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Turkey
Cartels

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This country-specific Q&A provides an overview of cartels laws and regulations applicable in Turkey.

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Turkey: Cartels

1. What is the relevant legislative framework?

The relevant legislation on cartel regulation is the Act on Protection of Competition No. 4054 of 13 December 1994 (the 'Competition Act'), which bases on Article 167 of Turkish Constitution assigning the government to prevent cartels and monopolies. The applicable provision for cartel-specific cases is Article 4 of the Competition Act. The provision is akin to, and closely modelled on, Article 101(1) of the Treaty on the Functioning of the European Union ('TFEU'). It prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices which have or may have as their object or effect the prevention, restriction or distortion of competition within a product or services market in Turkiye or a part thereof. The provision does not give a definition of 'cartel' and its scope extends beyond cartel activity.

The definition of 'cartel' is provided under the Regulation on Active Cooperation for Detecting Cartels (the 'Leniency Regulation') as well as the Guidelines on the Explanation of the Regulation on Active Cooperation for Detecting Cartels (the 'Leniency Guidelines'). The definition provided by the Leniency Regulation and the Leniency Guidelines are identical and akin to the cartel definition adopted by other jurisdictions. According to the Leniency Regulation cartels are defined as competition-limiting agreements and/or concerted practices concluded between competitors concerning the subjects of price fixing, allocation of customers, suppliers, regions or commercial channels, introduction of supply amount restrictions or quotas, and collusive bidding in tenders. The cartel prohibition provisions are applied to all industries, without exception.

On December 16, 2023, the revised Leniency Regulation was officially published in the Official Gazette No. 32401, replacing the previous regulation that had been in effect since February 15, 2009 (referred to as the "Former Regulation"). Alongside this update, there is an intention to revise the Guidelines for Explanation of the Leniency Regulation, originally published in April 2013, to align with the changes introduced by the new Leniency Regulation.

2. To establish an infringement, does there need to have been an effect on the market?

Article 4 of the Competition Act prohibits any form of agreement that aims or has the 'potential' to prevent, restrict or distort competition. This specific feature grants broad discretionary power to the Turkish Competition Board (the 'Board'). Additionally, Article 4 of the Competition Act brings a non-exhaustive list which provides examples of possible restrictive agreements. Cartels are regarded as object restrictions under the Board's decisional practice. Therefore, the Board is not required to establish anti-competitive effects when dealing with cartels and simply proving the existence of a cartel will be deemed sufficient to meet standard of proof for a competition law violation.

In 2020, the Competition Act was subject to essential amendments which passed through the Grand National Assembly of Turkiye (the 'Turkish Parliament') on 16 June 2020, and entered into force on 24 June 2020 ('Amendment Act') – on the day of its publication on Official Gazette No. 31165. The Amendment Act seeks to add the Turkish Competition Authority's (the 'Authority') experience of more than 20 years of enforcement to the Competition Act and bring it closer to European Union law. After the Amendment Act, – the Communiqué No. 2021/3 on De Minimis Applications for Agreements, Concerted Practices and Decisions of Associations of Undertakings ('Communiqué No. 2021/3') entered into force on 16 March 2021. It provides a safe harbour for companies whose market shares do not exceed 10 per cent for agreements between competitors, or 15 per cent for agreements between non-competitors, except for agreements that have an anti-competitive object. As a result, the Board is able to decide not to launch a fully-fledged investigation for agreements, concerted practices or decisions of association of undertakings that do not exceed the relevant market share thresholds. However, this principle is not applicable to hard-core violations such as price-fixing, territory or customer sharing, restriction of supply or resale price maintenance. Therefore, cartel arrangements do not benefit from the de minimis doctrine.

3. Does the law apply to conduct that occurs outside the jurisdiction?

Turkiye is one of the 'effect theory' jurisdictions, where what matters is the effect that a cartel activity has produced on the markets in Turkiye, regardless of (i) the

nationality of the cartel members, (ii) where the cartel activity took place, or (iii) whether the members have a subsidiary in Turkiye (See decisions of Rail Cargo Logistics, 15-44/740-267, 16.12.2015; Güneş Ekspres/Condor, 11-54/1431-507, 27.10.2011; Imported Coal, 10-57/1141-430, 02.09.2010; Refrigerator Compressor, 09-31/668-156, 01.07.2009; Sisecam/Yioula, 07-17/155-50, 28.02.2007 and Gas Insulated Switchgears 04-43/538-133, 24.06.2004.). It should be noted that, however, the Board has yet to enforce monetary fines or other sanctions against undertakings located outside of Turkiye without any presence in Turkiye, as this is mostly due to the enforcement handicaps (such as difficulties of formal service to foreign entities).

