PANORAMIC

VERTICAL AGREEMENTS

Türkiye

LEXOLOGY

Vertical Agreements

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LEGAL FRAMEWORK

Antitrust law

What are the legal sources that set out the antitrust law applicable to vertical restraints?

The main pieces of legislation regulating vertical restraints are:

- Law No. 4054 on the Protection of Competition (the Competition Law);
- the Block Exemption Communiqué on Vertical Agreements; and
- the Guidelines on Vertical Agreements (the Vertical Guidelines).

Other applicable legal sources include:

- the Communiqué On Agreements, Concerted Practices And Decisions And Practices O f Associations Of Undertakings That Do Not Significantly Restrict Competiti on (the De Minimis Communiqué);
- the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sec tor (the Motor Vehicles Communiqué);
- the Guidelines Explaining the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector (the Motor Vehicles Guidelines);
- the Guidelines on Certain Subcontracting Agreements between Non-competitors; and
- the Guidelines on the General Principles of Exemption.

Law stated - 28 Şubat 2025

Types of vertical restraint

List and describe the types of vertical restraints that are subject to antitrust law. Is the concept of vertical restraint defined in the antitrust law?

The concept of 'vertical restraint' is not defined in the Competition Law.

Paragraph 86 of the Vertical Guidelines distinguishes between price-related and non -price related vertical restrictions. It further classifies price-related vertical restrictions under four groups: setting maximum prices, setting minimum prices, setting indirect prices and price recommendations. It divides non-price related vertical restrictions into three groups: single branding, limited distribution and market allocation.

Law stated - 28 Şubat 2025

Legal objective

Is the only objective pursued by the law on vertical restraints economic, or does it also seek to promote or protect other interests?

The objective of the relevant legislation solely concerns the protection of competition.

Law stated - 28 Şubat 2025

Responsible authorities

Which authority is responsible for enforcing prohibitions on anticompetitive vertical restraints? Where there are multiple responsible authorities, how are cases allocated? Do governments or ministers have a role?

The Turkish Competition Authority (TCA) is the only administrative authority competent to enforce prohibitions on anticompetitive vertical restraints. Civil courts may also enforce the relevant law in cases brought before them in order to compensate for damages. In practice, civil courts usually require a prior TCA decision to determine the existence of a vertical restraint.

Law stated - 28 Şubat 2025

Jurisdiction

What is the test for determining whether a vertical restraint will be subject to antitrust law in your jurisdiction? Has the law in your jurisdiction regarding vertical restraints been applied extraterritorially? Has it been applied in a pure internet context and if so, what factors were deemed relevant when considering jurisdiction?

Turkish competition law adopts the 'effects doctrine' for determining whether a vertical restraint will be subject to its jurisdiction. Article 2 of the Competition Law stipulates that all agreements, decisions and practices that prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Türkiye are covered by the law. Thus, the law regarding vertical restraints has not been applied extraterritorially. The law, however, applies also in a pure internet context (eg, internet sales restrictions). The criteria for determining whether a vertical restraint in a pure internet context is subject to the TCA's jurisdiction are the same as for offline sales.

Accordingly, vertical restraints such as export bans are considered lawful if they have no effect within Türkiye's borders. In ***Pharmaceutical Warehouse*** (Decision No. 18-34/577-283 of 26 September 2018), the TCA emphasised that any direct or indirect export ban in which passive and/or active sales restrictions are stipulated shall have no effect on the Turkish market and, therefore, does not constitute a violation of article 4 of the Competition Law. The Decision also mentioned that the TCA Board had slightly changed its approach on this matter since 2015, finally aligning itself with EU legislation, which provides that export bans imposed on parties outside the EU customs union (ie, third parties) may be allowed. (For similar examples, see Decisions No. 22-27/432-177 of 16 June 2022 and No. 14-35/697-309 of 24 September 2014.)

Law stated - 28 Şubat 2025

Agreements concluded by public entities

To what extent does antitrust law apply to vertical restraints in agreements concluded by public entities?

The concept of 'undertaking' also applies to public undertakings. According to the established jurisprudence of the TCA Board, public undertakings may have an independent legal personality separate from the state, or they may be located within the central, regional or local administration. The Board emphasises that public administrations should be considered as undertakings in terms of economic activities they carry out. That said, the Board also distinguishes the activities carried out by public authorities using public power, since they are subject to review by administrative courts.

Law stated - 28 Şubat 2025

Sector-specific rules

Do particular laws or regulations apply to the assessment of vertical restraints in specific sectors of industry (motor cars, insurance, etc)? Please identify the rules and the sectors they cover.

The Motor Vehicles Communiqué and Motor Vehicles Guidelines apply to the motor vehicles sector and set forth conditions specific to that industry to benefit from block exemption that differ from the general conditions under the Competition Law. In order to frame the scope of the Motor Vehicles Communiqué and Motor Vehicles Guidelines, it is first necessary to define the term 'motor vehicle'. Article 4/1-g of the Motor Vehicles Communiqué provides that the Communiqué and the Guidelines shall apply to all 'self-propelled vehicles with three or more tyres, used for transporting people, animals or cargo on roads'. Accordingly, motorbikes and tractors are left out from the block exemption since those are not considered motor vehicles under that definition (paragraph 16/h of the Motor Vehicles Guidelines). By contrast, heavy commercial vehicles fall within the scope of the block exemption as they are expressly mentioned in paragraph 11 of the Motor Vehicle Guidelines.

A noticeable difference from the general conditions concerns the after-sales services market, with the Motor Vehicle Communiqué providing that for the vertical block exemption to apply:

- a supplier must have 30 per cent or less of the market shares of the supply market;
- a vehicle or spare part supplier must have 30 per cent or less of the market shares of the market in which it supplies spare parts;
- a provider of vehicle maintenance and repair services must have 30 per cent or less of the market shares of that market ; and
- a network founder must have 30 per cent or less of the market shares of the market for maintenance and repair chains.

Furthermore, on the basis of purchases of the buyer in the previous calendar year, any direct or indirect obligation placed on the buyer forcing the buyer to make its purchases of the relevant goods or services in the relevant market, or the substitutes thereof from the supplier or from an undertaking designated by the supplier at a level of over 80 per cent in the new motor vehicles sales market and over 30 per cent in the after-sales market shall be

considered a non-compete obligation. The 30 per cent threshold stipulated for after-sales market is specific to the Motor Vehicle Communiqué and such criterion is not included in the Vertical Agreements Communiqué, even though the 80 per cent threshold in the sales market is still stated to define a non-compete agreement.

Law stated - 28 Şubat 2025

General exceptions

Are there any general exceptions from antitrust law for certain types of agreement containing vertical restraints? If so, please describe.

The De Minimis Communiqué provides a safe harbour for agreements signed between non-competing undertakings, if the market share of each of the parties does not exceed 15 per cent in any of the relevant markets affected by the agreement. Accordingly, the TCA may exclude such agreements from an investigation. The safe harbour does not apply to resale price maintenance, or to other naked or hardcore restrictions (ie, price fixing among competing undertakings; allocation of customers, suppliers, regions or trade channels; restriction of supply amounts or imposing quotas; collusive bidding in tenders; and sharing competitively sensitive information about future prices, output, sales amounts, etc).

Additionally, if parallel networks created by similar vertical restrictions cover more than 50 per cent of the relevant market, the thresholds set out in article 5 are applied as 5 per cent, for agreements between competing and non-competing undertakings, as well as for decisions according to the article 5/4 of the De Minimis Communiqué.

