

TURKEY: An Introduction to Competition/Antitrust

Background

Throughout 2024, the Turkish Competition Board (“Board”) rendered notable precedents, and the Turkish Competition Authority (“Authority”) worked on various matters such as a new sector inquiry, legislative works, and co-operation agreements with other authorities.

New Legislative Developments

On 29 May 2024, Law No 7511 on the Amendment of the Turkish Commercial Code and Certain Acts was published in the Official Gazette (No 32560). Law No 7511 introduced amendments to Article 43 and Article 45 of Law No 4054, foreseeing changes to the procedure governing full-fledged investigations conducted by the Authority. A key amendment is the abolishment of the first written defence. Instead, the focus now centres primarily on the period following the Authority’s investigation report, where undertakings retain the right to submit a second written defence which is the backbone of defence instruments. Furthermore, the amendments introduce a conditional right to submit a third written defence, whereas undertakings could automatically exercise this right previously. With the amendments, submission of a third written defence became contingent upon a change in the opinion articulated in the investigation report by case handlers. Additionally, the timeframe for preparation of the additional opinion and the submission of the third written defence has been significantly reduced, from up to 30 days to 15 days for the additional opinion, and from up to 60 days to 30 days for the third written defence.

Further, the Guidelines on Competition Infringements in Labour Markets (“Guidelines”) were adopted by the Board’s decision numbered 24-49/1087-RM(4). The Guidelines provide explanations on the following: (i) wage-fixing agreements; (ii) no-poaching agreements; (iii) information exchange; and (iv) ancillary restraints. The Guidelines also provide explanations in terms of the application of Article 5 (concerning the exemption mechanism), Article 6 (concerning abuse of dominant position), and Article 7 (concerning mergers and acquisitions) of Law No 4054 to labour markets.

The New Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (“New Regulation”) was published in the Official Gazette on 27 December 2024. The New Regulation recently came into force, revoking the old regulation, and it sets out detailed guidelines on the calculation of monetary fines. Accordingly, when calculating fines, the base fine will be determined by considering the severity of the harm caused or likely to be caused by the violation and whether the nature of the violation is naked and/or hardcore. While the revoked regulation provided a distinction between “cartel” and “other violations” in the determination of base administrative monetary fines and provided lower and upper limits for said base fines determined based on the type of violation, the new Regulation removes this distinction and the lower and upper limits foreseen for the relevant violations. Therefore, the Authority has discretion to determine a base fine rate up to the statutory maximum of 10% of the undertaking’s turnover, as set forth in Article 16 of Law No 4054.

Additionally, while there is no primary legislation specific to competition in digital markets in Türkiye, the Ministry of Trade prepared a Draft Regulation on Amending Law No 4054, specifically focusing on updating existing competition rules to establish and preserve competition in digital markets. In 2024, the Authority shared its final draft with related parties and held stakeholder meetings to hear their opinions on

the current state of the draft. The draft amendment is a result of the Authority's efforts to regulate competition issues in digital markets, which have been ongoing since at least early 2021. However, the timing for its adoption remains still unclear.

Key Investigations and Decisions

Throughout 2024, the Authority conducted numerous investigations focusing particularly on FMCG, chemistry, mining, automotive and vehicles.

In its Nesine decision (29/02/2024, 24-11/194-78), the Board found that Nesine had entered into an exclusive agreement regarding the purchase of advertisement services with one of the largest live match broadcasting platforms and abused its dominant position by preventing competitors from purchasing these advertisement services and imposed an administrative monetary fine on Nesine.

On the other hand, based on its findings during the ongoing Mobile Ecosystems Sector Inquiry, through its decision (21/05/2024, 24-23/525-M), the Board decided to launch an investigation against Apple to decide whether Apple prevents application developers on the App Store from using competing payment systems through certain restrictions.

The Authority has also been intensifying its scrutiny of labour markets. In addition to the recently published Guidelines, the Board recently concluded its investigation into whether private schools operating in Kocaeli province violated Article 4 of Law No 4054 and, through its decision (03/10/2024, 24-40/948-407), imposed an administrative monetary fine on Arı İnovasyon for engaging in non-poaching agreements and practices related to fixing employee salaries. Further, the Board initiated an investigation through its decision dated 3 October 2024 (24-40/956-M(1-3)) into undertakings active in the film production industry, examining their labour market practices alongside other concerns. In addition, the Board concluded its investigation into certain undertakings active in the pharmaceutical sector regarding their labour market practices after they applied for the settlement mechanism decision dated 9 November 2023 (23-53/1004-M)). In another decision (24/04/2024, 24-20/466-196), the Board imposed an administrative monetary fine on French high schools in Istanbul for engaging in practices related to fixing school registration fees and the salaries of Turkish teachers.

In 2024, the Authority actively evaluated recently adopted commitment and settlement applications, and, in accordance with the statistical data for the first half of 2024 announced by the Authority, 66 investigations were concluded by settlement while eleven investigations were concluded by commitments.

In accordance with the Board's decision (14/03/2024, 24-13/250-105) regarding an investigation into whether driving courses active in the city of Uşak violated Article 4 of Law No 4054, all the investigated undertakings applied for the settlement mechanism and the investigation was therefore concluded by the Board.

The Board initiated an investigation into Hepsiburada to investigate whether it had violated Law No 4054. Hepsiburada submitted commitments, and the Board deemed these commitments sufficient to fully address the competition concerns.

In accordance with the Board's recently published decision (17/08/2023, 23-39/755-264), Lesaffre, submitted an application to benefit from the provision of the Regulation on Active Co-operation for Detecting Cartels, and the Board accepted the undertakings' application and reduced the administrative monetary fine down to 35%. During the investigation, Lesaffre also applied for the settlement mechanism. The Board accepted Lesaffre's application and terminated the investigation.

Regarding merger control assessments and Phase II investigations, throughout 2024, 311 transactions (six of which concern privatisation, and the rest concern mergers and acquisitions) have been notified to the Authority. In 2024, two transactions were taken into Phase II review. However, no notified transactions were prohibited by the Board. The Board approved 127 transactions without commitments, three transactions with commitments, and found 13 transactions non-notifiable within the first half of 2024.

In 2024, the Board continued to penalise companies for preventing and/or hindering on-site inspections, and published more than 20 reasoned decisions.

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