COMPETITION IN DIGITAL MARKETS

Turkey

LEXOLOGY
Getting The Deal Through

Consulting editor
Herbert Smith Freehills LLP

Competition in Digital Markets

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into applicable legislation, enforcement authorities and regulatory guidelines; horizontal agreements; vertical agreements; unilateral anticompetitive conduct; merger control; and recent trends.

Generated 06 September 2022

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LEGAL AND REGULATORY FRAMEWORK

Legislation

What legislation governs competition in digital markets in your jurisdiction? Does the standard competition law framework apply or are there any special rules or exemptions?

Law stated - 04 May 2022

Enforcement authorities

Which authorities enforce the competition law framework in your jurisdiction's digital markets?

The Turkish Competition Authority (the Authority) enforces antitrust rules in Turkey's digital markets. Although there is not a digital markets unit, the Authority operates with several different supervision and enforcement departments, all of which are dedicated to specific sectors. Although none are dedicated specifically to digital markets, Supervision and Enforcement Department I oversees information and communications technology and services, and media and advertising services, which broadly relate to digital markets.

Law stated - 04 May 2022

Regulatory guidelines

Have the authorities in your jurisdiction issued any guidelines on the application of competition law to digital markets?

The Authority has not yet issued dedicated secondary legislation (ie, regulation, communiqué or guideline) on the application of competition law rules in digital sectors. However, the Authority is in the process of considering legislative actions concerning digital markets. The Authority started working on its sector inquiries that focus on online marketplaces in June 2020, and on online advertising in March 2021. The Authority aims to determine behavioural and structural issues surrounding these sectors and to offer solutions accordingly. Each of these sector inquiries served as preparatory components facilitating the Authority's legislative actions. In fact, the Authority's final report on e-marketplace platforms of 14 April 2022 states the following:

As stated by the Chairman of the Board, Birol Küle, the Authority is currently working on digital market regulations that are expected to be enacted by mid-2022. Regulations for digital markets, namely the Digital Markets Acts (DMA) in the EU, industry research conducted by foreign competition authorities as well as by the Authority, and the experience and know-how gained from investigations concerning digital markets are likely to form the basis of digital market regulations in Turkey. During the legislation preparations, the Authority sent extensive information requests to undertakings active in the core platform services markets covered by the DMA. It is fair to say that the information requests were quite comprehensive in nature and were mostly specific to the Turkish market.

The Authority's competition advocacy advice and views are not binding. Taking into account that the DMA is considered to be the main reference point of the reports of the Authority, it is likely that sector reports of the Authority will be followed by legislative changes. It is especially expected that regulations focusing on gatekeepers mentioned in both online marketplaces reports will be incorporated as an addition to article 6 of Law No. 4054, which regulates

abuse of dominant position, or even as a separate article while also being reflected in the secondary legislation.

Law stated - 04 May 2022

Advisory reports

Have any advisory reports been prepared in your jurisdiction on competition law issues in digital markets?

Yes. The Authority announced that it had started work on a digitalisation and competition policy report at the beginning of 2020. The Authority said it aimed to 'approach business models that are at the focus of consumer-friendly innovations with greater sensitivity while shaping the competition policies of the future'.

The Authority also announced a sector inquiry into e-marketplace platforms. The Authority published a Preliminary Report on E-Marketplace Platforms (the Preliminary Report) on 7 May 2021. The Preliminary Report was based upon findings and facts obtained through the sector inquiry, and it offered policy recommendations for identified potential competition concerns within the e-marketplace platform market. To ensure maximum participation and depth of data in the inquiry, the Authority consulted not only e-marketplaces but also consumers that shop through these platforms, and suppliers that conduct product sales and associations of undertakings that represent such suppliers. The Preliminary Report contains certain findings on the e-commerce sector with the focus on business models and conducts of e-marketplaces along with their competitive and anticompetitive effects. It also suggests possible solutions as policy changes and regulations. The Preliminary Report's conclusions and policy recommendations suggest that the attempted legislative work is directed toward gatekeeper arrangements, which corresponds with topics addressed by the DMA. In fact, the category concerning gatekeeper regulations is quite parallel to the European Commission's proposal, especially considering that both regulations suggest imposing ex ante obligations on undertakings designated as 'gatekeepers'.

After its inquiry, which took almost two years, the Authority published its final report on 14 April 2022. In line with the Preliminary Report, the Authority proposes new and stricter regulations with regard to competition in the digital markets and its main actors. The Authority recommends two main policies to warrant efficient competition in the market.

First, the Authority refers to its ongoing preparation of legislation regarding gatekeepers in digital platforms, where e-marketplace platforms are already in scope under the category of 'online intermediary services'. The Authority recommends that in the new legislation, the following obligations should be imposed on e-marketplace platforms with gatekeeper status:

- gatekeepers should not apply contractual or de facto exclusivity clauses or impose wide most-favoured-nation (MFN) clauses on their vendors;
- gatekeepers should refrain from using non-public data, which is acquired through the activities of vendors, in their own products competing with the products of these vendors.
- gatekeepers should not favour their own products or the products belonging to their group of companies in its platform rankings;
- gatekeepers should provide their sellers with free, efficient, high-quality, and real-time access to the performance tools so that the sellers can track the profitability of their sales within the platform.
- gatekeepers should not create a technical or behavioural impediment to the transfer of the data, which the sellers or consumers provide to the marketplace, to other platforms;
- gatekeepers should provide free, effective, good-quality and real-time access to the data provided by the vendor to the marketplace, and to the data generated from this data, to its vendors or to third parties authorised by the vendors;

- gatekeepers should ensure interoperability between their main platform services and ancillary services;
- gatekeepers should warrant platform transparency by providing their sellers with sufficient information regarding the scope, quality, performance, and pricing of their main and ancillary platform services; and
- gatekeepers must notify the Authority regarding all acquisitions, regardless of the turnover thresholds in the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (the Board). (This obligation is already imposed through the amendment in Communique No. 2010/4.)

Second, the Authority advocates for more conservative and strict application of competition rules in the digital markets. Therefore, the Authority recommends that the secondary legislation is strengthened to achieve this goal. In particular:

- market share thresholds and theories of harm should be revised in connection with exclusivity and MFN obligations; and
- platforms' exploitative behaviours should be defined and clarified. In terms of unfair contractual obligations, topics such as MFN or exclusivity clauses, platform transparency, and excessive data collection and confidentiality are already covered by the legislation preparations. But it would be helpful to further clarify and strengthen these through secondary legislation.

More generally, secondary legislation completing the main legislation changes to be introduced in digital markets would be necessary.