Export cartels do not fall within the scope of jurisdiction of the Authority in accordance with Article 2 of the Competition Act (See decision of Poultry Meat Producers, 09-57/1393-362, 25.11.2009), although there are instances where the Board's reasoned decision suggests that the Board might claim jurisdiction over export cartels (See decision of Paper Recycling, 13-42/538-238, 08.07.2013). That said, it is fair to say that an export cartel would fall outside of the Authority's jurisdiction if and to the extent that it does not produce an impact on the Turkish markets (See decisions of Telecommunication Companies, 29.05.2014, 14-19/361-157; Automotive Industry Exporters Association 20.09.2012, 12-44/1350-455).

4. Which authorities can investigate cartels?

The national competition authority for enforcing the cartel prohibition and other provisions of the Competition Act in Turkiye is the Authority. As the competent body, a cartel matter is primarily adjudicated by the Board that is responsible for, inter alia, investigating and condemning cartel activity. Administrative enforcement is also supplemented with private lawsuits. In private suits, cartel members are adjudicated before regular courts. If a cartel activity amounts to a criminally prosecutable act such as bid rigging in public tenders, it may separately be adjudicated and prosecuted by Turkish penal courts and public prosecutors.

5. What are the key steps in a cartel investigation?

The Board may ex officio, or as a result of a notice or complaint, launch a preliminary investigation prior to initiating a full-fledged investigation. At the preliminary investigation stage, unless the Authority decides to conduct a dawn raid or apply other investigatory tools (i.e. formal information request letters), the undertakings concerned are not notified about the preliminary investigation. The preliminary investigation report of the Authority's case handlers will be submitted to the Board within 30 days after the Board's preliminary investigation decision. The Board will then decide within 10 days whether to launch a full-fledged investigation. If the Board decides to initiate a full-fledged investigation, it will send a notice to the undertakings concerned within 15 days. The investigation will be completed within six months once the Authority serves the investigation report to the undertakings. If deemed necessary, this period may be extended by the Board only once, for an additional period of up to six months. The investigated undertakings have 30 calendar days as of the formal service of the investigation notice to prepare and submit their first written defences. Subsequently, the investigation report is issued by the Authority. Once the investigation report is served on the defendants, they have 30 calendar days to submit their second written defence, extendable for up to 30 days. The investigation committee will then have 15 days to prepare an additional opinion concerning the second written defence, which is extendable for up to 15 days. The defending parties will have another 30-day period to submit their third written defence to the additional opinion, which is also extendable for up to 30 days. Once the defendant's written defences are submitted to the Authority, the written phase of the investigation will be completed. An oral hearing is held upon request by the parties. The Board may also ex officio decide to hold an oral hearing. Oral hearings are held within at least 30, and at the most, 60 days following the completion of the written defence process under the provisions of Communiqué on Oral Hearings before the Board No. 2010/2. The Board will render its final decision within: (i) 15 calendar days from the hearing, if an oral hearing is held; or (ii) 30 calendar days from the completion of the investigation process, if no oral hearing is held. It usually takes around six months (from the announcement of the final decision) for the Board to serve a reasoned decision to the investigated parties.

6. What are the key investigative powers that are available to the relevant authorities?

The Authority may request information it deems necessary from all public institutions and organisations, undertakings and trade associations. They are obliged to provide the necessary information within the period determined by the Authority. Article 15 of the Competition Act also authorises the Authority to conduct on-site investigations. Accordingly, the Authority is entitled to

examine the books, paperwork and documents of undertakings and trade associations, and, if necessary, take copies of the same; request undertakings and trade associations to provide written or verbal explanations on specific topics; and conduct on-site investigations with regard to any asset of an undertaking; and examine records of computers and mobile devices, including but not limited to deleted items accessed through company's servers and cloud systems (including those located outside Turkiye). The Competition Act provides huge powers to the Authority on dawn raids. Only if the undertaking concerned refuses to allow the dawn raid, a court order may be obtained. Other than that, the Authority does not need to obtain judicial authorisation to use its powers. While the wording of the Act is such that employees can be compelled to give verbal testimony, in practice, employees can avoid providing answers on issues that are uncertain to them, provided that a written response is submitted within a mutually agreed time.

In addition to the above, the Amendment Act also includes an explicit provision that during on-site inspections, the Authority can inspect and make copies of all information and documents in companies' physical records as well as those in electronic spaces and IT systems, which the Authority already does in practice.