Law stated - 28 Şubat 2025

TYPES OF AGREEMENT

Agreements

Is there a definition of 'agreement' – or its equivalent – in the antitrust law of your jurisdiction?

Although Law No. 4054 on the Protection of Competition (the Competition Law) does not provide an explicit definition of 'agreement', such definition is included in the preamble. In this context, the term 'agreement' is used to refer to all kinds of compromise or accord to which the parties feel bound, even if these do not meet the conditions for validity under the Civil Law. It is irrelevant whether the agreement is written or oral. In fact, even if the existence of an agreement between the parties cannot be established, direct or indirect relations between the undertakings that replace their own independent activities and ensure coordination and practical cooperation are prohibited if they lead to the same result as an agreement would have.

Law stated - 28 Şubat 2025

Agreements

In order to engage the antitrust law in relation to vertical restraints, is it necessary for there to be a formal written agreement or can the relevant rules be engaged by an informal or unwritten understanding?

As per the preamble to the Competition Law, the term 'agreement' is used to refer to all kinds of compromise or accord to which the parties feel bound, even if these do not meet the conditions for validity under the Civil Law. It is irrelevant whether the agreement is written or oral. In fact, even if the existence of an agreement between the parties cannot be established, direct or indirect relations between the undertakings that replace their own independent activities and ensure coordination and practical cooperation are prohibited if they lead to the same result as an agreement would have. In ***Turkcell*** (Decision No. 11-34/742-230 of 6 June 2011), the Turkish Competition Authority (TCA) concluded that the telecoms operator and its resellers had exclusivity arrangements, based on its observations of uniform applications in sales points that would normally have been expected to operate as multi-brand stores. In ***Akmaya*** (Decision No. 09-23/491-117 of 20 May 2009), the TCA concluded that there was a vertical agreement between a fresh yeast producer and its resellers that contained resale price maintenance and non-compete clauses, based on sample agreements that were shared with the resellers by the supplier, despite the supplier's claims that there was not any signed or valid agreement between the parties.

Law stated - 28 Şubat 2025

Parent and related-company agreements
In what circumstances do the vertical restraints rules apply to agreements between a parent company and a related company (or between related companies of the same parent company)?

The TCA Board considers companies within the same group to be part of a single economic entity. Accordingly, the TCA seeks the establishment of 'control' by one entity over another to conclude that these two entities mainly form a single economic unit and are therefore considered as a single undertaking. Control may be established through rights, contracts or other instruments that, separately or jointly, enable the exercise of a decisive influence over an undertaking, either de facto or de jure. These instruments are, in particular, rights or contracts that provide for the exercise of a decisive influence over all or part of the assets of an undertaking, either by ownership or by an exploitation right capable of being exercised, or over the composition of the bodies of an undertaking or over its decisions. Control may be obtained by the holders of rights or by persons or undertakings who are authorised to exercise rights under a contract or who, although not having such rights or authority, have the actual power to exercise such rights. Examples of the legal acquisition of control include the acquisition of assets and the de facto acquisition of control includes long-term supply or debt agreements. The Board decided in ***TTKKMB*** (Decision No. 99-26/233-141 of 27 May 1999), ***TTKKMB-Bandırma*** (Decision No. 01-33/331-94 of 17 July 2001) and ***Elektrik Dağıtım*** (Decision No. 11-12/240-77 of 3 March 2011) that the agreements between a parent company and a company it controls are not subject to article 4 of the Competition Law. That said, in ***Softtech*** (Decision No. 20-55/767-340 of 24 December 2020) the TCA decided that, albeit exceptional, an agreement between a bank and its subsidiary must be assessed since the agreement had foreseen the exchange of a certain dataset, which also included competitively sensitive data between undertakings operating in the financial sector.

Agent–principal agreements

In what circumstances does antitrust law on vertical restraints apply to agent–principal agreements in which an undertaking agrees to perform certain services on a supplier's behalf for a sales-based commission payment?

In principle, agency agreements do not fall within the scope of article 4 of the Competition Law. An agreement will be considered an agency agreement if the agent does not bear any, or bears only insignificant, financial or commercial risks in relation to the contracts concluded or negotiated on behalf of the principal. That said, paragraph 14 of the Guidelines on Vertical Agreements (the Vertical Guidelines) stipulates that restrictions that prevent the client from appointing another agency for the relevant transactions at the customer or regional level (exclusive agency clause) or prevent the agency from serving as an agency or distributor for competing undertakings (non-competition clause) may be assessed under article 4 of the Competition Law. Furthermore, paragraph 15 of the Vertical Guidelines states that agency agreements may be evaluated under article 4 of the Competition Law if they facilitate anticompetitive cooperation. In ***Metlife*** (Decision No. 23-13/216-71 of 9 March 2023), while assessing the relationship between Metlife Emeklilik ve Hayat AŞ (Metlife) and Denizbank AŞ (Denizbank) the TCA held that the rights and obligations arising from the transactions to be carried out by Denizbank as an agent of Metlife, and that the investments to be made by Denizbank for the purpose of marketing the products to be offered within the scope of the agreement – in other words, for the continuation of the agency activities – were investments that would not cause commercial risk; these activities did not, therefore, carry commercial or financial risk in the meaning of the Vertical Guidelines and the party carrying out the investment did not act independently in this respect. Accordingly, it is established that the obligation assumed by Denizbank under the agreement is limited to the promotion, marketing, sale, distribution and collection of insurance premiums of Metlife's life insurance, personal accident insurance and private pension products to customers through the bancassurance channel. In this respect, it is understood that the agreement subject to the notification is not within the scope of article 4 of the Competition Law. However, according to the draft supplemental protocol planned to be concluded between Metlife and Denizbank, Denizbank and Metlife had agreed that they would not engage in marketing and sales activities targeting each other's customers during the term of the agreement. However, article 5.10 of the protocol stated that the said obligation would continue after the termination of the agreement. Therefore, it is stipulated that the obligation not to entice each other's customers would continue after the expiration of the contract period, but the non-compete clause was stipulated for an indefinite period. The TCA concluded that while the agency agreement and the supplemental protocol could not benefit from the group exemption within the scope of the group exemption in the Vertical Agreements Communiqué, an individual exemption to the agency agreement and supplemental protocol for life insurance could be granted for the duration of the contract within the framework of article 5 of the Competition Law, provided that the non-compete obligation imposed on the parties by articles 5.8A (i) and 5.8B of the agreement shall continue for a maximum period of two years following the termination of the agreement.

Law stated - 28 Şubat 2025

Agent–principal agreements

Where antitrust rules do not apply (or apply differently) to agent–principal relationships, is there guidance (or are there recent authority decisions) on what constitutes an agent–principal relationship for these purposes?

The Vertical Guidelines set forth certain criteria to determine whether the agent bears economic or commercial risks. To the extent that the agreement includes one or more of the situations listed below, the relationship would fall within the scope of article 4 of the Competition Law:

- the agency contributes to the costs related to the purchase and sale of the goods or services, including transportation costs;
- the agency is forced to contribute, directly or indirectly, to activities aimed at increasing sales;
- the agency assumes risks, such as the funding of contracted goods kept in storage or the cost of lost goods, and the agency is unable to return unsold goods to the client;
- the agency is obligated to provide after-sales service, maintenance or warranty services;
- the agency is forced to make investments that may be necessary for operation in the relevant market and that can be used exclusively in that market;
- the agency is responsible to third parties for any damage caused by the products sold; and
- the agency assumes responsibility other than failing to get a commission owing to customers' failure to fulfil the terms of the contract.

