ISSN 2147 – 558X

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# LEGAL INSIGHTS QUARTERLY

## March 2025 – May 2025

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## March 2025 – May 2025

Mart/March 2025, Istanbul

**Yayın Türü / Type of Publication**
Yerel Süreli / Local Periodical

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ISSN 2147 – 558X

## Preface to the March 2025 Issue

The March 2025 issue of Legal Insights Quarterly was prepared to provide an extensive look into the upcoming legal issues, as well as the foremost contemporary legal agenda in Turkiye.

The Corporate Law section examines the duty of care, loyalty, and non-compete obligations of directors in limited liability companies, providing insight about the legal framework under the Turkish Commercial Code and the consequences of non-compliance.

The Banking and Finance Law section provides an overview of the implementation of negative pledges in Türkiye, examining their role in loan agreements and their enforceability across different types of assets. The Capital Markets Law section discusses the conditions and procedures for joint-stock companies to go private under Turkish capital market regulations, with a focus on regulatory requirements and key considerations.

The Competition Law section of our March 2025 issue reviews two mergers and acquisitions cases, one of which includes an assessment regarding the acquisition of control over the already jointly controlled Target, and the other includes an examination of a transaction approved by Turkish Competition Board under behavioural commitments. This section further provides insight into the Competition Board's assessment of market practices in the labour sector. Furthermore, the section reviews a landmark case regarding the determination of the resale prices of the distributors and imposition of customer and territorial restrictions.

Moving on, the Dispute Resolution section covers a recent ruling by the High Court of Appeals' General Assembly of Civil Chamber, confirming that courts are not required to follow expert reports which are incomplete or incorrect, even if they are not challenged by the parties to the case.

The section on Data Protection Law introduces a detailed examination of the guideline issued by the Turkish Data Protection Authority regarding the Chatbots, which are defined as artificial intelligence-powered software.

Subsequently, the Internet Law section discusses the recent legislative amendments, including new parental consent requirements and access restrictions for children on social media platforms, in addition updates to e-commerce regulations. Meanwhile, the Telecommunications Law section examines Turkiye's evolving cybersecurity framework, focusing on the newly established Cyber Security Presidency and the Draft Law on Cyber Security. Moreover, the Employment Law section sheds light on a Constitutional Court ruling regarding delayed public payments and their impact on property rights. Finally, the Intellectual Property Law section focuses on a High Court of Appeals decision, which clarifies how conceptual similarities in weak trademarks should be assessed in trademark disputes.

***March 2025***

## Corporate Law

### *Limited Liability Companies: Duties of Care, Loyalty, and Non-Compete Obligations of Directors*

In limited liability companies, there are certain requirements applicable to the directors to duly ensure continuity and organisation of the company. These obligations primarily include duty of care, duty of loyalty and non-compete obligations as outlined in the Turkish Commercial Code No. 6102 ("***TCC***").

#### I. Duty of Care

Article 626 of the TCC dictates that directors and those in charge of management are obliged to fulfil their responsibilities with due diligence and to act in the best interests of the company, adhering to the principles of honesty and good faith. This is also emphasized in the doctrine, positioning the duty of care as a fundamental obligation that requires directors to act prudently.

According to the TCC, duty of care requires the business to be conducted with diligent care, research and observation, and the business decisions to be taken responsibly. Furthermore, the fundamental duties of directors of a limited liability company include prioritizing the company's interests and averting any harm to the company. According to Article 553 of the TCC, if the directors are in breach of their obligations and found to be at fault, they shall be liable for damage incurred by the company, shareholders or creditors of the company.

Although it is essential to protect the interests of the company, it is also important to fulfil the duty of care within the framework of the principle of good faith, as stated in the law. Actions that benefit the company through unlawful means or in contravention of the principle of good faith, will not be considered as fulfilment of the duty of care. As a matter of fact, both the doctrine and the decisions of the Court of Cassation agree that transactions contravening the principle of good faith are afforded no legal protection for the director in question.

Directors and those responsible for the management of a company are also obligated to perform their duties carefully, and to safeguard the company's interests in accordance with the principles of honesty and good faith. As part of these obligations, Article 627 of the TCC imposes a duty on directors to treat shareholders equally under comparable conditions. This means that directors must ensure fair and impartial treatment among shareholders in similar circumstances.

#### II. Duty of Loyalty

The duty of loyalty, being closely associated with the duty of care, requires directors to act in the company's best interests. Moreover, directors may not engage in transactions that provide them with personal benefits and are detrimental to the company's objectives. That said, this obligation can be waived by the shareholders.

Under Turkish laws, directors of limited liability companies are also obliged to protect the company's confidential information. In other words, directors must avoid conflicts of interest and maintain confidentiality regarding the company's affairs. As per Articles 613 and 626 of the TCC, this duty of confidentiality is mandatory and cannot be waived or removed under the articles of association or shareholders' resolution.

The duty of confidentiality is perpetual, meaning that former directors must continue to keep such information confidential even after their tenure ends. This is supported by Article 613 of the TCC, which establishes that the duty to maintain confidentiality cannot be waived or limited by the company's constitutional agreements or resolutions. Moreover, duty of confidentiality is governed by principles of contract and tort law, allowing for indefinite protection unless the information becomes publicly available through lawful means. Unlike the duty of confidentiality, a director's non-compete obligation and duty of loyalty cease upon the termination of their directorship.

**III. Non-compete**

Non-compete obligations of directors serve as an extension of the duties of care and loyalty. Pursuant to Article 626 of the TCC, unless otherwise stipulated in the articles of association or unless all other shareholders have consented in writing, the directors cannot engage in any activity that may compete with the company's business. This duty can be waived by the shareholder. As agreed in the doctrine, non-compete obligations are essential for protecting the company's interests and preventing directors from exploiting their positions for personal gain.

As per Article 621 of the TCC, in order for the general assembly to approve the directors' engagement in activities that may contradict the duty of loyalty or the non-compete obligation, there is an enhanced quorum requirement. Accordingly, such resolutions require the attendance of (i) at least two thirds of the votes, and (ii) the absolute majority of the entire share capital with voting rights. If the company director is also a shareholder of the company, they will not be able to vote on resolutions approving his/her own activities in violation of the duty of loyalty or the non-compete obligation.

**IV. Consequences of Breach**

As per Article 630 of the TCC, a director's gross breach of their duties of care and loyalty, as well as other obligations arising from law or the articles of association, or the loss of capabilities necessary for the proper management of the company, constitute just cause for termination. In such cases any shareholder may petition the court to remove or limit their management rights and representation powers. However, in practice, if there is a just cause, shareholders of the company may choose to remove the relevant director by way of a general assembly resolution.

If a director of a limited liability company fails to comply with their duty of care, duty of loyalty, or non-compete obligations contrary to what is regulated by law, they may face legal consequences under the TCC. If the board of directors breach their duties and are found to be at fault, pursuant to Article 553/1 of the TCC, members of the board of directors may be held personally liable with their personal assets against the (i) company, (ii) shareholders and (iii) company's creditors for the damages they incur as a result of breach of their obligations arising out of the law and articles of association. Both the fault and the damage must be substantiated, in order to hold the members of the board of directors liable.

All in all, the TCC imposes certain limitations on the directors of limited liability companies in order to ensure sufficient care and loyalty, and to protect the interests of the company. Although the duty of care and obligations as to confidentiality cannot be removed in any

way, non-compete obligations may be waived if the shareholders consent.

## Banking and Finance Law

### *Implementation of Negative Pledges in Turkiye*

#### I. Introduction

Loan agreements are one of the most important and frequently used financing instruments in the economic landscape, as they enable borrowers to grow their businesses and secure their financial standing in a convenient manner. In order to mitigate payment risks, banks, and other financial institutions ("***Creditors***") usually assess the financial standing of borrowers, require collaterals to secure repayment, and also implement covenants in loan agreements to ensure borrowers act in a manner that safeguards their repayment capacity.

Therefore, covenants—which may be either positive or negative—serve as a critical contractual instrument as they oblige borrowers to act or refrain from acting in ways that could jeopardize their financial standing. In this article, we will delve into negative pledges, a common form of covenants in loan agreements.

#### II. Covenants and Negative Covenants

Covenants are contractual terms that oblige the borrowers to perform specific activities to secure the interests of the Creditors. For instance, through covenants, borrowers may be required to provide periodic financial reports and offer additional guarantees upon the Creditor's request.

Negative covenants, on the other hand, restrict borrowers from performing certain actions. Common examples of negative covenants may include prohibitions on incurring additional debts, disposing of assets, businesses and/or pledging assets.

It is important to note that covenants only have contractual force, and they only bind the parties with regard to the contractual terms of the agreement. Accordingly, negative covenants do not legally limit borrower's power of disposition and borrowers may, in some scenarios, dispose of their assets despite negative covenants without notifying the Creditor or the third party acquiring the asset, unless another legal restriction affecting the borrower's power of disposition is in place. It should also be noted that a potential transferee would not be able to verify if an asset is subject to a negative covenant, as such covenants are contractual obligations and may not be publicly recorded. In this respect, although borrowers may dispose of their assets despite the existence of negative covenants, any such actions may constitute a breach of the agreement and trigger default provisions under the loan agreement. However, there are also scenarios where the borrower cannot dispose of their assets due to negative covenants. For instance, share certificates held in escrow or types of assets that are subject to registration of liens and similar encumbrances, may not be freely transferred.