In the same line of reasoning, back in 2017, the Authority also published a sectoral report named 'Television Broadcasting Sector within the Context of Digitalisation and Convergence'. With a special focus on the television broadcasting sector, this report also aimed to guide the implementation of competition law in the relevant sector within the framework of digitalisation dynamics.

Law stated - 04 May 2022

Advance compliance guidance

Can companies active in digital markets ask the competition authority for advance guidance on competition law compliance before entering into an agreement or determining a pricing strategy?

Law stated - 04 May 2022

Regulatory climate and enforcement practice

How would you describe government policy and the competition authorities' general regulatory and enforcement approach towards digital companies in your jurisdiction?

The Turkish government has adopted certain tailor-made economic agendas and policy choices to address the new economy's challenges. The Turkish government's 11th Development Plan (the Plan) (2019–2023) shows that the government has included the goal of increasing its innovation capacities as a development priority. These goals were listed as agenda priorities within Turkey's science and innovation enforcement policies to create an innovation-enabling environment. The Plan states that information platforms in fields such as social media and e-trade are expected to be customised and scaled up in sectors like health, finance, manufacturing and agriculture with the help of accelerated digitalisation. In addition, the Plan states that the main objective is to boost productivity and competitiveness in priority

sectors by accelerating digital transformation. In this regard, the Turkish government has clearly and visibly recognised the importance of increasing investments in R&D and innovation activities.

The Authority closely follows the recent national and international developments in the digital economy sector. On 4 April 2021, the Authority published an announcement on its official website explaining that the Authority closely scrutinises digital markets, and that it is working on a legislation proposal for digital markets, also referring to the EU DMA proposal. The Authority has acknowledged this in its final report on the sector inquiry regarding e-marketplace platforms. The Authority announced that it aims to approach business models that are at the focus of consumer-friendly innovations with greater sensitivity. The Authority accepted that e-marketplaces dissociate from traditional markets due to the operation and effects of their platform economy. The Authority's final report on the sector inquiry regarding e-marketplace platforms states that digital platforms 'have become the main gateway to reach markets and customers' and provides that 'digitalization transforms the appearance of market malfunctions and competition issues that we face in traditional markets in parallel to economic operations and consuming habits. E-marketplaces have certain features arising from platform economies that distinguish them from traditional markets. These, along with the business model that e-marketplaces adopt make it more difficult to understand how competition works in this field'. Similarly, the Board finds that the digital sector has different competitive dynamics and thus has a different and more complex structure and operation as compared to provisions of a traditional legislative landscape. Therefore, the Authority and the government are working on relevant regulations to adapt the current legal framework to the digital age.

The Board's intention to put the digital economy, including big tech platforms, under scrutiny in the near future can also be observed in its enforcement track record in recent years concerning platforms (Nadirkitap , 7 April 2022, 22-15/273-122, Trendyol , 30 September 2021, 21-46/669-334; Google Local Search, 8 April 2021, 21-20/248-105; Facebook interim measures decision , 11 January 2021, 21-02/25-10; Google Search and AdWords, 12 November 2020, 20-49/675-295; Kitapyurdu , 5 November 2020, 20-48/658-289, Google Shopping, 13 February 2020, 20-10/119-69; Google Android , 19 September 2018, 18-33/555-273; Çiçek Sepeti , 8 March 2018, 18-07/111-58; and Yemek Sepeti , 9 June 2016, 16-20/347-156).

Law stated - 04 May 2022

HORIZONTAL AGREEMENTS

Special rules and exemptions

Do any special rules or exemptions apply to the assessment of anticompetitive agreements between competitors in digital markets in your jurisdiction?

There are no specific rules that apply to horizontal agreements in digital markets. However, the Guidelines on Horizontal Cooperation will also apply to any horizontal agreements in digital markets as well.

Law stated - 04 May 2022

Access to online platforms

How has the competition authority in your jurisdiction addressed horizontal restrictions on access to online platforms?

There are no decisions where the Competition Board (the Board) has addressed horizontal agreements that bring restrictions on access to online platforms.

Law stated - 04 May 2022

Algorithms

Has the competition authority in your jurisdiction considered the application of competition law to the use of algorithms, in particular to algorithmic pricing?

The Turkish Competition Authority's (the Authority) decisional practice does not yet include a detailed assessment of the use of algorithms within the sphere of anticompetitive agreements. However, on 30 September 2021, the Authority announced its decision to issue interim measures against DSM Grup Danismanlik Iletisim ve Satis Ticaret A.S. (Trendyol) for its practices in the multi-category online marketplaces market. This was the first instance in which the Board decided to impose interim measures in an investigation conducted on algorithm-based competition law violations. Before the Trendyol investigation, the Authority had not inspected algorithmic commercial behaviours. Therefore, such examination constitutes a milestone for on-site investigations, as the Authority has analysed the algorithms of an undertaking in detail for the first time.

Following the decision of the Board, a preliminary investigation was initiated against Trendyol to determine whether it violated article 4 (Agreements, Concerted Practices and Decisions Limiting Competition) and article 6 (Abuse of Dominant Position) of Law No. 4054.

As a result of the on-site inspection and the analysis conducted during the preliminary investigation phase based on the data in the algorithms and information systems, the Authority found that Trendyol:

- acts as the intermediary for the third-party sellers, as well as conducting the sales of its own brands such as TrendyolMilla, TrendyolMan and TrendyolKids;
- interferes with the listing algorithm in a way that gives its own products an unfair advantage;
- uses the data obtained in the scope of the marketplace activities in the creation of the marketing strategy of its own brands; and
- discriminates between sellers in the marketplace by interfering with the algorithms.

In light of the above, and considering that Trendyol has gained significant market share in recent years in all categories within the market for multi-category marketplaces, and particularly the fashion category, the Board decided to apply interim measures in the context of article 9 of Law No. 4054, since such violations have the potential to cause serious and irreparable damages until the final decision is rendered.

Within this scope, the Board decided that Trendyol shall:

- end all kinds of actions, behaviour and practices that provide an advantage against its competitors, including the interventions made through algorithms and coding, for other products and services within the context of the marketplace activity, and avoid such actions during the investigation;
- stop sharing and using all kinds of data obtained and produced from the marketplace activity for other products and services under its economic unity and avoid such actions during the investigation;
- end all kinds of actions, behaviour and practices that may discriminate among sellers in the marketplace including interventions made through algorithms and coding, and avoid such actions during the investigation;
- take all necessary technical, administrative and organisational measures to ensure the auditability of the interim measures;
- retain the data on parametric and structural changes made on all algorithm models used for product search, seller listing, seller score calculation, etc for at least eight years, with all versions and irrefutable accuracy within Trendyol;
- retain the source codes of all software that has been specifically developed for use within Trendyol, for at least

eight years, with all versions and irrefutable accuracy; and
- retain the user access and authorisation records and manager audit records for all software used within the scope of the business activities being conducted within Trendyol, for at least eight years, with irrefutable accuracy.

