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Turkey: Dominance

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In Turkey, unilateral conduct of a dominant undertaking is restricted by article 6 of the Law on the Protection of Competition (Law No. 4054), which provides that 'any abuse on the part of one or more undertakings, individually or through joint venture agreements or practices, of a dominant position in a market for goods or services within the whole or part of the country is unlawful and prohibited.' Although article 6 of Law No. 4054 does not define what constitutes 'abuse' per se, it provides five examples of forbidden abusive behaviour, which comes as a non-exhaustive list and falls to some extent in line with article 102 of the Treaty on the Functioning of the European Union (TFEU). Accordingly, these examples include the following:

- 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 by the other parties of restrictions concerning resale conditions such as the purchase of other goods and services, or acceptance by the intermediary purchasers of displaying other goods and services or maintenance of a minimum resale price;
- distorting competition in other markets by taking advantage of financial, technological and commercial superiorities in the dominated market; and
- limiting production, markets or technical development to the prejudice of consumers.

Pursuant to article 6, the abusive exploitation of a dominant market position is prohibited in general. Therefore, the article 6 prohibition applies only to dominant undertakings, and in a similar fashion to article 102 TFEU. Dominance itself is not prohibited; only the abuse of dominance is outlawed. Thus, article 6 does not penalise an undertaking that has captured a dominant share of the market because of superior performance.

Dominance provisions, as well as other provisions of Law No. 4054, apply to all companies and individuals to the extent that they qualify as an undertaking, which is defined as a single integrated economic unit capable of acting independently in the market to produce, market or sell goods and services. Notably, state-owned and state-affiliated entities also fall within the scope of the application of article 6 (see Board's decisions such as *Devlet Hava Meydanları İşletmesi*, No. 15-36/559-182, 9 September 2015; *Turkish Coal Enterprise*, No. 04-66/949-227, 19 October 2004 and *Türk Telekom*, No. 14-35/697-309, 24 September 2014).

Dominance

The definition of dominance can be found under article 3 of Law No. 4054, which defines it 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'. Enforcement trends show that the Turkish Competition Board (the Competition Board) is increasingly inclined to broaden the scope of application of the article 6 prohibition by diluting the 'independence from competitors and customers' element of the definition to infer dominance even in cases where clear dependence or interdependence on either competitors or customers exist (eg, the Board's decisions in cases *Anadolu Cam*, No. 04-76/1086-271, 1 December 2004 and *Warner Bros*, No. 05-18/ 224-66, 24 March 2005).

When unilateral conduct is in question, dominance in a market is the primary condition for the application of the prohibition stipulated in article 6. To establish a dominant position, the relevant market must be defined first and then the market position must be determined. The relevant product market includes all goods or services that are substitutable from a customer's point of view. The Board has issued Guidelines on the Definition of Relevant Market on 10 January 2008, with the goal of minimising the uncertainties that undertakings may face and to state, as clearly as possible, the method used by the Board in its decision-making practice for defining a relevant product and geographic market. The Guidelines are closely modelled on the Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law (97/C 372/03) and apply to both merger control and dominance cases. The Guidelines consider the demand-side substitution as the primary standpoint of market definition. Thus, the undertakings concerned must be in a dominant position in a given relevant market that is to be determined for every individual case and circumstance. The Guidelines also consider the supply-side substitution and potential competition as secondary factors.

Under Turkish competition law, the market share of an undertaking is the primary step for evaluating its position in the market. In theory, there is no market share threshold above which an undertaking will be presumed to be dominant. Although not directly applicable to dominance cases, the newly published Guidelines on Horizontal Mergers confirm that companies with market shares in excess of 50 per cent may be presumed to be dominant. On the other hand, pursuant to the Turkish Competition Authority's (Competition Authority) recent Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings (Guidelines on Exclusionary Abuses) published on 29 January 2014 and the Board's respective precedents, an undertaking with a market share of 40 per cent is a likely candidate for dominance, subject to some exceptions, whereas a firm with a market share of less than 25 per cent would not generally be considered dominant (paragraph 12 of the Guidelines on Exclusionary Abuses and the Board's decisions such as *Mediamarkt*, No. 10-36/575-205, 12 May 2010, *Pepsi Cola*, No. 10-52/956-335, 5 August 2010 and *Egetek*, No. 10-62/1286-487, 30 September 2010).