#### III. Pledges and Negative Pledges

A pledge, which can be included in loan agreements as either a positive or negative covenant, secures a Creditor's claim by allowing them to force the sale of the pledged asset in the event of the borrower's default. Accordingly, if the borrower cannot fulfil its obligations under the loan agreement, the Creditor can collect its receivables from the pledged asset's sale. Due to the long-standing *lex commissoria* principle, it is not permissible to prearrange

the transfer of the ownership of the pledged asset directly to the Creditor in the event of the borrower's default. In this respect, as Creditors cannot directly acquire the pledged asset in the event of default, they include negative pledges in loan agreements as contractual clauses to prevent borrowers from establishing pledge rights over their assets in favour of third parties or disposing of the pledged asset. Accordingly, Creditors rely on negative pledges to safeguard their receivables by preventing third parties from acquiring pledge rights over the borrower's assets.

In this respect, the subject of the pledge may vary under Turkish law, such as bank account, share certificate, movable or immovable properties. Moreover, according to the Turkish Civil Code, some pledges are subject to a degree system, which determines the priority of pledges on an asset. Accordingly, in cases where multiple pledges are created over the same asset, their priority is determined based on this degree system. It should be noted that the application of this system varies depending on the type of asset involved.

## IV. Implementation of Negative Pledges

The implementation of negative pledges differs depending on the type of assets involved. While negative pledges aim to secure assets against being pledged to third parties, for certain types of assets, they may not be enforceable due to legal prohibitions. In this respect, below is a detailed explanation of how negative pledges apply to various asset categories:

**(i) Movable Properties:** Loan agreements may include negative covenants prohibiting borrowers from establishing pledges over movable properties. As per the Turkish Civil Code, movable properties are defined as assets capable of being moved and transferred through delivery of possession (such as automobiles, machinery, equipment, ships, and aircraft). If a pledge on a movable property is registered with the Movable Pledge Registry, third parties may verify it through an online public registry for pledged assets. Furthermore, under Article 26 of the Regulation on Movable Pledge Registry, anyone who can demonstrate legitimate interest may obtain certified documents from the Movable Pledge Registry regarding pledge rights and other related matters concerning the movable assets. Importantly, negative pledge covenants regarding movable properties are not valid in all types of agreements. For instance, as per Article 4/7 of the Law on Movable Pledges in Commercial Transactions, negative pledge covenants in pledge agreements concerning a movable property that already has an established pledge would be deemed invalid and the Creditor cannot demand specific performance of the negative pledge. However, in such cases, the borrower's act of establishing a pledge over the assets may trigger default provisions in the loan agreement regarding penalty, termination, or indemnification.

**(i) Immovable Properties:** Immovable properties, such as land and independent units within buildings, may also be subject to negative pledge clauses. That said, as per Article 869/1 of the Turkish Civil Code, negative covenants

prohibiting the establishment of new limited real rights on an immovable property that has an established pledge, would be invalid. Accordingly, as pledges are classified as limited real rights, negative pledge covenants in mortgage agreements would be invalid. Similarly, negative pledges in loan agreements concerning immovable properties that are already encumbered by a pledge would also be invalid. Instead, Creditors often require borrowers to release immovable properties from existing pledges as part of the loan agreement. It should also be noted that pledges on immovable properties are not publicly accessible to safeguard the personal data of property owners. However, individuals who can establish their interest in the property may access this information.

**(ii) Share Certificates:** According to Article 956 of the Turkish Civil Code, share certificates may also be subject to pledges, but the procedure to establish the pledge varies depending on the type of shares (***i.e.***, bearer's or registered shares). Financial rights attached to the shares, such as the right to dividends and pre-emption rights, fall within the scope of the pledge, however non-financial rights, such as the right to request information and inspection, are excluded. Share certificates subject to a pledge are held in escrow by the pledgee, or as often seen in practice, an escrow agent appointed by them, to prevent their unauthorized disposal. In addition, the pledge may be recorded in the share ledger, and an endorsement of the pledge may be annotated on the share certificate.

**(iii) Bank Accounts and Receivables**: As per Article 954 of the Turkish Civil Code, bank accounts may also be subject to pledges. In practice, this may involve placing a block on the bank account to secure the pledge. Additionally, Article 955 of the Turkish Civil Code permits the establishment of pledge rights over receivables. Unless otherwise agreed, the rules governing possessory pledges also apply to pledges regarding bank accounts and receivables. As pledging bank accounts or receivables may negatively affect a borrower's repayment capacity, Creditors may also include negative pledge clauses to prevent borrowers from pledging these assets.

## V. Conclusion

Negative pledges are widely included in loan agreements to ensure that the borrower's financial position remains secure throughout the loan term. However, negative pledges do not limit the borrower's statutory powers of disposition, which means violating these would only constitute a breach of the agreement and trigger the default terms stipulated in the loan agreement.

Additionally, in some cases, the inclusion of negative pledges for certain types of assets may not be valid under Turkish law. In such cases, Creditors must consider alternative mechanisms, such as stipulating different covenants under the loan agreement.

## Capital Markets Law

### *Turkiye: Going Private Per Turkish Capital Market Law*

As per Article 3/1(e) of the Capital Market Law No. 6362 ("***CML***"), a public company is described as a joint-stock company, shares of which are (i) offered to public or (ii) deemed to be offered to public, save for those that collect funds through crowdfunding platforms.

In the first alternative above, the joint-stock company intentionally makes a public offering by satisfying the relevant requirements of the Capital Market Board ("**Board**") and achieves public company status. In the second alternative, the joint-stock company acquires public company status due to the number of its shareholders exceeding the statutory threshold. In this article, we will examine the conditions of going private for such a joint-stock company (***i.e.***, one that is deemed to be a public company due to the number of its shareholders) to go private.

Pursuant to Article 16/1 of the CML, if the total number of the shareholders of a joint-stock company exceeds 500 (five-hundred), shares of such company are deemed to be offered to the public and consequently, such company is considered to be a public company although its shares are not listed or publicly traded ("***Non-Listed Public Company***"). In terms of Turkish capital market legislation and practise, this is an exceptional and temporary situation. Article 16/2 of the CML requires such companies to apply to the Board within 2 (two) years after becoming a public company, in order to have their shares traded on the stock exchange. If there is no such application, the Board can take the necessary actions *ex officio* to have such shares traded on the stock exchange or remove the company from the public company status.

The Communiqué on the Principles regarding Removal of Companies from the Scope of Law and Obligation of Trading of Shares on Exchange (II - 16.1) ("***Communiqué***") sets out the procedures implementing Article 16 of the CML. In this regard, unlike Article 16 of the CML, the Communiqué also introduces certain circumstances where a Non-Listed Public Company may request to be excluded from the public company status and the scope of CML.

As per the Communiqué, the circumstances which grant a Non-Listed Public Company the opportunity of going private may be summarized as follows:

**(i)** As per Article 5 of the Communiqué, a Non-Listed Public Company may adopt a general assembly resolution to cease its public company status. In order to pursue this method, the company must first apply to the Board for approval and then complete the general assembly proceedings once the approval is granted. In this option, the company is required to disclose its specific reasons for leaving its public company status in the agenda of the general assembly meeting. Moreover, the shareholders, except for those who approved the removal plan, must be granted exit rights in line with relevant implementation rules of the Board.

**(ii)** In accordance with Article 6 of the Communiqué, if a Non-Listed Public Company is able to prove an up-to-date list of attendants which is no older than 6 months, or any

other evidencing document approved by expert report, that (i) more than 95% of its share capital of is owned by at most 50 (fifty) shareholders or (ii) more than 50% of its share capital is owned by private provincial administrations, municipalities or other public institutions and organizations, it may request to be excluded from the public company status and the scope of the CML, for the purpose of going private.

**(iii)** According to Article 7 of the Communiqué, if a Non-Listed Public Company is able to evidence, by way of a court appointed experts' report relying on up-to-date list of attendants, share ledger, accounting documents as to distribution of dividend, corporate documents as to its share capital increase transactions after the incorporation of the company, and other similar documentation, that the total number of the shareholders of a joint-stock company has fallen under 500 (five-hundred), it may apply to the Board to cease its public status and be excluded from the CML.

**(iv)** Pursuant to Article 8 of the Communiqué, if financial figures and results of a Non-Listed Public Company are insufficient compared to what should be expected from a listed company, such company may be excluded from the scope, if requested. For this, the Non-Listed Public Company must be able to evidence as per the principle decision of the Board published in the Board's Bulletin dated December 31, 2024 and numbered 2024/60 that (i) its total assets are below (a) TRY 1,500,000,000 for 2023 and (b) TRY 2,400,000,000 for 2024 or (ii) other income (except for the net sales revenue) or net sales revenue is less than (a) TRY 750,000,000 for 2023 and (b) TRY 1,200,000,000 for 2024, or (iii) total of the registered share capital and legal reserves remain uncovered (***i.e.***, the company is in technical bankruptcy) as per duly audited financial statements of last 2 (two) years.

**(v)** Per Article 9 of the Communiqué, if the Non-Listed Public Company must cease its activities since it is deemed insolvent or it goes into liquidation (voluntarily or non-voluntarily), it may apply to the Board with the relevant documents or orders evidencing the foregoing circumstances and may request the exclusion.

Although a joint-stock company with more than 500 (five-hundred) shareholders is automatically classified as a public company, the Communiqué outlines certain specific conditions under which this status can be revoked. These conditions typically involve the decision and intention of the shareholders, shareholder composition and financial viability of the company. In order to avoid such involuntary public company status, the number of shareholders in a joint-stock company should be regularly monitored. Otherwise, the company would become subject to the rules and regulations stipulated by the CML, the Communiqué and the Board.

