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Turkiye

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Overview of the law and enforcement regime relating to cartels

The national competition authority for enforcing the cartel prohibition and other provisions of the Competition Law in Turkiye is the Turkish Competition Authority ("***Competition Authority***" or "***Authority***"). The Competition Authority has administrative and financial autonomy. It consists of the Competition Board ("***Competition Board***" or "***Board***"), Presidency and service departments. There are six divisions, with sector-specific work distribution, that handle Competition Law enforcement work through approximately 288 case handlers. The other service units consist of the following: (i) the department of decisions; (ii) the economic analysis and research department; (iii) the information management department; (iv) the external relations, training and competition advocacy department; (v) the strategy development, regulation and budget department; (vi) the administrative services department; (vii) the human resources department; and (viii) the cartel and on-site inspections support division or the leniency division.

The statutory basis for cartel prohibition and the enforcement regime is Law No. 4054 on the Protection of Competition of 13 December 1994 ("***Competition Law***"). In 2020, the Competition Law was subject to essential amendments, which passed through the Grand National Assembly of Turkiye on 16 June 2020 and entered into force on 24 June 2020 ("***Amendment Law***") on the day of its publication in Official Gazette No. 31165.

The Competition Law finds its underlying rationale in Article 167 of the Turkish Constitution of 1982, which authorises the state to take appropriate measures to secure the functioning of the markets and prevent the formation of monopolies or cartels. The Turkish cartel regime, by nature, applies administrative and civil (not criminal) law. The Competition Law applies to individuals and companies alike and even to public corporations if they act as an undertaking within the meaning of the Competition Law. The Competition Law is similar to EU law and the Amendment Law seeks to add the Competition Authority's experience of more than 20 years of enforcement to the Competition Law and bring it closer to EU law. Article 4 of the Competition Law is the applicable provision for cartel-specific cases and provides the basic principles of the cartel regulation. The provision is akin to and closely modelled on Article 101(1) of the Treaty on the Functioning of the European Union ("***TFEU***"). Article 4 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices that have (or may have) as their object or effect the prevention, restriction or distortion of competition. Similar to Article 101(1) of the TFEU, the provision does not explicitly define the term "cartel". However, Article 4 prohibits all kinds of restrictive agreements, including any form of cartel agreements.

Article 4 also prohibits any form of agreement that has the "potential" to prevent, restrict or distort competition. Again, this is a specific feature of the Turkish cartel regulation system,

granting broad discretionary power to the Board. Additionally, Article 4 sets out a non-exhaustive list that provides examples of possible restrictive agreements.

The prohibition on restrictive agreements and practices does not apply to agreements that benefit from a block exemption or an individual exemption issued by the Board. Vertical agreements are also caught by the prohibition laid down in Article 4, to the extent that they are not covered by block exemption rules or individual exemptions.

The Amendment Law introduced the *de minimis* principle under Article 41 of the Competition Law, with the aim to steer the direction of the Competition Authority and public resources toward more significant violations. The secondary legislation (Communiqué No. 2021/3), which provides details on the process and procedure related to the application of the *de minimis* principle, came into force on 16 March 2021. Overall, the *de minimis* principle applies to (i) agreements signed between competing undertakings, if the total market share of the parties to the agreement does not exceed 10% in any of the relevant markets affected by the agreement, and (ii) agreements signed between non-competing undertakings, if the market share of each of the parties does not exceed 15% in any of the relevant markets affected by the agreement, and the relevant agreements do not significantly restrict competition in the market. Moreover, the *de minimis* principle is not applicable to "clear and hard core violations". On this note, Communiqué No. 2021/3 defines "clear and hard core violations" as "agreements and/or concerted practices as well as decisions and practices of associations of undertakings on the following subjects, the goal of which is to directly or indirectly prevent, distort or restrict competition in the market for a good or service, or which have led or may lead to such effects: (i) price fixing among competing undertakings, allocation of customers, suppliers, regions or trade channels, restriction of supply amounts or imposing quotas, collusive bidding in tenders, sharing competitively sensitive information including future prices, output or sales amounts; and (ii) fixing flat or minimum sales rates of the buyer in a relationship between undertakings operating at different levels of a production or distribution chain". A similar definition of "clear and hard core violations" is provided by Communiqué No. 2021/2. In other words, cartels do not benefit from the *de minimis* principle.

The Board's general practice shows that horizontal restrictive agreements, such as price fixing, market allocation, collective refusals to deal (group boycotts) and bid rigging, have consistently been deemed to be *per se* illegal.

The Turkish competition regime also condemns concerted practices. The Competition Authority may apply "the presumption of concerted practice" and thus can easily shift the burden of proof for the investigated parties in connection with concerted practice allegations, too. Similar to the EU competition law regime, a concerted practice is defined as a form of coordination between undertakings that, without having reached the stage where a so-called agreement has been properly concluded, knowingly substitutes practical cooperation between them for the risks of competition. Therefore, this is a form of coordination, without a formal "agreement" or "decision", by which two or more companies come to an understanding to avoid competing with each other. The coordination does not need to be in writing; it is sufficient if the parties have expressed their joint intention to behave in a particular way, perhaps in a meeting, via a telephone call or through the exchange of letters.

Overview of investigative powers in Turkiye

The Competition Law provides vast investigative powers to the Competition Authority, such as the power to conduct dawn raids and to apply other investigatory tools (e.g., formal

information request letters). The prevention or hindering of a dawn raid could result in the imposition of an administrative monetary fine.

Article 15 of the Competition Law authorises the Board to conduct on-site investigations. The Amendment Law introduced changes to Article 15 that expand the scope of the Board's authority during on-site investigations, and further details are provided in the Guidelines on Examination of Digital Data during On-site Inspections. The amendments match the recent practice of case handlers and, currently, the Board is entitled to:

- examine and make copies of all information and documents in companies' physical records as well as those in electronic mediums and IT systems (including, but not limited to, any deleted items);
- request written or verbal explanations on specific topics; and
- conduct on-site investigations with regard to any asset of an undertaking.

Additionally, the Guidelines on Examination of Digital Data during On-site Inspections enable the Competition Authority to examine mobile devices (such as mobile phones and tablets), unless it is determined that such devices are used solely for the personal use of a given employee. Regardless, the Board is authorised to conduct a quick review of any portable electronic device to determine its intended purpose. Refusal to grant Competition Authority staff access to business premises may lead to the imposition of a fixed fine of 0.5% of the annual turnover. The minimum fine for 2024 is TRY 167,473. It may also lead to the imposition of a fine of 0.05% of the turnover for each day of the violation.