However, the Trendyol investigation is not the first time the Board has faced algorithms as a tool for infringement. From 2015 to 2020, the Authority started investigating online platforms with dominant positions in the market such as Yemeksepeti and Booking.com. Even though the Authority dealt with online platforms in the digital sector in its earlier decisions, it abstained from examining the algorithms that these platforms used. In Google Search and AdWords (12 November 2020, 20-49/675-295), the Board found no violation on Google's part concerning algorithm updates. In fact, the Board concluded that: (1) 'based on the findings reached within the scope of the case at hand, it is not possible to come to a conclusion that Google causes a violation of competition through changing the algorithms and giving incomplete information regarding these changes'; and (2) 'at this stage, no determination was made that would require intervention as per Law No. 4054, within the scope of the allegations that Google changed the algorithm with the intention of deliberately excluding organic search results from the market, and the allegations that the text advertising of the websites affected their ranking in the organic results'.

While investigating a certain violation, the burden of proof must be satisfied in order to turn an allegation into a finding of violation. In principle, the burden of proof lies with the authority that is conducting the investigation. Considering the technical complexity of algorithms, linking these algorithmic processes to illegal behaviour or holding undertakings accountable for using algorithms in a way that restricts competition is not always an easy task. In addition, it is debatable whether there is an actual theory of harm when it comes to undertakings' use of their algorithms. Therefore, it is not possible to say how the Authority will answer the question of whether there can be an agreement where algorithms coordinate pricing with no human input.

Law stated - 04 May 2022

Data collection and sharing

Has the competition authority in your jurisdiction considered the application of competition law to 'hub and spoke' information exchanges or data collection in the context of digital markets?

While there are no precedents specific to the digital sector as yet, the Turkish competition law regime does recognise and condemn 'hub and spoke' information exchanges (see the Supermarket Chains decision (28 October 2021, 21-53/747-360). However, the Authority examines the problematic marketplace and sellers' tendency to hub and spoke cartels in digital markets in its final report on the sector inquiry regarding e-marketplace platforms.

Law stated - 04 May 2022

Other issues

Have any other key issues emerged in your jurisdiction in relation to the application of competition law to horizontal agreements in digital markets?

On 20 April 2021, the Board launched a full-fledged investigation against 32 undertakings active in the digital sector for an alleged gentlemen's agreement in labour markets across Turkey. The investigated parties appear to range from IT and software companies to platform businesses, as well as players in the media industry and undertakings in the food and beverages sector. The Authority emphasises that it is well aware of the importance of the employees' contributions to the process of connecting products and services with consumers in the digital age, where creativity and innovative

intelligence have become especially important. The investigation is ongoing as at the date of writing.

Law stated - 04 May 2022

VERTICAL AGREEMENTS

Special rules and exemptions

Do any special rules or exemptions apply to the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets in your jurisdiction?

There are no specific rules that apply to vertical agreements in digital markets. The generally applicable Block Exemption Communiqué No. 2002/2 on Vertical Agreements (Communiqué No. 2002/2, the Guidelines on Vertical Agreements (the Guidelines)) will also apply to any vertical agreements in digital markets. In fact, to meet the needs of the evolving digital sector and to align with the European Union, on 30 March 2020, the Authority revised the Guidelines and introduced new provisions with regard to online sales and most-favoured-nation (MFN) clauses.

Law stated - 04 May 2022

Online sales bans

How has the competition authority in your jurisdiction addressed absolute bans on online sales in digital markets?

According to the Guidelines, online sales are generally considered passive sales and cannot be restricted. The Guidelines, however, introduce some exemptions where restrictions to online sales can benefit from the protective cloak of the block exemption. For instance, particularly in the selective distribution system, suppliers may impose quality conditions for online sales channels. Furthermore, if there is an objective reason concerning the product (eg, dangerous chemical materials), suppliers may prevent online sales due to safety or health concerns. To benefit from the protective cloak, these conditions and restrictions must be objective, fair and reasonable and should not directly or indirectly lead to the prevention of online sales. Having said that, the decisional practice of the Board demonstrates the Board strictly approaches the restrictions to online sales and considers online sales as passive sales, which cannot be restricted (Jotun , 15 August 2018, 18-05/74-40). Accordingly, in Baymak (26 March 2020, 20-16/232-113) the Board deemed an absolute restriction on internet sales covering both individual websites of the distributors and third-party platforms as a violation of article 4 of Law No. 4054. In Yataş (6 February 2020, 20-08/83-50), the Board decided that online sales are passive sales and the restriction of passive sales may not benefit from block exemption under Communiqué No. 2002/2.

In the very recent B S H decision (16 December 2021, 21-61/859-423) the Board evaluated a negative clearance and individual exemption application by Bosch regarding the restriction of sales through third-party online marketplaces. Bosch had prohibited its authorised dealers from selling on digital platforms such as N11, Amazon, Trendyol, Morhipo, and Hepsiburada via a circular. The Board decided that the restriction does not qualify for a block exemption and does not meet the conditions for an individual exemption as prescribed under article 5 of Law No. 4054. The decision is significant as it clarifies that the Board maintains a clear position on prohibiting online sales, especially through online marketplaces, which has been criticised in connection to the current EU approach on this issue.

Law stated - 04 May 2022

Resale price maintenance

How has the competition authority in your jurisdiction addressed online resale price maintenance?

Pursuant to Communiqué No. 2002/2, vertical agreements of undertakings with market shares that exceed 30 per cent cannot benefit from the block exemption. However, Communiqué No. 2002/2 does not bring an exemption for agreements that directly or indirectly restrict the buyer's ability and freedom to determine its own resale prices, and considers them hardcore restrictions.

In Sony (22 November 2018, 18-44/703-345), the Board decided that Sony (1) had monitored the price levels on online platforms; (2) expected compliance with its recommended resale prices; and (3) had the ability to threaten the distributors with withholding incentive payments in case of non-compliance. The Board decided that the said conduct of Sony had restricted the distributors' ability to autonomously determine their online prices. Accordingly, the Board concluded that Sony had violated article 4 of Law No. 4054 by determining the resale prices of its online retailers and it imposed an administrative fine of 2,346,618.62 Turkish lira.