Similarly, the Authority published its Guidelines on Examination of Digital Data During On-site Inspections on 8 October 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in the electronic media and information systems, during the on-site inspections ('Guidelines on Examination of Digital Data'). According to the Guidelines on Examination of Digital Data, the Authority can inspect portable communication devices (mobile phones, tablets, etc.) if, as a result of a quick review, it is understood that they include digital data about the undertaking. The inspection of the digital data obtained from mobile phones must be completed at the premises of the undertaking, hence the data cannot be copied for the continuation of the inspection at the Authority's premises.

7. On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?

According to İstanbul Custom Consultants Association (19-22/352-158, 20.06.2019), Warner Bros Turkiye (19-04/36-14, 17.01.2019), Enerjisa (16-42/686-314, 06.12.2016) and Dow Turkiye (15-42/690-259, 02.12.2015) decisions, the attorney client protection covers the correspondences made in relation to the client's right of defence and documents prepared in the scope of an independent attorney's legal service. However, the correspondence between the undertaking concerned, its employees and in-house counsels does not benefit from the attorney–client privilege (regardless of whether the outside counsel is copied, or the correspondence is related to legal matters (Huawei 07.08.2019, 19-28/433-M), Çiçek Sepeti (2.07.2020, 20-32/405-186)). Correspondences that are not directly related to use of the client's right of defence and/or that aim to facilitate/conceal a violation are not protected, even when they are related to a preliminary investigation, investigation or inspection process. While an independent attorney's legal opinion on whether an agreement violates the Competition Act can be protected under the attorney-client privilege, the correspondences on how the Competition Act can be violated between an independent attorney and client do not fall within the scope of this privilege.

That said, the Eighth Administrative Chamber of the Ankara Regional Administrative Court issued a unique decision on attorney-client privilege in 2018 (Enerjisa, 2018/1236, 10 October 2018). The decision concerned an internal review report of outside counsel for competition law compliance purposes, which had been prepared before the authority opened an investigation against Enerjisa. The report was taken by the case handlers during a dawn raid conducted in the scope of the investigation against this company at a later stage. The court held that although the document was correspondence "between an independent attorney and the undertaking", it was not protected under attorney-client privilege given that "it was not directly related to the right to defence", due to its preparation prior to an investigation. In a similar vein, in Warner Bros (17.01.2019, 19-04/36-14), Storytel (30.03.2023, 23-16/274-94) and Oriflame (17.08.2023, 23-39/735-252) decisions, the Board decided that documents produced before the date of the pre-investigation are not directly related to the right to defence and would not benefit from the privilege. On the other hand, in its recent decision (Transorient and Tunaset, 26.05.2022, 22-24/390-161) the Board concluded that documents produced before the date of the pre-investigation benefit from the privilege.

8. What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?

Under the recently amended Leniency Regulation, the leniency program now extends its coverage to both cartel members and facilitators. This expansion broadens the scope of full immunity to include parties involved in hub-and-spoke cartels or other facilitators, who, in practice, face similar administrative sanctions as cartel members. They are now eligible to benefit from active cooperation, thereby enhancing the avenues for leniency applications accepted by the Authority.

According to the amended Leniency Regulation, while parties or facilitators seeking immunity can apply for leniency until the Investigation Report is officially served, applicants seeking a fine reduction can apply for leniency within three months of receiving the Investigation Notice, provided they submit required information and documents and meet specified conditions. Additionally, applicants obtaining further information and documents subsequent to their initial application can submit these materials before the conclusion of the second written defence period, which occurs 30 days after the Investigation Report is served (extendable for another 30 days).

While the leniency program traditionally applies to cartel infringements, the amended Leniency Regulation introduces new provisions offering exemptions or fine reductions under the leniency mechanism, even when the applicant initially believed their actions constituted cartel violations, but subsequent Board determination reveals otherwise. This change aims to address concerns of undertakings hesitant to utilize the leniency program due to uncertainties surrounding the nature of their infringements. This is in parallel with the Board's precedent indicating that a leniency applicant may enjoy a total immunity from fines according to Article 16/6 of the Competition Act that allows the Board to impose no fine on the undertakings actively cooperating with the Board depending on the, among others, level of cooperation, even when the subject matter falls under another form of antitrust violation (See decision of Syndicate Loans (17-39/636-276, 11.11.2017).

In alignment with European Union legislation, the Leniency Regulation now imposes an additional requirement for applicants seeking a fine reduction. This stipulation necessitates that applicants furnish documents deemed to create added value, defined in the Regulation as "information and/or documents that strengthen the Board's ability to substantiate the existence of the cartel, considering the evidence already in its possession." Through this requirement, the Authority seeks to delineate clearly between the active cooperation and settlement procedures.