Although the Competition Law obliges employees to provide a verbal testimony during the dawn raid, case handlers usually allow for providing an answer after the occurrence of the dawn raid. Therefore, in practice, employees can avoid providing answers on issues that are uncertain to them, provided that a written response is submitted in a mutually agreed timeline. Case handlers of the Competition Authority may fully examine computer records, including, but not limited to, deleted mail items.

Officials conducting a dawn raid must be in possession of a deed of authorisation issued by the Board. The deed of authorisation must specify the subject matter and purpose of the investigation. The inspectors are not entitled to exceed their authorisation. Hence, the inspectors must not exercise their investigative powers in relation to matters that do not fall within the scope of the investigation specified in the deed of authorisation. Therefore, Competition Authority officials may not copy documents or record verbal testimonies that are not related to or covered by the scope of the investigation.

The Constitutional Court of the Republic of Turkiye ("***Constitutional Court***") published on 20 June 2023 its reasoned decision dated 23 March 2023 with the application No. 2019/40991, which may potentially impact the standard of due process in the Authority's dawn raid practice. The decision, in brief, rules that the Authority is obliged to obtain a court decision (i.e., a warrant) allowing the Authority officials to conduct a dawn raid. In the standard practice of the Authority, which was in full compliance with the Competition Law, the case handlers of the Authority have been able to legally conduct the dawn raids with the certificate of authorisations that can be issued by the Competition Board. However, the Constitutional Court found that although the Authority's dawn raid practice has been in compliance with the Competition Law, the provisions of Article 15 of the Competition Law regulating dawn raids is unconstitutional as it does not require the Authority to obtain a court decision before conducting dawn raids in contravention of Article 21 of the Turkish Constitution protecting the immunity of domicile.

Since the Constitutional Court found that the Authority's practice has been in full compliance with the Competition Law, but certain provisions of the Competition Law regulating dawn raids are unconstitutional, the said provisions of the Competition Law are likely to be amended in the near future to comply with the decision. Meanwhile, however, it is considered that the dawn raid practice of the Authority should not be significantly affected in a way that would lessen the frequency of its dawn raids. Indeed, with a view to comply with the decision, the Authority would now be expected to apply to the Criminal Court of Peace (first instance criminal courts) to obtain a warrant allowing the Authority's case handlers to conduct the necessary dawn raids. This application is already a process that is foreseen by the Competition Law and applied to by the Authority from time to time.

At the site of a dawn raid, Competition Authority staff are not obliged to wait for a lawyer to arrive. However, the staff usually agree to wait for a short while for a lawyer to arrive, but may impose certain conditions (e.g., to seal file cabinets or disrupt email communications).

The Competition Authority may also request all information it deems necessary from all public institutions and organisations, undertakings and trade associations. Officials of these bodies, undertakings and trade associations are obliged to provide the necessary information within a fixed period of time. Failure to comply with a decision ordering the production of information may lead to the imposition of a turnover-based fine of 0.1% of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). The Board may impose the same amount of fine if an undertaking provides incorrect or incomplete information in response to the Competition Authority's request for information.

Overview of cartel enforcement activity during the last 12 months

Developments in cartel enforcement in Turkiye may be illustrated with an overview of the most notable cartel cases that the Board has examined in recent years.

According to the Competition Authority's decision statistics of the Authority for 2022, the Board finalised a total of 78 cases concerning Competition Law violations. Of these, 64 cases came under Article 4 of the Competition Law (anti-competitive agreements) and six cases concerned both Article 4 and Article 6 (abuse of dominant position). As per the annual report for 2022, the Board issued a total of TRY 1,379,322.246 in monetary fines for Article 4 cases in 2022. The monetary fine total for Article 4 cases in 2022 was roughly half of 2021, while the total of monetary fines imposed in Article 6 cases increased compared to the amount of fines imposed in 2021. In this regard, there has been a decrease in the monetary fines that were levied under Article 4. Specifically, the Board imposed monetary fines totalling TRY 375,997,540 in relation to horizontal anti-competitive arrangements in 2022, while the monetary fines for such arrangements in 2021 and 2020 were TRY 687,288,455 and TRY 60,030,330, respectively.

Alanya Chamber of Electrical Engineers decision

In the Alanya Chamber of Electrical Engineers decision (22-48/699-M, 20 October 2022), the Board assessed whether a group of electrical engineers who were members of the Chamber of Electrical Engineers, District Representation in Alanya, had violated Article 4 of Law No. 4054 by way of fixing minimum prices. The Board concluded that the electrical engineers, either personally or via the companies they control, had been engaged in a cartel. The investigation concluded by way of settlement involving all the parties to the investigation.

Eczacıbaşı decision

In the Eczacıbaşı decision (23-13/212-68, 9 March 2023), the Board concluded its investigation against Eczacıbaşı Tüketim Ürünleri San. ve Tic. AŞ with settlement. The investigation focused on the allegations that Eczacıbaşı's involvement in a hub-and-spoke cartel, coordinating price increases of downstream retailers and fixing resale prices. It was determined that Eczacıbaşı engaged in anti-competitive behaviour as a party to a hub-and-spoke cartel. The discussions involved aspects such as determining shelf prices, coordinating timing for retailers to implement price hikes, organising simultaneous increases, and sharing information about other retailers' behaviours to persuade them to raise prices. The investigation concluded with a settlement text submitted by Eczacıbaşı, resulting in a maximum 25% reduction in the administrative fine. Consequently, an administrative fine of TRY 17,525,798.63 was imposed for the hub-and-spoke cartel violation and TRY 8,762,899.32 for the resale price maintenance violation.

Egg producers decision

In terms of another decision regarding cartels, the Board pronounced its final decision on the fully-fledged investigations regarding the egg sector on 31 October 2023. To provide further colour on that front, in May 2022, the Board initiated two separate fully-fledged investigations into the egg sector based on allegations of price fixing, regional allocation, and quantity restrictions. These allegations were thoroughly examined in the first fully-fledged investigation, which targeted a total of 34 egg producers, and the second fully-fledged investigation, which involved 13 egg producer associations and an additional 12 egg producers.

During the first fully-fledged investigation involving egg producers, 14 undertakings submitted applications for settlement procedure. As a result of the settlement procedures, the investigations for undertakings that acknowledged the existence and scope of the violation were concluded with Board decisions determining the violation and imposing administrative monetary fines.

Moving on, both investigations were completed with decisions rendered by the Board on 26 October 2023.

In the first fully-fledged investigation into egg producer undertakings, the Board determined that a total of 26 undertakings collectively fixed egg prices and shared the regions where they sold eggs and the Board evaluated these behaviours as cartel, which is the most severe violation in competition law. In the second fully-fledged investigation, the Board found that the investigated parties, which were egg producer associations, determined egg prices and restricted the egg supply quantity. The Board evaluated that the behaviours of these undertakings and associations of undertakings fell within the scope of Article 4 of the Law No. 4054. Therefore, as a result of these investigations, a total of approximately TRY 98 million in administrative monetary fines was imposed on the parties found to have violated the Competition Law.

