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Turkish Competition Board finds price fixing improbable due to publicly available tuition fees and service differentiation

**ELIG Gürkaynak Attorneys-at-Law | Competition & Antitrust - Turkey**

GÖNENÇ GÜRKAYNAK,  
BARAN CAN YILDIRIM,  
PETEK GÜVEN



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## **Introduction**

On 29 September 2023, the Turkish Competition Authority published the Turkish Competition Board's reasoned decision<sup>(1)</sup> concerning the allegation that private schools in Istanbul and Ankara violated article 4 of Law No. 4054 on the Protection of Competition ("Law No. 4054") through mutual determination of tuition fees for primary and secondary school education.

The Board held that the evidence obtained within the scope of the preliminary investigation launched on 6 October 2022 against 15 private schools<sup>(2)</sup> and the Private Schools Association of Türkiye (TÖZOK) did not demonstrate the existence of price coordination among the concerned parties and decided not to launch a full-fledged investigation.

This article aims to provide an overview of the decision and offer insight into the Authority's continued scrutiny into the conduct of private schools in Turkey.

## **Background of Turkish private school sector**

Pursuant to Basic Law No. 1739 on National Education (Law No. 1739), mandatory primary education, which covers children between the ages of six and 14, consists of four-year primary schools and four-year middle schools that allow choice between different programmes. However, secondary education consists of general, vocational and technical education institutions providing four-year compulsory formal or non-formal education, high schools and vocational education centres applying various programmes. All public, private and voluntary organisations in Turkey are subject to the supervision of the Ministry of National Education in terms of the conformity of their educational activities with the objectives of "national education".

The Regulation on Private Education Institutions of the Ministry of National Education stipulates that the schools can freely determine the fees for newly enrolled 1st, 5th and 9th grade students through agreements signed with parents based on their own cost structures without being subject to any limit. However, when determining the increase on fees for intermediate grades (ie, those other than 1st, 5th and 9th grades) a maximum of 5% increase can be made in addition to the increase that is based on the average " $(\text{domestic PPI}^{(3)} + \text{CPI}^{(4)})/2$ " ratio.

The Regulation further provides that schools cannot oblige parents to purchase:

- meals;
- breakfast;
- school bus services;
- dormitories or boarding houses;
- books;
- stationery;
- clothing; and
- tutoring and similar non-teaching services.

Additionally, parents can only benefit from these services on request. It is also regulated that students cannot be:

- charged any fees under any name other than those specified in the Regulation;
- requested to pay any amount before the fee announcement; and

- charged a fee above the fees announced by the schools between January and May of each year.<sup>(5)</sup>

Against this legislative background, the Board analysed the relevant product and geographic markets within the scope of the file with particular focus on the sector's structure and development in Turkey. Accordingly, the Board has stated that the relevant product market may be defined as the "private school management services market for primary and secondary education", as private education in Turkey is carried out within the framework of Law No. 1739 and Law No. 5580, and private school services cannot be substitutable with any other service. However, the Board ultimately held not to precisely define a relevant product market by assessing that the existence of a precise definition would not affect the conclusion of the file under paragraph 20 of the Guidelines on the Definition of Relevant Market.

The Board thoroughly considered the data collected throughout the pre-investigation on various aspects of the market such as the breakdown of private and public schools in Turkey as well as Istanbul and Ankara, and the total number of students enrolled in each type of school during the period between 2017 and 2022. Considering the information obtained, the Board concluded that the student portfolio of private primary and secondary schools in Istanbul and Ankara is mostly limited to students within the provincial borders, and competition conditions vary among cities as evident from the significantly differing education prices in Istanbul and Ankara. Therefore, while the Board stated that the relevant geographic markets could be defined narrowly as "Istanbul" and "Ankara" for the case at hand, similar to its assessment for the relevant product market, it has eventually concluded that no relevant geographic market should be defined pursuant to paragraph 20 of the Guidelines.

## **Board's assessment and decision**

### ***Evaluation of tuition fees***

The decision includes the Board's detailed evaluations on the price increases and strategies implemented by the 15 private schools and TÖZOK, and the findings obtained during the on-site inspections conducted within the scope of the pre-investigation, as well as from publicly available sources.