Although the Leniency Regulation provides a basic definition of "document that create added value," it is expected that the forthcoming revised Guideline on Leniency Programs will offer more detailed guidance on discerning which documents qualify. Moreover, if a leniency application from a particular undertaking is rejected due to the documents it submitted not meeting the criteria of "documents that create added value," the information and documents provided by that undertaking will be excluded from the scope of the file. Consequently, they will not serve as a basis for the final decision reached at the conclusion of the investigation.

Depending on the application order, the applicant may be granted full immunity or reduction of a fine. This immunity/reduction includes both the undertaking and its employees and managers, except for the "ringleader", which can only benefit from a second-degree reduction of a fine.

The first one to file an appropriately prepared application for leniency before the investigation report is officially served may benefit from full immunity, provided that the Authority is not in possession of any evidence indicating a cartel infringement. However, there are also several other conditions provided as follows as per Article 6 of the Leniency Regulation: the applicant shall submit information and documents in respect of the alleged cartel, including the products affected, information on the geographical scope of the cartel, the duration of the cartel, the names and addresses of cartelists and cartel facilitators, and specific dates, locations, and participants of cartel meetings. In addition, the applicant should not conceal or destroy information or evidence related to the alleged cartel; should end its involvement in the alleged cartel except when otherwise is requested by the Cartel Unit of the Authority on the ground that detecting the cartel would be complicated; should keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit; and should maintain active cooperation until the Board's final decision on the investigation.

9. What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?

The rules explained in Question 3.1. apply to subsequent cooperating parties as well. Also, the Board may consider the parties' active cooperation after the immunity application as a mitigating factor as per the provisions of the Regulation on Fines.

The first applicant seeking a fine reduction receives a fine

reduction ranging between 25 and 50 percent. Employees or managers of this applicant who actively cooperate with the Authority may enjoy a fine reduction ranging from 20 to 100 percent.

The second applicant seeking a fine reduction receives a fine reduction ranging between 20 and 40 percent. Employees or managers of this second applicant who actively cooperate with the Authority may enjoy a fine reduction ranging from 20 to 100 percent.

Subsequent applicants receive a reduction ranging between 15 and 30 percent, with their employees or managers potentially benefiting from a reduction of between 15 and 100 percent.

Current employees of an applicant are entitled to the same level of leniency or immunity granted to the entity. However, there are no precedents regarding the status of former employees. Additionally, according to the Leniency Regulation, a manager or employee of an applicant may apply for leniency until the official service of the investigation report. Such an application would be separate from any applications made by the applicant itself. Depending on the order of application, the manager or employee may receive total immunity from or a reduction in the fine imposed, with the conditions for immunity or reduction being identical to those designated for the applicants.

10. Are markers available and, if so, in what circumstances?

Although the Leniency Regulation does not provide detailed principles on the 'marker system', pursuant to Article 6(3) of the Leniency Regulation and paragraph 54 et seq. of the Leniency Guidelines, a document (showing the date and time of the application and request for time (if such a request is in question) to prepare the requested information and evidence) will be given to the applicant by the authorized division. For the applicant to be eligible for a grace period, it must provide minimum information concerning the affected products, duration of the cartel and names of the cartelists and cartel facilitators (if any).

11. What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?

Articles 6 and 9 of the Leniency Regulation provide that unless stated otherwise by the Cartel Unit of the Authority, the principle is to keep leniency applications confidential until the service of the investigation report. Nevertheless, to the extent the confidentiality of the investigation will not be harmed, the applicant undertakings could provide information to other competition authorities or institutions, organisations and auditors. As per paragraph 44 of the Leniency Guidelines, if the employees or personnel of the applicant undertaking disclose the leniency application to the other undertakings and breach the confidentiality principle, the Board will evaluate the situation on a case-by-case basis based on the criteria of whether the person at issue is a high-level manager, and whether the Board was notified promptly after the breach. The applicant is in any case obliged to maintain active cooperation until the final decision is taken by the Board following the conclusion of the investigation.

12. Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?

While the Turkish cartel regime is administrative and civil in nature, certain antitrust violations such as bid rigging in public tenders may also trigger criminal consequences under Sections 235 et seq. of the Turkish Criminal Code. Illegal price manipulation (i.e. manipulation through disinformation or other fraudulent means) may also be punished buy up to two years' imprisonment and civil monetary fine under Section 237 of the Turkish Criminal Code. Immunity or leniency does not close the door on leveraging criminal procedures on the basis of a Board decision. Therefore, employees/managers of an offending company may face criminal liability, even in cases where the company benefits from immunity or leniency from administrative monetary fines.