Chain stores decision

In respect of cartel enforcement activity, the Board issued a reasoned decision that concluded imposition of an administrative monetary fine against chain markets engaged in retail food and cleaning products and their supplier, for their cartel arrangement (21-53/747-360, 28 October 2021). The Board found that five chain markets, directly or indirectly, through their supplier, and their supplier:

- coordinated their prices or price transitions;
- shared competitively sensitive information;
- colluded on and heightened prices through retailers against the good of consumers; and
- observed and maintained the said collusion.

Thus, the Board decided that the relevant undertakings violated Article 4 of the Competition Law. In this respect, the Board imposed a total administrative monetary fine of over TRY 2.6 billion on the undertakings. This was the highest monetary fine imposed by the Board for an entire case (i.e., total fine on all companies covered by the cartel conduct) as a result of a cartel investigation. In the same case, the Board also imposed the highest monetary fine it imposed on a single company as a result of a cartel investigation – which was TRY 958,129,194.39. This monetary fine was imposed by the Board on BİM Birleşik Mağazalar A.Ş. ("***BİM***") (21-53/747-360, 28 October 2021). This amount represented 1.8% of BİM's annual gross revenue for the year 2020.

In harmony with its continuing focus on the fast-moving consumer goods sector, the Competition Board concluded another investigation just before the end of 2022 (22-55/863-357, 15 December 2022) following its recent investigation (21-53/747-360, 28 October 2021). As a result of this latest investigation, the Competition Board imposed administrative monetary fines based on a hub-and-spoke cartel once again while also fortifying its decisional practice in terms of the application of the *ne bis in idem* principle by way of not imposing administrative monetary fines to certain chain stores and suppliers/retailers.

The Competition Authority received one leniency application in 2021, which centred on the electronic sector and resulted in the full reduction of the administrative monetary fine in accordance with Article 5 of the Regulation on Active Cooperation for Discovery of Cartels ("***Regulation on Leniency***").

Gedik decision

In another recent decision (21-20/247-104, 8 April 2021), the Board conducted an investigation against Gedik Kaynak Sanayi ve Tic. A.Ş. ("***Gedik***"), Kaynak Tekniği San. ve Tic. A.Ş. ("***Askaynak***") under the control of Lincoln Electric Holdings, Inc., and Oerlikon Kaynak Elektrodları ve Sanayi A.Ş. ("***Oerlikon***")/Magmaweld Uluslararası Tic. A.Ş. ("***Magmaweld***") under the control of Zaimoğlu Holding A.Ş., to decide whether these undertakings had violated Article 4 of the Competition Law. The Board found that, in 2011, the general managers of Gedik, Askaynak and Oerlikon/Magmaweld (i) took joint decisions on product prices and sales methods, (ii) showed an effort to ensure implementation of these decisions by each undertaking, and (iii) warned those who did not comply with such decisions. Based on these findings, the Board decided that there was a cartel infringement in 2011 but did not impose an administrative fine on the investigated undertakings for their violation in 2011 due to the expiration of the eight-year statute of limitation. For the following periods from 2011 to 2019, the Board reached the conclusion that there is no sufficient finding to prove that the undertakings violated Article 4 of the Competition Law by stating that (i) in the light of the economic analysis, the price changes did not show the effect of an infringement, and, therefore, (ii) the presumption of the concerted practice cannot be applied for the period of 2017–2019 since there are no indications of "market behavior that provides a presumption of communication".

Healthcare sector decision

The Competition Board's recent healthcare sector decision (22-10/152-62, 24 February 2022) is a significant example of its enforcement activity: it investigated 29 undertakings and associations of undertakings and imposed monetary fines under three different

violations. Considering price fixing regarding freelance doctors and other services as a single violation, the Competition Board concluded that six undertakings had established a pricing cartel in two different cities. On the other hand, the Competition Board found that the practices of 16 undertakings aimed at limiting competition in the labour market by preventing personnel transfers and wage fixing constituted another single violation of Article 4 of the Competition Law. Finally, the Competition Board imposed administrative monetary fines on eight undertakings on the grounds of exchanging competitively sensitive information; seven undertakings were found to have been directly active in information exchange, while one was a facilitator.

Beypazarı/Kınık decisions

In the Board's Beypazarı/Kınık decisions (Decision Nos 22-17/283-128 of 14 April 2022 and 22-23/379-158 of 18 May 2022), it decided that the undertakings had violated Article 4 of the Competition Law by way of implementing fixed prices, exchanging current and future price information and, therefore, establishing a cartel. The Board found evidence on exchange of information on future prices and decided that Beypazarı and Kınık were in an agreement for the purpose of restricting competition; in other words, a cartel agreement. Importantly, these decisions constitute the first combined application of the settlement and leniency mechanisms. The Competition Board applied a 25% reduction (the highest possible reduction) under the Regulation on the Settlement Procedures to be applied during Investigations Regarding Anti-competitive Agreements, Concerted Practices and Decisions as well as Abuse of Dominance and a 35% reduction under the leniency application, reducing the administrative monetary fine by 60% in total. Thus, the monetary fines imposed on Kınık were significantly reduced from TRY 2,322,328.75 to TRY 928,931.50. For Beypazarı, which applied for lenience after Kınık, the monetary fines were also reduced significantly, from TRY 21,885,323.28 to TRY 9,848,395.48.

MDF decision

In the MDF decision (21-18/229-96, 1 April 2021), the Board concluded that AGT Ağaç Sanayi ve Ticaret A.Ş., Çamsan Ordu Ağaç San. ve Tic. A.Ş., Divapan Entegre Ağaç Panel San. Tic. A.Ş., Gentaş Dekoratif Yüzeyler Sanayi ve Ticaret A.Ş., Kastamonu Entegre Ağaç Sanayi ve Ticaret A.Ş., Kronospan Orman Ürünleri San. ve Tic. A.Ş., Orma Orman Mahsulleri Entegre San. ve Tic. A.Ş., Starwood Orman Ürünleri Sanayii A.Ş., Teverpan MDF Levha Sanayii ve Ticaret A.Ş., Yıldız Entegre Ağaç San. ve Tic. A.Ş., and Yıldız Sunta Orman Ürünleri Sanayi Tesisleri İth. İhr. ve Tic. A.Ş., all producers of medium density fibreboard ("***MDF***") and chipboard, were involved in a cartel agreement to fix the price increase timing and percentages regarding MDF and chipboard products. In the relevant case, although the violation had occurred in two different time periods (namely 2014 and 2016–2017), the Board determined that a single base fine for both time periods should be applied with respect to the violation.

