), the Board imposed fines both on the cartelists and the persons having a determining effect on the violation, but eventually offered reductions on the fines after one cartelist and its general manager filed a leniency application. In its decision, the Board stated that the undertakings, Otuzbir Kimya and Sodaş Sodyum, fixed prices of sodium sulfate and shared customers between 2005 and 2011. Additionally, it stated that Alkim Alkali Kimya, Otuzbir Kimya and Sodaş Sodyum collectively determined prices of raw salt. The Board imposed a fine on Sodaş Sodyum equal to 3% of its annual gross income in the 2011 fiscal year and simultaneously, imposed a fine on Sodaş Sodyum's general manager, who was engaged actively in the infringement, equal to 3% of the administrative fine applied to Sodaş Sodyum. Sodaş Sodyum and its general manager filed applications for leniency and eventually received a reduction of one third and 50%, respectively, of the fines to be imposed.

In the decision on Gaz Cartel (11.11.2010, 10-72/1503-572), the Board offered full immunity to an applicant for leniency, in spite of the fact that the new evidence uncovered during the on-site inspection had shed light on the investigation. This constituted a landmark decision after the coming into effect of the Leniency Regulation. Berk Gaz, who received full immunity, was the first applicant to apply for leniency. That said, Berk Gaz managed to convince the Board that it provided sufficient documents and information, while also fulfilling the other conditions set out in the Leniency Regulation.

Administrative settlement of cases

The current Turkish competition law regime does not provide for a settlement procedure. However, the draft Law amending Competition Law (***"Draft Law"***) includes a provision regulating the settlement process.

Draft Law reveals that the Board considers factors such as the type of infringement, the market, the market position of the undertakings, the cost to be incurred as a result of the investigation and the related law suits, and lastly the benefits to be had as a result of the settlement agreements.

The Draft Law also puts forward that the Board can settle with the undertakings or association of undertakings that accepts the existence of the infringement.

There is no guidance yet regulating the settlement process published by the Board, as the settlement process is not yet being regulated under Turkish competition law regime. However, the Draft Law states that the procedures and other rules will be determined by the regulations to be enacted by the Board. Therefore, it is expected that the Board will, after the enactment of the Draft Law, publish guidance regarding the settlement process.

Third party complaints

A notice or complaint may be submitted verbally or through a petition. Recently, the Competition Authority included an online system in which complaints may be submitted by the online form in the official website of the Competition Authority. In the case of a notice or complaint, the Board rejects the notice or complaint if it deems it not to be serious. Any notice or complaint is deemed rejected if the Board remains silent on the matter for 60 days. The Board will decide to conduct a pre-investigation if it finds the notice or complaint to be serious.

Investigated parties have a right to access the file (*Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets (Communiqué No. 2010/3)*). The right to access the file can be exercised on written request at any time until the end of the period for submitting the last written statement.

Complainants and other third parties may request access to file for follow-on actions (Law No. 4982 on the Right to Access to Information). The approach of the Competition Authority is to consider not only the interests of the person requesting information, but also the personal data of other natural and legal persons, public interest as well as all other individual's interests. This balance is regulated by way of exceptional provisions under Law No. 4982 on the Right to Access to Information. Most of the time the Competition Authority is reluctant to grant access to the file and justifies the denial of access on the grounds that the access concerns internal documents and business secrets. Based on that, the Competition Authority usually denies access to documents such as investigation reports or information petitions submitted by investigated parties.

Third parties can attend the oral hearing and be heard by submitting a petition and presenting information and documents that show their interest in the subject matter of the oral hearing.

Civil penalties and sanctions

In the case of a proven cartel activity, the companies concerned may be subject to fines of up to 10% of their Turkish turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account).

Employees and managers of the undertakings or association of undertakings that had a determining effect on the creation of the violation are also fined up to 5% of the fine imposed on the undertaking or association of undertaking. The current minimum fine is TL 15,226 (approx. €4,531).

The Competition Law makes reference to article 17 of the Law on Minor Offences to require the Board to take into consideration factors such as: (i) the level of fault and the amount of possible damage in the relevant market; (ii) the market power of the undertaking within the relevant market; (iii) the duration and recurrence of the infringement; (iv)

cooperation or driving role of the undertaking in the infringement; (v) the financial power of the undertaking; and (vi) compliance with the commitments in determining the magnitude of the fine. In line with this, the Turkish Competition Authority enacted the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance ("***the Regulation on Fines***"). The Regulation on Fines sets out detailed guidelines as to the calculation of monetary fines applicable in the case of an antitrust violation. The Regulation on Fines applies to both cartel activity and abuse of dominance, but illegal concentrations are not covered by the Regulation on Fines.

According to the Regulation on Fines, fines are calculated by first determining the basic level, which in the case of cartels is between 2 and 4% of the company's turnover in the financial year preceding the date of the fining decision. Aggravating and mitigating factors are then factored in.

The Regulation on Fines also applies to managers or employees that had a determining effect on the violation (such as participating in cartel meetings and making decisions that would involve the company in cartel activity), and provides for certain reductions in their favour.

In addition to the monetary sanction, the Board is authorised to take all necessary measures to terminate the restrictive agreement, to remove all *de facto* and legal consequences of every action that has been taken unlawfully, and to take all other necessary measures in order to restore the level of competition and status as before the infringement.