13. Is there an 'amnesty plus' programme?

Amnesty Plus is regulated under Article 7 of the Regulation on Fines. According to Article 7 of the Regulation on Fines, the fines imposed on an undertaking which cannot benefit from immunity provided by the Leniency Regulation will be decreased by one-fourth, if it provides the information and documents specified in Article 6 of the Leniency Regulation (see above) prior to the Board's decision of preliminary investigation in relation to another cartel.

14. Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for

doing so?

The Amendment Act introduced a settlement procedure. Relevant provision was added to Article 43 concerning investigations of anticompetitive conduct in general (not limited to cartels but also to 'other infringements' under Article 4 and abuse of dominance cases under Article 6). The Board, ex officio or upon a party's request, could initiate a settlement procedure. Unlike the commitment procedure, settlement could only be offered in full-fledged investigations. In this respect, parties that admit an infringement can apply for the settlement procedure within th until the official service of the investigation report. The Board will set a deadline for the submission of the settlement letter and if settled, the investigation will be closed with a final decision including the finding of a violation and administrative monetary fine. If the investigation ends with a settlement, the Board can reduce the administrative monetary fine by up to 25 per cent.

As confirmed by two recent decisions of the Board, the undertakings concerned can apply for settlement and leniency together as long as the leniency application is submitted to the Authority before the settlement text (See decisions of Beypazarı (22-23/379-158, 18.05.2022) and Kınık Maden Suları (22-17/283-128, 14.04.2022). In Beypazarı and Kırık Maden Suları decisions, the Board indicated that Beypazarı and Kınık exchanged competitively sensitive information in terms of commercial decisions regarding pricing, and thus, engaged in a cartel. Both Beypazarı and Kınık applied for settlement and leniency. The Board accepted both parties' applications and reduced the administrative fines imposed on Kınık and Beypazarı by 35% and 30%, respectively, for opting in to the leniency mechanism. Moreover, the Board reduced the administrative fines imposed on both parties by 25% in view of their settlement with the Authority, enabling Kınık and Beypazarı to benefit from 60% and 55% reduction in fines, respectively.

15. What are the key pros and cons for a party that is considering entering into settlement?

If the investigated party decides to settle, a discount from 10% up to 25% will be applied to the administrative monetary fine by the Authority Regulation on the Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position. Settlement mechanism requires the acceptance of the alleged infringements. If investigated party submits the settlement letter, it will not be able to bring the final decision to the judicial review. Once the settlement negotiations have started and then abandoned, another settlement request cannot be submitted to the Authority.

According to Article 7 of the Settlement Regulation, the Board renders an interim decision, including but not limited to information on the rate of the maximum administrative fines calculated under the Regulation on Fines, the discount rate to be applied as a result of the settlement procedure, the discount rate to be applied, if any, under the Active Cooperation Regulation, and the rate and amount of the maximum administrative fines to be imposed. Therefore, the settlement parties have certainty about the amount of fine to be imposed. However, under the current legislation, there is no room to shape the content of the settlement decision.

The acknowledgement of an infringement could be used as evidence in the potential damages actions against the settling undertakings and weaken their defences in those legal battles as it still remains possible for third parties who suffered damages to initiate a lawsuit for compensation. This is particularly important as claimants of such cases, if successful, are allowed to recover three times their losses as compensation pursuant to Article 58 of Competition Act. It is not clear yet how the courts in these cases will view the settlement decisions, and whether they will consistently render decisions to the detriment of settling undertakings in the future. Reasoned settlement decision of the Board will be publicly announced on Authority's website as is the case with other reasoned decisions of the Board.

16. What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?

Article 43 of Decision No. 1/95 of the EC- Turkiye Association Council authorises the Authority to notify and request the European Commission (Directorate General for Competition) to apply relevant measures if the Board believes that cartels organised in the territory of the European Union adversely affect competition in Turkiye. The provision grants reciprocal rights and obligations to the EU and Turkiye, and thus the European Commission has the authority to request the Board to apply relevant measures to restore competition in relevant markets. There are also a number of bilateral cooperation agreements between the Authority and the competition agencies in other jurisdictions on cartel enforcement matters. The Authority has close ties with the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, the World Trade Organization, the

International Competition Network and the World Bank. The research department of the Authority makes periodic consultations with relevant domestic and foreign institutions/organisations about the protection of competition and submits its recommendations to the Board.

As a recent example of inter-agency cooperation of the Authority with its counterparts, on October 17, 2023, the European Commission officially announced that certain unannounced inspections at the premises of companies active in the construction chemicals sector were carried out in coordination with the UK Competition and Markets Authority and the Authority, on the very same day.