## Competition / Antitrust Law

### *Turkish Competition Board Scrutinizes Labour Markets and Concludes Its Investigation via the Settlement Mechanism* [1]

#### I. Introduction

The Turkish Competition Board (the "***Board***") launched a preliminary investigation into the allegation that the private schools operating in Kocaeli province have violated Article 4 of the Law No. 4054 on the Protection of Competition ("***Law No. 4054***"). Assessing the information, documents and findings obtained during the preliminary investigation, the Board held that the allegations and findings are significant, thus initiated a full-fledged investigation against several private schools, including Murat Yıldırım Eğitim Hizmetleri San. ve Tic. A.Ş. ("***Murat Yıldırım Okulları***") at its meeting dated April 28, 2023, with the decision numbered 23-19/374-M.

#### II. Relevant Product and Geographical Markets

The Board considered that the relevant product markets may be defined as the private school management market, including education services and non-education services provided at private schools, and the labour supply/labour market for education services within the scope of the labour market practices of private schools. However, the Board ultimately left the product market definition open, as it would not change its assessment, according to Paragraph 20 of the Guidelines on Definition of Relevant Market.

The Board considered that, as the private schools providing education and training services operate in the Kocaeli province, the relevant geographical market may be defined as "Kocaeli." Nevertheless, the Board again left the geographical market definition open, as it would not change its assessment according to Paragraph 20 of the Guidelines on Definition of Relevant Market.

#### III. Assessments on the Labour Market

In its assessment, the Board emphasized that restrictive agreements between undertakings in labour markets often take the form of no-poaching and wage fixing agreements, as described in Guidelines on Competition Infringements in Labour Markets ("***Regulation on Labour Markets***"). The economic basis for the anti-competitive effects of agreements such as wage fixing and no-poaching agreements in labour markets is that these agreements create monopsony power between competitors on the buying side of the labour market. Regardless of the factors that give rise to the monopsony power of undertakings in labour markets, anti-competitive agreements between undertakings make monopsony power much more visible, artificially suppressing working conditions and wages of employees.

As a matter of fact, wage fixing/no poaching agreements, which constitute the main part of competition law enforcement in labour markets, are not different from cartels established on the buyer side of the market. Except for the difference of being on the buying or selling side of the market, there is no fundamental difference between no-poaching agreements and

[1] The Board's decision numbered 24-08/138-56 and dated 15.02.2024

customer/market sharing agreements, and between wage fixing and price fixing agreements.

In this regard, agreements between competitors to prevent the transfers of the employees and to fix their wages in labour markets violate Article 4 of Law No. 4054.

It is noted that the relevant decision also focuses on the infringements related to school tuition and lunch fees, which fall outside the scope of this article.

## IV. Assessments of the Findings during the Investigation

Within the scope of the case, on-site inspections were conducted at private schools operating in Kocaeli, and several findings were obtained from the correspondences in WhatsApp groups between the employees of the undertakings subject to the investigation. The Board found that the relevant undertakings were engaged in anti-competitive behaviours against the buying side of the market for refusing to employ the employees of their competitors, by not offering jobs to, or rejecting job applications made by these teachers. The Board assessed that such practices intended to restrict teachers' mobility and were achieved with the no-poaching agreement in question.

Based on the findings obtained throughout the investigation, the Board assessed that Murat Yıldırım Okulları was one of the undertakings engaging in this practice and thus acted in concert with its competitors in terms of no-poaching and wage-fixing. Accordingly, the Board evaluated that Murat Yıldırım Okulları's practices in labour markets violated Article 4 of Law No. 4054.

## V. Settlement Process

With the recent amendments to Article 43 of the Law No 4054 and the enactment of Regulation on the Settlement Procedure ("***Settlement Regulation***"), the settlement mechanism has been officially introduced to Turkish competition law. Accordingly, parties to an investigation may now settle by, *inter alia*, accepting the infringement and thus benefit from a reduction of up to 25% in administrative monetary fines to be imposed.

After being notified of the investigation, Murat Yıldırım Okulları applied to the Turkish Competition Authority to commence the settlement procedure. As a result of the negotiations with the Board, Murat Yıldırım Okulları acknowledged the matters specified under the settlement letter with respect to the infringement and requested the Board to conclude the investigation.

The Board made the decision to end the investigation based on the settlement application, in line with previous proceedings. Accordingly, the Board concluded the investigation against Murat Yıldırım Okulları by imposing an administrative monetary fine, which was reduced by 25% pursuant to the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position.

## VI. Conclusion

In an era where the competition authorities all over the world are increasingly focusing on labour markets, this file is a notable case that clearly demonstrates the Board's approach to anticompetitive practices in labour markets. This decision reveals that the Board considers no-poaching and wage-fixing agreements as cartel-like practices in

labour markets, thus it enforces Law No. 4054 as it does in other traditional markets. In addition, this decision is one of the handful of examples in which an undertaking under investigation applied to the Board to implement the settlement mechanism since the introduction of the settlement and commitment mechanisms in the Turkish competition landscape a short time ago.

## *Turkish Competition Board Issues a Retroactive Fine in the FMCG Market for Resale Price Maintenance and Sales Restrictions, Rejecting Resolution through Commitments*

### I. Introduction

The Turkish Competition Board's ("***Board***") initiated an investigation against Nestlé Turkey Gıda Sanayi AŞ ("***Nestlé***") upon a complaint alleging that Nestlé has been determining its distributors' resale prices and imposing customer and territorial restrictions, which are prohibited by Article 4 of the Law No. 4054 on the Protection of Competition ("***Law No. 4054***").[2]

The Board concluded that Nestlé's resale price maintenance ("***RPM***") practices and territorial/customer restrictions violated Article 4 of the Law No. 4054 and could not benefit from an exemption. The decision re-emphasizes the Board's increased scrutiny of RPM practices and it stands out for the Board's refusal to accept Nestlé's proposed commitments for the alleged sales restrictions, marking a departure from its previous approach of resolving similar cases through commitments.

### II. Information on the Relevant Market and Nestlé's Arguments

Nestlé operates across various product categories, including chocolates, confectionery, breakfast cereals, dairy products, coffee products, baby food, pet food, and healthy nutrition products. The investigation focused on Nestlé's retail and out-of-home consumption ("***OHC***") distribution channels. The products sold through the OHC channel differs from Nestlé's retail channel products in terms of packaging, package size and content. The OHC channel also has a different structure, customer base and suppliers compared to the retail channel.

To define the relevant product market, the Board considered previous decisions such as *Ülker*,[3] segmenting the market into biscuits, chocolate, baby food, and beverages. While acknowledging that the relevant product market may be defined broadly as "*supply of food products*," the Board also found that it can be defined separately for each segment such as instant coffees, chocolate drinks, and breakfast cereals. Ultimately, the Board left the relevant market definition open. The Board did not define any geographical market, either, since defining a specific geographical market would not have any impact on the outcome of the decision.

However, it highlighted that Nestlé was the market leader in 2022 in terms of revenue in the categories of instant coffee, iced coffee, breakfast cereals, chocolate-flavoured powdered drinks, and coffee creamer. Additionally, the Board found that Nestlé ranked among the top market players in the categories of chocolate bars, baby food and pet food.

[2] The Board's decision dated 15.02.2024, numbered 24-08/149-61.

[3] The Board's decision dated 02.06.2005, numbered 05-38/487-116.

Nestlé argued that the definition of relevant product market was critical in this case since pursuant to Article 2/2 of Block Exemption Communiqué on Vertical Agreements Communiqué No. 2002/2 ("***Communiqué***"), an exemption may be granted if the supplier's market share in the relevant market does not exceed 30%. Nestlé argued that retail and OHC channels significantly differ from each other, and since the RPM allegations are mainly focused on the OHC channel, a separate market for OHC channel should therefore be defined in this case. The Board rejected Nestlé's arguments on two grounds: (i) the evidence obtained pertains to both of the retail and OHC channels, and (ii) according to the Communiqué No. 2021/3 on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings that Do Not Significantly Restrict Competition, RPM is a naked and hardcore restriction, and hence there is no need to assess its actual or potential effects in the relevant market.

## III. The Board's Assessment under Article 4 of the Law No. 4054

Article 4 of the Law No. 4054 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 within a particular market for goods or services. Agreements restricting competition may be in the form of vertical or horizontal agreements. In its decision, the Board focused on vertical restraints, namely (i) RPM practices, and (ii) territorial and customer restrictions.

### *a. The Board's Assessment on RPM*

The Board's investigation uncovered certain evidence that Nestlé imposed specific resale prices and discount rates on its distributors. In this context, the Board's evaluation relied on correspondences and information obtained during on-site inspections conducted at Nestlé, complaints submitted, and statements from meetings with Nestlé's distributors. Particularly, the case handlers held several meetings with Nestlé's distributors. One of the key points highlighted in these meetings was the Nestlé's "*Panorama*" system, which was a sales automation system provided to Nestlé's distributors free of charge, in order to manage purchasing, sales, inventory and various related sales activities. Some distributors claimed that this system monitored their pricing compliance, restricted their ability to deviate from Nestlé's pre-set prices and discounts, and forced them to apply Nestlé's RPM policies. Particularly, they emphasized that even though the Panorama system allowed them to modify their prices and discounts, this function was a monitoring mechanism, and prices or discounts different from those set by Nestlé were not allowed. Any objections by distributors resulted in the termination of the distributor agreements as a sanction.