In assessing dominance, although high market shares are considered as the most indicative factor of dominance, the Competition Board takes other factors into account, such as legal or economic

barriers to entry, the market structure, the competitors' market positions, portfolio power and financial power of an incumbent firm. Thus, domination of a given market cannot be defined solely on the basis of the market share held by an undertaking or of other quantitative elements; other market conditions as well as the overall structure of the relevant market should be assessed in detail.

Collective dominance

Collective dominance is also covered by Law No. 4054, as indicated in the aforementioned definition provided in article 6. On the other hand, precedents concerning collective dominance are not abundant and mature enough to allow for a clear inference of a set of minimum conditions under which collective dominance should be alleged. That said, the Competition Board has considered it necessary to establish an economic link for a finding of abuse of collective dominance (eg, *Biryay*, No. 00-26/292-162, 17 July 2000; *Turkcell/Telsim* No. 03-40/432-186, 9 June 2003).

Dominance under merger control rules

Structural changes through which an undertaking attempts to establish dominance or strengthen its dominant position (for instance, in cases of acquisitions) are regulated by the merger control rules as established under article 7 of Law No. 4054. Nevertheless, a mere demonstration of post-transaction dominance is not in itself sufficient for enforcement under the Turkish merger control rules, but rather 'a restriction of effective competition' element is required to deem the relevant transaction illegal and prohibited. Thus, the principles laid down in merger decisions can also be applied to cases involving abuse of dominance. For instance, recently the Competition Board rejected the acquisition of full shares of Beta Marina Liman ve Çekek İşletmesi A.Ş. and Pendik Turizm Marina Yat ve Çekek İşletmesi A.Ş. by Setur Servis Turistik A.Ş. as it concluded that the transaction would result in creation or strengthening a dominant position and thus, would impede effective competition (No. 15-29/421-118; 09 July 2015).

On a separate note, mergers and acquisitions are normally caught by the merger control rules contained in article 7 of Law No. 4054. However, there have been cases – albeit rarely – where the Competition Board found structural abuses through which dominant firms use joint venture agreements as a backup tool to exclude competitors, which is prohibited under article 6 (eg, *Biryay*).

Abuse

As mentioned above, the definition of abuse is not provided under article 6 of Law No. 4054. This provision only contains a non-exhaustive list of certain forms of abuse. Moreover, article 2 of Law No. 4054 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 produced on the market, regardless of the type of conduct at issue. Notably, the concept of abuse covers exploitative, exclusionary and discriminatory practices.

Theoretically, a causal link must be shown between dominance and abuse. The Competition Board does not yet apply a stringent test of causality, and has, in the past, inferred abuse from the same set of circumstantial evidence employed in demonstrating the existence of dominance. Furthermore, abusive conduct on a market different to the market subject to dominant position is also prohibited under article 6. Accordingly, the Competition Board found that incumbent undertakings had infringed article 6 by engaging in abusive conduct in markets that were neighbouring to the dominated market (eg, *Volkan Metro*, No. 13-67/928-390, 2 December 2013; *Türkiye Denizcilik İşletmeleri*, No. 10-45/801-264, 24 June 2010; *Türk Telekom*, No. 02-60/755-305, 2 October 2002; and *Turkcell*, No. 01-35/347-95, 20 July 2001).

Guidelines on the Assessment of Exclusionary Abusive Conduct by dominant undertakings

The Competition Authority's Guidelines on Exclusionary Abuses minimise the uncertainties that market players may encounter when interpreting article 6 and describe the main factors that the Competition Board shall take into consideration when assessing exclusionary abusive conduct by dominant undertakings under article 6 of Law No. 4054. To that end, the Guidelines on Exclusionary Abuses are intended to be instructive not only for dominant undertakings in a market, but also for other undertakings such as their competitors, customers or suppliers. The Guidelines on Exclusionary Abuses are in line with the European Commission's Guidance on its enforcement priorities in applying article 82 of the EC Treaty (new article 102 TFEU) to abusive exclusionary conduct by dominant undertakings (2009/C 45/02).

Specific forms of abuse

Under Turkish competition law, specific forms of abuse are apparent. Price and non-price behaviours may amount to an abusive conduct under article 6. The Competition Board has found, in the past, incumbent undertakings to have infringed article 6 by engaging in discriminatory behaviour concerning prices and other trade conditions (eg, *TTAŞ*, No. 02-60/755-305, 2 October 2002 and *Türk Telekom/TTNet*, No. 08-65/1055-411, 19 November 2008).