17. What are the potential civil and criminal sanctions if cartel activity is established?

The undertakings concerned will be separately subject to fines of up to 10 per cent of their turnover generated in the financial year prior to the date of the fining decision (if this is not calculable, the Turkish turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Although there is not any explicit provision in law on that front, in the latest decisions of the Board, the turnover generated from the export sales have not been taken into account in calculating the amount of fine (See decisions of Sunny Elektronik 23-01/12-7, 05.01.2023; Retailers-II 22-55/863-357, 15.12.2022; Numil 30.06.2022, 22-29/483-192; Retailers-I 28.10.2021, 21-53/747-360; Unilever 18.03.2021, 21-15/190-80; Google Android 19.09.2018, 18-33/555-273; Booking 05.01.2017, 17-01/12-4; Consumer Electronics 07.11.2016, 16-37/628-279). Nonetheless, the Board itself stated in one of its previous decisions that it is not stipulated under the Law No 4054 that solely the turnover generated from the Turkish geographic market should be considered (See decision of Sunexpress 27.10.2011, 11-54/1431-507).

Employees or members of the executive bodies of the undertakings or association of undertakings that had a determining effect on the creation of the violation may also be fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In addition to that, the Board could take all necessary measures to terminate the restrictive agreement, to remove all de facto and legal consequences of every action that has been taken unlawfully and to take all other necessary measures in order to restore the level of competition and status as before the infringement.

The Amendment Act grants the Board the power to order structural remedies for anti-competitive conduct provided that behavioural remedies are applied in the first place but failed. Either way, both behavioural and structural remedies should be proportionate to and necessary to end the infringement effectively. Furthermore, a restrictive agreement shall be deemed legally invalid and unenforceable with all its legal consequences. Similarly, the Board may take interim measures until the final resolution on the matter, in case there is a possibility of serious and irreparable damages.

Bid-rigging activity may be criminally prosecutable under Sections 235 et seq. of the Turkish Criminal Code. Illegal price manipulation (i.e. manipulation through disinformation or other fraudulent means) may also be punished by up to two years' imprisonment and a civil monetary fine under Section 237 of the Turkish Criminal Code. That said, there have been cases where the matter had to be referred to a public prosecutor after the competition law investigation was completed.

18. What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?

The Competition Act makes reference to Article 17 of the Act on Minor Offences to require the Board to take into consideration factors such as the level of fault and amount of possible damage in the relevant market, the market power of the undertakings within the relevant market, the duration and recurrence of the infringement, the cooperation or driving role of the undertakings in the infringement, the financial power of the undertakings, compliance with their commitments, etc., in determining the monetary fine. In terms of the highest monetary fines imposed by the Board as a result of a cartel investigation, Retail decision regarding pricing activities of the market chains and the undertakings at the manufacture or wholesale level that are suppliers to the market chains (21-53/747-360, 28.10.2021) stands out in two aspects: first it is the one where the highest monetary fine imposed on a single undertaking (BİM Birleşik Mağazalar A.Ş.) as TL 958,129,194.39 (around EUR 91.95 million at the time of decision, in 2021) and second, where the highest monetary fine imposed for an entire case (imposed on 6 undertakings active in the fast moving consumer goods sector) was TL 2,671,434,094.38 TL (approximately EUR 256.4 million at the time of decision, in 2021).

19. Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?

Article 16 of the Competition Act makes a reference to the term "undertaking" when it identifies the entity which the monetary fine is to be imposed on. Therefore, for instance, in the Board's Waste Paper decision (13-42/538-238, 08.07.2013) the Board found the parent companies liable instead of the joint venture. However, this is an exceptional case and the Board has a consistent approach to fine the legal entity which was involved in cartel behaviour (the actual infringing legal entity / infringing subsidiary) rather than fining the parent company as a whole (the whole group's, i.e. the undertaking's, revenue) (See decisions of Automotive, (11-24/464-139, 18.04.2011); Cement, (12-17/499-140, 06.04.2012); Financial Institutions (17-39/636-276, 28.11.2017); Hospitals (22-10/152-62, 24.02.2022).

20. Are private actions and/or class actions available for infringement of the cartel rules?

Article 57 et seq. of the Competition Act entitle any person injured in his or her business or property by reason of anything forbidden by the antitrust laws to sue the violators for three times their damages plus litigation costs and attorney fees. Turkish procedural law does not allow for class actions or procedures. While Article 73 of Act No. 6502 on the Protection of Consumers allows class actions by consumer organisations, these actions are limited to violations of Act No. 6502, and do not extend to cover antitrust infringements. Similarly, Article 58 of the Turkish Commercial Code enables trade associations to take class actions against unfair competition behaviour, but this has no reasonable relevance to private suits under Article 57 et seq. of the Competition Act.