On the other hand, Nestlé argued that the prices in the Panorama system were merely recommendations. It further submitted that statements from some of its distributors supported this argument. However, the Board rejected Nestlé's argument and highlighted that the distributors' statements denying Nestlé's interference in their resale prices may be influenced by commercial concerns. The Board further added that some distributors, in spite of evidence obtained during on-site inspections showing Nestlé interfered in their resale prices, have made contradictory statements. Overall, the Board noted that the Panorama system facilitated interference with

distributors' pricing, since it enabled Nestlé to actively monitor their prices and discount rates.

Regarding RPM allegations, the Board concluded that Nestlé required its distributors to sell products at pre-determined prices, which eliminated their ability to compete on pricing. This reduced intra-brand competition, limited consumer choice, and hindered price competition.

***b. The Board's Assessments on Territorial/Customer Restrictions***

The Board noted that Nestlé's agreements with its distributors did not contain clauses regarding territorial/customer restrictions or exclusivity, and hence, complied with paragraph 30 of the Guidelines on Vertical Agreements. However certain findings within the scope of the investigation revealed that in practice, Nestlé (i) forced its distributors to make sales only to the designated territories and customers, and (ii) did not provide discounts to them outside of the designated territories.

In this context, the Board referenced correspondences consisting of WhatsApp messages and emails between Nestlé and its distributors as evidence. In these correspondences, the Board found that Nestlé assigned customers to its distributors by categorizing them into three groups: red, yellow, and green. Accordingly;

- Nestlé did not provide any additional discounts when a distributor sold products to a customer in the red category,
- Nestlé decided on the additional discounts rates based on the category and volume of the sales when a distributor sold products to a customer in the green category,
- Nestlé's decisions on discount levels were also based on the category and volume of the sales when a distributor sold products to a customer in the yellow category.

Furthermore, Nestlé refused to grant additional discounts to its distributors if the customers did not fall into any of the designated categories.

The Board also added that Nestlé implemented strict territorial restrictions, prohibiting distributors from selling outside of their designated geographic areas. For instance, the Board highlighted that email and WhatsApp correspondences with distributors included statements such as "*you are in violation of the territory*," "*There is a boundary, we marked it*" and "*Do not supply any products. He is a customer of Duyça.*[4]" Moreover, Nestlé did not allow customers to purchase from their desired distributors to enforce its territorial restriction practices. Overall, the Board evaluated that Nestlé not only restricted its distributors' active sales outside their designated territories but also imposed passive sales restrictions on them.

***c. The Board's Assessment under Article 5 of Law No. 4054***

Vertical agreements falling within the scope of Article 4 may benefit from block exemption or individual exemption if they meet certain criteria.[5] Considering that

[4] Duyça was one of Nestlé's distributors.

[5] Cumulative conditions for individual exemption are as follows: (i) the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress; (ii) the agreement must allow consumers a fair share of the resulting

Nestlé employed RPM mechanisms, restricted its distributors' active sales without exclusivity clauses and prohibited their passives sales, the Board held that Nestlé's practices could not benefit from the block exemption. Moreover, the Board determined that Nestlé's practices did not qualify for individual exemption either. Specifically, no evidence showed that the sales restrictions yielded significant efficiencies or technological advancements. Additionally, the Board held that RPM directly aims to raise prices and significantly harms intra-brand competition. Further, the Board added that preventing distributors from freely making active or passive sales to customers in a non-exclusive territory or customer group is unlikely to deliver any consumer benefit, as it would limit consumer choice. Therefore, the Board concluded that anti-competitive consequences outweighed any potential benefits claimed by Nestlé.

## IV. The Board's Assessments on Nestlé's Commitments

During the investigation, Nestlé offered commitments regarding the territorial and customer restrictions allegations. However, the Board rejected the commitments on the grounds that (i) the allegations involved Nestlé's RPM practices and restrictions on both active and passive sales of its distributors to a specific territory and customer group, (ii) RPM is considered as a naked and hardcore infringement, and (iii) the commitment mechanism would not provide the expected procedural benefits, as it would only address the part of the competitive concerns in the case.

The Board's rejection of the commitment offer is a significant aspect of this decision, representing a departure from its previous approach. In earlier cases where (i) RPM allegations and (ii) sales restriction allegations were assessed within the same investigation, and where undertakings proposed to settle the RPM allegations while offering commitments for the sales restriction allegations, the Board evaluated them separately. In those instances, it accepted the settlements for RPM allegations and approved the commitments for sales restriction allegations.[6]

## V. Conclusion

Nestlé's RPM practices and territorial/customer restrictions constituted a breach of Article 4 of Law No. Accordingly, the Board imposed an administrative fine of TL 346,911,505.44 on Nestlé, based on its gross revenue in 2022. In addition to reflecting the Board's stringent stance on vertical restraints such as RPM and territorial/customer restrictions, this decision also serves as a critical precedent, particularly because of the rejection of Nestlé's commitments regarding sales restrictions.

benefit; (iii) the agreement should not eliminate competition in a significant part of the relevant market; and (iv) the agreement should not restrict competition by more than what is necessary for achieving the goals set out in (i) and (ii).

[6] The Board's Duracell decisions dated 08.02.2024, numbered 24-07/117-49 and dated 04.04.2024, numbered 24- 16/359-139; The Board's Oriflame decisions dated 14.03.2024, numbered 24-13/245-102 and dated 14.03.2024, numbered 24-13/246-103; The Board's Pierre Fabre decisions dated 23.02.2024, numbered 23-10/175-43 and dated 09.03.2023, numbered 23-13/214-70; The Board's Yıldırımoğlu decisions dated 05.07.2023, numbered 23-29/568-193 and dated 07.06.2023, numbered 23-26/492-169.

## *An Assessment on the Concept of Negative Joint Control: Propars/Mega Merchant Decision*

### I. Introduction

On November 11, 2024, the Turkish Competition Authority ("***Authority***") published the Turkish Competition Board's ("***Board***") reasoned decision[7] regarding the acquisition of certain shares of Propars Teknoloji A.Ş. ("***Propars***" or "***Target***") by Mega Merchant Pazarlama A.Ş. ("***Mega Merchant***"), which is an affiliated entity of Mega Merchant Holdings Limited ("***Mega Merchant UK***"). The decision involves assessments regarding the acquisition of control over the already jointly controlled Target, the nature of which resembles negative control over the joint venture.

### II. Legal Background on the Concept of Control and Negative Control under Turkish Merger Control Regime

Pursuant to Article 5(1) of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("***Communiqué No. 2010/4***"), which is akin to Article 3(1) of the EC Merger Regulation ("***ECMR***"), a transaction is deemed to be a notifiable merger or an acquisition if it brings about a change in control on a lasting basis. Under Turkish merger control regime, control is defined as the power to exercise decisive influence over an undertaking. If an acquired undertaking will not be controlled by any of its new shareholders after the transaction, such transaction would not result in a change in control over the acquired undertaking on a lasting basis and it would not constitute a notifiable concentration within the meaning of Article 5 of Communiqué No. 2010/4.

The rights conferring decisive influence include the right to determine key business matters, such as the business plan, the composition of senior management, material financial investments or any other matters that are particularly important in the context of the transaction.[8] Accordingly, the decisive influence should be related to the strategic business behavior of the target, and they must go beyond normal "minority rights", ***i.e.***, the veto rights normally accorded to minority shareholders to protect their financial interests. The ability to exercise decisive influence on the day-to-day management of the target is not a requisite. What matters is whether the voting and/or veto rights afford the buyer to decisively influence the target's important strategic business decisions.

According to the Guidelines on Cases Considered as a Merger or Acquisition and the Concept of Control ("***Control Guidelines***"), which is closely modelled on the European Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 ("***CJN***"), joint control can be typically established through (i) equality in voting rights or appointment to decision-making bodies, (ii) veto rights, and (iii) joint exercise of voting rights. In this context, joint control exists where two or more undertakings or persons have the power to exercise decisive influence over another undertaking. Decisive influence in this sense normally means the power to block actions which determine the strategic commercial behaviour of an undertaking. Accordingly, joint control may arise from the possibility

[7] The Board's Propars/Mega Merchant decision dated 28.03.2024 and numbered 24-15/312-127.

[8] ABI/AE (23.11.2017, 17-38/611-26); Aksa Akrilik Kimya Sanayi (29.03.2012, 12-14/410-121); Medikal Park, (25.11.2009, 09-57/1392-361); Tarshish (24.8.2006, 06-59/780-229); ADM-STFA 14.2.2008, 08-15/151-53).

of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions.[9] The ability to create a deadlock, for instance via refusal to attend the board meeting where the quorum requires a certain member to be present at the meeting, could be considered as joint control within the meaning of Turkish merger control regime.[10]

Additional cases in which the Board provides its assessment regarding negative control, by determining whether the acquiring party will have decisive influence by creating a deadlock situation, are as follows:

- In Saray Holding/Greenco Enerji,[11] the Board assessed that Saray Holding would acquire negative control over Greenco Enerji since in the event that a strategic commercial decision could not be reached in the first meeting of the Board of Directors, the decision would be postponed to the next meeting, with the specification that it would be considered vetoed if it could not be resolved. The Board, therefore, determined that although Saray Holding would be unable to make such decisions by itself, it would be able to prevent those decisions from being taken.

- In Trafigura-IFM/Simba,[12] the Board identified that while Trafigura and IFM would have identical voting rights, both parties would have negative control over strategic decisions and budget planning.

