

Restraints of trade and dominance in Turkey: overview

Gönenç Gürkaynak and Ayşe Güner
ELIG, Attorneys-at-Law

global.practicallaw.com/0-559-1605

SCOPE OF RULES

1. Are restrictive agreements and practices regulated? If so, what are the substantive provisions and regulatory authority?

Regulatory framework

The statutory basis for cartel prohibition is the Law on Protection of Competition No. 4054 dated 13 December 1994 (Competition Law). The Competition Law finds its underlying rationale in Article 167 of the Turkish Constitution of 1982, which authorises the government to take appropriate measures and actions to secure a free market economy. The Turkish cartel regime is administrative and civil in nature, not criminal. The Competition Law applies to individuals and companies, if and to the extent they act as an undertaking within the meaning of the Competition Law.

The applicable provision for cartel-specific cases is Article 4 of Competition Law, which provides the basic principles of cartel regulation. The provision is closely modelled on Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) (Article 101(1)). It prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices that have (or may have) as their object or effect the prevention, restriction or distortion of competition within, or within a part of, a Turkish product or services market. Similarly to Article 101(1), the provision does not provide a definition of cartel. It rather prohibits all forms of restrictive agreements, which would include any form of cartel agreement. Therefore, the scope of application of the prohibition extends beyond cartel activity.

Article 4 also prohibits any form of agreement that has the potential to prevent, restrict or distort competition. Similar to Article 101(1) of the TFEU, Article 4 of Competition Law provides a non-exhaustive list of restrictive agreements such as directly or indirectly fixing purchase or selling prices or other trading conditions, market sharing, output or demand restrictions.

Regulatory authority

See box, *The regulatory authority*.

2. Do the regulations only apply to formal agreements or can they apply to informal practices?

A number of horizontal restrictive agreement types 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 anti-trust regime also condemns concerted practices and shifts the burden of proof in connection with concerted practice allegations onto the accused party. A concerted practice is a form of co-ordination, without a formal agreement or decision, by which two or more companies come to an understanding to avoid competing with each other. Such co-ordination does not need to be in writing.

Exemptions

3. Are there any exemptions? If so, what are the criteria for individual exemption and any applicable block exemptions?

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 Competition Board.

The block exemption rules currently applicable are the:

- Block Exemption Communiqué No. 2002/2 on Vertical Agreements.
- Block Exemption Communiqué No. 2005/4 on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector.
- Block Exemption Communiqué No. 2016/5 on R&D Agreements.
- Block Exemption Communiqué No. 2008/3 for the Insurance Sector.
- Block Exemption Communiqué No. 2008/2 on Technology Transfer Agreements
- Block Exemption Communiqué No. 2013/3 on Specialisation Agreements.

The Competition Board can grant, on the parties' application, an individual exemption for agreements between undertakings if the agreement fulfils all of the following requirements:

- It ensures new developments and improvements, or economic or technical development in the production or distribution of goods and in providing services.
- It allows the consumer to benefit from these developments and improvements.
- It does not eliminate competition in a significant part of the relevant market.

- It does not impose a restraint on competition that is more than what is necessary to attain the objectives in the first two bullets above.

EXCLUSIONS AND STATUTES OF LIMITATION

4. Are there any exclusions? Are there statutes of limitation associated with restrictive agreements and practices?

Exclusions

Unlike the Treaty on the Functioning of the European Union (TFEU), Article 4 of the Competition Law does not refer to an appreciable effect or a substantial part of a market, and therefore excludes any *de minimis* exception.

Statutes of limitation

Article 20/3 of the Law No. 5326 provides a limitation period of eight years for offences that are punishable with proportional administrative monetary fines. Infringements set out under Competition Law are subject to the proportional administrative monetary fines and therefore the limitation period for infringements arising from Competition Law, such as violation of Article 4 (that is, restrictive agreements between competitors), is eight years.