In Groupe SEB (4 March 2021, 21-11/154-63), the Board evaluated the allegation that Groupe SEB İstanbul Ev Aletleri Ticaret A.Ş. (Groupe SEB) and İlk Adım Dayanıklı Tüketim Malları Elektronik Tekstil İnşaat ve İletişim Hiz. San. Tic. Ltd. Şti. (İlk Adım) violated article 4 of Law No. 4054 by way of determining the resale prices and restricting the online sales of their distributors and other resellers. The Board assessed the activities of Groupe SEB and İlk Adım, which included interfering with distributors' pricing strategies, imposing sanctions on distributors that disrupt the pricing strategy, such as prohibiting online sales, and notifying distributors to increase their prices. Based on the evidence collected during the on-site inspections, the Board decided to impose administrative monetary fines on Groupe SEB and İlk Adım.

Law stated - 04 May 2022

Geoblocking and territorial restrictions

How has the competition authority in your jurisdiction addressed geoblocking and other territorial restrictions?

There is no specific rule or case law concerning restrictions on online sales to customers in other countries. Pursuant to article 4 of Communiqué No. 2002/2, restrictions requiring the buyer not to sell the products or services in certain territories or to certain customers may violate competition laws. However, there are exceptions to this rule. For instance, the supplier may prevent the buyer from active sales to an exclusive territory or to customers allocated to the supplier or another buyer. Furthermore, in a selective distribution system, the buyer may prevent its authorised distributors from making sales to unauthorised distributors. However, restriction of passive sales to exclusive territories or customers cannot benefit from the protective cloak of the block exemption. In any event, the jurisdiction of the Authority is limited to transactions that produce an impact on Turkish markets, therefore generally, restrictions on sales to customers in other countries should not be caught by the article 4 prohibition.

Law stated - 04 May 2022

Platform bans

How has the competition authority in your jurisdiction addressed supplier-imposed restrictions on distributors' use of online platforms or marketplaces and restrictions on online platform operators themselves?

According to the Guidelines on Vertical Agreements, which were updated on 30 March 2018, online sales are generally considered passive sales and cannot be restricted. In many decisions, the Board considered online platform bans as anticompetitive and analysed the cases accordingly (eg, Baymak (26 March 2020, 20-16/232-113); Yataş (6 February 2020, 20-08/83-50); and Marks & Spencer (11 April 2019, 19-15/208-93).

In the very recent BSH decision (16 December 2021, 21-61/859-423) the Board evaluated a negative clearance and individual exemption application by Bosch regarding the restriction of sales through third-party online marketplaces. Bosch had prohibited its authorised dealers from selling on digital platforms such as N11, Amazon, Trendyol, Morhipo and Hepsiburada via a circular. The Board decided that the restriction does not qualify for a block exemption and does not meet the conditions for an individual exemption as prescribed under article 5 of Law No. 4054. The decision is significant as it clarifies that the Board maintains a clear position on prohibiting online sales especially through online marketplaces.

Law stated - 04 May 2022

Targeted online advertising

How has the competition authority in your jurisdiction addressed restrictions on using or bidding for a manufacturer's brand name for the purposes of targeted online advertising?

The Board decided in Google AdWords that it is not possible or appropriate to find a violation on Google's display of third parties' text ads, considering that these practices have aspects that increase competition (Google Adwords , 12 November 2020, 20-49/675-295). Similarly, in Çiçeksepeti , the Board did not consider the display of third-party websites' text ads for branded queries to fall under Law No. 4054 (8 March 2018, 18-07/111-58).

The Board closed a pre-investigation launched against Google concerning the allegation that Google's bidding mechanism restrained competition between e-commerce sites. The Competition Board decided that there was no need to initiate a full-fledged investigation as the allegations did not reflect the truth (Google e-commerce , 7 November 2019, 19-38/575-243).

In Modanisa/Sefamerve (25 November 2021, 21-57/789-389) , the Board refused to grant negative clearance or individual exemption to a settlement agreement concerning certain keyword bidding practices. The decision is of great significance as it harbours extensive explanation and analysis of branded keyword bidding practices in terms of competition law and intellectual property law. The decision also serves as an important precedent indicating that the agreements restricting companies from bidding on each other's brands could be exempted from Law No. 4054 if such agreements only contain narrow non-brand bidding restrictions. The decision also sets an example of how the Board treads a line between intellectual property protection and competition law sensitivities while assessing agreements regarding the use of negative keywords.

Law stated - 04 May 2022

Most-favoured-nation clauses

How has the competition authority in your jurisdiction addressed most-favoured-nation clauses?

The Guidelines, which were updated on 30 March 2018, recognise the pro-competitive nature of MFN clauses and adopt a 'rule of reason' approach to the analysis of anticompetitive effects of these clauses. The relevant guidelines provide that in the analysis of these clauses, (1) the relevant undertakings' and their competitors' positions in the relevant market; (2) the object of the MFN clause in the relevant agreement; and (3) the specific characteristics of the market, should be taken into consideration. An MFN clause may benefit from the block exemption, provided that the market share of the beneficiary of the relevant MFN clause does not exceed 30 per cent, together with other conditions

as set forth under Communiqué No. 2002/2. The evaluation of MFN clauses in the traditional markets differs from those in the online platforms. For example, while the party that is the beneficiary of the clause is the buyer in the traditional markets, it may be either a supplier, buyer or intermediary in the online platform markets depending on the relevant product market. Therefore, Communiqué No. 2002/2 does not provide any indication as to which party's market share should be taken into account.

The first case in which the Board examined online platforms' MFN clauses in detail was Yemek Sepeti . This case concerned an alleged violation of article 6 of Law No. 4054, which prohibits abuse of dominant position. Yemek Sepeti (which is now owned by Delivery Hero SE, one of the leading online food ordering and delivery marketplaces), was the incumbent online food delivery platform in Turkey, with a significant market share and unparalleled geographical coverage. Certain competitors of Yemek Sepeti argued (mostly encouraged by recent investigations initiated in certain European countries against the MFN clauses used by Booking.com) that Yemek Sepeti held a dominant position in the market for online food delivery platform services and was abusing this dominant position by hindering the entry of competitors via the MFN clauses. After confirming that Yemek Sepeti held a dominant position with a market share of more than 90 per cent, the Board undertook an assessment of the MFN clauses that were in place between Yemek Sepeti and the restaurants that used its online platform. The relevant clauses were divided into two subcategories: MFN clauses that required restaurants not to offer better terms in their own food delivery channels (narrow MFN clauses) and MFN clauses that required restaurants not to offer better terms in any other channel, including competing platforms (wide MFN clauses). The Board analysed the effects of the wide MFN clauses in detail and concluded that their anticompetitive effects outweighed the efficiency gains that they created under the specific circumstances of the case at hand, especially considering Yemek Sepeti's significant market power. The Board decided that the narrow MFN clauses did not constitute a violation but refrained from conducting a detailed effects-based assessment in this particular case. As a matter of fact, the Board specifically noted that it would not further evaluate the pro-efficiency (especially to tackle the free-riding problem) and anticompetitive aspects of the narrow MFN clauses as these were not a subject of the investigation.