The TCA determined in Decision No. 21-40/576-279 of 26 August 2021 that the relationship between banks and brokers does not constitute an agency relationship even if it satisfies the above criteria, given that the relationship is continuous and is created on a transaction-specific basis. In ***Booking.com*** (Decision No. 17-01/12-4 of 5 January 2017), the TCA found that the relationships between accommodation businesses and an online platform do not constitute agency relationships either, since the accommodation businesses cannot exert any influence on Booking.com's commercial decisions and strategies, and the platform conducts its own business independent of the accommodation businesses. Furthermore, the TCA held that Booking.com incurs its own financial and economic risks since its commercial activities and risks are entirely different from those of accommodation businesses, particularly considering the network, advertisement and technical investments involved.

Law stated - 28 Şubat 2025

Intellectual property rights

Is antitrust law applied differently when the agreement containing the vertical restraint also contains provisions granting intellectual property rights (IPRs)?

The Block Exemption Communiqué on Vertical Agreements stipulates that vertical agreements that involve provisions on the transfer or use of IPRs to the purchaser shall benefit, together with the regulations on purchase, sale or resale of goods or services, from the block exemption provided for in the communiqué, on condition that the IPRs directly concern the use, sale or resale by the purchaser, or the customers of the purchaser, of the goods or services that form the substantial subject of the agreement, and that the transfer or use of such IPRs do not constitute the main purpose of the agreement. The Guidelines on Certain Subcontracting Agreements between Non-competitors provide that a subcontracting agreement may also qualify for the block exemption where the contractor, which is in the position of buyer, passes on to the subcontractor, which is in the position of provider, the detailed specifications wherein the products or services to be provided are described.

In Decision No. 21-51/715-356 of 21 October 2021, the TCA assessed an exclusive licence agreement between Easysnap Technology SRL and Altıparmak Gıda San ve Tic AŞ where the former had granted exclusive rights to the latter in Turkey. Following its evaluation, the TCA concluded that the vertical and exclusive licence agreement between the parties could not benefit from the block exemption provided under the Vertical Agreements Communiqué as the applicable market share threshold of 40 per cent (the maximum threshold under the previous version of the law) was exceeded. However, the decision set forth that the relevant agreement could benefit from individual exemption.

Separately, the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector provides that agreements between a motor vehicle manufacturer and a spare parts supplier that prevent the latter from displaying, in an effective and distinctly visible manner, its brand or logo on the parts provided cannot benefit from the block exemption.

Law stated - 28 Şubat 2025

ANALYTICAL FRAMEWORK FOR ASSESSMENT

Framework
Explain the analytical framework that applies when assessing vertical restraints under antitrust law.

The Communiqué On Agreements, Concerted Practices And Decisions And Practices Of Associations Of Undertakings That Do Not Significantly Restrict Competition declares that fixing flat or minimum sales rates for the buyer in a relationship between undertakings operating at different levels of a production or distribution chain (resale price maintenance) is a naked and hardcore restriction. In parallel to this, the Turkish Competition Authority (TCA) has consistently held that resale price maintenance constitutes a 'by object' restriction of competition (see Decision No. 22-55/863-357 of 15 December 2022; Decision No. 20-14/192-98 of 12 March 2020; Decision No. 18-44/703-345 of 22 November 2018). Additionally, the TCA's approach to the restriction of passive sales (including internet sales) is also very strict, with the TCA deeming such restrictions to be hardcore (see Decision No. 22-41/580-240 of 8 September 2022).

The first step would be to determine whether the agreement would benefit from the block exemption. If that is not the case, the next step would be to conduct a self-assessment to determine whether the agreement satisfies the cumulative conditions for individual exemption. The cumulative conditions for individual exemption set out under article 5 of Law No. 4054 on the Protection of Competition (the Competition Law) are as follows:

- the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress;
- the agreement must allow consumers a fair share of the resulting benefit;
- the agreement must not eliminate competition in a significant part of the relevant market; and
- the agreement must not restrict competition more than what is compulsory for achieving the goals set out in the above first two points.

Law stated - 28 Şubat 2025

Market shares

To what extent are supplier market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other suppliers relevant? Is it relevant whether certain types of restriction are widely used by suppliers in the market?

Vertical agreements may benefit from the block exemption regulated by the Block Exemption Communiqué on Vertical Agreements (the Vertical Agreements Communiqué) provided that the market share of the supplier does not exceed 30 per cent of the market in which it operates, and the agreement does not include hardcore restrictions. Other relevant factors considered when assessing the legality of vertical restraints include the market position of the supplier, competitors and buyer, entry barriers, the maturity of the market, the level of trade and the nature of the products or services.

Wide use of certain types of restrictions by suppliers are also relevant in the TCA's assessments. For example, the TCA stated in ***BSH*** (Decision No. 21-61/859-423 of 16 December 2021) that cumulative effects of vertical restrictions (ie, ban on online sales) may foreclose the market via parallel networks created by vertical agreements. Another example was that the TCA found that an oil distributor's long-term exclusive agreements with the fuel stations would foreclose the market, since the market was characterised by exclusive agreements due to regulations (Decision No. 10-66/1400-521 of 21 October 2010).

Additionally, vertical agreements including most-favoured customer clauses shall be considered within the scope of the vertical block exemption as long as the market share in the relevant market of the party that benefits from the clause, which may also be the buyer, does not exceed 30 per cent.

Law stated - 28 Şubat 2025

Market shares

To what extent are buyer market shares relevant when assessing the legality of individual restraints? Are the market positions and conduct of other buyers relevant? Is it relevant whether certain types of restriction are widely used by buyers in the market?

The Vertical Agreements Communiqué provides that for vertical agreements that include exclusive supply obligations, the exemption shall be applied provided the market share of the buyer in the relevant market where it purchases the goods and services comprising the subject matter of the agreement does not exceed 30 per cent. That said, the TCA may grant individual exemption to exclusive supply clauses due to characteristics of the market or where the investment justifies the existence of such clauses (Decision No. 19-46/786-343 of 26 December 2019).

Law stated - 28 Şubat 2025

BLOCK EXEMPTION AND SAFE HARBOUR

Function
Is there a block exemption or safe harbour that provides certainty to companies as to the legality of vertical restraints under certain conditions? If so, please explain how this block exemption or safe harbour functions.

The Block Exemption Communiqué on Vertical Agreements provides the block exemption regime for vertical agreements. Where the supplier's market share (or the buyer's market share, in exclusive supply agreements) is less than 30 per cent, the agreement may benefit from a block exemption, provided that other conditions are met. If the market share threshold is exceeded, the agreement automatically falls outside the scope of a block exemption.

Law stated - 28 Şubat 2025

TYPES OF RESTRAINT

Assessment of restrictions
How is restricting the buyer's ability to determine its resale price assessed under antitrust law?

Article 4 of the Block Exemption Communiqué on Vertical Agreements (the Vertical Agreements Communiqué) includes limitations that exclude agreements from the scope of exemption provided by the communiqué. Listed among these restrictions is the act of 'preventing the buyer's freedom to determine [its] own sales price'. That said, the same article also states that 'it is possible for the supplier to determine or recommend the maximum sales price, provided that it does not turn into a fixed or minimum sales price as a result of pressure or encouragement from any of the parties'. In Decision No. 12-36/1045-332 of 4 July 2012, the Turkish Competition Authority (TCA) indicated that by determining maximum sales price, the supplier ensured that the warehouses with which it concluded vertical agreements offer competitive prices in bids concerning the use of warehouses.