- In Akarlılar/Mavi,[13] the Board noted that Mavi's Board of Directors consisted of 6 members, 3 of them group A shareholders and the remaining 3, group B shareholders. As Akarlılar would appoint only 2 out of the 6 Board members, with 1 member appointed by TPEF II and the other 3 members being appointed by group B shareholders, the Board determined that no specific entity would have sole or joint control over Mavi's strategic decisions pre-transaction. However, as Akarlılar would be able to appoint 3 members, who would have veto power, to Mavi's Board of Directors post-transaction, the Board determined that Akarlılar would, in fact, acquire negative sole control over Mavi post-transaction.

According to paragraph 74-75 of the Control Guidelines, similar to the CJN, the entry of a new shareholder in a jointly controlled undertaking, either in addition to the already controlling shareholders or in replacement of one of them, constitutes a notifiable transaction provided that the jurisdictional thresholds are met, even if the undertaking is jointly controlled before and after the transaction. However, in case new shareholders enter but one or several shareholders would not have sole or joint control by virtue of the transaction, then the transaction is not notifiable. The entry of new shareholders may lead to a situation where joint control can be established neither on a *de jure* nor a *de facto* basis, due to changing coalitions between minority shareholders.

[9] New Age Overseas (22.4.2010, 10-33/507-184)
[10] Luxottica/Alaluf-New Age (22.4.2010, 10-33/507-184).
[11]The Board's Saray Holding/Greenco Enerji decision dated 14.09.2023 and numbered 23-43/829-293.
[12]The Board's Trafigura-Infraco/Simba decision dated 15.11.2018 and numbered 18-43/682-335.
[13]The Board's Akarlılar/Mavi decision dated 08.03.2018 and numbered 18-07/121-65.

## III. The Board's Assessment on the Change of Control

The Board noted that the Target's shares had been held by two undertakings, exercising joint control, and that after the consummation of the Transaction, the Target's shares will be held by Mega Merchant in addition to the said two undertakings. In relation to the control structure of Mega Merchant UK, the Board noted that its shares are held by Intera, which is controlled by the Aydın Family, and one other undertaking, and that while the said undertaking holds the minority votes, it has veto rights on strategic decisions such as appointment of senior management and budget. Accordingly, the Board found that Mega Merchant UK is jointly controlled by the Aydın Family and the other minority undertaking.

In addition, the Board indicated that post-transaction, the Board of Directors of Propars would be composed of individuals appointed by shareholders, including Mega Merchant UK, which could result in a "deadlock situation". In this sense, the Board noted that Mega Merchant UK will have decisive influence over Propars post-transaction due to the shareholding and Board of Directors structure, and that Mega Merchant UK's decisive influence over Propars resembles negative control.

## IV. The Board's Competitive Assessment

Further to its conclusion that the transaction results in a change in control over Propars on a lasting basis, the Board proceeded with assessing whether the transaction will result in the significant impediment of effective competition in any markets in Turkiye.

The Board found that there is a vertical overlap between Mega Merchant's e-export services and Propars' e-commerce integration services, which allow businesses to make sales on platforms. Specifically, the Board noted that within the scope of Mega Merchant's platform business model (in which Mega Merchant provides a single panel which handles and covers the entire process of international e-commerce sales), customers must first register the system panel named "Omega", which is managed with the support of Propars. In this sense, the Board concluded that the e-export services market offered by Mega Merchant is a downstream market of e-commerce integration services of Propars.

Additionally, the Board identified a potential "complementary relationship" as it was found that (i) Propars, independent from the services it offers to Mega Merchant, offers a software service that allows sellers who want to sell their products in an e-commerce platform abroad to integrate in the relevant platforms, and (ii) Mega Merchant offers such sellers services such as marketing, local storage, logistics and pricing strategies which handle and cover the entirety of the e-export process.

However, the Board found that the combined market share of entity to be formed post-transaction in both markets is significantly lower than the 25% threshold set out under the Guidelines on the Assessment of non-Horizontal Mergers and Acquisitions. In addition, the Board also noted that there were significantly powerful and competitive local and international players in both e-export services and e-commerce integration services markets. Against the foregoing, the Board determined that the transaction would not result in a significant impediment of the competition in the affected markets in Turkiye.

## V. Conclusion

The decision holds significance as it provides further insight into the Board's approach towards the assessment of control structure in joint venture transactions post-transaction and the elements to be taken into consideration when evaluating negative joint control.

## *Behavioural Commitments Reviewed in-depth in Bupa Turkey/Compugroup Medical Transaction*

### I. Introduction

Through its decision dated February 29, 2024, and numbered 24-11/174-69 ("***Reasoned Decision***"), the Turkish Competition Board ("***Board***") approved the acquisition of Compugroup Medical Bilgi Sistemleri AŞ ("***Compugroup Medical***") by Bupa Turkey Sağlık Hizmetleri AŞ ("***Bupa Turkey***") under behavioural commitments.

### II. The Parties and the Relevant Product Market

The Reasoned Decision describes the transaction parties and then delves into detailed explanation in terms of the relevant product market. Regarding the acquirer, the Reasoned Decision notes that Bupa Turkey is the subsidiary of Bupa International Markets Limited ("***Bupa International***") which is an international health insurance provider. As for the target, Compugroup Medical is currently indirectly controlled by Compugroup Medical Global ("***CGM***"). CGM is a group of companies operating internationally, focusing on the digitalization of healthcare systems.

The Board's Reasoned Decision highlights Compugroup Medical's focus on healthcare system digitalization through IT and operational support services. It also states that these include the following products: Smart Claims Management Systems (real-time electronic treatment authorizations), Octopus (standardized data transfer between healthcare providers and insurers), and TSS Ulak (supporting complementary insurance policies for costs beyond SSI coverage). The Board concluded that Compugroup Medical provides IT and operational support services to insurance companies in the sickness and health sectors, as well as to healthcare institutions, pharmacies, and mutual aid funds.

The Board's Reasoned Decision notes that Bupa International operates globally in health insurance, healthcare, and elderly care, while Bupa Turkey provides consultancy services in areas such as strategy, finance, marketing, and trademark matters. For the relevant product market, the Board identified "information technology systems and operational support for health insurance companies" and "sickness-health insurance." The Board further considered segmenting the insurance market into "complementary health insurance" and "private health insurance" due to the product focus of the software. However, since this segmentation did not affect the merger control review outcome, the Board based its analysis on the broader market definition and left the relevant market definition open.

### III. The Opinion of the Third Parties with Respect to the Transaction

Before delving into its substantive assessment, the Board referred to the third-party opinions received during the investigation, including those from insurance companies, competitors, and the Insurance and Private Pension Regulation and Supervision Agency, to assess potential competitive concerns arising from the transaction. In a nutshell, the insurance

companies raised concerns about Bupa Turkey gaining indirect access to sensitive commercial and personal data through Compugroup Medical, including policy details, pricing strategies, and client portfolios. The Reasoned Decision also reveals that some of these third parties noted a lack of alternatives for certain services and expressed concern about declining service quality or potential data breaches post-transaction. Specifically, competitors expressed concerns about market dominance by Allianz and Bupa potentially disadvantaging smaller insurers. The Insurance and Private Pension Regulation and Supervision Agency raised no specific concerns from a competition law perspective.

## IV. The Board's Substantial Assessment

After providing a brief analysis of the nature of the transaction and considering the activities of the target company, the Board identified Compugroup Medical as a technology undertaking that provides IT support to insurance companies, healthcare institutions, pharmacies, and pension funds. Based on this, the Board indicated that Compugroup Medical is exempt from the local turnover threshold for the purposes of the notifiability analysis of the transaction.

The Board assessed the transaction under the Guideline on Non-Horizontal Mergers and Acquisitions, highlighting two primary anti-competitive risks: input foreclosure and customer foreclosure, as well as the potential for coordinated effects that could restrict competition.

Regarding input foreclosure, the Board expressed the concern that, after the transaction, Compugroup Medical might cease providing its software services and operational support to competitors of Bupa Acıbadem Sigorta A.Ş. ("***Bupa Acıbadem***"), a subsidiary of Bupa International in Turkiye, which are insurance companies active in the healthcare sector. This could place certain healthcare-focused insurance companies at a competitive disadvantage. To address this concern, the Board reviewed the market shares of Compugroup Medical and its competitors and concluded that Compugroup Medical holds a significant market share in the relevant sector and is a market leader in terms of both customer base and premium production volumes of insurance companies. Based on this, the Board concluded that Compugroup Medical's potential cessation of services to competitors in the healthcare insurance sub-market could significantly restrict access to essential inputs and potentially result in market foreclosure.

In terms of customer foreclosure, the Board noted that since the merged entity will operate in both the upstream and downstream markets after the transaction, the acquisition could limit the ability of existing and potential competitors in the upstream market to access a significant customer base in the downstream market. Specifically, the Board considered that, in the case of a merger with an undertaking possessing considerable market power in the downstream market, the potential for customer foreclosure becomes a concern, as it could impede competitors from reaching potential customers. However, following an assessment of market shares, the Board concluded that post-transaction, Compugroup Medical's competitors will still be able to access potential customers, and that the services provided by Bupa Acıbadem will remain largely unchanged. As such, the Board determines that the transaction will not result in significant customer foreclosure or significant impediment of effective competition.