The Booking.com decision (5 January 2017, 17-01/12-4) sets a landmark precedent that concerns the application of MFN clauses in online markets under the Turkish competition law regime. The case handlers claimed that the provisions related to the price and availability parity clause as well as the best price guarantee (wide MFN clauses) contained within the agreements executed between Booking.com and the accommodation providers, having the effect of restricting competition within the meaning of article 4 of Law No. 4054. The Board decided that such clauses:

- foreclose the market to competitors and reduce the competition in the market for accommodation reservation services platforms;
- reduce Booking.com's competitors' incentive to offer lower commission rates to the accommodations that execute wide MFN clauses with Booking.com;
- prevent the application of competitive pressure to the commission rates applied by Booking.com; and
- protect Booking.com from new entrants to the market.

The Board concluded that Booking.com's wide MFN clauses were in violation of article 4. The Competition Board's findings in Yemek Sepeti and Booking.com were integrated into the Authority's amendments to the Guidelines on Vertical Agreements mentioned above.

In Kitapyurdu (5 November 2020, 20-48/658-289), the Board held that Kitapyurdu.com's requests for additional discounts or access to similar or better discounts and campaigns than those applied to competitors could be deemed as wholesale MFN clauses, and considered that such practices would benefit from block exemption as Kitapyurdu.com's market share was below 40 per cent.

In its final report on e-marketplace platforms, the Authority states that contractual arrangements that guarantee the

platform the best price/terms the seller gives to its customers (MFN clauses and especially wide MFN clauses) are problematic. The Authority believes that the use of wide MFN clauses by platforms leads to serious competition concerns such as a decrease in price competition and an increase in retail prices, price rigidity and possible anticompetitive collaborations in the market, and barriers to entry and expansion. Therefore, the Authority recommended as a policy consideration that e-marketplace platforms with gatekeeper status should not apply contractual or de facto exclusivity or MFN clauses.

Law stated - 04 May 2022

Multisided digital markets

How has the competition authority in your jurisdiction addressed vertical restraints imposed in multisided digital markets? How have potential efficiency arguments been addressed?

Vertical agreements falling outside the block exemption are not automatically deemed to be in violation of Law No. 4.054, and the undertakings may plead the efficiencies defence. The cumulative conditions for an individual exemption set out under article 5 of Law No. 4054 are as follows:

1) the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress;

2) the agreement must allow consumers a fair share of the resulting benefit;

3) the agreement should not eliminate competition in a significant part of the relevant market; and

4) the agreement should not restrict competition by more than what is necessary for achieving the goals set out in (1) and (2).

The Board takes into account potential efficiencies or benefits for consumers to decide whether a restrictive agreement could benefit from an individual exemption. Restrictions should not be more than what is necessary to reach efficiencies and benefits, and the agreement should not eliminate competition in a significant part of the relevant market. The Guidelines on Vertical Agreements do not refer to any specific defences in addition to the 'efficiency defence'. Therefore, possible defence scenarios would heavily depend upon case-specific parameters.

In Travel Agents (25 October 2018, 18-40/645-315) and Kitapyurdu (5 November 2020, 20-48/658-289), the Board indicated that the relevant agreements or practices that included MFN clauses benefitted from the block exemption.

Law stated - 04 May 2022

Other issues

Have any other key issues emerged in your jurisdiction in relation to the application of competition law to vertical agreements in digital markets?

No.

Law stated - 04 May 2022

UNILATERAL ANTICOMPETITIVE CONDUCT

Establishing market power

What are the relevant criteria for establishing market power in digital markets in your jurisdiction? Is there any concept of 'abuse of economic dependence' where a company's market power does not amount to a dominant position?

Turkish competition law does not have separate dedicated criteria for establishing market power in digital markets. Under Turkish competition law, the market share of an undertaking is the primary point for evaluating its position in the market. In terms of unilateral conduct, dominance in a market is the primary condition for the application of the prohibition stipulated in article 6 of Law No. 4054. Subject to exceptions, an undertaking with a market share of 40 per cent is a likely candidate for dominance, whereas a firm with a market share of less than 25 per cent would not generally be considered dominant. Although the Competition Board (the Board) considers a large market share as the most indicative factor in assessing dominance, it also takes into account other factors, such as legal or economic barriers to entry, and the portfolio power and financial power of the incumbent firm.

As well as an online platform's market share, the Board would take into account network effects, entry barriers, innovation as well as the multisided aspects of the relevant activities. All in all, the Board's dominance analysis is still similar to its analyses in brick-and-mortar markets.

Law stated - 04 May 2022

Abuse of market power

To what extent are companies with market power in digital markets subject to the rules preventing abuse of that power in your jurisdiction?

Pursuant to article 6 of Law No. 4054, the abusive exploitation of a dominant market position is prohibited in general. Article 6 of Law 4054 regulates abuse of dominance which does not define 'abuse' per se, but does provide a non-exhaustive list of specific forms of abuse, these being:

- directly or indirectly preventing entry 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;
    - acceptance by intermediary purchasers of the display of other goods and services; or
    - maintenance of a minimum resale price; and
- 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.

As Turkish competition law does not define what constitutes an abuse of dominance online, the abovementioned conduct is also applicable to the online space.

Law stated - 04 May 2022

Data access

How has the competition authority in your jurisdiction addressed concerns surrounding access to data held by companies with market power in digital markets?

The Turkish competition law regime does not precisely address concerns surrounding access to data held by companies with market power in digital markets.

The Turkish Competition Authority (the Authority) has acknowledged the difficulties in determining the scope of effect and establishing competition violations based on big data. The Authority has stated that conventional practices and approaches would clearly prove insufficient to handle issues in the digital market.

In the Turkish Insurance decision (27 September 2017, 17-30/500-219), the Board stated that small insurance companies will have similar advantages by accessing the big data of big companies and that this will increase economic efficiency. As a result, the Board granted individual exemption.

In Nadirkitap (7 April 2022, 22-15/373-122), the Board decided that the online book sales platform Nadirkitap holds a dominant position in the market for platform services for second-hand book sales. As such, the Board assessed that Nadirkitap abused its dominance by unjustifiably preventing access to and the portability of book data uploaded to its website by third-party sellers. As a result, the Board decided to fine Nadirkitap. In addition, to ensure effective competition the Board also ordered Nadirkitap to cease blocking access to data and to provide sellers with their data in an accurate, understandable, secure, complete, free-of-charge and appropriate format, should the sellers request so. Thus, sellers are now able to transfer data to other platforms. Even though the reasoning of the Board has not yet been published, the decision is significant since it displays the approach the Board takes in relation to digital platforms and data portability.