The investigations that have been initiated by the Competition Authority so far clearly show that it does not focus on any specific sectors when it comes to the investigation of cartel behaviour, but rather aims to tackle any conduct or practice that might point to a restriction of competition among competing undertakings. It is expected that the trend will continue in its future cases.

Key issues in relation to enforcement policy

The Competition Authority places equal emphasis on all areas of enforcement. The significance of the cartel enforcement regime under the Competition Law has nonetheless been repeatedly underlined by the Presidency of the Competition Authority.

There are neither industry-specific offences nor defences subject to particular scrutiny. The Competition Law applies to all industries, without exception. In terms of cartel enforcement, food, cement, information and communication technology, pharmaceuticals, healthcare, medical equipment, cleaning products, household appliances, building material, automotive, and retail have recently been under investigation for cartel and concerted practice allegations.

It is fair to say that the Board may at times consider policies that are not directly related to the protection of competition in the markets. The Turkish paper sector investigation (13-42/538-238, 8 July 2013) marks one of the extremely rare cases in Turkiye where a policy concern not directly related to the Competition Law (i.e., a policy concern relating to minimising trade deficit) may have played a role in the ultimate decision, together with a state action defence of the parties concerned, as the parties' collective behaviour was influenced by a set of rules brought by the relevant ministry tackling the trade deficit. The Board found that seven paper recycling companies had violated the Competition Law by harmonising their commercial behaviours and colluding against wastepaper producers that aimed to export wastepaper. However, the Board did not levy turnover-based monetary fines against the defendants, and granted three-year exemptions under objective criteria.

Key issues in relation to investigation and decision-making procedures

As the competent body of the Competition Authority, the Board is responsible for, *inter alia*, investigating and condemning cartel activity. A cartel matter is primarily adjudicated by the Board.

The Board may launch, *ex officio* or as a result of a notice or complaint, a preliminary investigation prior to initiating a fully-fledged investigation. At this preliminary stage, the undertakings concerned are usually not notified that they are under investigation, unless the Competition Authority decides to conduct a dawn raid or apply other investigatory tools (i.e., formal information request letters).

The Competition Authority experts submit a preliminary report to the Board within 30 days after the Board decides to launch a preliminary investigation. The Board then decides within 10 days whether to launch a fully-fledged formal investigation. If the Board decides to initiate an investigation, it sends a notice to the undertakings concerned within 15 days. The investigation is to be completed within six months. If deemed necessary, this period may be extended by the Board only once, for an additional period of up to six months.

Once the Investigation Notice has been formally served, the investigated undertakings have 30 days to prepare and submit their first written defences. Subsequently, the main investigation report is issued by the Competition Authority. Once this is served on the defendants, they have 30 days to respond, extendable for a further 30 days (this is the second written defence). The investigation committee will then have 15 days to prepare an additional opinion concerning the second written defence, which, as per the Amendment Law, is extendable for a further 15 days. The defending parties will have another 30-day period to reply to the additional opinion (third written defence), which is also extendable for a further 30 days. When this reply is served on the Competition Authority, the investigation process is to be completed (i.e., the written phase of investigation involving the claim/defence exchange will close with the submission of the third written defence).

An oral hearing may be held upon the request of the parties. The Board may also decide *ex officio* to hold an oral hearing. Oral hearings are held before the Board between 30 and 60 days following the completion of the investigation process under the provisions of

Communiqué No. 2010/2 on Oral Hearings. The Board renders its final decision within 15 days from the hearing if an oral hearing is held. Otherwise, the decision is rendered within 30 days from the completion of the investigation process. It usually takes around three to six months (from the announcement of the final decision) for the Board to serve a reasoned decision on the counterpart.

The Competition Authority's administrative enforcement is also supplemented with private lawsuits. Accordingly, in case of private suits, cartel members are adjudicated before the courts. Due to a treble damages clause allowing litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the cartel enforcement arena. Most courts wait for the decision of the Competition Authority and build their own decision on the Board's decision.

Leniency/amnesty regime

In addition to the Amendment Law, the Competition Law also underwent significant amendments in February 2008 – bringing a stricter and more deterrent fining regime, coupled with a leniency programme for undertakings. The secondary legislation specifying the details of the leniency mechanism is the Regulation on Active Cooperation for Detecting Cartels ("***Leniency Regulation***"). On 16 December 2023, the Leniency Regulation was published in the Official Gazette and came into effect. It replaced the former leniency regulation, which had been enforced since 15 February 2009. Guidelines on Explanation of the Regulation on Leniency, which were published in April 2013, are intended to be updated in parallel with the new Leniency Regulation.

Within the scope of the Leniency Regulation, the leniency programme is available to cartel parties as well as the cartel facilitators, which (i) expanded the scope of full immunity to the parties to a hub-and-spoke cartel or other cartel facilitators, who are, in practice, held liable for administrative sanctions in the same way as the cartel parties are, by allowing them to also benefit from active cooperation, and (ii) broadened the Authority's avenues for accepting leniency applications. The Leniency Regulation foresees that a cartel party or cartel facilitator that submits the information and documents and meets the conditions mentioned below qualifies for leniency within a period of three months following the receipt of Investigation Notice. Moreover, the applicant acquiring additional information and documents subsequent to the initial application, can submit these materials before the conclusion of the second written defence period.

Pursuant to the Leniency Regulation, the following conditions must be met before an applicant can benefit from immunity or fine reduction.

The applicant must submit:

- information on the products affected by the cartel;
- information on the geographical scope of the cartel;
- information on the duration of the cartel;
- the names and/or trade names and addresses of the cartelists and of cartel facilitators;
- the dates, locations and participants of the cartel meetings; and
- other information or documents about the cartel activity.

Aligned with the legislation of the EU, the Leniency Regulation introduces an additional requirement for applicants to qualify for a fine reduction. This condition mandates that applicants must provide documents deemed to have value, as defined in the Leniency Regulation as "information and/or documents that will reinforce the Board's ability to prove the cartel, taking into account the evidence already held by the Board". Within

this requirement, the Authority aims to establish a clear distinction between the active cooperation procedure and the settlement procedure. Despite the fact that the Leniency Regulation only offers a basic definition of the term "document that holds value", it is anticipated that the forthcoming revised Guideline on Leniency Programs will provide more comprehensive insights into determining which documents should be regarded as holding value. Additionally, if a leniency application from a particular undertaking is rejected due to the documents it submitted not meeting the criteria of "documents that hold value", the information and documents provided by that undertaking will be excluded from the file's scope. Consequently, they will not be considered as a basis for the final decision made at the conclusion of the investigation.

It is worth mentioning that with the Leniency Regulation, the expansion of the scope for the submission of information and documents now includes meetings conducted in a digital environment, along with the relevant information and documents produced during such interactions.