Regarding coordinated effects, the Board first evaluated whether the data accessed by Compugroup Medical regarding the insurance companies it serves is competitively sensitive. Additionally, the Board requested information from industry participants about whether such data could be obtained from the market. It was noted that while the pricing data for insurance policies can be accessed via brokers and platforms, price agreements with hospitals are confidential and not accessible unless disclosed by the insurance companies. The Board assessed that Compugroup Medical's potential to share such sensitive data with Bupa Acıbadem could create competitive concerns both from a unilateral and a coordination perspective. Specifically, the Board considered that, post-transaction, Bupa Acıbadem could find it easier to target its competitors' customers with tailored offers, given the market's relatively fragmented structure. This could hinder the ability of insurance companies to benefit from economies of scale and may make it harder for competitors to maintain their positions in the market. The Board also considers that vertical transactions can increase transparency in the market, allowing for access to sensitive information or price monitoring, which could facilitate coordination among undertakings. This increased market transparency might encourage coordinated behaviour and hinder effective competition in the relevant market.

## V. The Board's Assessment on Commitments Submitted by Compugroup Medical

To eliminate the potential anti- competitive effects of the transaction, Bupa Turkey submitted behavioural remedies. Bupa Turkey has committed to maintaining existing contracts between Compugroup Medical and insurance companies, except where there is just cause for termination or unilateral termination by the customer. It also committed to renewing contracts upon customer request and providing all current and future products and services to other insurance companies under market conditions, without granting an advantage to entities within its own economic unit, such as Bupa Acıbadem. The proposed remedies also include measures to prevent the exchange of trade secrets and/or competitively sensitive information between Compugroup Medical and Bupa Acıbadem. These include (i) revising contracts with insurance companies to prevent sensitive data sharing, (ii) requiring employees and board members with access to such data to sign confidentiality agreements, (iii) keeping the databases of Compugroup Medical and Bupa Acıbadem separate, with secure access logs, (iv) reporting measures taken to prevent data sharing and service provision to insurance companies to the authority every three months during a one-year transition period, and (v) submitting an independent audit report at the end of this period to confirm compliance.

After assessing the proposed remedies, the Board concluded that the commitment package sufficiently addresses the identified competitive concerns, particularly by ensuring the prevention of sensitive information sharing between Compugroup Medical and Bupa Acıbadem. Consequently, the commitments provided by Bupa Turkey were deemed effective in mitigating potential competition risks. Based on these assurances, the Board unanimously approved the transaction, subject to the behavioural remedies outlined in the remedy package.

### VI. Conclusion

The Board's reasoned decision provides a comprehensive analysis of the acquisition's impact on software-based services in both upstream and downstream markets, addressing concerns related to input foreclosure and access to competitively sensitive information. The Board conditionally approved the transaction based on behavioural remedies aimed at (i) eliminating concerns about input foreclosure through the commitment to continue existing contractual relationships post-transaction, and (ii) ensuring effective firewall mechanisms to address sensitive data-sharing concerns. It is also noteworthy that significant reporting mechanisms have been established for the Board to monitor the application of these measures.

## Dispute Resolution

### *High Court of Appeals' General Assembly of Civil Chambers Rules That Not Objecting to an Unfavourable Expert Report Does Not Create an Acquired Right*

### I. Introduction

A (procedural) acquired right is a right that arises in favour of one of the parties through a procedural action taken by the court or the parties. The High Court of Appeals' settled practice on acquired rights in terms of expert reports was that if a party did not object to an expert report whilst the other did, a procedural acquired right would arise in favour of the objecting party. This would mean that if a subsequent expert report was obtained further to the objection of the objecting party, and such report turned out to be even more unfavourable for the objecting party, then the first expert report would be binding. In such a case, the first expert report would be deemed final for the non-objecting party, due to the acquired right established in favour of the objecting party.

However, the High Court of Appeals' General Assembly of Civil Chamber, in its decision numbered 2022/508 E., 2023/226 K. and dated March 15, 2023, ruled that it is not admissible to make a ruling based on a deficient expert report, even if it was not objected to.

### II. Background of the Dispute

In a dispute arising from a refund request stemming from a real estate sale transaction conducted based on an invalid agreement, the first instance court decided to obtain an expert's report. In the first expert report dated June 27, 2012, the value of the subject property was determined as TRY 28,750. Although neither party objected to this expert report, the first instance court decided to obtain another expert report. In the second expert report dated November 2, 2015, a discount has been applied as per the principle of compensatory justice, and the plaintiff objected to this second expert report. Despite the objection, the first instance court rendered a decision in accordance with the second expert report.

The plaintiff appealed the decision. Upon the appeal, the High Court of Appeals reversed the first instance court's ruling, stating that the findings in the first expert report dated June 27, 2012, constitutes an acquired right in favour of the plaintiff since the parties did not object to this expert report.

The court of first instance nonetheless refused to abide by the reversal decision and insisted on its own approach. Accordingly, the dispute was thereupon brought before the High Court of Appeals' General Assembly of Civil Chamber.

## III. Decision of the High Court of Appeals' General Assembly of Civil Chamber

The High Court of Appeals' General Assembly of Civil Chamber first noted that expert examination is deemed to be discretionary evidence, and that the judge may resort to expert examination or seek clarification in an expert report *ex officio* if deemed necessary. It is also indicated that legal literature and jurisprudence acknowledge that if a party does not object to an expert report an acquired right would be established in favour of the objecting party. The example given for such a situation is that; if a defendant would object to the degree of fault determined in an expert report in a compensation lawsuit while the plaintiff did not, and the court was to obtain another expert report wherein the degree of fault is determined higher than the first expert report, to the detriment of the defendant, the court should then consider the degree of fault determined under the first expert report. This is because the finding is deemed as being accepted by the non-objecting party, and this establishes an acquired right in favour of the objecting party.

Further to the foregoing, the General Assembly sheds light on the meaning of "*an expert report being finalized*" and elaborates that such "*finalization*" pertains to the facts that parties accept, but it does not mean that the court is bound with every aspect of that particular expert report, to wit that "finalization" does not yield the same legal consequences that a settlement or waiver would. It is highlighted that it is fundamental that the legal evaluation and assessment of an expert report remain at the judge's discretion. If the judge evaluates that the technical analysis in the report does not align with the facts established in the case file, legal principles, or precedents, the judge may still request a new report or, by providing the underlying reasons, may rule contrary to the report.

The High Court of Appeals' General Assembly of Civil Chamber also noted that if neither party objects to the expert report, then such insufficient expert report cannot establish an acquired right that is binding for the court in its decision-making. If the expert report is not objected by either party and the judge is deemed bound to resolve the case based on that expert report regardless of its sufficiency, this would then be contrary to the explicit legal provisions and the basic principles of procedural law, as well as the judge's authority to make *ex officio* investigation on a disputed matter.

Based on the foregoing, the High Court of Appeals' General Assembly of Civil Chamber has rendered a significant decision by approving the first instance court's decision to resist.

## IV. Conclusion

It is important to keep in mind that the extent of legal evaluation of a disputed matter is at the judge's discretion and the judge may proceed with regard to an expert report, regardless of the parties' objections or lack thereof and the concept of acquired right does not preclude a judge from exercising its discretion. In other words, a judge cannot be deemed bound with an expert report that is found to be insufficient or faulty, just because the relevant party affected by the insufficient or incorrect parts of the report does not object.

## Data Protection Law

### *Turkish Data Protection Authority Introduces New Information Note on Chatbots*

The Turkish Data Protection Authority ("***DPA***") has recently issued the Information Note on Chatbots (ChatGPT Example)[14] ("***Guideline***") which was published on the DPA's website on November 8, 2024.

The DPA defines the chatbots as artificial intelligence-powered software that performs specific tasks by communicating with users in written or verbal form through an interface. These technologies use natural language processing (NLP) techniques to make sense of the input from users and provide relevant outputs. The feature that distinguishes AI chatbots from other chatbots is that AI chatbots have a continuous learning and development process with the knowledge gained from previous interactions with users.

The DPA emphasizes that these technologies, which have become widespread for both personal and corporate uses, should be developed in compliance with data security and privacy requirements.

**I. Data Processed by AI-based Chatbots**

The DPA states that AI-based chatbots have a wide range of data processing capabilities to effectively communicate with users and perform various tasks. While these capacities increase the functionality of the technology, they also require the collection and processing of certain types of personal data. AI chatbots mainly process the following data:

**Account Information:** Basic information such as the user's name, contact details and payment details.

**Usage Data:** Content of chats, user feedback and uploaded files.

**Technical Data:** IP address, device type, operating system, and browser information.

**Cookies and Metadata:** Data that provides information about the user's behaviour and preferences on the platform.

Accurate and transparent processing of this data is critical in terms of gaining the trust of users as well as compliance with the law.

**Data Security and Privacy Risks**

The DPA explains the various risks regarding the protection and security of user data, and notes that managing these risks is a priority task for developers and service providers. The most common risks are the following:

**Data Leakage:** Personal data becoming accessible to unauthorized persons due to inadequate technical measures or vulnerabilities.

**Improper or Excessive Data Sharing:** Privacy is compromised when users share excessive or sensitive information with chatbots.

**Protection of Children Data:** Vulnerabilities that may occur due to the lack of protection mechanisms such as age verification in services for children.

[14] https://kvkk.gov.tr/SharedFolderServer/CMSFiles/967c7518-2a4c-4318-9c97-01dcac2591f3.pdf

**Cyber Attacks:** Malicious attacks that exploit the weaknesses of systems.

### II. Points to Consider in Compliance with the Personal Data Protection Law

The Personal Data Protection Law ("***Law***") states that compliance with the obligations stipulated by the Law plays a vital role in the development and operation of chatbots. The key issues to be considered in this context are as follows:

**Disclosure Obligation:** Users should be clearly informed about what data is collected, for what purpose it is processed, and with whom it is shared. The principle of transparency is a fundamental requirement in this context.