Law stated - 04 May 2022

Data collection

How has the competition authority in your jurisdiction addressed concerns surrounding the collection of data by companies with market power in digital markets?

The Turkish competition law regime does not precisely address the collection of data by companies with market power in digital markets. That said, the Board has launched an ex officio investigation against Facebook and WhatsApp to determine whether the obligation to share data imposed on WhatsApp users violates article 6 of Law No. 4054. The Board stated that the update in the privacy policy would enable Facebook to collect, process, and use more data. The Board emphasised the scope and significance of WhatsApp data in its decision, and ordered an interim measure requiring Facebook to cease the execution of the new privacy policy and notify all its users, regardless of whether they gave the relevant consent or not (11 January 2021, 21-02/25-10). The Board's concerns that utilisation of the WhatsApp data in other markets that Facebook operates in, and imposing this as mandatory for using WhatsApp, are as follows:

- tying WhatsApp data to other Facebook company products and data;
- Facebook using its power in the consumer communication services market to restrict the operations of its competitors in online advertisements; and
- The possibility of consumer exploitation as a result of over-collection of data and utilisation of said data for other services.

In its final report on the sector inquiry on e-marketplace platforms, the Authority states that 'data is the currency of the digital world, however consumers are . . . not aware of the payments made by this currency' and emphasises that data collected by marketplaces can constitute an important competitive asset. The Authority indicates in the same report that as the customer data that platforms collect increases, these platforms can both develop their marketing strategies by estimating customers preferences more accurately and make advertisements for customers in a more targeted way.

Law stated - 04 May 2022

Leveraging market power

Has the competition authority in your jurisdiction adopted any decisions involving theories of harm relating to leveraging market power in digital markets, such as through tying, bundling or self-preferencing?

Yes. The Board's Google Shopping decision of 13 February 2020 (Case No. 20-10/119-69) concerned the allegation that Google put rival shopping comparison services (CSSs) in a disadvantageous position as a result of its shopping unit, to which rival CSSs do not have access. The Board states that Google has a dominant position in general search and leverages this dominant position in shopping comparison services. In a similar way, in Google Android , the Board determined that Google obtained advantages in terms of economies of scale with Android operating systems and mobile applications distribution, and Google allegedly leveraged those economies of scale in a different part of the market, namely with regard to its advertising services. In addition, in Google Local Search, the Board held that Google abused its dominant position by way of restricting competition in the market for local search services and accommodation price comparison services by hindering the activities of its rivals by way of preventing local search services from accessing the local unit, and providing advantages to Google's own local search and accommodation price comparison services as compared to its rivals, in terms of position and display on the general search result page (8 April 2021, 21-20/248-105).

In Trendyol (30 September 2021, 21-46/669-334), the Board indicated that this concept of self-preferencing has come into play with the development of digital markets, and can be defined as the dominant undertakings' preferential treatment towards their own products and services when they are in competition with third-party products or services on the same platform. The Board noted that the reason behind the anticompetitive concern created by self-preferencing is the dominant undertaking's leveraging of market power in the related markets, and the subsequent creation of an unfair competitive advantage for itself in those markets.

The Board considered the documents obtained through the searches on the Trendyol's algorithms and systems, which revealed that Trendyol has manipulated the actual data on its platform by intervening in the algorithms and codes to favour its own products and services, and thereby has misled sellers and users on its platform. In that respect, Trendyol was found to have artificially increased the number of followers, erased low user scores for Trendyol branded products, and furthermore, to have listed its own brands at the top in brand filters.

With regards to the use of third-party data monitored and obtained via their marketplace activities, the Board underlined the risk of 'copycatting', where Trendyol would be able to detect the profitable and popular products and services and offer the same products and services without exposing itself to commercial risk, or incurring the costs that third-party sellers had to face to launch the concerned product and services. The Board considers this to be a self-preferencing behaviour, and claims that this might not only discourage the innovation efforts of third-party sellers but also enable Trendyol to free-ride on these sellers' efforts and data. The Board also drew attention to Trendyol's ability to offer even lower prices when Trendyol's economies of scale and scope are taken into consideration, which increases the disadvantage for third-party sellers.

Law stated - 04 May 2022

Other theories of harm

What other types of conduct have been found to amount to abuse of market power in digital markets in your jurisdiction?

In Yemek Sepeti (9 June 2016, 16-20/347-156), the Board found that the restaurants Yemek Sepeti approached regarding the most-favoured-nation (MFN) clause had generally preferred to cease providing discounts on other platforms and had in some cases left competitor platforms. As a result, the Board concluded that Yemek Sepeti's MFN practices had harmed other platforms and hindered the ability of competitors to offer different products and services. The Board further decided that preventing restaurants from offering better or different conditions to rival platforms through MFN practices leads to exclusionary effects and is thus an abuse of dominant position.

In Sahibinden , the Board concluded that Sahibinden.com abused its dominant position by applying excessive prices in these markets, and imposed a monetary fine against Sahibinden.com of 10,680,425.98 Turkish lira (2 May 2019, 19-17/239-108). However, the Ankara 6th Administrative Court annulled this decision, stating that the decision failed to meet the standard of proof (E.2019/946 K.2019/2625). As a result, the Board re-evaluated its decision and decided to follow the Administrative Court's decision, since direct harm to the end consumer could not be proved.

The Board also initiated a full-fledged investigation against Biletix.com (a Turkish subsidiary of Ticketmaster) to analyse the allegations that Biletix applied excessive pricing to consumers (22 July 2019, 19-22/341-M). The allegations include that Biletix added extra costs to tickets it sells under the categories of service cost, transaction cost and cargo cost and via exclusive agreements it has signed with organisers. The investigation is ongoing.

The Board in the Facebook interim measures decision considered the market power of Facebook in consumer communication services, social network services, and online advertisement services, and decided that the data sharing requirement imposed by Facebook upon WhatsApp users could lead to serious and irreparable damages up until the rendering of a final decision at the end of an investigation relating to concerns that Facebook can use its power in the consumer communication services market to restrict the operations of its competitors in online advertising (11 January 2021, 21-02/25-10). This is the first time the Authority has taken a dive into the interface between data protection and competition law, and they have assumed jurisdiction over the matter, leading to the use of an interim measure on consent procedures. It is now clear that as far as the Turkish jurisdiction is concerned, the Authority will be involved in highly visible data protection matters, to the extent that they assume the existence of a competition law angle in the matter.

Law stated - 04 May 2022

MERGER CONTROL

Merger control framework

How is the merger control framework applied to digital markets in your jurisdiction?