21. What type of damages can be recovered by claimants and how are they quantified?

Article 58 of the Competition Act determines how to calculate the amount of any damages suffered. Parties that suffer as a result of the prevention, distortion or restriction of competition may claim as damages the difference between the cost that they paid and the cost that they would have paid if competition had not been restricted. Pursuant to Article 58, in determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well.

22. On what grounds can a decision of the relevant authority be appealed?

Board decisions, including decisions on interim measures and fines can be appealed before the administrative courts under the appeal process. Administrative litigation cases are subject to judicial review before the newly established regional courts (appellate courts), creating a three-level appellate court system consisting of Administrative Courts, regional courts (appellate courts) and the Council of State. The judicial review of the Board's decisions before the administrative courts is conducted pursuant to administrative law principles. Ankara administrative courts examine whether the Board's decision complies with the law in terms of subject matter, form, purpose, jurisdiction and reason. On the other hand, the regional courts will go through the case file both on procedural and substantive grounds. The regional courts' decisions are considered as final in nature. In exceptional circumstances laid down in Article 46 of the Administrative Procedure Act, the decision of the regional court will be subject to Council of State's review and therefore will not be considered as a final decision. In such a case, the Council of State may decide to uphold or reverse the regional courts' decision. If the decision is reversed, it will be remanded back to the deciding regional court, which will in turn issue a new decision to take account of the Council of State's decision.

23. What is the process for filing an appeal?

As per the Act No. 6352, the administrative sanction decisions of the Board can be submitted for judicial review before the Administrative Courts in Ankara by the filing of an appeal case within 60 days upon receipt by the parties of the reasoned decision of the Board. As per Article 27 of the Administrative Procedural Act, filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request by the plaintiff, the court, providing its justifications, may grant stay of execution if such execution is likely to cause serious and irreparable damage; and if the decision is highly likely to be against the law (i.e. the showing of a prima facie case). The judicial review period before the Ankara Administrative Courts usually takes about 12 to 24 months. After exhausting the litigation process before the Administrative Courts of Ankara, the next step for the judicial review is to initiate an appeal against the Administrative Court's decision before the regional courts. The appeal request for the Administrative Courts' decisions will be submitted to the regional courts within

30 calendar days of the official service of the reasoned decision of the Administrative Court. The final step for the judicial review is to file an appeal against the regional court' decision before the High State Court as the final degree court in the appeal process. Similar to the appeal process before the regional courts, an appeal request against the regional court' decision will be submitted within 30 calendar days of the official service of the reasoned decision of the regional court.

24. What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?

In FMCG II (22-55/863-357, 15.12.2022) the Board decided that BİM Birleşik Mağazalar AŞ, CarrefourSA Carrefour Sabancı Ticaret Merkezi AŞ, Migros Ticaret AŞ, Şok Marketler Ticaret AŞ, and Yeni Mağazacılık AŞ had violated Article 4 of the Competition Law through agreements or concerted practices related to a hub-and-spoke cartel. The Board found that the said chain stores shared competitively sensitive information, coordinated their prices and price increases and colluded on and increased prices through retailers. The Board also found strategies such as product-specific price reduction was employed to ensure compliance with collusion among undertakings in case competitor prices did not rise. Consequently, the Board decided that an administrative monetary fine should be imposed on these undertakings in accordance with Article 16 of the Competition Law. However, considering that an administrative fine had already been imposed on the said chain stores pursuant to the Board's FMCG I Decision, following the general legal principle "ne bis in idem," the Board opted not to levy a new administrative monetary fine on the said chain stores, instead it imposed fines only on retailers within the scope of the investigation.

The board is also highly active as to the practices such as no-poaching and wage fixing arrangements in labour markets. With its decision dated 26.07.2023 and numbered 23-34/649-218, the Board imposed fines on 27 undertakings on the ground of entering into gentleman's agreements not to recruit each other's employees and to restrict employee mobility. The distinctive feature of the Board's decision is that investigated practices were considered as cartel.

In Eczacıbaşı (23-13/212-68, 09.03.2023), the Board concluded its investigation against Eczacıbaşı Tüketim Ürünleri San. ve Tic. AŞ with settlement. The investigation focused on the allegations that Eczacıbaşı's involvement in a hub-and-spoke cartel, coordinating price increases of downstream retailers and fixing resale prices. The Board determined that Eczacıbaşı engaged in anti-competitive behaviour as a party to a hub-and-spoke cartel. The discussions involved aspects such as determining shelf prices, coordinating timing for retailers to implement price hikes, organizing simultaneous increases, and sharing information about other retailers' behaviours to persuade them to raise prices. The investigation was concluded with a settlement submitted by Eczacıbaşı, resulting in a maximum 25% reduction in the administrative fine. Consequently, an administrative fine of TL 17,525,798.63 was imposed for the hub-and-spoke cartel violation and TL 8,762,899.32 for the resale price maintenance violation.

