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Turkish Competition Board finds no information exchange violation between traders in financial markets

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Introduction

In January 2020, the Turkish Competition Board launched a preliminary investigation against seven banks and financial institutions (and their representative offices) to establish whether these undertakings had violated article 4 of Law No. 4054 on the Protection of Competition (Law No. 4054) regarding their deposit, loans, foreign exchange, bonds, bills, stock and intermediary services by way of information exchange and anti-competitive agreements.

On 26 August 2021, the Board concluded its preliminary investigation and found no violation. It decided accordingly that a full-fledged investigation was not necessary on the grounds that there was no evidence to demonstrate that the relevant undertakings had violated article 4 of Law No. 4054.

On 9 September 2022, the Turkish Competition Authority published the Board's reasoned decision with regards to its preliminary investigation.[(1)] The reasoned decision provided the Board's approach to information exchange in the banking sector and manipulation in the market. The preliminary investigation is also interesting in the sense that it is one of the Board's longest preliminary investigations, taking approximately 19 months to conclude. This article presents an overview of the reasoned decision, along with the Board's and other competition authorities' relevant precedents.

Background

Overview of related decisions

The Board, in its reasoned decision, stated that the relevant product market could be defined as "the banking services market" in the broadest sense, and that this broad market could be further divided into the following segments:

- the "deposit services market";
- the "credit services market";
- the "credit card services market";
- the "mortgage loan market";
- the "vehicle loan market";
- the "credit services for small and medium sized enterprises"; and
- the "personal and commercial loan market".

The Board noted that the market definition could in fact be left open, since the allegations concerned anti-competitive agreements and concerted practices. However, considering that the documents obtained during the preliminary investigation related to different types of banking services – markets and transactions in nature – the Board determined the relevant markets to be:

- "institutional banking services";
- "financial derivatives";
- "fund (management)";
- "bonds/bill of exchange"; and
- "currency trading (FX)".

The Board explained the banking products that fell into each of the defined relevant product markets by taking into account its previous decisions regarding the finance sector. The Board further discussed the situations that could lead to the exchange of competitively sensitive information for each relevant market. In this sense, in order to provide a clearer view of the relevant markets, the relevant precedent of both other authorities and the Board are set out below.

Referenced foreign investigations

Although the Board has imposed no administrative monetary fines due to manipulative actions in the financial markets, these actions regarding the banking sector, especially benchmark reference rates and foreign exchange markets, have been on the agenda of other competition authorities and financial regulators in recent decades.

In 2013, the Department of Justice investigated the manipulation of interbank offered rates and decided that the Royal Bank of Scotland and Deutsche Bank had violated the Sherman Act.[(2)] In another case regarding the London interbank offered rate (Libor), Libor was characterised as an indispensable part of the price of the financial products and therefore it was held that the fixing of this component of price violated antitrust laws.[(3)]

Similarly, the UK financial regulator, the Financial Conduct Authority (FCA) opened an investigation concerning Libor and Euro interbank offered rate reference rates in interbank lending rates in 2010. The FCA imposed £758.7 million in fines between 2012 and 2015 for directly altering submissions to interbank lending rates and for influencing other banks to change their submissions. Accordingly, in November 2018, the UK Competition and Markets Authority launched an ongoing investigation into suspected anticompetitive agreements in the bond market.

In 2011, the European Commission (EC) started investigating price-fixing practices in the financial sector. The EC investigated alleged manipulations of the foreign exchange market used to trade currencies (Forex). Following this preliminary investigation, the EC initiated an investigation in 2016 and found that traders had communicated in different consecutive chatrooms on the Bloomberg terminal. In this vein, the EC settled with the undertakings and fined five banks €1.07 billion for participating in two cartels in the spot foreign exchange.[(4)]

In 2021 the EC concluded two cartel decisions regarding the finance sector:

- In April 2021, the EC fined Bank of America Merrill Lynch, Crédit Agricole, and Credit Suisse €28.49 million for participating in a bonds trading cartel by exchanging commercially sensitive information and coordinating on prices concerning US dollar-denominated supra sovereign, sovereign and agency bonds.
- In May 2021, the EC fined Nomura, UBS and Unicredit €371 million for participating in a cartel in the primary and secondary market for European government bonds by exchanging commercially sensitive information and coordinating on trading strategies for the bonds at different periods.[(5)]

Board's precedents regarding information exchange in finance sector

Information exchange is the main concern of the Board in the finance sector. Due to the multi-layered structure of the finance sector, it has come under the radar of the Board several times.[(6)]

In its *FX* decision,[(7)] the Board initiated a preliminary investigation against 14 undertakings active in the financial markets and scrutinised traders' communications with competitor traders on chat rooms on Reuters and Bloomberg terminals. The Board was concerned with the allegations that traders of these undertakings exchanged up-to-date competitively sensitive information, such as information on the amount of purchases and sales of customers, and carried out stop-loss hunting and front-running to affect the exchange rate.