Paragraph 18 of the Guidelines on Vertical Agreements (the Vertical Guidelines) states that resale price maintenance can be carried out directly or indirectly. In addition to directly determining the buyer's sales price by including clear provisions in the vertical agreements they have concluded, suppliers may also commit the same violation indirectly through various practices. Determining the buyer's profit margin, determining the maximum discount rate that the buyer can apply to a price level declared as a recommended price, applying additional discounts to the buyer in proportion to the buyer's compliance with the recommended prices, or threatening the buyer with delaying, suspending or terminating the deliveries if the buyer does not comply with these prices – these impositions and sanctions all amount to an indirect determination of the resale price. Such indirect resale price maintenance practices also exclude agreements from the scope of block exemption in accordance with article 4.1(a) of the Vertical Agreements Communiqué, as indicated above.

In Decision 16-37/628-279 of 7 November 2016, the TCA concluded that by warning its retailers to set higher prices, Türk Philips Tic AŞ indirectly determined the resale prices.

Paragraph 8 of the Guidelines on the General Principles of Exemption state that 'in some cases, it is obvious that the object of an agreement is to restrict competition', and examples of these agreements include determining the resale price and imposing a minimum resale price limit. Determination of the resale price by the supplier has, in many cases, been evaluated as a violation of competition by object, regardless of whether it has an effect on the market or not.

Law stated - 28 Şubat 2025

Assessment of restrictions

Have the authorities considered in their decisions or guidelines resale price maintenance restrictions that apply for a limited period to the launch of a new product or brand, or to a specific promotion or sales campaign; or specifically to prevent a retailer using a brand as a 'loss leader'?

No. That said, in ***Aygaz*** (Decision No. 16-39/659-294 of 16 November 2016), the TCA opined that the investigated undertaking's actions regarding resale price maintenance did not amount to an infringement since the duration of the actions was limited and, therefore, the actions were not expected to lead to anticompetitive effects. The issue was not ultimately resolved as the TCA Board did not find an infringement against ***Aygaz***, holding that its actions did not prove the existence of a resale price maintenance infringement.

Law stated - 28 Şubat 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the possible links between such conduct and other forms of restraint?

Paragraph 19 of the Vertical Guidelines states that most-favoured customer clauses included in agreements between undertakings may reinforce the impact of direct or indirect methods for resale price maintenance, as they may decrease the supplier's incentives

to sell the products to buyers other than the favoured customer for better prices and conditions. Furthermore, in ***Groupe SEB*** (Decision No. 21-11/154-63 of 4 March 2021)and-***NAOS*** (Decision No. 23-03/29-12 of 12 January 2023), the TCA held that internet sales restrictions and resale price maintenance were part of the same general strategy of the investigated undertaking and therefore should be considered a single act.

Law stated - 28 Şubat 2025

Relevant decisions

Have decisions or guidelines relating to resale price maintenance addressed the efficiencies that can arguably arise out of such restrictions?

While resale price maintenance is prohibited as a by-object restriction, in a limited number of precedents, the TCA Board suggested that efficiency arguments (eg, eliminating the free-riding problem and increasing distribution) might be considered, and acknowledged that efficiencies may outweigh any anticompetitive impact (eg, ***Reckitt,*** Decision No. 13-36/468-204 of 13 June 2013; and ***Frito Lay,*** Decision No. 18-19/329-163 of 12 June 2018). However, in Decision 16-37/628-279 of 7 November 2016, the TCA concluded that resale price maintenance cannot be justified as a tool to protect brand image and dealership network.

Law stated - 28 Şubat 2025

Relevant decisions

Explain how a buyer agreeing to set its retail price for supplier A's products by reference to its retail price for supplier B's equivalent products is assessed.

As at the time of writing, we are not aware of any specific decision of the TCA concerning these types of agreements. That said, these agreements can be assessed on a case-by-case basis, considering that horizontal price fixing and resale price maintenance concerns might arise depending on the situation.

Law stated - 28 Şubat 2025

Suppliers

Explain how a supplier warranting to the buyer that it will supply the contract products on the terms applied to the supplier's most-favoured customer, or that it will not supply the contract products on more favourable terms to other buyers, is assessed.

Most-favoured nation clauses benefit from the block exemption under the Vertical Agreements Communiqué, provided that the market share of the party benefiting from the most-favoured customer clause in the relevant market is below 30 per cent (see ***Trendyol***,-Decision No. 22-23/364-154 of 18 May 2022). The benefiting party is considered as the buyer

in terms of conventional markets, and the supplier in the case of agreements pertaining to online platforms. The Vertical Guidelines provide a balancing approach for the evaluation of most-favoured nation clauses for agreements that cannot benefit from the block exemption provided by the Vertical Agreements Communiqué, based on their effects on the relevant market.

Law stated - 28 Şubat 2025

Suppliers

Explain how a supplier agreeing to sell a product via internet platform A at the same price as it sells the product via internet platform B is assessed.

Most-favoured nation clauses benefit from the block exemption under the Vertical Agreements Communiqué, provided that, in terms of most-favoured customer clauses imposed regarding online platforms, the supplier's market share in the relevant market is below 30 per cent (see ***Trendyol***,Decision No. 22-23/364-154 of 18 May 2022). The Vertical Guidelines provide a balancing approach for the evaluation of most-favoured nation clauses for agreements that cannot benefit from the block exemption provided by the Vertical Agreements Communiqué, based on their effects on the relevant market. The Vertical Guidelines also state that most-favoured customer clauses may be assessed differently in conventional markets compared with markets with online platforms. For instance, in conventional markets, the party in favour of which this clause is implemented is the buyer, while in markets with online platforms, the party in favour of which this clause is implemented may be the supplier, buyer or mediator, depending on the product market. The Vertical Guidelines state that the market share of the party in favour of which the clause is implemented in the agreement shall be taken as the basis of the calculation. In terms of online platforms, there are two categories of most-favoured customer clauses, stemming from their scope and effect. 'Narrow most-favoured customer clauses' are defined as provisions that ensure that the prices announced on the online platforms are not more disadvantageous than the ones announced on the supplier's own website, while 'wide most-favoured customer clauses' extend similar protection to all channels, including competing platforms and/or offline channels such as telephone sales, direct face-to-face sales, etc (see ***Trendyol*** Decision, 28.01.2021, 21 - 05/64-28). That said, the TCA has now broadened the scope of narrow most-favoured customer clauses to include provisions that ensure that the prices and conditions are not more disadvantageous than the prices and conditions applied in some or all of the provider's own sales channels (telephone, website, come-and-buy, in-salon/in-store, mobile application, etc) (see ***Trendyol*** , Decision No. 23-01/2-2 of 5 January 2023).

Law stated - 28 Şubat 2025

Suppliers

Explain how a supplier preventing a buyer from advertising its products for sale below a certain price (but allowing that buyer subsequently to offer discounts to its customers) is assessed.

In ***Liquid Fuel*** (Decision No. 20-14/192-98 of 12 March 2020), the TCA held that preventing gas stations from advertising sales prices below the maximum price on price boards amounted to restriction of competition, since these price boards, and the prices therein, were an important element of competition in the liquid fuel market.