The Board first analysed the nine private schools in Istanbul in tuitions for students newly enrolling into 1st, 5th and 9th grades, and found it evident that the fee amounts, and pricing strategies determined by the six private schools in Istanbul except for Işık-H,<sup>(6)</sup> Terakki and MEF significantly differ from each other. A similar picture was noted for the Ankara market, with the six private schools in Ankara displaying an even clearer difference in tuitions for students newly enrolling into 1st, 5th and 9th grades than that in Istanbul, and ultimately assessed that the fees and pricing strategies were sufficiently diverse.

The Board then emphasised that the opportunities offered by private schools to their students are far too heterogeneous to allow them to coordinate their tuition fee amounts with competitors. Therefore, it was remarked that although private schools may be motivated to increase their profits through anticompetitive means, the only way to do so would be to adopt a strategy in which they mutually agree on the rate of fee increases they implement to be able to set a price above the competitive price and guarantee that the demand for their services will not decrease as a result of the increase in competitor prices at the same rate. Accordingly, the Board observed the increase rates of the parties between 2019 and 2022 and concluded that the rates differed among private schools despite sporadic similarities, which were attributed by the Board to the private schools' tendency to apply the maximum increase rates determined by the Ministry for intermediate grades to new enrolment fees as well to prevent price imbalance among classes within the same school and navigate reaction from parents.

Subsequently, the Board supported its data-based evaluations with its commentary on the findings obtained during the on-site inspections conducted within the scope of the Pre-Investigation. In this regard, the Board's analysis concluded that even though all of the findings contained information on the tuition fees of competing private schools, it is evident from both the circumstances and dates of the findings that all of this information was obtained from publicly available sources, or the announcements published by private schools on annual tuitions. Therefore, the Board stated that the findings do not give rise to the suspicion that there is an agreement on tuition fees or an exchange of competitively sensitive information in the Istanbul and Ankara markets.

As for Işık-H, Terakki, and MEF, the Board assessed that while certain branches of these three schools are close in location to each other may raise the suspicion of a price-fixing agreement between them at first

glance, upon closer inspection, it is apparent that each of their discounts are applied in different categories and at varying rates on a student basis. In addition, the Board observed that the three schools increased their prices for both teaching and non-teaching services at different rates in 2020 and 2021, and the increase rates only converged in 2022, a similarity which may have once again stemmed from the fact that the maximum rate determined by the Ministry for intermediate grades is also reflected in the increase rates for new enrolments. Considering this and in addition to the fact that the on-site inspections conducted at Işık, Terakki, and MEF had not yielded any finding to support the contrary, the Board concluded that the conduct of these three private schools did not give rise to anticompetitive behaviour.

### ***Evaluation of fees for non-education services***

As a second point, the Board also evaluated the annual lunch fees of the 15 private schools in Istanbul and Ankara to identify the potential existence of an agreement between competitors over these services. Within this scope, it was concluded that although some schools charged amounts closer to each other in some years, the overall variety in lunch fee amounts of the schools indicated that this convergence is not consistent and ongoing in either Istanbul or Ankara. The Board stated that this was fortified by the fact that the price increase rates applied to lunch fees showed divergence despite the occasional similarities in fee amounts.

Further, the Board evaluated that the findings obtained during the on-site inspections showed that the source of the price increase requests in non-teaching services is the service providers directly rather than private schools, and that parent-teacher associations are often directly involved in the agreements concluded with the service providers while the schools merely act as intermediaries.

### ***Evaluation of TÖZOK's announcement***

Within the scope of the file, TÖZOK's Twitter post from 4 January 2022, which was obtained from publicly available sources, was also evaluated. The post, which had announced that the maximum price increase rate determined by the Ministry for the 2022-2023 academic year, was deleted by TÖZOK on the same day on the grounds that it was understood by the parents as TÖZOK member private schools all were to implement the maximum rate of increase on their tuition fees, and another post explaining the announcement nature of the previous post was promptly published.

The Board first noted the fact that the maximum rate indicated in the deleted post was significantly higher than that actually determined by the Ministry using the same formula for 2022 may give rise to suspicion of anticompetitive conduct. However, upon further analysis, the Board held that this difference in rates was merely due to different interpretations of the Regulation, and that TÖZOK had in fact taken a different formula used by the Ministry in 2021 as its basis for the calculation of the 2022 rate. Further, the Board stated that the inflation figures used by the Ministry and TÖZOK were not the same, which gave rise to a change in PPI and CPI calculations. Therefore, the Board held that TÖZOK merely aims to inform private schools and parents about the maximum increase rate calculated in accordance with the Regulation.