Furthermore, such a restrictive agreement shall be deemed as legally invalid and unenforceable with all its legal consequences. Similarly, the Competition Law authorises the Board to take interim measures until the final resolution on the matter, in case there is a possibility for serious and irreparable damages.

The sanctions that could be imposed under the Competition Law are administrative in nature. Therefore, the Competition Law leads to administrative fines (and civil liability) but no criminal sanctions. That said, there have been cases where the matter had to be referred to a public prosecutor after the competition law investigation is complete. On that note, bid-rigging activity may be criminally prosecutable under sections 235 *et seq* of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code. The above-mentioned sanctions may apply to individuals if they engage in business activities as an undertaking. Similarly, sanctions for cartel activity may also apply to individuals acting as the employees or board members or executive committee members of the infringing entities in case such individuals had a determining effect on the creation of the violation. Other than these, there is no sanction specific to individuals.

Right of appeal against civil liability and penalties

Competition Board decisions can be submitted for judicial review before the administrative courts in Ankara by filing an appeal case within 60 days upon receipt by the parties of the justified (reasoned) decision of the Board. Filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request of the plaintiff, the court, by providing its justifications, may decide the stay of the execution if the execution of the decision is likely to cause serious and irreparable damages; and if the decision is highly likely to be against the law (i.e., showing of a *prima facie* case). The judicial review period before the Administrative Court usually takes about 24 to 30 months.

If the challenged decision is annulled in full or in part, the Administrative Court remands it to the Board for review and reconsideration.

Decisions of courts in private suits are appealable before the Supreme Court of Appeals. The appeal process in private suits is governed by the general procedural laws and usually lasts 24 to 30 months.

Criminal sanctions

The sanctions that could be imposed under Competition Law are administrative in nature. Therefore, Competition Law does not lead to criminal sanctions. However, cases might be referred to a public prosecutor after the Competition Law investigation is completed. On that note, bid-rigging activity may be criminally prosecutable under sections 235 *et seq.* of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code.

Cross-border issues

Turkey is one of the 'effect theory' jurisdictions where what matters is the effect a cartel activity has produced on Turkish markets, regardless of the nationality of the cartel members; where the cartel activity took place; or whether the members have a subsidiary in Turkey. The Board refrained from declining jurisdiction over non-Turkish cartels or cartel members (e.g., Sisecam/Yioula, 28.02.2007; 07-17/155-50; Gas Insulated Switchgear 24.06.2004; 04-43/538-133; Refrigerator Compressor, 1.07.2009; 09-31/668-156) in the past. It should be noted, however, that the Board is yet to enforce monetary or other sanctions against firms located outside of Turkey without any presence in Turkey, mostly owing to enforcement handicaps (such as difficulties of formal service to foreign entities).

Developments in private enforcement of antitrust laws

The most distinctive feature of the Turkish competition law regime is that it provides for lawsuits for treble damages. Hence, administrative enforcement is supplemented with private lawsuits.

Articles 57 *et seq.* of the Competition Law entitle any person who may be injured in his business or property by reason of anything forbidden in the antitrust laws to sue the violators for three times their damages plus litigation costs and attorney fees. The case must be brought before the competent general civil court. In practice, courts usually do not engage in an analysis as to whether there is actually a condemnable agreement or concerted practice, and wait for the board to render its opinion on the matter, thereby treating the issue as a prejudicial question. Since courts usually wait for the Board to render its decision, the court decision can be obtained in a shorter period in follow-on actions.

Turkish procedural law denies any class action or procedure. Class certification requests would not be granted by Turkish courts. While article 25 of Law No. 4077 on the Protection of Consumers allows class action by consumer organisations, these actions are limited to violations of Law No. 4077 on the Protection of Consumers, and do not extend to cover antitrust infringements. Similarly, article 58 of the Turkish Commercial Code enables trade associations to take class actions against unfair competition behaviour, but this has no reasonable relevance to private suits under article 57 *et seq.* of Competition Law.

Reform proposals

The two most recent developments regarding Turkish competition law are the Draft Regulation on Administrative Monetary Fines (***"Draft Regulation"***) and the Draft Competition Law (***"Draft Law"***).

The Draft Regulation on Administrative Monetary Fines for the Infringement of Law on the Protection of Competition was brought to public opinion on January 17, 2014. The Draft Regulation refers to the new calculation method for administrative monetary fines which would result in the explicit recognition of the parental liability principle. The upper limit of the administrative monetary fines is 10% of the overall turnover determined by the Competition Board and generated by the undertaking in the financial year preceding the decision. The Draft Regulation also brings new aggravating and mitigating factors. Additionally, the Draft Regulation obliges the Board to reduce the fine when mitigating factors exist. The content of the Draft Regulation seems to be heavily inspired by the European Commission's Guidelines on the method of setting fines imposed pursuant to article 23(2)(a) of Regulation No. 1/2003 (2006/C 210/02).

The Draft Proposal for the Amendment of the Competition Law was submitted to the Grand National Assembly of the Turkish Republic on January 23, 2014. The Draft Law introduces the *de minimis* rule, which enables the Competition Board to ignore certain cases that do not exceed a certain market share or turnover threshold, and brings the EU's significant impediment of effective competition (SIEC) test to the Turkish merger control regime in place of the current dominance test. It brings a settlement option and commitment mechanism. Also, where case handlers advise the Competition Board that the parties subject to the investigation did not commit violations, the Competition Board may decide to wholly or partially end an investigation.

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