Law stated - 28 Şubat 2025

Suppliers

Explain how a buyer's warranting to the supplier that it will purchase the contract products on terms applied to the buyer's most-favoured supplier, or that it will not purchase the contract products on more favourable terms from other suppliers, is assessed.

Most-favoured nation clauses benefit from the block exemption under the Vertical Agreements Communiqué, provided that the supplier's market share in the relevant market is below 30 per cent (see ***Trendyol***,Decision No. 22-23/364-154 of 18 May 2022). The Vertical Guidelines provide a balancing approach for the evaluation of most-favoured nation clauses for agreements that cannot benefit from the block exemption provided by the Vertical Agreements Communiqué, based on their effects on the relevant market. That said, to the best of our knowledge, as at the time of writing there is no decision evaluating a most-favoured supplier clause.

Law stated - 28 Şubat 2025

Restrictions on territory

How is restricting the territory into which a buyer may resell contract products assessed? In what circumstances may a supplier require a buyer of its products not to resell the products in certain territories?

According to article 4.1(b) of the Vertical Agreements Communiqué, a buyer may not be placed under regional or customer restrictions, with the following exceptions:

- restriction, by the provider, of active sales to an exclusive region or exclusive group of customers assigned to it or to a purchaser, provided that it does not cover sales to be made by customers of the purchaser;
- restriction of sales of the purchaser operating at the wholesale level in relation to end users;
- restriction of sales by the members of a selective distribution system to unauthorised distributors; and
- where there exist parts supplied with a view to combining them, restriction of the purchaser's selling them to competitors of the provider who holds the position of a producer.

Additionally, in selective distribution systems, restriction of active or passive sales to end users by the system members operating at the retail level also results in the whole agreement

not benefiting from the block exemption, with the exception that the right is reserved as to the prohibition for a system member against operating in a place where she is not authorised.

Law stated - 28 Şubat 2025

Restrictions on territory

Have decisions or guidance on vertical restraints dealt in any way with restrictions on the territory into which a buyer selling via the internet may resell contract products?

Internet sales restrictions are considered passive sales restrictions and are prohibited. In *BSH* (Decision No. 21-61/859-423 of 16 December 2021), the TCA concluded that the supplier in the case completely restricted the sales to be made by its buyers through the online platform at issue without imposing any qualitative criteria; the TCA considered that the prohibition imposed by the supplier directly or indirectly led to the restriction of internet sales, the conditions stipulated by the supplier contradicted the principle of equivalence and discouraged buyers from using the internet as a distribution channel, and the active and passive sales to be made by the members of the selective distribution system to the end users were prohibited. Consequently, the TCA held that the practice had the characteristics of hardcore restriction and excluded the agreement from the group exemption. Pursuant to the principle of equivalence, physical sales channels and online sales channels in the selective distribution system should be operated on the basis of the same or equivalent criteria and methods, these criteria should serve the same purpose and provide comparable results, and if unreasonable and strict restrictions are imposed on one of these sales channels but not on the other, such clauses may be considered a hardcore restriction.

Law stated - 28 Şubat 2025

Restrictions on customers

Explain how restricting the customers to whom a buyer may resell contract products is assessed. In what circumstances may a supplier require a buyer not to resell products to certain resellers or end consumers?

The types of region or customer allocation, which are not seen as restrictions that exclude agreements from the scope of the block exemption, are listed under four headings in article 4.1(b) of the Vertical Agreements Communiqué as follows:

- restriction, by the provider, of active sales to an exclusive region or exclusive group of customers assigned to it or to a purchaser, provided that it does not cover sales to be made by customers of the purchaser;
- restriction of sales of the purchaser operating at the wholesale level in relation to end users;
- restriction of sales by the members of a selective distribution system to unauthorised distributors; and
-

where there exist parts supplied with a view to combining them, restriction of the purchaser's selling them to competitors of the provider who holds the position of a producer.

The protection provided to undertakings via the grant of an exclusive region or customer group is not absolute. When selling to the region or customer group assigned to them, buyer undertakings can be protected from active competition only by the other buyers in the system. In other words, the supplier undertaking may restrict active sales to exclusive regions or customer groups assigned to it, or to a buyer. Restriction of passive sales to that region or customer group shall be considered an infringement, which excludes the agreement from the block exemption. Importantly, to consider a region or customer group as exclusive, that region or customer group must receive active sales only from a single buyer or from the supplier itself. In other words, if the number of undertakings selling to a specific region or customer group is two or more, that region or customer group is no longer exclusive.

Article 4.1(c) of the Vertical Agreements Communiqué explicitly stipulates the implementation of exclusive customer allocation together with selective distribution as a violation excluded from the scope of the block exemption. However, qualitative and quantitative selective distribution agreements may benefit from group exemption up to a market share threshold of 30 per cent, provided that the active sales between authorised distributors and their active sales to end users are not restricted.

Law stated - 28 Şubat 2025

Restrictions on use

How is restricting the uses to which a buyer puts the contract products assessed?

Limiting a buyer's freedom to use the contracted products in principle constitutes a restraint on competition. Nonetheless, restrictions on how a buyer or a subsequent buyer utilises the contract goods are acceptable if objectively justified (eg, health and safety concerns). In *Yatsan* (Decision No. 10-60/1251-469 of 23 September 2010), the TCA stated that the prohibition of online sales is a hardcore restriction in the context of preventing passive sales; the TCA then analysed whether there was an objective justification for this restriction, such as the protection of public safety and health, and the introduction of a new product to the market / marketing of an existing trademark for the first time in a new market. However, the TCA concluded that these conditions were not met in the case at hand. Similarly, in *Hayal Seram*ik (Decision No. 19-46/772-333 of 26 December 2019), the TCA concluded that abovementioned exclusive conditions were not met in terms of the agreement concluded and, therefore, there was no legal grounds to make the agreement benefit from individual exemption.

Law stated - 28 Şubat 2025

Restrictions on online sales

How is restricting the buyer's ability to generate or effect sales via the internet assessed?

Restrictions of online sales are considered passive sales restrictions. By contrast, sales by the dealer to the exclusive region of another distributor or to an exclusive customer group over the internet via promotions or similar methods shall be considered active sales, and the prevention of such sales may fall under the scope of the exemption. Internet advertisements aimed at a certain customer group or geographical region and (unsolicited) e-mail shall be considered active sales. Another restriction is limiting the ratio of sales made through the internet channel. Thus, setting maximum sales ratios for the internet channels is also considered a severe restriction. That said, the supplier may introduce certain conditions on the use of the internet as a sales channel, similar to the ones it may introduce in respect of physical points of sale or the catalogues in which the advertisements and promotions are published. Other conditions may also be introduced, but the key point here is that these conditions may not, either directly or indirectly, aim to prevent online sales by the distributor. The justification of the conditions introduced must be objectively concrete, reasonable and acceptable in terms of factors such as increasing the nature and quality of the distribution, brand image and potential efficiency. Similarly, the supplier may demand that the buyer sell only through 'sales platforms/marketplaces' that fulfil certain standards and conditions. However, this restriction should not aim to prevent the distributor's online sales or price competition (eg, TCA decisions in***Yatsan***, No. 10-60/1251-469 of 23 September 2010; ***Antis 1***, No. 08-32/401-136 of 8 August 2008; ***Antis 2***, No. 13-59/831-353 of 24 October 2013; ***Jotun***, No. 18-05/74-40 of 15 February 2018; and ***BSH***, No. 17-27/454-195 of 22 August 2018).

