



Newsletter

Pekin & Pekin

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Competition

2022 ANNUAL REPORT PUBLISHED BY THE TURKISH COMPETITION AUTHORITY

The Turkish Competition Authority (“TCA”) published its Annual Report (“Report”) which provides an overview of its activities within the year of 2022 on 23 August 2023.

President Birol Küle indicated that with the new ways of business, atypical infringements have increased in addition to traditional infringements, and the competition law has comprehensively been applied in more areas day by day. Another development in the field of competition law in Turkey would be TCA’s scrutiny over the disturbances in the markets that have a significant position in the daily lives and budgets of the citizens. The President also pointed out that TCA operated its activities from an economic perspective in markets having structural problems.

In 2022, The TCA has been active in assessing different types of cases in relation to competition law. In this respect, the TCA has concluded a total of 342 cases which included 78 competition infringement cases, 19 exemption/negative clearance applications, and 245 merger and acquisitions cases. The total number of cases reflects a 16% decrease compared to the previous year. Simultaneously, when compared with 2021 in terms of case types, there is a decrease in exemption/negative clearance and merger and acquisitions cases, while the number of competition infringement cases has increased.

Merger and Acquisition Cases

- The Competition Board (“**Board**”) ruled on a total of 245 merger control filings, including two mergers, 160 acquisitions, 76 joint ventures, and seven privatizations. 241 of these filings have been concluded at the phase one while four cases have been concluded at the second phase. It is also stated in the Report that 209 merger control filings have been unconditionally approved by the Board and only two cases have been conditionally approved. Also, 34 notifications have been regarded as “out of scope” or “notifiable”. The top ten sectors that are most subject to merger control decisions in 2022 were respectively chemistry and mining (36), information technologies and platform services (30), health services (21), banking, capital markets, finance, and insurance services (21), infrastructure services (20), automotive and vehicles (20), logistics, storage and mail (17), food industry (13), construction (13) and machinery industry sectors (11). These decisions regarding the sectors constituted approximately 82% of all merger control decisions.

Competition Infringement Cases

- The TCA concluded 78 cases regarding competition infringement. Among these decisions, 24 were concluded at the end of the preliminary investigation, while the remaining 54 were resolved in result of a full-fledged investigation. The distribution of decisions by sector is as follows: the food industry (23), machinery industry (11), healthcare services (6), information technologies and platform services (5), and chemistry and mining (5). At the end of 2022, there were 45 ongoing investigations 39 of which were initiated in 2022. The Report stated that there has been a two-fold increase in the number of investigations since 2020 and an approximately 65% increase in the number of on-site inspections thanks to the increase in the TCA’s IT and human resources capacity, and its effective usage of the commitment and conciliation mechanisms.

Exemption/Negative Clearance Cases:

- The Report indicated that in 2022, regarding the exemption assessment of undertakings and associations of undertakings, 19 exemption/negative clearance cases, 4 of which were negative clearance decisions and 15 of which were exemption decisions, have been concluded. The sectors of banking, capital market, financial and insurance services (6), health service (4), the food industry (2), and chemistry and mining (2) were the sectors in which the most exemption/negative clearance investigations were conducted in 2022. 15 exemption decisions included unconditional individual exemptions (5), conditional individual exemptions (4), block exemptions (3), individual and block exemptions evaluated together (2), and the withdrawal of the exemption (1).

Administrative monetary fines

- In respect of the cases concluded in 2022, a total of TRY 1,73 billion of administrative monetary fines were imposed on the undertakings in accordance with the third paragraph of Article 16 of Law No. 4054 which included the infringement of Article 4 (TRY 1.37 billion), the

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infringement of Article 6 (TRY 352 million). Furthermore, administrative fines worth of TRY 115 million were imposed for preventing on-site inspection in 2022. As for the sectoral distribution of the fines, the food industry sector was at the top being subject to TRY 1,06 billion administrative fines imposed by the Board and it was followed by the sectors of information technologies and platform services (TRY 347 million) and agriculture and agricultural products (TRY 186,7 million). The total administrative fines for these three sectors constituted approximately 92% of the total fines imposed for competition infringements.

Regulations in 2022

- The following regulations which amended the secondary legislation of the competition law were entered into force in 2022.
 1. Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Approval of the Competition Board was published in the Official Gazette dated 04.03.2022 and numbered 31768. With the Communiqué, the applicable turnover thresholds which require the approval of the Board for mergers and acquisitions were revised as follows: (a) the aggregate Turkish turnover of the transaction parties exceeds TRY 750 million and Turkish turnover of at least two transaction parties individually exceeds TRY 250 million; or (b) (i) the Turkish turnover of the transferred assets or businesses in acquisitions exceeds TRY 250 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TRY 3 billion, or (ii) the Turkish turnover of any of the parties in mergers exceeds TRY 250 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TRY 3 billion.
 2. Communiqué No. 2022/3 on the Amendment of Communiqué No. 2013/2 on the Procedures And Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid was published in the Official Gazette, dated 18.06.2022, and numbered 31870. Pursuant to the Communiqué, in acquisitions through privatization; if the turnover of the undertaking or unit for the production of goods or services to be privatized exceeds TRY 250 million, it is obliged to obtain the opinion of the TCA by making a preliminary notification to the TCA before the tender conditions are announced to the public.
 3. The Regulation Amending the Regulation on Settlement Procedure for Investigations on Anti-Competitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position was published in the Official Gazette dated 18.03.2022 and numbered 31782. According to the regulation, the reasoned settlement final decision of the investigation shall be notified to the settlement party before the final decision is taken.

4. Guidelines on the Assessment of Horizontal Mergers and Acquisitions and Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions were published. With the Guidelines, the notions of potential competition, the closeness of competition, and theories of harm in the innovation-based and digital markets were included and updated. In accordance with the actual theories of harm valid for mergers and acquisitions, general principles that can be taken into account in the evaluation of the acquisitions of newly established and developing companies were included. Also, consumer data, which has an increasing significance in competition law with digitization and its effects on competition law were added to the Guidelines. In the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions, amendments were made in the subject of digital markets and the assessment of vertical and multi-market merger transactions.

Pursuant to Law No. 4054, the TCA has the authority to examine the sector within the scope of competition advocacy. In this context, as of the end of 2022, sectoral examinations on online advertising, pharmaceuticals, fuels, container liner shipping and container port services market, automotive, and fast moving consumer goods retailing have continued. These examinations carry utmost significance in terms of identifying competition problems in relevant fields and finding proactive solutions that will establish competitive landscape.

According to the calculations made in the Impact Analysis Report based on OECD assumptions, the benefit provided to consumers as a result of the activities carried out by the TCA in 2021-2022 was an annual average of TRY 26.55 billion (USD 1.6 billion) at December 2022 prices; it has been estimated as TRY 67.32 billion (USD 4.06 billion) according to the OECD methodology.

To discuss how these developments affect your business interests please contact either:

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