Notification

5. What are the notification requirements for restrictive agreements and practices?

Notification

Individual exemption notification is not mandatory. The undertakings are responsible for compliance with the Competition Law either by means of self-assessment or by formal individual exemption application to the Competition Authority.

Informal guidance/opinion

No informal guidance or opinion is available. Notification (if made) needs to be formal.

Responsibility for notification

Persons or undertakings that are parties to the transaction, or their authorised representatives, can make the filing, jointly or severally.

Relevant authority

The Competition Authority is the relevant authority.

Form of notification

One copy of the notification form (which is attached to the Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings) must be submitted to the Competition Board, together with some additional documents, such as:

- The executed copies and sworn Turkish translations of the agreement or decision subject of the negative clearance application/notification.
- Annual reports showing the parties' activities, balance sheets, revenue charts and accounts of the last three years.
- Market research and relevant studies made by the parties or third persons, which contain information on the market and competitive conditions, current and potential competitors.

Filing fee

There is no filing fee.

Investigations

6. Who can start an investigation into a restrictive agreement or practice?

Regulators

The Competition Board can launch an investigation into an alleged cartel activity *ex officio*. The Competition Authority also conducts market monitoring and prepares sector reports.

Third parties

Third parties can file a complaint to the Competition Board verbally or through a petition as there are no special formalities for making a complaint.

7. What rights (if any) does a complainant or other third party have to make representations, access documents or be heard during the course of an investigation?

Representations

The complainants can attend the oral hearing if they make a written request within the period determined by the Competition Board. Third parties can attend the oral hearing by submitting a petition and presenting information and documents that show their interest in the subject matter of the oral hearing. The Competition Board notifies its decision to the relevant persons before the hearing.

On the request of the investigation committee or *ex officio*, the Competition Board can also invite other natural or legal persons whom it deems to be relevant, or from whom it needs to receive information, to the oral hearing.

Document access

The complainants and other third 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.

Be heard

See above, *Representations*.

8. What are the stages of the investigation and timetable?

The Competition Board rejects a notice or complaint if it deems it not to be serious. Any notice or complaint is deemed rejected if the Competition Board remains silent for 60 days.

Pre-investigation

The Competition Board decides to conduct a pre-investigation, if it finds the notice or complaint to be serious. At this preliminary stage, unless there is a dawn raid (that is, an unannounced on-site inspection), the undertakings concerned are not notified that they are under investigation.

The Competition Authority's experts' preliminary report is submitted to the Competition Board within 30 days after a pre-investigation decision is taken. The Competition Board will then

decide, within ten days from the receipt of the preliminary report, whether to launch a formal investigation. If the Competition Board decides to initiate an investigation, it will send a notice to the undertakings concerned within 15 days.

Formal investigation

The investigation must be completed within six months. If deemed necessary, the Competition Board can extend this period only once up to six months.

The following are the main stages of the formal investigation:

- The investigated undertakings have 30 calendar days as of the formal service of the notice to prepare and submit their first written defence.
- Subsequently, the Competition Authority issues its main investigation report.
- Once the main investigation report is served on the defendants, they have 30 calendar days to respond, extendable for a further 30 days (second written defence).
- The investigation committee then has 15 days to prepare an opinion concerning the second written defence (additional opinion).
- The defending parties have another 30 days to reply to the additional opinion (third written defence).
- When the parties' responses to the additional opinion are served on the Competition Authority, the investigation process will be completed (that is, the written phase of investigation involving claim/defence exchange will close with the submission of the third written defence).

Oral hearings

An oral hearing could be held on the parties' request. The Competition Board can also ex officio decide to hold an oral hearing:

- Oral hearings are held within at least 30 and at most 60 days following the completion of the investigation process.
- The Competition Board renders its final decision within:
 - 15 calendar days from the hearing, if an oral hearing is held; or
 - 30 calendar days from the completion of the investigation process, if no oral hearing is held.

It usually takes around two to three months, from the announcement of the final decision, for the Competition Board to serve a reasoned decision.