Law stated - 28 Şubat 2025

Restrictions on online sales
Have decisions or guidelines on vertical restraints dealt in any way with the differential treatment of different types of internet sales channel? In particular, have there been any developments in relation to 'platform bans'?

According to paragraph 28 of the Vertical Guidelines, the supplier may demand that the buyer sell only through 'sales platforms/marketplaces' that fulfil certain standards and conditions. However, this restriction should not aim to prevent distributor's online sales or price competition. As such, a general prohibition of sales over platforms without objective and uniform conditions and justifications in line with the specific characteristics of the product may be considered a restraint.

Law stated - 28 Şubat 2025

Selective distribution systems
Briefly explain how agreements establishing 'selective' distribution systems are assessed. Must the criteria for selection be published?

The Vertical Agreements Communiqué defines selective distribution systems as distribution systems whereby the provider undertakes to sell, directly or indirectly, the goods or services that are the subject of the agreement, only to distributors selected by it, based on designated criteria, and whereby such distributors undertake not to sell the goods or services in question to unauthorised distributors. Selective distribution systems are assessed under two categories. In the qualitative selective distribution system, distributors do not determine the number of resellers. However, for resellers, objective criteria are determined depending on the nature of the product sold, such as training sales personnel, providing a certain quality of service and selling a certain product range. The quantitative selective distribution system is a system that directly limits the number of resellers. This limitation can be made by requiring a minimum or maximum sales amount or by directly determining the number of sellers.

Qualitative selective distribution systems do not fall within the scope of article 4 of the Competition Law, provided they meet the following three conditions:

- such an agreement must be necessary to maintain the quality and appropriate use of the product;
- distributors should be selected based on quality-based objective criteria; and
- the criteria applied should not exceed what is necessary.

Selective distribution systems that do not have a qualitative system feature and directly or indirectly limit the number of resellers are considered to be within the scope of article 4 of the Competition Law. According to the Vertical Agreements Communiqué, quantitative and qualitative selective distribution systems can benefit from block exemption, even if they include restrictions such as non-competition or exclusive distribution, up to the 30 per cent market share threshold, provided that the active sales between authorised distributors and to end users are not restricted. In ***BSH*** (Decision No. 21-61/859-423 of 16 December 2021), he TCA determined that distributorship agreements impose 'prohibition of active sales to end users', 'exclusive customer allocation' and 'obligation to purchase from a single source' on dealers who are members of the selective distribution system. In this context, the TCA found that the dealership agreement provisions in question could not benefit from group exemption since they are among the limitations that exclude agreements from group exemption.

Law stated - 28 Şubat 2025

Selective distribution systems

Are selective distribution systems more likely to be lawful where they relate to certain types of product? If so, which types of product and why?

The TCA states that certain products subject to a contract must require selective distribution due to their nature, and the criteria must be necessary for the effective distribution of the relevant product. The selective distribution system is generally applied for products such as automobiles, cosmetics and durable consumer goods, and the aim is to ensure the protection of the brand value of these products (see ***Johnson&Johnson***, Decision No. 20-40/553-249 of 3 September 2020).

Law stated - 28 Şubat 2025

Selective distribution systems

In selective distribution systems, what kinds of restrictions on internet sales by approved distributors are permitted and in what circumstances? To what extent must internet sales criteria mirror offline sales criteria?

Paragraph 28 of the Vertical Guidelines provides that in selective distribution systems in particular, suppliers may lay down an obligation that distributors own at least one physical point of sales. However, this condition must not seek to foreclose the market to those players that sell exclusively over the internet (pure players) or restrict their sales (see ***Yataş***, Decision No. 20-08/83-50 of 6 February 2020).

However, the imposition of selective distribution systems with the addition of other vertical restraints may eventually result in disproportionate restriction of competition in the relevant market. For instance, in ***BSH*** (Decision No. 21-61/859-423 of 16 December 2021), the TCA stated that the prohibition of active sales in the selective distribution system and the exclusive purchase obligation may narrow the options available to consumers and may reduce intra-brand competition, but the outcome sought to be achieved by the provisions in question was disproportionate and the efficiency of the distribution system could be maintained through alternative means.

Law stated - 28 Şubat 2025

Selective distribution systems

Has the authority taken any decisions in relation to actions by suppliers to enforce the terms of selective distribution agreements where such actions are aimed at preventing sales by unauthorised buyers or sales by authorised buyers in an unauthorised manner?

The TCA decided in ***İklimsa*** (Decision No. 17-36/578-252 of 9 November 2017) that the supplier's actions to restrict sales to non-authorised resellers were in conformity with the Vertical Agreements Communiqué and therefore did not infringe competition law. In ***Karsan*** (Decision No. 11-60/1561-554 of 7 December 2011), the TCA stated that procedures and actions regarding the prevention of active sales of a non-authorised reseller were considered within the scope of exemption and were not a violation.

Law stated - 28 Şubat 2025

Selective distribution systems

Does the relevant authority take into account the possible cumulative restrictive effects of multiple selective distribution systems operating in the same market?

In principle, qualitative and quantitative selective distribution may benefit from the block exemption up to the 30 per cent market share threshold, even if combined with other non-hardcore restraints, such as non-competition or exclusive distribution, provided that active selling by the authorised distributors to each other and to end users is not restricted.

That said, in the case of cumulative effects resulting from parallel networks, the TCA Board may withdraw the exemption with a communiqué in case of cumulative effects.

The Vertical Guidelines state that a cumulative effect problem will not arise when the share of the market covered by all of the selective distribution systems in that market is below 50 per cent. Also, no problem is likely to arise where the market coverage ratio exceeds 50 per cent if the market shares of the five largest suppliers (CR5) is below 50 per cent. Where both the CR5 and market coverage exceed 50 per cent, the assessment may vary depending on whether all CR5 use a selective distribution system. In any case, suppliers with a market share of less than 5 per cent are generally not considered to contribute significantly to a cumulative effect, as indicated in the Vertical Guidelines. The TCA stated in ***BSH*** (Decision No. 21-61/859-423 of 16 December 2021) that online marketplace sales restrictions could lead to cumulative effects and so restrict competition in the market.

Law stated - 28 Şubat 2025

Selective distribution systems

Has the authority taken decisions (or is there guidance) concerning distribution arrangements that combine selective distribution with restrictions on the territory into which approved buyers may resell the contract products?

Members of a selective distribution system cannot be prohibited from making active or passive sales to end users. Even if the undertaking in the position of a supplier forms exclusive regions by stating that it would supply goods to a limited number of buyers in a certain region, active or passive sales by the buyers to end users outside the region may not be prevented. However, the supplier may prevent a system-member buyer from changing the location of the point of sale the buyer operates in, or from opening a new point of sale.

Law stated - 28 Şubat 2025

Other restrictions

How is restricting the buyer's ability to obtain the supplier's products from alternative sources assessed?

For vertical agreements that include exclusive supply obligations, exemption applies provided the market share of the buyer in the relevant market where it purchases the goods and services comprising the subject matter of the agreement does not exceed 30 per cent. That said, undertakings that adopt the selective distribution system may not place an exclusive purchase obligation on system-member buyers.