As mentioned above, both exploitative and exclusionary abuses fall within the prohibitions set out under article 6. On the other hand, exploitative prices or terms of supply may be deemed an infringement, even though the wording of the provision does not specifically refer to this concept. The Competition Board has already condemned excessive or exploitative pricing by dominant firms in its decisional practice (eg, *Tüpraş*, 14-03/60-24, 17 January 2014; *TTAŞ and Belko*, 01-17/150-39, 6 April 2001). However, complaints filed on this basis are frequently dismissed because of the Competition Authority's reluctance to micromanage pricing behaviour.

Although article 6 does not explicitly refer to rebate schemes as a specific form of abuse, rebate schemes may also be deemed as a form of abusive behaviour. In this respect, in *Turkcell* (No. 09-60/1490-37, 23 December 2009), the Competition Board condemned the defendant for abusing its dominance by, among other things, applying rebate schemes to encourage the use of the Turkcell logo and refusing to offer rebates to buyers who deal with Turkcell's competitors as well. Similarly, in *Doğan Holding* (No. 11-18/341-10, 30 March 2011), the Competition Board condemned Doğan Yayın Holding, the biggest undertaking in the Turkish media sector, for abusing its dominant position in the market for advertisement spaces in daily newspapers by applying loyalty-inducing rebate schemes.

Predatory pricing may be regarded as a form of abuse as evidenced by many precedents (eg, *Coca-Cola*, No. 04-07/75-18, 23 January 2004; *Denizcilik İşletmeleri*, No. 06-74/959-278, 12 October 2006; *Feniks*, 23 August 2007; *TTNet*, No. 07-59/676-235, 9 October 2007; *Türk Telekom/TTNet and Trakya Cam*, No. 11-57/1477-533, 17 November 2011). That said, complaints on this basis are frequently dismissed by the Competition Authority due to its reluctance to micromanage pricing behaviour. High standards are usually observed for bringing forward predatory pricing claims. Nonetheless, in the *UN Ro Ro* case, UN Ro Ro was found

to abuse its dominant position through predatory pricing and faced administrative monetary fines (*UN Ro Ro*, No. 12-47/1412-474, 1 October 2012).

In line with EU jurisprudence, price squeezes may amount to a type of abuse in Turkey. The Competition Board is known to closely scrutinise allegations of price squeezing and has already imposed monetary fines on the basis of this specific form of abuse (eg, *Türk Telekom*, No. 04-66/956-232, 19 October 2004; *TTNet*; *Doğan Dağıtım*, No. 07–78/962–364, 9 October 2007 and *Turk Telekom/ TTNet*).

Refusals to deal and access to essential facilities are forms of abuse that are frequently brought before the Competition Authority and that gave rise to various decisions of the Competition Board (eg, *Eti Holding*, No. 00-50/533-295, 21 December 2000; *POAS*, No. 01-56/554-130, 20 November 2001; *Çukurova Elektrik*, No. 03-72/874-373, 10 November 2003 and *AK-Kim*, No. 03-76/925-389, 4 December 2003).

Although exclusive dealing, non-compete provisions and single branding normally fall under the scope of article 4 of Law No. 4054, which governs restrictive agreements, concerted practices and decisions of trade associations, such practices could also be scrutinised within the scope of article 6. Indeed, the Competition Board has already found in the past infringements of article 6 on the basis of exclusive dealing arrangements (eg, *Karbogaz*, No. 05-80/1106-317, 1 December 2005). Also, in a very recent decision, the Competition Board imposed a fine on Mey İçki which is deemed dominant in the market for the alcoholic beverage rakı, for its abusive conduct through which it prevented sales points from selling Mey İçki's competitors' products through exclusivity clauses, thus foreclosing the market (*Mey İçki*, No. 14-21/470-178, 12 June 2014). On a separate note, the Block Exemption Communiqué No. 2002/2 on Vertical Agreements no longer exempts exclusive vertical supply agreements of an undertaking holding a market share above 40 per cent. Thus, a dominant undertaking is an unlikely candidate to engage in non-compete provisions and single branding arrangements without any significant pro-competitive effects and efficiency.