**Data Minimization:** Developers and data controllers should collect and process only the data that is necessary. Collecting unnecessary data can increase the risk of privacy violations.

**Risk Assessment:** Before starting data processing, technical and administrative risks in systems should be analysed in detail and necessary precautions should be taken.

**Child Protection:** Age verification mechanisms should be used effectively in child-specific services and extra protection should be provided for children's data.

**Data Retention Period:** Collected data should only be used for specified purposes and should be destroyed when these purposes are achieved. Unnecessary data retention can lead to legal issues.

**Security Certifications:** Systems must comply with internationally recognized security standards and be regularly audited.

### III. Conclusion

Chatbots are a rapidly growing and evolving part of the digital world. While these technologies make users' lives easier, they also bring privacy and data security requirements. Chatbots developed and operated in compliance with the Law not only fulfil legal responsibilities but also promote responsible use of technology by increasing user trust and satisfaction. By complying with these requirements, developers and data controllers can both protect the rights of individuals and build long-term trust and reputation.

## Internet Law

### *Recent Developments on Internet Law*

### I. Amendments to the Child Protection Law

Law Proposal Amending the Child Protection Law ("***Law Proposal***") was published on Turkish Grand National Assembly's website on December 13, 2024. The Law Proposal was submitted to the Digital Media Commission and the Health, Family, Labour, and Social Affairs Commission on December 12, 2024, and is currently pending before the Turkish Grand National Assembly.

The Law Proposal consisting of five articles, is adding the concept of social media platforms and their use, to the Child Protection Law. Accordingly, the law will encompass the access restrictions and control mechanisms that should be put in place by social media platforms for children in order to prevent children from being exposed to harmful content in the digital environment.

With the Law Proposal, children under 13 are prohibited from subscribing to and using social media platforms, and it is stipulated

that children under 16 might subscribe to social media platforms on the condition that their parents or legal representative give explicit consent. Also, social media platforms are obliged to block access by children under 13 and the social media platforms in breach of these requirements will be subject to measures such as access ban and administrative monetary fines. Social media platforms are also obliged to establish age verification systems and control mechanisms based on parental consent within 6 months.

## II. Amendments to the Consumer Protection Law and Law on the Regulation of Electronic Commerce

The Law Amending the Consumer Protection Law and Certain Laws ("***Amendment***"), published in the Official Gazette No. 32707 on October 30, 2024, amended the Consumer Protection Law No. 6502 ("***Consumer Protection Law***") and the Law on the Regulation of Electronic Commerce No. 6563 ("***E-Commerce Law***"). The Amendment introduced significant changes in the areas of consumer law and e-commerce law.

The Amendment introduced changes to the Consumer Protection Law, including expanding the scope of contracts that could be concluded by means of distant communication. Whereas consumer loan agreements were previously required to be concluded in writing in order to be valid, the Amendment now enables the consumer loan agreements to be established by means of distance communication.

Furthermore, a new practice has been introduced regarding special bank accounts opened under fixed-term loan and housing finance agreements. Such accounts, which are used solely for loan transactions, are automatically closed when the loan payment is completed. However, if a consumer wishes to keep the account open, they will now be able to submit this request not only in writing, but also through a permanent data storage device.

As for the amendments made to the E-Commerce Law, according to the E-Commerce Law, the intermediary service providers that enable the contracting or ordering of goods or services of electronic commerce service providers in electronic commerce marketplaces ("***Electronic Commerce Intermediary Service Provider***") are obliged to obtain a license from Ministry of Trade in order to operate. The Amendment provides for some exceptions and discounts regarding the calculation of the license fee. Accordingly, sales made abroad are excluded from the calculation of the license fee, capital expenditures made under investment incentives and net transaction volume are deducted under certain conditions.

Prior to the Amendment, those sales made abroad through electronic commerce marketplaces by intermediary service providers and their economically affiliated intermediary service providers were not included in the calculation of the license fee. According to the additional exceptions for the calculation of the license fee introduced by the Amendment, provided that the net transaction volume of the Electronic Commerce Intermediary Service Provider does not exceed twenty percent of the total net transaction volume of Electronic Commerce Intermediary Service Providers and Electronic Commerce Service Providers calculated using Electronic Commerce Information System ("***ETBIS***") data, twice the aggregated amount of (i) sales made abroad through electronic commerce marketplaces by the Electronic Commerce Intermediary Service Provider and its economically affiliated

Electronic Commerce Intermediary Service Providers and (ii) investment expenditures made under an investment incentive certificate obtained from the Ministry of Industry and Technology pursuant to the legislation on project-based support of investments, executed in the following calendar year, will be deducted from the net transaction volume of that calendar year. Additionally, in determining whether the net transaction volume threshold has been exceeded, any excess below fifteen percent will not be taken into account.

As for another exception introduced by the Amendment, in calculating the license fee for 2024, the deduction from the net transaction volume will be calculated as four times the total amount of investment expenditures made under project-based investments and sales made abroad by the Electronic Commerce Intermediary Service Providers; and for 2025, the deduction will be three times the total of these specified amounts.

## Telecommunications Law

### *A New Era in Turkiye's Cybersecurity: Insights from the Presidential Decree and Draft Law*

The first quarter of 2025 has brought notable developments in Turkiye's cybersecurity landscape, signalling important changes ahead.

**I. The Presidential Decree on the Cyber Security Presidency is Published**

The Presidential Decree on the Cyber Security Presidency ("***Decree***") was published in the Official Gazette of January 8, 2025, with number 32776[15] and entered into force on the same date. The Decree establishes the Cyber Security Presidency ("***Presidency***") and sets out the procedures and principles regarding its organization, duties, powers and responsibilities.

The Cyber Security Presidency, which is affiliated to the Presidency of the Republic, has public legal personality, a special budget and is headquartered in Ankara. Initially 135 staff positions have been allocated to the Presidency.

The Decree sets out the duties and powers of the Cyber Security Presidency as follows:

**(i)** To determine policies, strategies, and objectives, prepare action plans, carry out legislative work, ensure coordination of relevant activities and monitor their effective implementation in order to ensure cyber security.

**(ii)** To carry out activities to raise awareness, training and increase consciousness on cyber security.

**(iii)** To carry out projects supporting cyber security and information security.

**(iv)** To carry out activities to increase cooperation between the public, private sector and universities in the field of cyber security.

**(v)** To carry out studies for the development of domestic and national products and technologies with the cyber security ecosystem and for domestic entrepreneurs to become competitive in the world market.

[15] https://www.resmigazete.gov.tr/eskiler/2025/01/20250108-1.pdf

**(vi)** To carry out R&D and technology transfer in the areas needed for cyber security.

**(vii)** To carry out activities to encourage participation in training exercises, events and fairs organized at home or abroad related to cyber security.

**(viii)** To carry out studies to identify cyber security vulnerabilities.

**(ix)** To identify priority cyber security areas in order to direct the capacity in the field of cyber security to critical areas and to prevent duplicate investments.

**(x)** To develop cyber security emergency and crisis management plans and to establish joint operation centres within the framework of these plans.

**(xi)** To provide opinions on the incentives to be given by public institutions and organizations in the field of cyber security.

**(xii)** To perform other duties assigned by the legislation.

The service units of the Presidency are as listed as below:

**(i)** Directorate General for Cyber Defence

**(ii)** Directorate General for Cyber Resistance

**(iii)** Directorate General for Ecosystem Development.

**(iv)** Directorate of Foreign Relations

**(v)** Department of Administrative Services

**(vi)** Office of Legal Counsellor.

**(vii)** Office of Press and Public Relations

## II. Draft Law on Cyber Security Submitted to the Grand National Assembly of Turkiye

On January 10, 2025, the Draft Law on Cyber Security ("***Draft Law***" or "***Law***")[16] was submitted to the Grand National Assembly of Turkiye ("***GNAT***") and on January 15, 2025, it was approved by the Committee on National Defence of the GNAT.

### *a. Aim and Rationale*

The Draft Law aims to identify and eliminate existing and potential threats directed from within and outside against all elements that constitute the national power of the Republic of Turkiye in cyberspace, to determine the principles to reduce the possible effects of cyber incidents, to make the necessary arrangements for the protection of public institutions and organizations, professional organizations with public institution status, real and legal persons and organizations without legal personality against cyber-attacks, to determine strategies and policies to strengthen the cyber security of the country and to regulate the principles for the establishment of the Cyber Security Board.

In the rationale of the Draft Law, it is mentioned that cybersecurity has become a priority in a world where digitalization is

[16] https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y3/T2/WebOnergeMetni/6d9ba10d-9be6-4838-b58f-5d9d06080ff9.pdf

accelerating and has become a fundamental necessity in the process of technological transformation and development that Turkiye is going through. It was noted that internet usage, time spent on social media, the number of mobile subscribers, the number of mobile broadband subscribers and fixed broadband users in Turkiye have increased significantly, and as a result, data consumption -as in the rest of the world- has increased at a remarkable rate.

It was stated that cyber-attacks may target various entities and institutions, and the existence of a central authority supports efficient use of resources, fast and coordinated decision-making mechanisms, and also provides a basis for more effective detection of threats, harmonized response processes and focus on strategic objectives.

It was emphasized that in the current cyber security structure in Turkiye, many public institutions, including the Ministry of Transport and Infrastructure, the Ministry of Industry and Technology, the Information and Communication Technologies Authority and the Digital Transformation Office of the Presidency have responsibilities, but there is a lack of an umbrella legislation to provide a regulatory framework for institutions.