Depending on the application order, there may be total immunity from, or reduction of a fine. This immunity/reduction includes both the undertaking and its employees and managers, with the exception of the "ringleader", which can only benefit from a second-degree reduction of a fine. The conditions for benefitting from the immunity/reduction are also stipulated in the Leniency Regulation. Both the undertaking and its employees and managers can apply for leniency. A manager or employee of a cartelist may apply for leniency until the "investigation report" is officially served, in cases where there is not any evidence leading to violation of Article 4 at the Competition Authority's hand. That being said, if there is such evidence, a manager or employee of a cartelist may apply for leniency within three months after the Investigation Notice is served. Such an application would be independent from applications by the cartelist itself, if there are any. Depending on the application order, there may be total immunity from, or reduction of, a fine for such manager or employee. The requirements for such individual application are the same as stipulated above.

In terms of recent application of leniency mechanism, in the Biopharma decision (22-24/390-161, 26 May 2022), the Board imposed administrative monetary fines against Transorient Uluslararası Taşımacılık ve Ticaret A.Ş. ("***Transorient***") and Tunaset Biofarma Lojistik Hizmetleri A.Ş. ("***Tunaset***") for engaging in anticompetitive market allocation agreements. However, Biopharma Logistics Uluslararası Taşımacılık Sanayi ve Ticaret Anonim Şirketi ("***Biopharma Logistics***") received full immunity following its leniency application, despite the fact that two members of the Board argued that the agreement did not have any effects in the market.

Moreover, one of the Board's most important decisions concerning leniency applications rendered back in 2020 was the Süper Test decision. In the decision, the Board launched an investigation against 12 undertakings operating in the auto-expertise market for violating Article 4 by way of collectively fixing prices. Süper Test Oto Ekspertizlik Hizmetleri Sanayi ve Ticaret LLtd.Şti. ("***Süper Test***") made a leniency application on 4 April 2019 by providing information and documents including the names of the participants, dates and places regarding the cartel enforcement activity. Upon the Board's finding that the information and document stipulating the dates, parties and conduct of the violation provided by Süper Test contributed to the investigation, the Board reduced the administrative fine to be imposed on Süper Test by half, pursuant to the Regulation on Fines (see "Civil penalties and sanctions" below), while also imposing administrative fines on the remaining investigated parties (20-33/439-196, 9 July 2020).

Also, in another important leniency case – initiated by Arçelik Pazarlama AŞ's ("***Arçelik***") leniency application upon its discovery of the sharing of insider information by an Arçelik employee with various companies, including Arçelik's competitor Vestel Tipcart AŞ ("***Vestel***") – the Board found that Arçelik and Vestel did not violate Article 4 of the Competition Law as the investigated practices took place without the knowledge of the senior management, so they did not meet the mutual agreement criteria and it did not constitute concerted practice (20-01/13-5, 2 January 2020).

In 2017, the Board launched an investigation against 13 financial institutions, including local and international banks active in the corporate and commercial banking markets in Turkiye with respect to whether they had violated Article 4 of the Competition Law by way of exchanging competitively sensitive information on loan conditions (such as interest and maturity) regarding current loan agreements and other financial transactions (17-39/636-276, 28 November 2017). The Bank of Tokyo-Mitsubishi UFJ Turkiye A.Ş. ("***BTMU***") made a leniency application on 14 October 2015 to benefit from Article 4 of the Regulation on Leniency. After 19 months of in-depth investigation, the Board unanimously concluded that BTMU, ING Bank A.Ş. ("***ING***") and the Royal Bank of Scotland Plc. Merkezi Edinburgh İstanbul Merkez Şubesi ("***RBS***") violated Article 4 of the Competition Law. In this respect, the Board imposed an administrative monetary fine on ING and RBS in the amount of TRY 21.1 million (approximately EUR 1.4 million as of 26 January 2022) and TRY 66,400 (approximately EUR 4,356 as of 26 January 2022), respectively, over their annual turnover in the financial year of 2016. However, the Board resolved that BTMU should not have an administrative monetary fine imposed pursuant to its leniency application, granting full immunity to BTMU while also relieving the other investigated undertakings from an administrative monetary fine.

The other leniency application concerned the mechanical engineering sector (7-41/640-279, 14 December 2017) within the Burdur region. The case largely rested on the allegation that mechanical engineers in the Burdur region pooled their revenue and shared it on the basis of predetermined percentages. One of the defendants applied for leniency and was granted immunity.

One of the Board's notable decisions in which it granted full immunity was the *Yeast Cartel* case (14-42/783-346, 22 October 2014). The Board launched an investigation against four fresh yeast producers to determine whether they had violated Article 4 of the Competition Law through colluding to set prices for fresh bread yeast. It resolved that the investigated companies violated Article 4 and imposed administrative monetary fines on three of the undertakings, with a total amount of TRY 14 million (approximately EUR 918,611 as of 26 January 2021). The fourth undertaking, Mauri Maya, obtained full immunity, though it submitted its application for leniency after the preliminary investigation was initiated and following the dawn raids conducted at the premises of the undertakings. The Board considered the value and sufficient content of Mauri Maya's leniency application.

Overall, the Turkish leniency regime requires high standards for cooperation in the leniency procedure. For instance, in the *Steel Ring Manufacturers* case (12-52/1479-508, 30 October 2012), the Board stated that undertakings MPS Metal Plastik Sanayi Çember ve Paketleme Sistemleri İmalat Tic. A.Ş. ("***MPS***") and BEKAP Metal İnş. San. ve Tic. A.Ş. fixed the prices of steel strapping materials and were acting in collusion regarding certain tenders, and decided that both undertakings had violated Article 4 of the Competition Law. The Board considered the leniency application of MPS and imposed a fine equal to 1% of its annual gross income in 2011. The reason for the granting of partial immunity was that the

documents gathered at the on-site inspection allegedly already proved a cartel. However, it could be said that, in this case, the Board set a high standard for cooperation within the context of the leniency programme.

Another decision in which the Board sent a negative message to the business community by showing that leniency applications might not always be beneficial was the *3M* case (12-46/1409-461, 27 September 2012). In the *3M* case, the investigation team recommended that the Board revoke the applicant's full immunity on the grounds that the applicant did not provide all the documents that could be discovered during a dawn raid. Unfortunately, the Board's reasoned decision did not go into the details of the matter, as the case was closed without a finding of violation. It remains to be seen whether the Board will apply this approach again in the future.