Tying and leveraging are among the specific forms of abuse listed in article 6. The Board assessed many tying or bundling and leveraging allegations against dominant undertakings. However, there is no case in the enforcement track record where the incumbent firms were fined as a result of tying or leveraging. On the other hand, the Competition Board ordered some behavioural remedies against incumbent telephone and internet operators in some cases in order to have them avoid tying and leveraging (see *TTNET-ADSL*, No. 09-07/127-38, 18 February 2009).

Although limiting output, markets or technical development is one of the specific forms of abuse listed in article 6, there is no case in the enforcement track record where the incumbent firms were found to infringe article 6 as a result of limiting output, markets or technical development. However, similar behaviours by multiple undertakings have been condemned under article 4 as a form of cartel (*White Meat Cartel*, No. 09-57/1393-362, 25 November 2009). Furthermore, despite the fact that the issue of intellectual property rights is more important than ever before, the precedents of the Competition Board do not yet include a finding of an infringement on the basis of abuse of intellectual property rights since this issue has not been brought yet before the Competition Authority.

As mentioned above, the list of specific abuses present in article 6 is not exhaustive and it is very likely that other types of conduct may be deemed as abuse of dominance by the Competition Board. On the other hand, it is worth mentioning that the enforcement track record shows that the Competition Board has not been in a position to review any allegation of other forms of abuse, such as strategic capacity construction, predatory product design or product innovation, failure to pre-disclose new technology, predatory advertising or excessive product differentiation.

Sector-specific abuse

Since Law No. 4054 does not recognise any sector-specific abuses or defences, certain sectorial independent authorities have competence to control dominance in their relevant sectors. For instance, according to the secondary legislation issued by the Turkish Information and Telecommunication Technologies Authority, firms with a significant market are prohibited from engaging in discriminatory behaviour between companies seeking access to their network and, unless justified, from rejecting requests for access, interconnection or facility sharing. Similar restrictions and requirements are also regulated for the energy sector. Therefore, although sector-specific rules and regulations bring about structural market remedies for the effective functioning of the free market, they do not imply any dominance-control mechanisms and the Competition Authority remains the exclusive regulatory body that investigates and condemns abuses of dominance.

Enforcement

The national competition authority for enforcing competition law in Turkey is the Competition Authority, a legal entity with administrative and financial autonomy. The Competition Authority consists of the Competition Board, presidency and service departments. As the competent body of the Competition Authority, the Competition Board is responsible for, inter alia, investigating and condemning abuses of dominance. The Competition Board has seven members and is seated in Ankara.

The service departments consist of five main units. There is a 'sectorial' job definition of each main unit. A research department, a leniency unit, a decision unit, an information management unit, an external relations unit and a strategy development unit assist the five technical divisions and the presidency in the completion of their tasks.

The Competition Board has relatively broad investigative powers. It may 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 the period fixed by the Competition Board. Failure to comply with a decision ordering the production of information or failure to produce on a timely manner may lead to the imposition of a turnover-based fine of 0.1 per cent 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). Where incorrect or misleading information has been provided in response to a request for information, the same penalty may be imposed.

Article 15 of Law No. 4054 also authorises the Competition Board to conduct on-site investigations. Accordingly, the Competition Board can examine the records, paperwork and documents of undertakings and trade associations and, if need be, 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.

Law No. 4054 therefore grants the Competition Authority with vast authority to conduct dawn raids. A judicial authorisation is

obtained by the Competition Board only if the subject undertaking refuses to allow the dawn raid. While the mere wording of the law allows oral testimony to be compelled of employees, case handlers do allow delaying an answer so long as there is a quick written follow-up correspondence. Therefore, in practice, employees can avoid providing answers on issues that are uncertain to them, provided a written response is submitted in a mutually agreed timeline. Computer records are fully examined by the experts of the Competition Authority, including deleted items.

Officials conducting an on-site investigation need to be in possession of a deed of authorisation from the Competition Board. The deed of authorisation must specify the subject matter and purpose of the investigation. Inspectors are not entitled to exercise their investigative powers (ie, copying records, recording statements by company staff, etc) in relation to matters that do not fall within the scope of the investigation (ie, that is written on the deed of authorisation).

Refusing to grant the staff of the Competition Authority access to business premises may lead to the imposition of fines.

The minimum amount of fine was set as 16,765 lira for 2015 and 17,700 lira for 2016. It may also lead to the imposition of a periodic daily fine of 0.05 per cent 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) for each day of the violation.