***b. Provisions***

The scope of this Draft Law covers public institutions and organizations, professional organizations with public institution status, real and legal persons and organizations without legal personality that exist, operate, and provide services in cyberspace, with the exceptions specified.

With this Draft Law, domestic and national products/resources will be prioritized in efforts to ensure cyber security.

The duties of the Presidency include establishing and subsequently supervising cyber incident response teams called SOMEs, conducting studies to determine and increase the digital maturity levels of SOMEs, measuring their cyber incident response capabilities by conducting training exercises in cyber security, establishing coordination with cyber incident response teams of other countries, conducting and encouraging studies for the production and development of all kinds of cyber response tools and national solutions.

The powers of the Presidency include the following:

**(i)** To take the necessary measures to protect those covered by this Law against cyber-attacks and to provide deterrence against the source of these attacks. In this context, it will ensure the installation and integration of software and hardware products suitable for information systems, transfer the data and log records generated or collected by these products to the information systems under the management of the Presidency, and use the necessary method and tool for the detection of cyber incidents.

**(ii)** Providing on-site or remote cyber incident response support to those exposed to cyber incidents within the scope of this Law, trace the cyber attacks through the data, images or log records found or obtained in cyberspace, examine and prove the findings, share the findings with criminal consequences with judicial authorities and other relevant parties, and coordinate with stakeholders in Turkiye and abroad.

**(iii)** Receive and evaluate information, documents, data, and records from those within the scope of this Law, limited to the activities it carries out, make use of their archives, electronic data processing centres and communication infrastructure and establish contact with them. The information, documents, data, and records thus obtained shall be subject to study for a maximum period of two years and shall be destroyed after the study period. Those who are requested to provide information within this scope cannot rely on the provisions of their own legislation to abstain.

**(iv)** Collect, store, and evaluate log records in information systems. It may prepare reports on these and share them with relevant institutions and organizations.

There is also a plan to establish the Cyber Security Board, consisting of the President of the Republic, the Vice President of the Republic, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Interior, the Minister of National Defence, the Minister of Industry and Technology, the Minister of Transport and Infrastructure, the Secretary General of the National Security Council, the President of the National Intelligence Agency, the President of the Defence Industry and the President of Cyber Security.

### *c. Penal Provisions and Administrative Fines*

Some of the sanctions set forth in the Law are as follows:

**(i)** Those who carry out activities without obtaining the necessary approvals, authorizations or permissions required by this Law shall be sentenced to imprisonment from two to four years and a judicial fine from one thousand days to two thousand days.

**(ii)** Those who make available, share, or sell personal or corporate data that was within the scope of critical public service but found in cyberspace due to a previous due to data leakage, without the permission of individuals or institutions, shall be sentenced to imprisonment from three years to five years.

**(iii)** Those who carry out activities aimed at targeting institutions or individuals by insinuating a data leak incident where there has been none, shall be sentenced to imprisonment from two to five years.

## Employment Law

### *A Recent Decision of the Constitutional Court on Violation of Property Rights Due to Delayed Payments by Public Authorities*

#### I. Introduction

The Constitutional Court, in its decision of September 18, 2024, on the application number 2020/19618 ("***Decision***"), evaluated critical issues on the protection of property rights in terms of monetary receivables and the timely fulfilment of financial obligations by public authorities. The case focuses on the applicant's claims regarding violation of her right to property, due to the depreciation of her receivables as a result of inflation.

## II. Dispute Subject to the Decision

The dispute subject to the Decision concerns the applicant's claims that the value of the receivable she claimed has depreciated due to inflation and that her right to property and right to a fair trial have been violated.

The applicant, a former lecturer at a university, was dismissed from her position. The lawsuit she filed against this decision was rejected by the Eskişehir Administrative Court in 2001 on the grounds that she had not demonstrated satisfactory performance based on background reports. This ruling became final following the appeal process.

Subsequently, the applicant initiated legal proceedings to annul the background reports. In 2002, the Eskişehir Administrative Court annulled the reports, and based on this favourable decision, the applicant filed a lawsuit for non-pecuniary damages against the supervisor responsible for preparing the reports. During the proceedings before the Kütahya 2nd Civil Court of First Instance, it was determined that the reports contained false information. The court ruled in favour of the applicant and awarded her non-pecuniary damages.

Following annulment of the background reports, the applicant requested the retrial of the previous administrative decision about termination of her employment and also sought compensation for monetary losses incurred. The court accepted this request, and as a result of retrial it was ruled that the applicant's monetary loss must be compensated with its interest to be accrued from March 2001 (when the lawsuit was initially filed).

Based on the rulings of the court, the applicant began working in 2016. She was paid only for the period between 2001 and 2005 when she was not employed, but the University did not make any payments for the period from 2005 to 2016, arguing that she had earned a higher salary during that time.

In 2016, the applicant filed a full remedy action against the University, claiming non-compliance with previous court decisions due to their failure to compensate her full monetary rights. The Kütahya Administrative Court ruled in favour of the applicant, ordering payment of both pecuniary and non-pecuniary damages. The court emphasized that the applicant would have earned more if she had remained employed at the University between March 2001 and January 2016. This decision was upheld by the İzmir Regional Administrative Court and became final.

## III. Evaluations of the Constitutional Court's Decision

Among other claims of the applicant regarding the duration of litigation, the applicant also asserts that her receivables lost their value due to inflation and that her right to property was violated due to the failure to apply interest on her receivables.

The Constitutional Court, citing several previous cases where payment delays by public authorities led to depreciation of receivables and thereby imposed an excessive burden on applicants, concluded that the applicant's right to property under Article 35 of the Constitution had indeed been violated.

The Constitutional Court concluded that even though Kütahya Administrative Court ordered for payment of receivable along with its legal interest to be accrued from the date of lawsuit, the issue regarding legal interest that should have accrued from date of relevant salary until the date of lawsuit remained unresolved. The Constitutional

Court found this situation imposed excessive and unusual burden on the applicant and accordingly disrupted the balance between protecting property rights and serving the public interest to the applicant's detriment.

Following determination of such violation of property rights, the Constitutional Court concluded that a retrial in line with the applicant's requests can provide remedy required here. Therefore, the applicant's claim for compensation was rejected, but the judicial authorities were instructed to pursue a new litigation to rectify the violation.

**IV. Conclusion**

The Constitutional Court's decision highlights that public authorities' delayed fulfilment of their monetary obligations causes infringement of individuals' property rights. The Constitutional Court also emphasizes the need to ensure that public debts are paid without any unreasonable delay, especially where such delays may cause significant financial damage to individuals. The ruling underscores that when depreciation of a claim due to inflation or other factors places an excessive burden on an individual, the interference with their property rights becomes disproportionate, leading to a violation.

## Intellectual Property Law

### *A Landmark Trademark Decision from the High Court of Appeals on Conceptual Similarity vs. Distinctiveness*

**I. Introduction**

According to Article 6/1 of Law No. 6769 on Industrial Property ("***Law No. 6769***"), for two compared phrases to be deemed as having a likelihood of confusion, the following conditions should be met: (i) similarity between the trademarks, (ii) similarity between the goods and services covered by the compared trademarks, and (iii) existence of likelihood of confusion. In terms of similarity between the trademarks, the examination is conducted based on (a) conceptual similarity, (b) visual similarity and (c) phonetic similarity.

In its decision numbered 2024/3603 E., 2024/5814 K., dated July 11, 2024, the High Court of Appeals ruled that that when conceptual similarity arises from weak and non-distinctive phrases, the overall impression of a trademark may still serve as a basis for differentiation.

**II. Dispute Subject to the Decision**

The dispute is about an annulment request made against the decision of the Re-Examination and Evaluation Board, which had accepted an objection based on an earlier trademark. The earlier trademark features a pizza oven arch and a circular pizza illustration with visible toppings and a triangular slice removed, on a green background. Below this visual, the text "Pizza House" appears in a bold, white serif font. The subject-matter trademark application, on the other hand, features "houseofpizza" in bold lowercase black letters, with a red star inside the "o." Below, the phrase "steak burger" appears in smaller black text, separated by the red star.

In the lawsuit petition, the plaintiff argued that (i) the compared trademarks are not similar as there are visual and phonetic differences between the trademarks, (ii) the defendant's trademark is not a well-known trademark, (iii) no one should monopolize the use of generic foreign terms.

The first instance court accepted the claim on the grounds that (i) although the compared trademarks covered overlapping

goods, there are sufficient visual and phonetic differences between the trademarks from the perspective of the average consumer, (ii) the word elements of both trademarks were conceptually weak, (iii) the opposing party failed to demonstrate distinctiveness gained through use, (iv) thus consumers would not establish a connection between the trademarks under Article 6/1 of Law No. 6769.

The Turkish Patent and Trademark Institution ("***TPTI***") objected to the first-instance court's decision before the Regional Court of Appeals; but the Regional Court of Appeals rejected the TPTI's objection. The decision of the Regional Court of Appeals was appealed.

On July 11, 2024, the 11th Civil Chamber of the High Court of Appeals found no substantive or procedural grounds to overturn the ruling of the first-instance court, so confirmed the reasoning of the first instance court.

**III. Conclusion**

High Court of Appeals made an important ruling on how trademarks should be evaluated in terms of their overall impression, especially when it comes to weak trademarks. The decision emphasizes the need for a detailed, case-by-case analysis, considering the context and distinctiveness of the trademarks involved. The decision is also significant as the High Court accepted that conceptual similarities between weak trademarks might be overcome by virtue of differences in their overall appearance or impression and thereby potentially offered more flexibility in trademark disputes.


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