Publicity and confidentiality

9. **How much information is made publicly available concerning investigations into potentially restrictive agreements or practices? Is any information made automatically confidential and is confidentiality available on request?**

Publicity

The reasoned decisions of the Competition Board are published on the Competition Authority's website after confidential business information is redacted.

The main legislation regulating the protection of commercial information is Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets, which was enacted in April 2010 (Communiqué No. 2010/3). Communiqué No. 2010/3 places the burden of identifying and

justifying information or documents as commercial secrets on the undertakings.

Automatic confidentiality

The Competition Board can evaluate information or documents ex officio. However, the general rule is that information or documents that are not requested to be treated as confidential are accepted as not confidential.

Confidentiality on request

Undertakings must request confidentiality in writing from the Competition Board. They must justify their reasons for the confidential nature of the information or documents that they request to be treated as commercial secrets.

10. What are the powers (if any) that the relevant regulator has to investigate potentially restrictive agreements or practices?

Competition Law gives the Competition Authority considerable authority to conduct dawn raids. A judicial authorisation is obtained by the Competition Board only if the relevant undertaking refuses to allow the dawn raid (in which case, the undertaking would be subject to monetary fines).

Officials conducting a dawn raid must have a deed of authorisation from the Competition Board which specifies the subject matter and purpose of the investigation.

The Competition Authority can also use formal information request letters when investigating potentially restrictive agreements or practices.

Settlements

11. **Can the parties reach settlements with regulators to bring an early resolution to an investigation? If so, what are the circumstances for doing so and the applicable procedure?**

Other than in relation to leniency (see *Question 13, Immunity/leniency*), the Competition Board does not enter into plea bargain arrangements.

Mutual agreements (which must take the form of an administrative contract) on other liability matters have not been tested in Turkey.

12. **Can the regulator accept remedies (commitments) from the parties to address competition concerns without reaching an infringement decision? If so, what are the circumstances for doing so and the applicable procedure?**

There is no settlement procedure.

Penalties and enforcement

13. **What are the regulator's enforcement powers in relation to a prohibited restrictive agreement or practice?**

The sanctions that can be imposed under the Competition Law are administrative in nature. Therefore, breaches of the Competition Law lead to administrative fines (and civil liability) but no criminal sanctions. However, there are circumstances

where the matter is referred to a public prosecutor after the competition law investigation is complete. For example:

- Bid-rigging activity can be subject to criminal prosecution under Section 235 of the Criminal Code.
- Illegal price manipulation can also carry up to two years' imprisonment and a civil monetary fine under Section 237 of the Criminal Code.

Orders

The Competition Board is authorised to take all necessary measures to:

- Terminate the restrictive agreement.
- Remove all factual and legal consequences of every action that has been taken unlawfully.
- Take all other necessary measures to restore the level of competition and status as before the infringement.

Apart from that, Article 9 of the Competition Law, which generally entitles the Competition Board to order structural or behavioural remedies to restore competition as before the infringement, sometimes operates as a conduit through which infringement allegations are settled before a full-blown investigation is launched.

Fines

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

Article 17 of the Law on Minor Offences requires the Competition Board to take a number of factors into consideration in determining the magnitude of the monetary fine.

In line with this, the Competition Authority enacted the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance (Regulation on Fines). The Regulation on Fines sets out detailed guidelines as to the calculation of monetary fines applicable in the case of an anti-trust violation. The Regulation on Fines applies to both cartel activity and abuse of dominance, but does not cover illegal concentrations.

Personal liability

In the case of a proven cartel activity, 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 undertakings. The Regulation on Fines also applies to managers or employees that had a determining effect on the violation and provides for certain reductions in their favour (*see above, Fines*).

Immunity/leniency

The Regulation on Active Co-operation for Discovery of Cartels (Regulation on Leniency) provides the main principles of the immunity and leniency programmes. The leniency programme is only available for cartel participants. It does not apply to other forms of anti-trust infringements. A cartel participant can 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 or reduction includes both the undertakings and its employees/managers, with the exception of the ringleader, who can only benefit from a second degree fine reduction.