In ***BSH*** (Decision No. 21-61/859-423 of 16 December 2021), the TCA evaluated individual exemption pertaining to the vertical restrictions that imposes exclusive purchasing clauses; it assessed that while certain restrictions were already imposed on authorised dealers who were already members of the selective distribution system through dealership agreements, the prohibition of active sales to end-users and the obligation of authorised dealers to purchase from a single source would further restrict the behaviour of authorised dealers, making their activities in the market more difficult and further limiting intra-brand

competition, which was already restricted by the selective distribution system. With this additional restriction, the TCA considered that the conditions for creating efficiency and achieving economic and technical development, and thereby consumer welfare, would not be satisfied.

Law stated - 28 Şubat 2025

Other restrictions

How is restricting the buyer's ability to sell non-competing products that the supplier deems 'inappropriate' assessed?

Article 3 of the Vertical Agreements Communiqué defines 'non-compete obligation' as any kind of direct or indirect obligation preventing the purchaser from producing, purchasing, selling or reselling goods or services that compete with the goods or services that are the subject of the agreement. In this context, in principle, non-compete obligations benefit from the block exemption regime under the Vertical Agreements Communiqué for up to five years, provided the market share of the supplier is less than 30 per cent. That said, in a selective distribution system, the legislation states that non-competition obligations must either cover all competing products or none of them.

Law stated - 28 Şubat 2025

Other restrictions

Explain how restricting the buyer's ability to stock products competing with those supplied by the supplier under the agreement is assessed.

Article 3 of the Vertical Agreements Communiqué defines 'non-compete obligation' as any kind of direct or indirect obligation preventing the purchaser from producing, purchasing, selling or reselling goods or services that compete with the goods or services that are the subject of the agreement. Furthermore, any obligation imposed on the purchaser, directly or indirectly, that more than 80 per cent of the goods or services in the relevant market that are the subject of the agreement, or the goods or services substituting for them, be purchased from the provider or from another undertaking to be designated by the provider, is also considered as non-compete obligation.

In principle, non-compete obligations benefit from the block exemption regime under the Vertical Agreements Communiqué for up to five years, provided the market share of the supplier is less than 30 per cent. Exceptionally, the non-compete obligation imposed on the purchaser may be tied to the duration of use of the said facility by the purchaser where:

- the ownership of the facility to be used by the purchaser while continuing its activities based on the agreement belong to the provider, together with the land or under a right to build over, which has been secured from third persons not connected with the purchaser; or
- the purchaser continues its activities in a facility that is the subject of a real or personal right of use obtained by the provider from third persons not connected with the purchaser.

For the period following the expiry of the agreement, any direct or indirect obligation imposed on the purchaser prohibiting it from producing, purchasing, selling or reselling goods or services cannot benefit from block exemption (eg, ***Lukoil***, Decision No. 18-09/154-74 of 29 March 2018; ***Eropet***, Decision No. 14-14/250-108 of 9 April 2014; and ***Akbank/Avivasa/Hayat***, Decision No. 14-37/714-319 of 1 October 2014). That said, a non-compete obligation may be imposed on the purchaser provided it does not exceed one year as of the expiry of the agreement, with the conditions that the prohibition:

- relates to goods and services in competition with the goods or services that are the subject of the agreement;
- is limited to the facility or land where the purchaser operates during the agreement; and
- is compulsory for protecting the know-how transferred by the provider to the purchaser.

Law stated - 28 Şubat 2025

Other restrictions

How is requiring the buyer to purchase from the supplier a certain amount or minimum percentage of the contract products or a full range of the supplier's products assessed?

Pursuant to article 3 of the Vertical Agreements Communiqué, any obligation imposed on the purchaser directly or indirectly that more than 80 per cent of the goods or services in the relevant market that are the subject of the agreement, or of the goods or services substituting for them, be purchased from the provider or from another undertaking to be designated by the provider is considered a non-compete obligation. That aside, restrictions that force the buyer to purchase a certain amount of product ('quantity forcing') are considered less harmful for the competitive structure than exclusive arrangements.

Law stated - 28 Şubat 2025

Other restrictions

Explain how restricting the supplier's ability to supply to other buyers is assessed.

Article 2 of the Vertical Agreements Communiqué defines 'exclusive supply obligations' as direct or indirect obligations whereby the supplier can sell the goods or services that are the subject of the agreement only to a single buyer within Türkiye for the latter's own use or for resale purposes. The Communiqué also provides that the block exemption shall be applied provided the market share of the provider in the relevant market where it provides the goods and services comprising the subject matter of the agreement does not exceed 30 per cent.

Law stated - 28 Şubat 2025

Other restrictions

Explain how restricting the supplier's ability to sell directly to end-consumers is assessed.

The Vertical Agreements Communiqué provides that sales to end users by a buyer operating at the wholesale level may be restricted. That said, members of a selective distribution system cannot be prohibited from making active or passive sales to end users. Even if the undertaking in the position of a supplier forms exclusive regions by stating that it would supply goods to a limited number of buyers in a certain region, active or passive sales by the buyers to end users outside the region may not be prevented. In other words, buyers that are members of a selective distribution system may engage in active or passive sales to end users in any region, including through internet channels.

Law stated - 28 Şubat 2025

Other restrictions

Have guidelines or agency decisions in your jurisdiction dealt with the antitrust assessment of restrictions on suppliers? If so, what were the restrictions in question and how were they assessed?

The Vertical Guidelines mention tying practices as a type of vertical restriction. Vertical agreements containing tying obligations can benefit from the block exemption where, in accordance with article 2.2 of the Vertical Agreements Communiqué, the market share of the supplier does not exceed the 30 per cent threshold both for the tied and the tying product, provided the agreement fulfils the conditions specified in the Communiqué. The TCA has also evaluated tying practices as a category of anticompetitive agreement in its previous decisions. In ***Allianz/Mapfre*** (Decision No. 22-14/223-97 of 24 March 2022), the TCA held that for tying to be found, two conditions must be cumulatively satisfied: (1) there must be a tying arrangement; and (2) the tying arrangement must be contrary to the nature of the agreement or commercial practice.

Law stated - 28 Şubat 2025

NOTIFICATION

Notifying agreements

Outline any formal procedure for notifying agreements containing vertical restraints to the authority responsible for antitrust enforcement.

There is no obligation to notify the Turkish Competition Authority's (TCA) Board of the agreements, concerted practices and decisions of associations of undertakings that are under the scope of article 4 of the Competition Law. Therefore, in principle, undertakings and associations of undertakings should make the assessment for exemption on their own without notifying the Board; nevertheless, undertakings may submit a notification voluntarily. The voluntary application must be made by filling the Negative Clearance/Exemption Notification Form, which is available on the TCA's website. The TCA may render a negative clearance, exemption or rejection decision at the end of the procedure, which typically takes

over a year. The reasoned decisions are also published on the TCA's website at the end of the procedure.

Law stated - 28 Şubat 2025

Authority guidance

If there is no formal procedure for notification, is it possible to obtain guidance from the authority responsible for antitrust enforcement or a declaratory judgment from a court as to the assessment of a particular agreement in certain circumstances?

Not applicable.

Law stated - 28 Şubat 2025

ENFORCEMENT

Complaints procedure for private parties

Is there a procedure whereby private parties can complain to the authority responsible for antitrust enforcement about alleged unlawful vertical restraints?