Article 7 of Law No. 4054 governs mergers and acquisitions and the principal regulation on merger control is the Competition Law and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board.

On 4 March 2022, the Turkish Competition Authority (the Authority) published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (the Amendment Communiqué). The Amendment Communiqué introduced certain new rules concerning the Turkish merger control regime, which fundamentally affect merger control notifications submitted to the Authority. Pursuant to article 7 of the Amendment Communiqué, the changes introduced by the Amendment Communiqué

became effective as of 4 May 2022. One of the most significant developments that the Amendment Communiqué entails is the increase of the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Authority. In addition, the Amendment Communiqué introduced a threshold exemption for undertakings active in certain markets or sectors. Pursuant to the Amendment Communiqué, special thresholds will be applicable for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users. Further to the Amendment Communiqué, as of 4 May 2022, a transaction will be required to be notified before the Authority if:

- the aggregate Turkish turnover of the transaction parties exceeds 750 million Turkish lira (approximately €71.9 million or US$84.9 million) and the Turkish turnover of at least two of the transaction parties each exceeds 250 million Turkish lira (approximately €23.9 million or US$28.3 million); or
- (1) the Turkish turnover of the transferred assets or businesses in acquisitions exceeds 250 million Turkish lira (approximately €23.9 million or US$28.3 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion Turkish lira (approximately €287.9 million or US$339.7 million); or (2) the Turkish turnover of any of the parties in mergers exceeds 250 million Turkish lira (approximately €23.9 million or US$28.3 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion Turkish lira (approximately €287.9 million and US$339.7 million).

Furthermore, the Amendment Communiqué introduced a threshold exemption for undertakings active in certain markets and sectors. Pursuant to the Amendment Communiqué, the 250 million Turkish lira Turkish turnover thresholds mentioned above will not be sought for the acquired undertakings (target companies) active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to the users in the Turkish geographical market.

It is also noteworthy that the Amendment Communiqué does not seek a Turkish nexus in terms of activities that meet the threshold exemption. In other words, it would be sufficient for the target company to be active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies anywhere in the world for the threshold exemption to become applicable, provided that the target company operates in the Turkish geographical market, conducts R&D activities in Turkey, or provides services to the Turkish users in any fields other than the abovementioned ones. Accordingly, the Amendment Communiqué does not require operating in the Turkish geographical market, conducting R&D activities in Turkey, or providing services to the Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

Law stated - 04 May 2022

Prohibited mergers

Has the competition authority prohibited any mergers in digital markets in your jurisdiction?

No.

Law stated - 04 May 2022

Market definition

How has the competition authority in your jurisdiction addressed the issue of market definition in the context of digital markets?

The Board has not eschewed adopting new market definitions for digital markets when necessary and based on the specific features of each case that it assesses. The Board has generally shown a tendency to introduce separate market definitions for online and offline services providing the same goods and services. For example, the Board separated the electronic and physical sale of event tickets by defining the relevant product market as 'intermediary services for the electronic sale of event tickets over a platform' in the Biletix case (11 November 2013, 13-61/851-359), which involved one of the largest companies for ticket sales and distribution for various cultural, musical and sports events in Turkey. The Board decided that there was a distinction between brick-and-mortar retailers and online services in the Çiçek Sepeti decision (16 December 2010, 10-78/1623-623), which concerned an online platform for flower sales. The Board defined the relevant product market as 'online flower sale services'. In Yemek Sepeti (9 June 2016, 16-20/347-156) and Booking.com (5 January 2017, 17-01/12-4), the Board distinguished and separated the online and offline sales channels, since online sales channels' offers are not similarly available or accessible in offline sales channels.

The Board consistently defines the relevant geographical market as Turkey, without further segmentation on the basis of different regions of the country. Indeed, the abovementioned decisions define the geographic market as Turkey. Only the Yemek Sepeti decision (9 June 2016, 16-20/347-156) defines the geographical market as 'each city that Yemek Sepeti is active in' along with Turkey.

Law stated - 04 May 2022

'Killer' acquisitions

How has the competition authority in your jurisdiction addressed concerns surrounding 'killer' acquisitions in digital markets?

A development on the secondary legislation front is the recently amended merger control rules in Turkey. The Authority introduced a threshold exemption for undertakings active in certain markets or sectors. The 250 million Turkish lira turnover thresholds will not be sought for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users.

Law stated - 04 May 2022

Substantive assessment

What factors does the competition authority in your jurisdiction consider in its substantive assessment of mergers in digital markets?

Before the amendment of Law No. 4054 (the Amendment Law), there were no debates about the suitability of merger tools to address digital mergers. The dominance test was applicable to these mergers.

The Amendment Law replaced the previous dominance test with the significant impediment of the effective competition (SIEC) test. With this new test, the Authority will be able to prohibit not only transactions that may create a

dominant position or strengthen an existing dominant position, but also those that could significantly impede competition. On the other hand, the SIEC test may also reduce over-enforcement as it focuses more on whether and how much the competition is impeded as a result of a transaction. Thus, pro-competitive mergers and acquisitions might benefit from the test even though a transaction leads to significant market power based on, for instance, major efficiencies. Likewise, dominant undertakings contemplating transactions with de minimis impact may also benefit from the new approach. In TIL /Marport (13 August 2020, 20-37/523-231), the Board refused to grant approval to the transaction on the grounds that the notified transaction was likely to cause significant impediment of effective competition at the first time.

The Turkish merger control regime considers innovation in the assessment of mergers. Indeed, the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions recognise innovation as a benefit created by competition and a factor for the Board's assessment of mergers. In certain approval decisions of the Board (Johnson and Johnson/Mentor , 8 January 2009, 09-01/10-8; Ticketmaster/Live Nation , 11 June 2009, 09-27/572-133; Syngenta/Monsanto's Sunflower Seed Business, 1 October 2009, 09-43/1097-277; Atlas Elektronik/Advanced Lithium Systems , 21 April 2011, 11-25/476-145; Metair/Mutlu Holding, 21 November 2013, 13-64/901-381; Novartis/GlaxoSmithKline Oncology Business , 4 November 2014, 14-43/796-357; Apax-Accenture/Duck Creek , 9 June 2016, 16-20/330-149; and Linde/Praxair , 10 October 2017, 17-31/520-224) the parties argued that the transaction would enable them to develop innovative products and encourage innovation in the future. The Board acknowledged in Cisco Systems/IBM (2 May 2000, 00-16/160-82) that the transaction would benefit consumers with the development of innovative applications, and therefore concluded that the transaction would not increase the concentration level or significantly lessen competition in the relevant market, despite Cisco's increased post-merger market share.

Law stated - 04 May 2022

Remedies

How has the competition authority in your jurisdiction approached the design of remedies in mergers in digital markets?