Impact on agreements

A restrictive agreement is deemed legally invalid and unenforceable, with all its legal consequences. Similarly, the Competition Board can take interim measures until the final resolution on the matter, if there is a possibility of serious and irreparable damage.

Third party damages claims and appeals

14. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or practice? If so, what special procedures or rules (if any) apply? Are collective/class actions possible?

Third party damages

Any person who is injured in his/her business or property by reason of anything the anti-trust laws prohibit can sue the violators for three times their damages, plus litigation costs and attorneys' fees (*Articles 57 et seq., Competition Law*).

Special procedures/rules

The case must be brought before the competent general civil court. In practice, courts usually do not engage in an analysis of whether there is actually a condemnable agreement or concerted practice. Instead they wait for the Competition Board to render its opinion on the matter, therefore treating the issue as a prejudicial question.

Collective/class actions

Procedural law denies the possibility of any class actions or procedures. The courts do not grant class certification requests.

15. Is there a right of appeal against any decision of the regulator? If so, which decisions, to which body and within which time limits? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?

Rights of appeal and procedure

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be submitted to judicial review before the Administrative Courts by filing a lawsuit within 60 days of the receipt by the concerned parties of the Competition Board's reasoned decision. Filing an administrative action does not automatically stay the execution of the Competition Board's decision (*Article 27, Administrative Procedural Law*).

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 takes more than 18 months.

Third party rights of appeal

Third parties can challenge the Competition Board's decision before the competent judicial tribunal, subject to the condition that they prove their legitimate interest.

MONOPOLIES AND ABUSES OF MARKET POWER

Scope of rules

16. Are monopolies and abuses of market power regulated under administrative and/or criminal law? If

so, what are the substantive provisions and regulatory authority?

Regulatory framework

The main legislation applying specifically to the behaviour of dominant firms is Article 6 of the Competition Law. It provides that any abuse of dominance on the part of one or more undertakings, individually or through joint agreements or practices, in a market for goods or services within the whole or part of Turkey, is unlawful and prohibited.

Article 6 of the Competition Law provides a non-exhaustive list of specific forms of abuse, similar to Article 102 of the Treaty on the Functioning of the European Union (TFEU). Abuse can consist of:

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

Regulatory authority

The Competition Authority is the regulatory authority (see box, *The Regulatory authority*).

17. How is dominance/market power determined?

Dominance is defined as the power of one or more undertakings in a certain market to determine economic parameters such as price, output, supply and distribution, independently from competitors and customers (*Article 3, Competition Law*).

Enforcement trends show that the Competition Board is increasingly inclined to infer dominance even in cases of dependence or inter-dependence (see, for example, *Anadolu Cam, 1 December 2004, 04-76/1086-271* and *Warner Bros, 24 March 2005, 05-18/224-66*).

The Competition Board considers high market shares as the most indicative factor of dominance. However, it also takes account of other factors (such as legal or economic barriers to entry, portfolio power and financial power of the incumbent firm).

18. Are there any broad categories of behaviour that may constitute abusive conduct?

The Competition Law contains a non-exhaustive sample list of specific forms of abuse. Article 2 of the Competition Law adopts an effects-based approach for identifying anti-competitive conduct, with the result that the determining factor in assessing whether a practice amounts to an abuse is the

effect on the market regardless of the type of conduct at issue. Notably, the concept of abuse covers exploitative, exclusionary and discriminatory practices.

Exemptions and exclusions

19. Are there any exemptions or exclusions?

Exemptions and exclusions are not available.

Notification

20. Is it necessary (or, if not necessary, possible/advisable) to notify the conduct to obtain clearance or (formal or informal) guidance from the regulator? If so, what is the applicable procedure?

There is no notification mechanism.

Investigations

21. What (if any) procedural differences are there between investigations into monopolies and abuses of market power and investigations into restrictive agreements and practices?

This is the same as for restrictive agreements and practices (see *Questions 6 to 9* and *11 to 12*).