Unlike its approach in its *12 Banks* decision, the Board held that the acts did not share a systematic characteristic and were not continuous, since the obtained correspondence had taken place at different times within a five-year period and by different traders. Although the Board remarked that while the information exchanged carried a competitively sensitive aspect and that some traders had requested to enter misleading quotations, the information exchange was discrete in terms of competition and did not have an effect since the exchanged information was aimed at gaining a higher profit in favour of their customers, rather than damaging the competition. In this sense, the Board decided to not to launch a full-fledged investigation in its *FX* decision on the grounds that there was a difference between an anti-competitive agreement and manipulation.

Decision

First, the Board asserted that it was necessary to evaluate which interactions between the financial players would be accepted as anti-competitive agreements and/or manipulative conduct.

The Board noted the similarity between the manipulation and an agreement since both have an element of artificiality. However, the Board also remarked the two different points between the definitions as follows:

- Manipulation is a term that only concerns the artificial determination of price, supply and demand of financial instruments/products and services that are traded in financial markets, whereas the concept of anti-competitive agreements, from physical markets to financial markets, concerns every market conceivable.
- While manipulation can be realised by one party only, for the existence of a violation within the meaning of article 4 of Law No. 4054, there must be an agreement, coordination or exchange of competitively sensitive information between two undertakings.

The Board stated that the following aspects are important:

- whether the information exchange between the traders is against competition;
- the nature of the information exchanged; and
- whether the information has an anticompetitive effect in the relevant market structure.

Further, the Board underlined that the evaluation of the exchange of information for each relevant product market had to be made separately since each market has its own specific characteristics.

The Board found that the information exchange between the traders regarding its positions (short or long term) may have a negligible effect in terms of competition since financial markets are complex, high-volume, unstable and multiplayer, and the dynamic market structure causes information to become out of date in a short time. Indeed, in the *FX* decision, the Board held that the manipulation aspect of the conducts of the investigated parties outweighed the anti-competitive aspects and that front-running and stop-loss hunting conduct do not relate to competition in terms of gaining customers; instead, they constitute manipulative cooperation, which is fundamentally directed to deceiving the customer.

However, the Board also noted that the market conditions should not be interpreted in a way that grants full immunity to the undertaking active in financial markets in terms of information exchanges and that they should be evaluated on a case-by-case basis. The Board underlined that it is highly likely that information exchanges will lead to a direct violation where:

- they are continuous;
- they are the result of planned actions, which makes traders take similar actions, and are related to future data; and
- the transaction in question is high volume and contains information on recent trading of a third-party undertaking.

Comment

The Board remarked that there were no indications that the banks, financial institutions and their agencies had violated Law No. 4054 and decided not to undertake a full-fledged investigation. Within the scope of the reasoned decision of the Board, it introduced additional

criteria as to whether the manipulation conducts were anti-competitive in addition to the *FX* decision. It seems that the Board will adopt a more conservative approach and look into the volume of the transaction and age of data while evaluating its impact analysis in a possible investigation.

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Endnotes

(1) The Board's *Banks and Financial Institutions* decision (26 August 2021, 21-40/576-279).

(2) *USA v The Royal Bank of Scotland Plc*, 5 February 2013, 13-cr-00074 and DC, *USA v Deutsche Bank AG*, 23 April 2015, 15-cr-00061-RNC.

(3) *Gelboim v Bank of America Corporation*, 23 May 2016.

(4) Case AT.40135 – Forex-Three Way Banana Split and Case AT.40135 – Forex-Essex Express.

(5) Case AT.40324 – European Government Bonds.

(6) The Board's *Wage Promotion* decision (7 March 2011, 11-13/243-78), *12 Banks* decision (8 March 2013, 13-13/198-100) and *Syndication Loans* decision (28 November 2017, 17-39/636-276).

(7) The Board's FX decision (24 November 2016, 16-41/667-300).