In the *Sodium Sulphate* case (12-24/711-199, 3 May 2012), the Board imposed fines both on the cartelists and the persons having a determining effect on the violation, but eventually offered reductions in the fines after one cartelist and its general manager filed for leniency. In its decision, the Board stated that undertakings Otuzbir Kimya and Sodaş Sodyum fixed prices of sodium sulphate and shared customers between the years 2005 and 2011. Additionally, it also stated that Alkim Alkali Kimya, Otuzbir Kimya and Sodaş Sodyum collectively determined the prices of raw salt. The Board imposed a fine on Sodaş Sodyum equal to 3% of its annual gross income in the 2011 fiscal year, and simultaneously imposed a fine on Sodaş Sodyum's general manager, who was actively engaged in the infringement, in the amount of 3% of the administrative fine applied to Sodaş Sodyum. Sodaş Sodyum and its general manager filed for leniency and eventually received reductions at the rate of one-third and 50%, respectively, of the fines imposed.

In the decision regarding the Gaz cartel (10-72/1503-572, 11 November 2010), the Board offered full immunity to a leniency applicant, in spite of the fact that new evidence uncovered during the on-site inspection had shed light on the investigation. This constituted a landmark decision. Berk Gaz, which received full immunity, was the first applicant to apply for leniency. That said, Berk Gaz managed to convince the Board that it provided sufficient documents and information, while also fulfilling the other conditions set out in the Regulation on Leniency.

Administrative settlement of cases

The Amendment Law introduced a commitment and settlement mechanism under Article 43 of the Competition Law with an effort to end investigation processes in an appropriate manner. Furthermore, the Board enacted secondary legislation through the Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position, published on 16 March 2021, as well as the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position that was published on 15 July 2021.

The commitment mechanism allows parties to voluntarily offer commitments during a preliminary or fully-fledged investigation to eliminate the Authority's competitive concerns in terms of Articles 4 and 6. Depending on the sufficiency and the timing of the commitments, the Board can decide not to launch a fully-fledged investigation following the preliminary investigation or to end an ongoing investigation without completing the entire investigation procedure. The parties are allowed to submit commitments until three months following the

official service of the Investigation Notice. The commitment mechanism is not applicable to "hard core" violations including price fixing, territory or customer sharing and restriction of supply. In other words, the commitment mechanism is not applicable to cartels.

However, the settlement mechanism is applicable to "hard core" violations; in other words, cartels. Under the settlement mechanism, the Board may, *ex officio* or upon the parties' request, initiate a settlement procedure. As per the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position, parties that admit to competition infringement until the official notification of the investigation report may benefit from a reduction of the administrative monetary fine ranging from 10% to 25%. The parties may not bring a dispute on the settled matters or the administrative monetary fine once an investigation finalises with a settlement.

In its first-ever settlement decision, the Competition Board announced on its official website that its investigation against Türk Philips Ticaret A.Ş. ("***Philips Turkiye***"), Dünya Dış Ticaret Ltd. Şti., Melisa Elektrikli ve Elektronik Ev Eşyaları Bilg. Don. İnş. San. Tic. A.Ş., Nit-Set Ev Aletleri Paz. San. ve Tic. Ltd. Şti. and GİPA Dayanıklı Tüketim Mamülleri Tic. A.Ş., based on the allegation that Philips Turkiye violated Article 4 of the Competition Law by way of determining its dealer's resale prices, was concluded with a settlement decision for each investigated party through the Board's decision (21-37/524-258, 5 August 2021).

In another important decision in which both settlement and commitment mechanisms were implemented, the Board initiated a fully-fledged investigation against Singer sewing machines on 4 March 2020 with Decision No. 21-11/147-M. In the investigation, the Competition Authority assessed that the dealership agreements Singer had with its resellers included a non-compete clause that exceeded the time limit set by the legislation (i.e., five years), alongside resale price maintenance practices. During the investigation, Singer applied to both settlement and commitment mechanisms. Whilst Singer submitted its commitments addressing the deletion of the non-compete clause, it also applied before the Competition Authority for conclusion of the investigation through a settlement mechanism by accepting its resale price maintenance violation.

The Board also rendered a decision in which it accepted the commitments proposed by Türkiye Şişe ve Cam Fabrikaları A.Ş. and Sisecam Çevre Sistemleri A.S. to remedy the competition concerns relating to abuse of dominance in the glass production market. This decision marks the first time that the Board has approved the commitments submitted in the preliminary investigation stage since the Amendment Law was enacted (21-51/712-354, 21 October 2021).

In terms of the Competition Board's recent decisions, in its Şişecam decision (23-10/170-53, 23 February 2023), the Board recently revised the commitments finalised with its first commitment decision stated above. In the first commitment decision, the Board had decided that Şişecam, through its subsidiary Çevre Sistemleri, had abused its dominant position in the market for glass manufacturing, by way of excluding its competitors in the upstream market for recycled glass, utilised its buyer power to narrow the margin between its competitors' input and output and aggravated their activities through restricting their supply of waste glass. Following the earthquake that took place in Kahramanmaraş province and nearby cities, upon the application of Şişecam for revision of the commitments, the Board has decided that "there is a substantial alteration in any of the factors on which the decision was based" in the face of the repercussions of the earthquake and accepted that the commitment in the item above is to be revised. By way of the revision, Şişecam committed to limit its procurement of

unprocessed flat glass used in furnace-ready cullet from any undertaking that is outside the scope of Şişecam's economic integration (from third parties operating domestically), for five years beginning from the service of the short decision with an annual 15,000 tonnes.

As another example, the Competition Board launched an investigation against Coca-Cola and found that Coca-Cola held a dominant position in the "carbonated drinks", "cola drinks" and "aromatic carbonated drinks" markets, and abused its dominance by way of using its rebate system and refrigerator policies that restricted its competitor's activities in the relevant market. The Competition Authority addressed its competition concerns and found in the assessment that the exemption previously granted to Coca-Cola for "non-carbonated drinks" must be withdrawn, that 40% of the space in refrigerators should be accessible to competitors and that the sales agreements and refrigerator *commodatum* (loan for use) agreements entered into by Coca-Cola and its distributors must be amended within four months. In light of the Competition Authority's assessments, Coca-Cola proposed its commitments, including the amendment of the general agreements entered into with sales points and executing separate agreements for carbonated drinks and non-carbonated drinks, the termination of transitional terms and conditions across different product categories and increasing the refrigerator space accessible to competitors by 25%. The commitments offered and subsequently agreed by Coca-Cola were deemed to address the concerns raised by the Competition Authority (21-41/610-297, 2 September 2021).

As a recent example of the settlement procedure, the Competition Board launched an investigation against Obilet Bilişim Sistemleri AŞ ("***Obilet***") for allegedly violating Article 6 of Law No. 4054 by setting excessive commission rates for bus companies and excluding competitors through its platforms. During the investigation process, Obilet submitted a commitment package to address competitive concerns that may arise due to its practices that may tie ticketing software services for bus transportation to bus ticket sales through platform services and the online advertising bans and communication bans that are stipulated in the agreements between Obilet and competing platforms. As a result of the negotiations, the Competition Board decided (23-27/521-177, 16 June 2022) that the commitment text submitted by Obilet was sufficient to address the competition issues. Therefore, the Board concluded the investigation against Obilet and rendered the commitments binding.