22. What are the regulator's powers of investigation?

This is the same as for restrictive agreements and practices (see *Question 10*).

Penalties and enforcement

23. What are the penalties for abuse of market power and what orders can the regulator make?

This is the same as for restrictive agreements and practices (see *Question 13*).

Third party damages claims

24. Can third parties claim damages for losses suffered as a result of abuse of market power? If so, what special procedures or rules (if any) apply? Are collective/class actions possible?

Third party damages

This is the same as for restrictive agreements and practices (see *Question 14*).

Special procedures/rules

See *Question 14*.

Collective/class actions

See *Question 14*.

EU LAW

25. Are there any differences between the powers of the national regulatory authority(ies) and courts in

relation to cases dealt with under Article 101 and/or Article 102 of the TFEU, and those dealt with only under national law?

Not applicable.

JOINT VENTURES

26. How are joint ventures analysed under competition law?

Joint ventures that permanently meet all the functions of an independent economic entity are deemed notifiable to the Competition Board (*Article 5/III, Communiqué*) provided that the turnover thresholds are exceeded. Co-operative joint ventures are also subject to a merger control notification and analysis, on top of an individual exemption analysis, if warranted (*Article 13, Communiqué*). However, there have been cases (albeit rarely) where the Competition Board found structural abuses where dominant firms use joint venture agreements as a backup tool to exclude competitors, which is prohibited under article 6 (for example, Biryay, 17 July 2000; 00-26/292-162).

INTER-AGENCY CO-OPERATION

27. Does the regulatory authority in your jurisdiction co-operate with regulatory authorities in other jurisdictions in relation to infringements of competition law? If so, what is the legal basis for and extent of co-operation (in particular, in relation to the exchange of information)?

The Competition Authority can notify and request the European Commission to apply relevant measures if the Competition Board believes that cartels organised in the territory of the EU adversely affect competition in Turkey (*Article 43, Decision No. 1/95 of the EC-Turkey Association Council (Decision No. 1/95)*).

The provision grants reciprocal rights and obligations to the parties. There are also a number of bilateral co-operation agreements on cartel enforcement matters between the Competition Authority and the competition agencies in other jurisdictions (including Romania, South Korea, Bulgaria, Portugal, Bosnia-Herzegovina, Russian Federation, Croatia, Austria, Turkish Republic of Northern Cyprus, Egypt, Kazakhstan and Mongolia).

The Competition Authority's research department has periodic consultations with relevant domestic and foreign institutions and organisations about the protection of competition. In this respect, a co-operation protocol was signed on 14 October 2009 between the Competition Authority and the Public Procurement Authority, to procure a healthy competition environment in relation to public tenders by co-operating and sharing information.

RECENT CASES

28. What are the recent developments or notable recent cases concerning abuse of market power?

2015 marked the Authority's interest in the new technology and online markets. The Authority recently closed a pre-investigation against Google where the Board assessed whether Google had violated Article 4 and Article 6 of the

Competition Law through its behaviour regarding mobile operating systems and mobile applications and services, and the agreements it entered with the original equipment manufacturers (OEMs). Although the Board decided that there was no need to launch an investigation for the alleged practices, it has, however, requested that Google terminates these practices and removes the provision regulating exclusive pre-installment of certain applications within Google Mobile Services to the mobile devices from the agreements signed between Google and the OEMs.

In line with the Authority's interest in the online markets, the Authority is currently investigating several practices in the online platforms undertaken by Booking.com and Yemek Sepeti – the latter is a Turkish online meal order platform. Both cases concern two-sided markets and deal with the impact of the "most favoured customer/nation" clauses (MFN clauses). In the Booking.com investigation, the Authority is looking at whether the "best price guarantee" clause that Booking.com offers to its visitors, together with the MFN clauses that Booking.com inserts in the agreements executed with accommodation and hotels for the purposes of booking services offered by the Booking.com online platform, are contrary to competition law rules (9 July 2015, 15-29/432-M). Similarly, in the investigation against Yemek Sepeti, the Authority is investigating whether Yemek Sepeti is engaged in practices tending to exclude its competitors from the market through the MFN clauses and de facto exclusivity practices (18 March 2015, 15-12/161-M).