25. What are the key recent trends (e.g. in terms of fines, sectors under investigation, any novel areas of investigation, applications for leniency, approach to settlement, number of appeals, impact of hybrid working in enforcement practice – e.g. dawn raids of domestic premises, 'hybrid' in-person/virtual dawn raids, access to personal devices, etc.)??

The annual statistics of the Authority for 2023 provide that the Board finalised a total of 145 cases relating to competition law violations. Among the 145 cases, 121 were subject to Article 4 of the Competition Act (anticompetitive agreements) and only 6 cases were subject to both Article 4 and Article 6 (abuse of dominant position). The sectors that were scrutinized most were (i) information technologies and platform services, (ii) telecommunication (including internet services, digital publishing and IPTV), (iii) media, advertising and publishing, (iv) agriculture and agricultural products and (v) food industry (including packaged goods production, wholesale/retail sales, etc.)), respectively.

Similar to global trends, technologies and digital platforms have come under close scrutiny by the Authority. The Authority first announced its plans for the development unit to concentrate on digital markets in May 2020 and subsequently released its Final Report on the E-Marketplace Sector Inquiry on April 14, 2022. Additionally, an assessment report on financial technologies in payment services, focusing on payment services and fintech ecosystems, was published on December 9, 2021. Moreover, on April 7, 2023, the Authority issued its Preliminary Report on the Online Advertising Sector Inquiry, initiated in January 2021 alongside the anticipated DMA-type legislation in Turkiye.

Further, on April 18, 2023, the Authority published the Study on the Reflections of Digital Transformation on Competition Law, offering an overview of the competition law framework for digital markets and emphasizing challenges related to data practices, algorithmic collusion, interoperability, and platform neutrality.

The Authority is currently contemplating legislative actions concerning digital markets. The expected amendment aims to introduce new definitions regarding digital markets and impose fresh obligations on entities with significant market power. Regulations targeting gatekeepers highlighted in the Final Report on the E-Marketplace Sector Inquiry are anticipated to be integrated into Article 6 of Law No. 4054, governing abuse of dominant position, or potentially added as a standalone article. The draft amendment reflects the Authority's endeavours to address competition issues in digital markets, ongoing since early 2021, although the timeline for adoption remains uncertain.

Conversely, the Authority's market inquiries into traditional sectors persist. On March 30, 2023, the Authority published its Final Report on the Sector Inquiry into the fast-moving consumer goods sector. Presently, the Authority is conducting market studies on automotive, cement and construction chemicals sectors. Moreover, the Authority has established a Cooperation and Information Exchange Protocol with the Turkish Personal Data Protection Authority, aiming to promote competitive practices, align competition and data protection measures, and address concerns stemming from data-driven technologies, thereby enhancing consumer control over personal data.

26. What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?

As elaborated in previous sections, the recently amended Leniency Regulation was published in the Official Gazette and came into effect on 16 December 2023. It replaced the former leniency regulation, which had been enforced since 15 February 2009. A Guidelines on Explanation of the Regulation on Leniency is expected to be updated in parallel with the new Leniency Regulation.

The Leniency Regulation expanded the scope of full immunity to the parties to a hub-and-spoke cartel or other cartel facilitators, who are, in practice, held liable for administrative sanctions in the same way as the cartel parties do, by allowing them to also benefit from active cooperation and broadened the Authority's avenues for accepting leniency applications.

Another important change brought by the recently amended Leniency Regulation is the requirement to provide documents deemed to create added value, as defined in the Leniency Regulation as “information and/or documents that will reinforce the Board's ability to prove the cartel, taking into account the evidence already held by the Board”. Within this requirement, the Authority aims to establish a clear distinction between the active cooperation procedure and the settlement procedure. If a leniency application from a particular undertaking is rejected due to the documents it submitted not meeting the criteria of “documents that create added value," the information and documents provided by that undertaking will be excluded from the file's scope. Consequently, they will not be considered as a basis for the final decision made as a result of the investigation.

Further, the Leniency Regulation provides the opportunity for applicants to receive an exemption or fine reduction under the leniency mechanism. This applies even if the applicant initially applies for leniency, believing it to be a cartel violation, but the Board later determines that the specific infringement does not qualify as a cartel. The aim is to address concerns of undertakings that may be hesitant to utilize the leniency program due to uncertainties about the nature of the infringement.

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