Sanctions and remedies

The sanctions that could be imposed for abuses of dominance under Law No. 4054 are administrative in nature. In case of a proven abuse of dominance, the incumbent undertakings concerned shall be (each separately) subject to 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, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Employees or members of the executive bodies of the undertakings or association of undertakings (or both) that had a determining effect on the creation of the violation are also fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In this respect, Law No. 4054 makes reference to article 17 of the Law No. 5326 on Minor Offences and there is also a Regulation on Fines (Regulation No. 27142 of 16 February 2009). Accordingly, when calculating fines, the Competition Board takes into consideration factors such as the level of fault and amount of possible damage in the relevant market, the market power of the undertakings within the relevant market, duration and recurrence of the infringement, cooperation or driving role of the undertakings in the infringement, financial power of the undertakings, compliance with the commitments and so on, in determining the magnitude of the monetary fine.

In addition to the monetary sanction, the Board is authorised to take all necessary measures to terminate the abusive conduct, 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.

Additionally, article 56 of Law No. 4054 provides that agreements and decisions of trade associations that infringe article 4 are invalid and unenforceable with all their consequences. The issue of whether the 'null and void' status applicable to agreements that fall foul of article 4 may be interpreted to cover contracts entered into by infringing dominant companies is a matter of ongoing controversy. However, contracts that give way to or serve as a vehicle for an abusive conduct may be deemed invalid and unenforceable because of violation of article 6.

The highest fine imposed to date in relation to abuse of a dominant position is in the *Tüpraş* case where Tüpraş, a Turkish energy company, incurred an administrative monetary fine of 412 million lira, equal to 1 per cent of its annual turnover for the relevant year (*Tüpraş*, No. 14-03/60-24, 17 January 2014).

Private enforcement

Articles 9 and 27 of Law No. 4054 entitle the Competition Board to order structural or behavioural remedies in case of violation of article 6 of Law No. 4054. Failure by a dominant firm to meet the requirements so ordered by the Competition Board would lead it to initiate an investigation, which may or may not result in the finding of an infringement. The legislation does not explicitly empower the Competition Board to demand performance of a specific obligation such as granting access, supplying goods or services or concluding a contract through a court order.

Availability of damages

A dominance matter is primarily adjudicated by the Competition Board. Enforcement is also supplemented with private lawsuits. Article 57 et seq of Law No. 4054 entitle any person who is injured in their business or property by reason of anything forbidden in the antitrust laws to sue the violators to recover up to three times their personal damages plus litigation costs and attorney fees. Therefore, Turkey is one of the exceptional jurisdictions where a triple-damages principle exists in the law. In private suits, the incumbent firms are adjudicated before regular civil courts. Because the triple-damages principle allows litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the article 6 enforcement arena. Most of the civil courts wait for the decision of the Competition Board in order to build their own decision on the Competition Board's decision. The majority of private lawsuits in Turkish antitrust enforcement rely on refusal to supply allegations.

Recent enforcement action

The recent enforcement trend of the Competition Authority showed that the Authority is becoming more and more interested in the pricing behaviours of dominant undertakings, since over the past three years there have been several pre-investigations and investigations launched by the Competition Authority in relation to this aspect of the competition law principles in Turkey, such as the *Turkish Airlines/Pegasus* (30 December 2011, No. 11-65/1692-599) and *Turkcell* (24 November 2011, No. 11-59/1516-541) investigations, and the *Efes Pazarlama* (18 July 2012, No. 12-38/1085-344), *IDO* (1 November 2012, No. 01.11.2012) and *DHMI* (24 April 2012, No. 12-21/561-159) pre-investigations. The ongoing investigations involving abuse of dominance allegations include the high-profile investigations against:

- Yemek Sepeti, a Turkish online meal order platform (investigation concerns the allegations on exclusivity and was initiated on 18 March 2015);
- Mozaik İletişim Hizmetleri, Doğan TV Digital Platform İşletmeciliği and Krea İçerik Hizmetleri (investigation initiated on 24 April 2015);
- Ankara Uluslararası Kongre ve Fuar İşletmeciliği and GL Events (investigation initiated on 15 June 2015);