The Competition Board initiated an investigation against Coca-Cola Satış Dağıtım AŞ (Coca-Cola) as a result of the preliminary inquiry related to claims that Coca-Cola made exclusive agreements with some points in various cities in Turkey, especially in Istanbul, Ankara, Izmir, Bursa and Antalya (5 March 2015, No. 15-10/148-65). During the investigation, the Competition Board analysed whether Coca-Cola has fulfilled the requirements of the Competition Board's decision of 10 September 2007, No. 07-70/864-327. Coca-Cola's existing contracts and protocols contain exclusivity provisions and its contracts and practices in the market create de facto exclusivity in the market, taking into account its availability and market share data. At the end of an in-depth investigation, the Competition Board found no infringement of competition law on the part of Coca-Cola as no information or findings were obtained showing that Coca-Cola carried out organised and systematic practices preventing its competitors from entering points of sale.

Mey İçki, a dominant player in the rakı market (the traditional Turkish alcoholic beverage), was fined for abusive conduct in 2014 (see Mey İçki, 12 June 2014, 14-21/410-178). The fine was over TRY41.5 million (approximately USD14.7 million and EUR13 million), amounting to 1.5% of its annual turnover. The allegations included preventing shops and resellers from selling competitors' products and exclusivity imposed on shops and resellers and obstructing competitors' activities on the market. After this decision, another investigation was launched recently against Mey İçki in response to a complaint that Mey İçki abused its dominant position by engaging in practices aimed at preventing the operations of its competitors (28 July 2015, 15-32/459-M).

Turkey's biggest energy company, TÜPRAŞ, was found to have abused its dominant position and was fined for predatory pricing in 2014. The Competition Board imposed an unprecedented administrative fine of over TRY412 million (approximately USD146.8 million and EUR128.7 million), corresponding to 1% of its annual turnover (see TÜPRAŞ, 17 January 2014, 14-03/60-24). This is the highest fine levied on a single undertaking in the Competition Authority's enforcement history, with an amount almost double that of the previous

highest fine on a single undertaking (which was a fine of TRY213.4 million against *Garanti Bankası*, one of the biggest banks in Turkey).

PROPOSALS FOR REFORM

29. Are there any proposals for reform concerning restrictive agreements and market dominance?

The Draft Competition Law, which was issued by the Turkish Competition Authority in 2013 and officially submitted to the Presidency of the Turkish Parliament on 23 January 2014, is

now null and void following the beginning of the new legislative year of the Turkish Parliament. At this stage, it remains unknown whether the new Turkish Parliament or the government will renew the draft law. However, it is anticipated that the main topics to be held in the discussions on the potential new draft competition legislation will not significantly differ from the changes that were introduced by the previous draft.

ONLINE RESOURCES

W www.rekabet.gov.tr

Description. This is the official website of the Competition Authority (*see below, The regulatory authority*). The updated versions of the laws, publications, latest board announcements, decisions, work principles of the Competition Board and general information about Competition Authority procedures can be obtained from the website. This information, except for certain Board decisions, can be accessed in English.

THE REGULATORY AUTHORITY

Competition Authority (Rekabet Kurumu)

Head. Prof. Dr. Ömer TORLAK (The Presidency of the Turkish Competition Authority)

Contact details. Üniversiteler Mahallesi 1597. Cadde, No:9, Bilkent, Çankaya 06800, Ankara, Turkey

T +90 312 291 4444

F +90 312 266 7920

E rek@rekabet.gov.tr

W www.rekabet.gov.tr

Outline structure. The Competition Authority consists of the:

- Competition Board, which consists of seven members and is seated in Ankara.
- Presidency.
- Main Service Units, which comprise the following:
 - five supervision and enforcement departments;
 - department of decisions;
 - economic analyses and research department;
 - information management department;
 - external relations, training and competition advocacy department;
 - strategy development, regulation and budget department; and
 - cartel on-the-spot inspections support division.
- Each service unit has a sectoral job definition.