Yes. Applications may be filed by natural persons as well as by institutions, organisations, associations and similar legal persons. In principle, applications to the Turkish Competition Authority (TCA) must be filed in writing. Applications may also be sent by post, or they may be submitted to the TCA in person. Applications may also be filed via other methods such as e-mail, fax and phone. Such applications shall be treated as information (ie, not as a complaint). Verbal applications may also be recorded in an official report and treated as information by the relevant staff. The applicant may request to stay anonymous. In such a case, the identity of the relevant party or any other information that may lead to the disclosure of their identity will not be included in any of the correspondence made, including internal TCA correspondence. The legislation sets out that information shall be given to the applicant or its representative within 30 days at the latest concerning the phases of those applications that meet the requirements.

Law stated - 28 Şubat 2025

Regulatory enforcement

How frequently is antitrust law applied to vertical restraints by the authority responsible for antitrust enforcement? What are the main enforcement priorities regarding vertical restraints?

Vertical restraints are frequently scrutinised by the TCA. According to the statistics on the TCA's website, in 2023, 72 out of 127 decisions on anticompetitive agreements related to vertical restraints. In the first half of 2024, the figure was 34 out of 92. The TCA's main enforcement priorities include resale price maintenance, restriction of internet sales and

other types of vertical restraints such as non-compete and territorial or customer exclusivity clauses.

Law stated - 28 Şubat 2025

Regulatory enforcement

What are the consequences of an infringement of antitrust law for the validity or enforceability of a contract containing prohibited vertical restraints?

As provided in article 56 of Law No. 4054 on the Protection of Competition, any agreements or decisions of associations of undertakings that are contrary to article 4 of this Act will be invalid. That said, where the buyer is placed under non-compete obligations exceeding the block exemption limits, if those non-compete provisions can be separated from the rest of the agreement, only those provisions may not benefit from the block exemption, while the remaining articles of the agreement may benefit from it. If the contract provisions that include the non-competition obligation cannot be separated from the other parts of the contract, then the whole agreement falls out of the scope of the block exemption.

Law stated - 28 Şubat 2025

Regulatory enforcement

May the authority responsible for antitrust enforcement directly impose penalties or must it petition another entity? What sanctions and remedies can the authorities impose? What notable sanctions or remedies have been imposed? Can any trends be identified in this regard?

The TCA is solely empowered to issue fines. A company may be subject to a fine of up to 10 per cent of its Turkish turnover from the financial year preceding the decision. Furthermore, employees or managers of the undertaking or association of undertakings who have a determining role in the violation may face fines of up to 5 per cent of the penalty imposed on the undertaking or association of undertakings. The TCA Board is empowered to prescribe behavioural or structural remedies, or both, and issue written opinions to the concerned undertakings, ordering the cessation of the infringement. The Board's decisions can be brought to judicial review by filing an appeal before the administrative courts.

Law stated - 28 Şubat 2025

Investigative powers of the authority

What investigative powers does the authority responsible for antitrust enforcement have when enforcing the prohibition of vertical restraints?

The TCA Board is authorised to request any information it deems necessary from both public and private institutions, organisations, undertakings and trade associations. Failure to comply with a decision ordering the provision of information may lead to the imposition of a turnover-based fine. In instances where inaccurate or incomplete information is provided

in response to an information request, administrative monetary fines may be imposed. The Board is also empowered to conduct on-site inspections. During a dawn raid, the relevant company is obligated to cooperate with the Board. Any obstruction to an on-site inspection will trigger an administrative fine based on turnover.

Law stated - 28 Şubat 2025

Private enforcement

To what extent is private enforcement possible? Can non-parties to agreements containing vertical restraints obtain declaratory judgments or injunctions and bring damages claims? Can the parties to agreements themselves bring damages claims? What remedies are available? How long should a company expect a private enforcement action to take?

Anyone who, through actions, decisions, contracts or agreements contrary to competition law obstructs, distorts or restricts competition, or abuses a dominant position in a particular market for goods or services, is obliged to compensate for any and all damages suffered by those adversely affected. If the harm arises from the conduct of multiple individuals, they shall be jointly and severally liable for the damages. However, the TCA Board does not determine whether the victims of anticompetitive conduct are entitled to compensation. These matters are subject to private lawsuits.

Law stated - 28 Şubat 2025

OTHER ISSUES

Other issues

Is there any unique point relating to the assessment of vertical restraints in your jurisdiction?

No.

Law stated - 28 Şubat 2025

UPDATE AND TRENDS

Recent developments

What were the most significant two or three decisions or developments in this area in the past 12 months?

The Turkish Competition Authority (TCA), in ***Honey*** (Decision No. 23-13/209-67 of 9 March 2023), rejected resale price maintenance (RPM) allegations against a honey producer on the following grounds:

- the supplier did not show any efforts to transform the recommended shelf prices into fixed resale prices;
-

the communication between the supplier and the reseller was only a reminder that new list prices were to be applied;

- the internal communications of the supplier did not prove any agreement between the supplier and its reseller;
- the TCA did not find any evidence that would show pressure from or a threat by the supplier with respect to the enforcement of the reselling prices; and
- there were no contractual clauses between the parties regarding RPM.

The decision may represent a significant departure from the TCA's strict case law over the previous five years, which heavily relied upon the wordings included in the internal or external communications of the undertakings. The ***Honey*** decision adopts a considerably higher bar for proving RPM, albeit it does not change the TCA's position regarding its 'by object'approach to RPM. The TCA's enforcement in relation to restrictive agreements covers a variety of services, with no obvious specific priority for the TCA. However, the TCA seems to have adopted a stricter approach to vertical restrictions, especially resale price maintenance and sales restrictions. Undertakings tends to settle RPM allegations, whilst proposing commitments for sales restrictions. In this manner, 13 RPM cases were concluded through settlement procedure, whilst total settlement cases amounted to 23, in the first half of 2024.

In terms of vertical restrictions, RPM remained a recurring theme in TCA's enforcement efforts in 2024. In the reasoned decision regarding an investigation against Nestlé, the TCA fined Nestlé approximately 346 million Turkish liras for engaging in RPM and imposing territorial and customer restrictions on distributors. The investigation concluded that Nestlé controlled sales prices, restricted distributor sales territories and imposed active/passive sales prohibitions in violation of article 4 of the Law No. 4054 on the Protection of Competition. Nestlé's request to offer commitments was rejected due to the hard-core nature of RPM violations and the inability to resolve all competition concerns through partial commitments. The investigation revealed that Nestlé intervened in distributors' pricing and discount practices through tools such as the Panorama system and correspondence, indicating efforts to enforce minimum resale prices and monitor compliance. Additionally, Nestlé imposed region and customer restrictions on distributors, categorising customers into red, yellow and green lists, with discounts contingent on these categories, effectively restricting both active and passive sales. The findings, supported by internal communications and distributor agreements, highlighted Nestlé's practices in controlling sales and discounts, leading to competition concerns in multiple market areas.

On February 19 2025, the amended Guidelines on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position were published. The reasoning for the amendment appears to be that as markets subject to competition law evolve, shifting business models and consumer preferences reshape the nature of violations and enforcement targets. Consequently, the amended guidelines remove the distinction formerly made between cartels and other violations, and introduce a new categorisation for determining the base fine – namely, (1) naked and hardcore violations, and (2) other violations. Accordingly, these amendments may affect the determination of base fines for RPM violations and other violations. Practices such as RPM are expected to face stricter administrative monetary fines in the TCA's future decisions.

Law stated - 28 Şubat 2025

Anticipated developments

Are important decisions, changes to the legislation or other measures that will have an impact on this area expected in the near future? If so, what are they?

The amended Guidelines on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position was published (see preceding paragraph).

Law stated - 28 Şubat 2025