- Booking.com and Bookingdotcom Turkey (investigation concerns the allegations on MFN clauses and was initiated on 9 July 2015);
- Luxottica (investigation concerns the alleged tying and bundling practices in the market for export of sunglasses and sunglasses' frames and was initiated on 1 September 2015);
- Siemens Turkey (investigation initiated on 1 September 2015);
- Philips Turkey (investigation concerns the alleged price discrimination in the market for the sale of spare parts of medical diagnosis and imaging devices and initiated on 9 September 2015);
- Dow Turkey (investigation initiated on 10 November 2015);
- Mey İçki, a Turkish alcoholic beverages producer and seller (two investigations were initiated against Mey İçki in 2015 and 2016. One of them alleges that Mey İçki prevents its competitors' activities and was initiated on 28 July 2015 and the other concerns the allegations that pressurising the sale points through rebates and/or investment supports and was initiated on 20 April 2016); and
- Turkish Pharmacists' Association (investigations initiated on 7 July 2015 and 30 March 2016).

Four of the aforementioned ongoing investigations (ie, investigations against :
- Mozaik İletişim Hizmetleri, Doğan TV Digital Platform İşletmeciliği and Krea İçerik Hizmetleri;
- Turkish Pharmacists' Association and Seven Pharmacists Chambers;
- Siemens; and
- Ankara Uluslararası Kongre ve Fuar İşletmeciliği and GL Events) were initiated upon the annulment decision of the Ankara Administrative Courts or Council of State.

Additionally, the Board rendered four no-fine decisions in 2015 and 2016. These four decisions concern the investigations launched against Tırsan Kardan-Tiryakiler, active in the market for sales of cardan shaft and spare parts (No. 15-30/445-132, 10 July 2015), Devlet Hava Meydanları İşletmesi, a state-owned airports administration (No. 15-36/559-182, 9 September 2015), Unilever and Advertising Self-Regulatory Board (No. 15-38/631-214, 16 October 2015), Nuh Çimento, active in the cement market (No. 16-05/118-53, 18 February 2016) and Türk Telekom-TTNet (No. 16-15/254-109, 3 May 2016).

The following cases are the most recent landmark decisions regarding abuse of dominance, which were issued by the Competition Board in 2014, 2015 and 2016.

Solgar (18 February 2016, No. 16-05/116-51)

In 2010, the Competition Board initiated a preliminary investigation against Solgar based on the allegations that Solgar violated articles 4 and 6 of Law No. 4054 through an alleged refusal to supply. The Board unanimously ruled that Solgar did not violate Law No. 4054 and no administrative fines were levied. The 13th Chamber of the Council of State annulled the Competition Board's decision in late 2014, on the grounds that the information and evidence obtained during the preliminary investigation were not sufficient to conclude that the case did not necessitate an in-depth investigation. Upon the Council of State's decision, the Competition Board initiated a full-fledged investigation against Solgar, by operation of administrative law, in order to determine whether Solgar has violated article 4 or article 6 of Law No. 4054 by refusing to supply Anadolumed's orders.

At the end of this in-depth investigation, the Competition Board concluded that Solgar did not violate Law No. 4054 and, thus, it did not impose any administrative monetary fines on Solgar.

Coca-Cola (5 March 2015, No. 15-10/148-65)

The Competition Board initiated an investigation against Coca-Cola Satış Dağıtım AŞ (Coca-Cola) as a result of the preliminary inquiry related to the claims that Coca-Cola made exclusive agreements with some points in various cities in Turkey, especially in Istanbul, Ankara, Izmir, Bursa and Antalya. During the investigation, the Competition Board analysed whether Coca-Cola had fulfilled the requirements of the Competition Board's decision of 10 September 2007, No. 07-70/864-327; whether Coca-Cola's existing contracts and protocols contained exclusivity provisions; and whether its contracts and practices in the market created 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.

Turkish Airlines (25 December 2014, No. 14-54/932-420)

Pegasus Hava Taşımacılığı AŞ, a low-cost rival airline company, complained that Turkish Airlines engaged in abusive behaviour through predatory pricing and obstructing rivals' flights and other abusive operations and accused Turkish Airlines of violating article 6 of Law No. 4054 through abuse of its dominance.

The case was an extension of an older full-fledged investigation, which had been closed without a fine against Turkish Airlines in 2011 by the Competition Board due to lack of merit in the claims, without imposing any administrative monetary fine against Turkish Airlines (Turkish Airlines, No. 11-65/1692-599, 30 December 2011). The Ankara Administrative Court repealed the 2011 investigation decision, arguing that the Competition Board should have engaged in a more detailed and sophisticated analysis of Turkish Airlines' pricing behaviour. As a result, the Competition Board had to reopen the case in 2013. Following the fully fledged investigation process, the Board did not find any violation on the part of Turkish Airlines.