Third-party complaints

A notice or complaint may be submitted verbally or through a petition. The Competition Authority has an online system in which complaints may be submitted via an online form on the official website of the Competition Authority, as well as through the e-Government system. In the case of a notice or complaint, the Board rejects the notice or complaint if it deems the complaint not to be serious. The Board will decide to conduct a pre-investigation if it finds the notice or complaint to be serious.

Investigated parties have a right to access the file (Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets ("***Communiqué No. 2010/3***")). The right to access the file can be exercised upon a written request at any time until the end of the period for submitting the last written statement.

Complainants and other third parties may request access to a file for follow-on actions (Law No. 4982 on the Right to Access to Information). The approach of the Competition Authority is to consider not only the interests of the person requesting information, but also the personal data of other natural and legal persons, as well as public interest and all other individuals' interests. This balance is regulated by way of exceptional provisions under

Law No. 4982 on the Right to Access to Information. Most of the time, the Competition Authority is reluctant to grant access to the file and justifies the denial of access on the grounds that such access concerns internal documents and business secrets. Based on that, the Competition Authority usually denies access to documents such as investigation reports or information petitions submitted by the investigated parties.

Board decision 16-26/433-192, 4 August 2016, narrowly defined the parties that have the right to access the file, stipulating that Communiqué No. 2010/3 allows the access request to only those who are being investigated. In this regard, the Competition Authority does not grant the complainant or third parties permission to access the file during the investigation period.

Third parties can attend the oral hearing and be heard by submitting a petition and presenting information and documents that show their interest in the subject matter of the oral hearing.

Civil penalties and sanctions

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

Employees and managers of the undertakings or association of undertakings that had a determining effect on the creation of the violation can also be fined up to 5% of the fine imposed on the undertaking or association of undertaking. The current minimum fine is set as TRY 167,473 for 2024.

The Competition Law makes reference to Article 17 of the Law on Misdemeanours to require the Board to take into consideration factors such as: (i) the level of fault and the amount of possible damage in the relevant market; (ii) the market power of the undertaking within the relevant market; (iii) the duration and recurrence of the infringement; (iv) cooperation or driving role of the undertaking in the infringement; (v) the financial power of the undertaking; and (vi) compliance with the commitments in determining the magnitude of the fine. In line with this, the Competition Authority enacted the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance ("***Regulation on Fines***"). The Regulation on Fines provides detailed guidelines regarding the calculation of monetary fines applicable in cases of antitrust violations. The Regulation on Fines applies both to cartel activity (Article 4) and abuse of dominance (Article 6), but illegal concentrations (Article 7) are not covered.

According to the Regulation on Fines, fines are calculated by first determining the basic level, which, in the case of cartels, is between 2% and 4% of the company's turnover in the financial year preceding the date of the fining decision. Aggravating and mitigating factors are then factored in.

The Regulation on Fines also applies to managers or employees that had a determining effect on the violation (such as participating in cartel meetings and making decisions that would involve the company in cartel activity) and provides for certain reductions in their favour.

In addition to the monetary sanction, restrictive agreements may be deemed legally invalid and unenforceable with all its legal consequences. Under Article 9, the Amendment Law stipulates that besides an Article 7 violation, in determination of Article 4 and 6 infringements, the Board may order behavioural as well as structural remedies to re-establish the competition and end the infringement. Overall, the Board may order an end to certain practices, or the adoption of remedies to restore the *status quo* without imposing

an administrative fine. Additionally, the Competition Law authorises the Board to take interim measures until the final resolution on the matter in case there is a possibility for serious and irreparable damages.

The sanctions that could be imposed under the Competition Law are administrative in nature. Therefore, the Competition Law leads to administrative fines (and civil liability) but no criminal sanctions. That said, there have been cases where the matter was referred to a public prosecutor after the Competition Law investigation had been completed. On that note, bid rigging activity may be criminally prosecutable under sections 235 *et seq.* of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code. The above-mentioned sanctions may also apply to individuals if they engage in business activities as an undertaking. Similarly, sanctions for cartel activity may also apply to individuals acting as the employees or board members or executive committee members of the infringing entities in case such individuals had a determining effect on the creation of the violation. There are no sanctions specific to individuals other than those mentioned above.

Right of appeal against civil liability and penalties

Board decisions can be submitted for judicial review before the administrative courts in Ankara by filing an appeal case within 60 days upon receipt of the justified (reasoned) decision of the Board by the parties. Filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request of the plaintiff, the court, by providing its justifications, may decide for stay of the execution if the execution of the decision is likely to cause serious and irreparable damages, or if the decision is highly likely to be against the law (i.e., showing of a *prima facie* case). The judicial review period before the administrative court usually takes about 12 to 24 months. If the challenged decision is annulled in full or in part, the administrative court returns it to the Board for review and reconsideration.

After the recent legislative changes, administrative litigation cases (as well as private litigation cases) are subject to judicial review before the newly established regional courts, creating a three-level appellate court system consisting of administrative courts, regional courts and the Council of State (the Court of Appeals for private cases). The regional courts will (i) go through the case file both on procedural and substantive grounds, and (ii) investigate the case file and make their decision considering the merits of the case. The regional courts' decisions will be considered final in nature. The decision of the regional court will be subject to the Council of State's review in exceptional circumstances, which are set forth in Article 46 of the Administrative Procedure Law. In such cases, the decision of the regional court will not be considered final, and the Council of State may decide to uphold or reverse the regional court's decision. If the decision is reversed by the Council of State, it will be returned to the deciding regional court, which will in turn issue a new decision that takes into account the Council of State's decision.

Criminal sanctions

The sanctions that could be imposed under the Competition Law are administrative in nature. Therefore, the Competition Law does not lead to criminal sanctions. However, cases might be referred to a public prosecutor after the Competition Law investigation is completed. On that note, bid rigging activity may be criminally prosecutable under sections 235 *et*

seq. of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code.

Cooperation with other antitrust agencies

Article 43 of Decision No. 1/95 of the EC–Turkiye Association Council authorises the Competition Authority to notify and request the European Commission to apply relevant measures if the Board believes that cartels organised in the EU adversely affect competition in Turkiye. The provision grants reciprocal rights and obligations to the parties (the EU and Turkiye), and the European Commission therefore has the authority to request that the Board apply relevant measures to restore competition in the relevant markets.