Within the framework of these findings and assessments, the Board held against launching a full-fledged investigation against the 15 private schools and TÖZOK as no evidence of violation of article 4 of Law No. 4054 has been obtained during the pre-investigation.

### **Comment**

The decision revisits the issues that the Board had previously examined regarding private schools where, similar to the decision, no administrative sanction was imposed on private schools. In 2011, the Board had held that the organization of meetings by foundation schools operating in Istanbul to discuss and share information on tuition fees, scholarships and salaries for the 2001-2002 academic year constituted a violation of article 4 of Law No. 4054 but decided not to launch an investigation due to the statute of limitations.<sup>(7)</sup> Subsequently, in 2012, the Board decided not to launch an investigation in response to the allegation that private schools in Istanbul violated article 4 by increasing their fees at the same time at a high rate, since there was no evidence that the schools in question coordinated price increases.<sup>(8)</sup>

The decision is followed by the Board deciding not to launch an investigation to determine whether Kocaeli Chamber of Commerce facilitated a cartel among private schools in Kocaeli,<sup>(9)</sup> and its decision not to impose any administrative monetary fine upon private schools in Ankara investigated for a potential violation of article 4.<sup>(10)</sup> Most recently, the Board has an ongoing investigation to determine whether

private schools in Kocaeli have violated Article 4.<sup>(11)</sup> Based on the foregoing, it is evident that the Authority continues to intensely scrutinise the private school sector in Türkiye.

*For further information on this topic please contact Gönenç Gürkaynak, Baran Can Yıldırım, or Petek Güven at ELIG Gürkaynak Attorneys-at-Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@eliglegal.com, can.yildirim@elig.com or petek.guven@elig.com). The ELIG Gürkaynak Attorneys-at-Law website can be accessed at [www.elig.com](http://www.elig.com).*

## Endnotes

(1) The Board's decision dated 23 November 2022 and numbered 22-52/776-320.

(2) The private schools subjected to the pre-investigation were:

- Açı Eğitim Öğretim Hizmetleri A.Ş;
- Bahçeşehir Okulları A.Ş;
- Bilfen Eğitim Kurumları A.Ş;
- Arı Inovasyon ve Bilim Hizmetleri A.Ş;
- Rüstem Eyüboğlu Eğitim Kurumları A.Ş;
- Feyziye Mektepleri Vakfı Işık Okulları İktisadi İşletmesi;
- İstek İstanbul Eğitim Hizmetleri A.Ş;
- MEF Okulları ve Özel Eğitim Hizmetleri A.Ş;
- Terakki Eğitim Yayıncılık Organizasyon Hizmetleri ve Tic. A.Ş;
- Geliştirme Vakfı Özel Lisesi Ticari İşletmesi;
- Başkent Üniversitesi Özel İlk ve Orta Öğretim Kurumları Tic. ve San. A.Ş;
- İhsan Doğramacı Vakfı Özel Bilkent Lisesi Ortaokulu ve İlkokulu İktisadi İşletmesi;
- ODTÜ Geliştirme Vakfı Eğitim Hizm. A.S;
- TED Ankara Koleji Vakfı Okulları İktisadi İşletmesi; and
- Tezer Özel Eğitim Hiz. Spor Malz. San. Tic. Ltd. Şti.

(3) Producer price index.

- (4) Consumer price index.
- (5) The fact that tuition and other fees are to be determined by private schools every year and announced between January and May of each year is regulated by Law No. 5880 on Private Education Institutions (Law No. 5880).
- (6) For Bahçeşehir, Bilfen, and Işık, the Board added the suffixes "-H" and "-L" to the schools' names to indicate the prices of these schools' respective highest and lowest priced branches.
- (7) The Board's decision dated 3 March 2011 and numbered 11-12/226-76.
- (8) The Board's decision dated 27 December 2012 and numbered 12-68/1681-617.
- (9) The Board's decision dated 28 April 2023 and numbered 23-19/374-129.
- (10) The Board's decision dated 07 December 2023 and numbered 23-56/1120-398. The reasoned decision has not been published on the Authority's website at the date of publishing.
- (11) The Board's decision dated 28 March 2023 and numbered 23-19/374-M.