There is not yet any case law concerning remedies in mergers in digital markets.

With the Amendment Law, article 9 now introduces the 'first behavioural, then structural remedy' rule for article 7 violations. The Amendment Law also aims to grant the Board the power to order structural remedies for anticompetitive conduct infringing article 7 of Law No. 4054, provided that behavioural remedies are first applied and have failed. Further, if the Board determines with a final decision that behavioural remedies have failed, undertakings or associations of undertakings will be granted at least six months to comply with structural remedies. How the Board will reconcile these two provisions in practice remains to be seen.

Before the Amendment Law, the general approach was that structural remedies take precedence over behavioural remedies, and behavioural remedies can be considered in isolation only if structural remedies are impossible to implement and it is beyond doubt that behavioural remedies are as effective as structural remedies. For behavioural remedies to be accepted alone, such remedies must produce results as efficient as divestiture. The behavioural commitments will be re-evaluated by the Board at the end of the three-year period.

Law stated - 04 May 2022

UPDATE AND TRENDS

Recent developments and future prospects

What are the current key trends, legislative and policy initiatives, recent case law developments and future prospects for the enforcement of competition law in digital markets in your jurisdiction?

On 4 March 2022, the Turkish Competition Authority (the Authority) published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (the Amendment Communiqué). The Amendment Communiqué introduced certain new rules concerning the Turkish merger control regime, which fundamentally affect merger control notifications submitted to the Authority. Pursuant to article 7 of the Amendment Communiqué, the changes introduced by the Amendment Communiqué became effective as of 4 May 2022. One of the most significant developments that the Amendment Communiqué entails is the increase of the applicable turnover thresholds for concentrations that require mandatory merger control filing before the Authority and the introduction of a threshold exemption for undertakings active in certain markets or sectors. Pursuant to the Amendment Communiqué, special thresholds will be applicable for acquired undertakings active in, or assets related to, the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users.

The Authority is working on the Digitalisation and Competition Policy Report, which aims to set out the competition policies that it will be implementing in the future. The Authority has acknowledged the difficulties of determining the scope of effect and establishing competition violations based on big data and algorithms. The Authority has stated that conventional practices and approaches would clearly prove insufficient to handle issues in the digital market. In this scope, closely following the digital economy and potential competition violations that platforms may commit, the Competition Board (the Board) includes new duties concerning digital economy into the work description of the Presidency of the Strategy Development Department to ensure that the Authority is able to move proactively. These developments show that the Authority could change its enforcement policies concerning digital markets in the future.

The Authority also published its final report on the sector inquiry regarding e-marketplace platforms on 14 April 2021 to address the developments in digitalisation in light of competition law. The Authority clarified the relevant competitive concerns in relation to e-marketplace platforms and proposed relevant policy recommendations.

As a result of the full-fledged Android investigation against Google, the Board decided that Google abused its dominant position through some of its agreements executed with device manufacturers, and imposed certain remedies on Google in its Android decision of 19 September 2018 (18-33/555-273). The Board initially decided that Google did not comply with the remedies imposed in the Android decision. Google implemented the additional measures and the Board finally decided that Google was compliant with the remedies set out in the Android decision of 9 January 2020 (20-03/30-13).

As a result of the full-fledged Shopping investigation against Google, the Board decided that Google abused its dominant position through its display of the shopping unit in its general search results in the Board's Shopping decision of 13 February 2020 (20-10/119-69). The Board imposed an administrative monetary fine of 98,354,027.39 Turkish lira.

As a result of the full-fledged AdWords investigation against Google, the Board decided that Google abused its dominant position by way of hindering the activities of organic results – through which Google does not generate any ad revenues – in the content services market, by showing text ads at the top of general search results in a manner that the ad characteristic is uncertain, and doing so extensively (12 November 2020, 20-49/675-295). The Board imposed an administrative monetary fine of 196,708,054.78 Turkish lira.

As a result of the full-fledged Local Search investigation against Google, the Board decided that Google abused its dominant position by way of restricting competition in the markets for local search services and accommodation price comparison services through hindering the activities of its rivals by way of preventing local search services from accessing the local unit and providing advantages to Google's own local search and accommodation price comparison services as compared to its rivals, in terms of position and display on the general search result page (8 April 2021, 21-20/248-105). The Board imposed an administrative monetary fine of 296,084,899.49 Turkish lira.

The Board launched a preliminary investigation against Google (11 April 2019, 19-15/209-M) for the purpose of reviewing Google's commercial approach to and relationship with e-commerce companies. The allegations that Google's tender mechanism regarding the display of e-commerce companies' ads on Google's shopping unit led to the foreclosure of this area by a single undertaking through high fees, and this hindered the competitive landscape of the market against consumers through reducing the visibility of the e-commerce companies in the shopping unit. Pursuant to the pre-investigation against Google, the Board decided not to launch a full-fledged investigation against Google (7 November 2019, 19-38/575-243).

The Authority decided to introduce interim measures against Trendyol for its practices in the multi-category online marketplaces market. This was the first instance in which the Board decided to impose interim measures in an investigation conducted on algorithm-based competition law violations. Before the Trendyol investigation, the Authority had not inspected algorithmic commercial behaviours. Therefore, such examination constitutes a milestone for on-site investigations, as the Authority has analysed the algorithms of an undertaking in detail for the first time.

In Nadirkitap (7 April 2022, 22-15/373-122), the Board decided that online book sales platform Nadirkitap holds a dominant position in the market for platform services for second-hand book sales. As such, the Board assessed that Nadirkitap abused its dominance by unjustifiably preventing access to and the portability of book data uploaded to its website by third-party sellers. As a result, the Board decided to fine Nadirkitap. In addition, to ensure effective competition the Board also ordered Nadirkitap to cease blocking access to data and to provide sellers with their data in an accurate, understandable, secure, complete, free-of-charge and appropriate format, should the sellers request so. Thus, sellers are now able to transfer data to other platforms. Even though the reasoning of the Board has not yet been published, the decision is significant since it displays the approach the Board takes in relation to digital platforms and data portability.

Law stated - 04 May 2022

Jurisdictions

Australia	Gilbert + Tobin
Brazil	Advocacia José Del Chiaro
China	King & Wood Mallesons
European Union	Herbert Smith Freehills LLP
Germany	Herbert Smith Freehills LLP
Japan	Miura & Partners
South Korea	Yoon & Yang LLC
Sweden	Advokatfirman Cederquist KB
Switzerland	Prager Dreifuss
Turkey	ELIG Gurkaynak Attorneys-at-Law
United Kingdom	Herbert Smith Freehills LLP
USA	Crowell & Moring LLP