Responsibilities. In its capacity as the competent body of the Competition Authority, the Competition Board is responsible for, among other things, reviewing and resolving notifications concerning mergers, acquisitions and joint ventures.

Procedure for obtaining documents. The application form is attached to Communiqué.

Practical Law Contributor profiles



Gönenç Gürkaynak, Managing Partner

ELIG, Attorneys-at-Law
T +90 212 327 1724
F +90 212 327 1725
E gonenc.gurkaynak@elig.com
W www.elig.com

Qualified. Istanbul, 1997; New York, 2001; England and Wales, 2004 (non-practising)

Areas of practice. Competition law; regulated markets; mergers and acquisitions; general corporate; EU law.

Recent transactions

- Represented Coca-Cola Satış ve Dağıtım A.Ş. in an investigation launched by the Competition Authority as a result of the preliminary inquiry related to the claims that Coca-Cola made exclusive agreements with some sale points in various cities in Turkey.
- Represented Deutsche Bahn Group of companies (Schenker & Co AG, Schenker A.E., Schenker Arkas Nakliyat ve Ticaret A.Ş. and Fertrans AG) in an investigation conducted by the Turkish Competition Authority against nine companies active in the railway freight forwarding services market.
- Filing merger notification with the Competition Board for the acquisition of sole control of SABMiller plc. by Anheuser-Busch In Bev.

Languages. English, French

Professional associations/memberships. Istanbul Bar (since 1997); New York Bar (since 2002); American Bar Association (since 2002); Law Society of England and Wales (since 2004); Brussels Bar (since 2004).

Publications

- *"Most-favored-nation Clauses in Commercial Contracts: Legal and Economic Analysis and Proposal For a Guideline"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Sinan Diniz and Janelle Filson, Esq., *European Journal of Law and Economics*, October 27, 2015.
- *"Competition Law and Personal Data Crossing in Digital Markets"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Ayşe Gizem Yaşar for Ian S. Forrester QC LL.D. *A Scot without Borders, Liber Amicorum - Volume II, Concurrences Review*, 2015.
- *"Turkish Competition Authority's Sector Inquiries: Past and Current Sector Inquiries Reviewed"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., and Ayşe Gizem Yaşar, *The Turkish Commercial Law Review*, February 2015.



Ayşe Güner

ELIG, Attorneys-at-Law
T +90 212 327 1724
F +90 212 327 1725
E ayse.guner@elig.com
W www.elig.com

Qualified. California, 2009

Areas of practice. Competition law; corporate law; commercial law; mergers and acquisitions.

Recent transactions

- Represented Deutsche Bahn Group of companies (Schenker & Co AG, Schenker A.E., Schenker Arkas Nakliyat ve Ticaret A.Ş. and Fertrans AG) in an investigation conducted by the Turkish Competition Authority against nine companies active in the railway freight forwarding services market.
- Merger control filing with the Competition Board for the acquisition of sole control of SABMiller plc. by Anheuser-Busch In Bev.

Languages. English, German

Professional associations/memberships. California Bar (since 2009)

Publications

- *"Most-favored-nation Clauses in Commercial Contracts: Legal and Economic Analysis and Proposal For a Guideline"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Sinan Diniz and Janelle Filson, Esq., *European Journal of Law and Economics*, October 27, 2015.
- *"Competition Law and Personal Data Crossing in Digital Markets"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Ayşe Gizem Yaşar for Ian S. Forrester QC LL.D. *A Scot without Borders, Liber Amicorum - Volume II, Concurrences Review*, 2015.
- *"Turkish Competition Authority's Sector Inquiries: Past and Current Sector Inquiries Reviewed"*, by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., and Ayşe Gizem Yaşar, *The Turkish Commercial Law Review*, February 2015.