Mey İçki (12 June 2014, No. 14-21/410-178)

The Competition Board initiated an investigation upon the application made by several complainants alleging that Mey İçki abused its dominant position in the market for rakı (the traditional Turkish alcoholic beverage) through preventing sale points from selling competitors' products, imposing exclusivity on sales points, obstructing competitors' activities on the market and thus violating article 6 of Law No. 4054. Eventually, the Competition Board held that Mey İçki holds a dominant position in the rakı market and imposed an administrative monetary fine on Mey İçki over 41.5 million lira amounting to 1.5 per cent of its annual turnover.

Tüpras (17 January 2014, No. 14-03/60-24)

The Turkish Competition Board recently concluded the high-profile competition law investigation against Tüpraş, Turkey's biggest energy company, and OPET, one of Turkey's biggest fuel oil companies. The Competition Board found that Tüpraş abused its dominant position through abusive pricing practices and contracts. It imposed an unprecedented administrative monetary fine of 412 million lira on Tüpraş, the equivalent of 1 per cent of Tüpraş'

annual turnover for 2013. This is the highest fine levied on a single undertaking in the Competition Authority's enforcement history, with an amount almost double of the previous highest fine on a single undertaking (the monetary fine of 213.4 million lira against Garanti Bankası, one of the biggest banks in Turkey).

The Competition Board did not find sufficient evidence of an article 4 violation (anticompetitive agreements), so it cleared Tüpraş and OPET of the allegations based on article 4. Therefore, OPET received no fine as the Competition Board did not find any violation on the part of OPET. Finally, the Competition Board decided to deliver an opinion to the public authorities concerned that pricing mechanisms for refineries should be restructured in a manner to yield consumer benefit. Tüpraş was also warned to avoid similar behaviour in the future.

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Gönenç Gürkaynak is a founding partner and the managing partner of ELIG, Attorneys-at-Law. He holds an LLM degree from Harvard Law School, and is qualified to practise in Istanbul, Brussels, New York, and England and Wales (at present a non-practising solicitor). Gürkaynak heads the competition and regulatory department of ELIG, and has unparalleled experience in all matters of Turkish Competition Act counselling, with more than 18 years' experience dating from the establishment of the Turkish Competition Authority. Before founding ELIG more than 10 years ago, he worked as an attorney at the Istanbul, New York and Brussels offices of a global law firm for more than eight years. Gürkaynak frequently speaks at conferences and symposia on competition law matters. He teaches undergraduate and graduate level courses at two universities, and gives lectures in other universities in Turkey. He has had many international and local articles published in English and in Turkish, and is the author of a book published by the Turkish Competition Authority.

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M Hakan Özgökçen holds an LLB degree from Marmara University Law School (2003) and an LLM degree from Istanbul Bilgi University (2010). He is a partner at the competition and regulatory department of ELIG and has been a member of Istanbul Bar since 2005. He has extensive experience in competition law, mergers and acquisitions, contracts law, administrative law and general corporate law matters. He has assisted Gönenç Gürkaynak in representing various multinational and national companies before the Turkish Competition Authority and Turkish courts.

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ELIG, Attorneys-at-Law 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 competition and regulatory department consists of three partners, two counsel and 36 associates. We represent corporations, business associations, investment banks, partnerships and individuals in a wide range of competition law matters. Our firm also collaborates with many international law firms on Turkish competition law matters.

In addition to an unparalleled experience in merger control issues, ELIG has vast experience in defending companies before the Competition Board in all phases of an antitrust investigation. ELIG has in-depth knowledge of representing defendants and complainants in complex antitrust investigations concerning all forms of abuse of dominant position allegations and all other forms of restrictive horizontal and vertical arrangements, including price fixing, retail price maintenance, refusal to supply, territorial restrictions and concerted practice allegations. Furthermore, in addition to a significant antitrust litigation expertise, our firm has considerable expertise in administrative law, and is therefore well equipped to represent clients before the administrative courts and the High State Council, both on the merits of a case and for injunctive relief. ELIG also advises clients on a day-to-day basis concerning business transactions that often contain complex antitrust law issues, including distributorship, licensing, franchising and toll manufacturing.

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