There are also a number of bilateral cooperation agreements between the Competition Authority and the competition agencies in Albania, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Egypt, the EU, the Russian Federation, Serbia, South Korea and Ukraine, among others. These cooperation agreements are signed and implemented for various purposes, such as:

- Enhancing cooperation in applying Competition Law rules to increase the efficiency of product and service markets.
- Exchanging documents and information on certain topics between authorities.
- Improving cooperation and facilitating the exchange of information between the authorities with respect to competition law enforcement and policy.

Moreover, on 19 October 2023, the Authority announced that a "Competition Council of Turkic States" will be established. The aim of the council has been stated as to strengthen the relations based on common historical, linguistic and cultural heritage between the Council members as well as to carry out joint studies, visits, training activities, to develop projects, to share experiences to understand today's competition problems and in this way to spread competition culture throughout the region.

The Competition Authority also faces various issues where international cooperation is required. In this respect, there have been various decisions in which the Competition Authority has requested cooperation on dawn raids, information exchange, notifications and collection of monetary fines from the competition authorities in other jurisdictions via the Ministry of Foreign Affairs and the Ministry of Justice. The Competition Authority has, however, been unsuccessful in these requests.

The research department of the Competition Authority makes periodic consultations with relevant domestic and foreign institutions and organisations about the protection of competition to assess their results and submits its recommendations to the Board. A cooperation protocol was signed on 14 October 2009 between the Competition Authority and the Turkish Public Procurement Authority to procure a healthy competition environment with regard to public tenders by cooperating and sharing information. On 2 November 2011, a cooperation protocol was signed with the Turkish Information and Communication Technologies Authority in order to establish, develop and maintain competition in the electronic communication sector, and on 28 January 2015, a cooperation protocol was signed with the Turkish Energy Market Regulatory Authority in order to establish, develop and maintain a free and healthy competition environment in the energy markets. However, the interplay between jurisdictions does not materially affect the handling of the Board in cartel investigations. The principle of comity is not an explicit provision of the Competition Law. A cartel conduct that was investigated elsewhere in the world can be prosecuted in Turkiye

if it had an effect on Turkish markets. On 26 October 2023, the Competition Authority announced that it has entered into a Cooperation and Information Exchange Protocol with the Turkish Data Protection Authority in order to ensure an active and effective regulatory environment. It is stated in the announcement that the protocol aims to establish effective competition in the sector and strengthen consumers' control over their personal data.

Cross-border issues

Turkiye is one of the "effect theory" jurisdictions, where the effect that a cartel activity has produced on Turkish markets is what matters, regardless of the nationality of the cartel members, where the cartel activity took place, or whether the members have a subsidiary in Turkiye. The Board refrained from declining jurisdiction over non-Turkish cartels or cartel members in the past (e.g.: the suppliers of rail freight forwarding services for block trains and cargo train services, 15-44/740-267, 16 December 2015; *Güneş Ekspres/Condor*, 11-54/1431-507, 27 October 2011; *Imported Coal*, 10-57/1141-430, 2 September 2010; *Refrigerator Compressor*, 09-31/668-156, 1 July 2009; *Şişecam/Yioula*, 07-17/155-50, 28 February 2007; and *Gas Insulated Switchgear*, 04-43/538-133, 24 June 2004). It should be noted, however, that the Board has yet to enforce monetary fines or other sanctions against firms located outside of Turkiye without any presence in Turkiye, as this is mostly due to the enforcement handicaps (such as difficulties of notification to foreign entities).

Developments in private enforcement of antitrust laws

The most distinctive feature of the Turkish competition law regime is that it allows for lawsuits with treble damages. Hence, administrative enforcement is supplemented with private lawsuits.

Articles 57 *et seq.* of the Competition Law entitle any person who may suffer in his business or property by reason of anything forbidden in the antitrust laws to sue the violators for three times their damages plus litigation costs and attorney fees. The case must be brought before the competent general civil court. In practice, courts do not usually engage in an analysis as to whether there is an actual condemnable agreement or concerted practice, but wait for the Board to render its opinion on the matter, thereby treating the issue as a prejudicial question. Since courts usually wait for the Board to render its decision, the court decision can be obtained in a shorter period in follow-on actions.

Due to a treble damages clause allowing litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the cartel enforcement arena. Most courts wait for the decision of the Authority and build their own decision on that decision. Turkish procedural law denies any class action or procedure. Class certification requests would not be granted by Turkish courts. While Article 25 of Law No. 4077 on the Protection of Consumers allows for class actions by consumer organisations, these actions are only limited to violations of said Law, and do not extend to cover antitrust infringements. Similarly, Article 58 of the Turkish Commercial Code enables trade associations to take class actions against unfair competition behaviour, but this has no reasonable relevance to private lawsuits provided under Articles 57 *et seq.* of the Competition Law.

Reform proposals

Similar to the rest of the world, technologies and digital platforms are under the Authority's radar. The Authority announced plans for the strategy development unit to focus on digital markets in May 2020 and published its Final Report on the E-Marketplace Sector Inquiry

on 14 April 2022. Furthermore, the Authority published its assessment report regarding financial technologies in payment services, which focuses on payment services and fintech ecosystems, on 9 December 2021. Moreover, on 7 April 2023, the Authority published its Preliminary Report on Online Advertising Sector Inquiry which was initiated in January 2021 together with the expected DMA-type legislation in Turkiye.

On 18 April 2023, the Authority published the Study on the Reflections of Digital Transformation on Competition Law, which provides an overview of the competition law framework for digital markets and highlights the challenges posed by data practices, algorithmic collusion, interoperability, and platform neutrality.

The Authority is in the process of considering certain legislative steps related to digital markets. The amendment is expected to introduce several new definitions concerning digital markets and new obligations for undertakings with significant market power. Regulations focusing on gatekeepers mentioned in the Final Report on the E-Marketplace Sector Inquiry are also expected to be incorporated into Article 6 of Law No. 4054, which regulates abuse of dominant position, or possibly added as a separate article. The draft amendment is a result of the Authority's efforts to regulate competition issues in digital markets, which have been ongoing since at least early 2021. However, the timing for its adoption remains unclear at this stage.

On the other hand, the Authority's market inquiries in relation to traditional markets continued. On 30 March 2023, the Authority published its Final Report on its Sector Inquiry on the fast-moving consumer goods sector. Currently, the Authority is undertaking a market study in relation to the cement and construction chemicals sector. Besides this, the Authority signed a Cooperation and Information Exchange Protocol with the Turkish Personal Data Protection Authority, to promote competitive practices, synchronise competition and data protection measures, and alleviate concerns arising from data-driven technologies, and accordingly enhancing consumer control over personal data.

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- Third-party complaints
- Civil penalties and sanctions
- Right of appeal against civil liability and penalties
- Criminal sanctions
- Cooperation with other antitrust agencies
- Cross-border issues
- Private enforcement of antitrust laws
- Reform proposals

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