Competition Law in Türkiye: Overview

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Country Q&A | Law stated as at 01-Nov-2024 | Turkey

A Q&A guide to competition law in Türkiye.

The Q&A provides a high-level overview of the antitrust and competition law rules for restraints of trade and dominance, merger control and the legal approach to joint ventures.

The section on restraints of trade and dominance covers the regulatory framework applicable to horizontal and vertical restraints, monopolistic behaviour and abuses of dominance; the regulatory authorities; exemptions and exclusions; penalties; third-party claims; and appeals.

The section on merger control covers the relevant rules for acquisitions; notification requirements; the timelines and rules regarding publicity and confidentiality; the substantive test; remedies, penalties; third-party claims; and appeals.

Regulatory Framework

1. What is the competition law framework?

Competition law in Türkiye is governed primarily by *Law No. 4054 of 13 December 1994 on the Protection of Competition* (Competition Law) together with a number of official communiques and regulatory guidelines published by the *Turkish Competition Authority* (*Rekabet Kurumu*) (TCA). These detail and clarify the respective provisions with regards to anti-competitive agreements, abuses of dominance, and merger control.

The prohibition on anti-competitive agreements and practices is regulated under Article 4 of the Competition Law (known as the first pillar under the Competition Law). Article 4 prohibits agreements, concerted practices, and decisions which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services within Türkiye. This provision mirrors Article 101 of the *Treaty on the Functioning of the European Union* (TFEU). See *Question 3*.

Abuses of dominance are prohibited under Article 6 of the Competition Law (known as the second pillar), which provides that any abuse, by one or more undertakings of their dominant position in a market for goods or services within the whole or a part of Türkiye on their own or through agreements with others or through concerted practices is illegal and prohibited. See *Question 4*.

Merger control is briefly outlined in Article 7 of the Competition Law (known as the third pillar). Economic concentrations that create or strengthen a dominant position and significantly impede effective competition in either the whole or within a certain territory of Türkiye are prohibited. See *Question 13*.

Regulatory Authority

2. Which authority or authorities regulate competition?

Competition law in Türkiye is enforced by the *Turkish Competition Authority* (*Rekabet Kurumu*) (TCA), an autonomous administrative organisation with financial independence. The TCA has published *various guidelines* for analysing competition law-related matters on its website.

Within the TCA, the Turkish Competition Board (Board) plays a crucial role as the decision-making body responsible for:

- Investigating potential competition law violations.
- Determining sanctions/fines to be imposed on undertakings in cases of competition law violations.
- Carrying out reviews of merger filings.

The Board is composed of seven members. It has the authority to initiate investigations both following a complaint or on its own initiative (*ex officio*).

Violations of the Competition Law may be subject to enforcement through administrative fines (civil liability). The Competition Law itself does include any criminal sanctions. However, it is possible for cases of bid-rigging to be referred to the public prosecutor following a TCA investigation (see *Question 10, Personal Liability*).

The Board may impose administrative fines based on an undertaking's annual turnover for the year prior to its decision (or, if this is not available, the turnover generated in the financial year closest to the date of the fining decision).

In addition to monetary sanctions, the Board is authorised to:

- Terminate any restrictive agreement found to be in violation of the country's competition laws.
- Remove all de facto and legal consequences of any action carried out unlawfully by the infringing undertaking(s).
- Impose behavioural and structural remedies to restore the level of competition and status to the condition they were in before the infringement.

See *Question 10*.

The Board can also issue interim measures where there is a real possibility of serious and irreparable damage.

When making determinations, the TCB does not take into account any penalties imposed in other jurisdictions, or any overlapping liability for damages in other jurisdictions

Certain sector-specific regulations on competition are enforced by the relevant authorities overseeing regulated sectors, including those issued by:

- The *Turkish Energy Market Regulatory Authority* (*Türkiye Cumhuriyeti Enerji Piyasas# Düzenleme Kurumu*) (EMRA).
- The *Turkish Banking Regulation and Supervision Authority* (*Bankac#l#k Düzenleme ve Denetleme Kurumu*) (BRSA).
- The *Turkish Information Technologies and Communications Authority* (Bilgi Teknolojileri ve #leti#im Kurumu) (ITCA).

However, these authorities do not have jurisdiction in relation to competition control mechanisms.

Restrictive Agreements and Practices

3. What is the basic legal framework governing restrictive agreements and practices?

Article 4 of the Competition Law prohibits agreements, concerted practices, and decisions which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services within Türkiye.

The following vertical restraints are prohibited under Article 4 of the Competition Act:

- Resale Price Maintenance (RPM). The practice of RPM is prohibited. However, undertakings are permitted to recommend resale prices and determine the maximum resale prices provided they benefit from the block exemption (see *Question 7*, *Block Exemptions*).
- Restrictions regarding regions and customers. Communiqué No. 2002/2 allows a supplier to prevent a buyer from engaging in the active sales of contract products or services into an exclusive territory, or to customers allocated to a supplier or another buyer, provided this does not involve:
    - restrictions on active sales to an exclusive region or exclusive group of customers assigned to it by the provider or to a purchaser;
    - restrictions on sales of the purchaser operating at the wholesale level in relation to end users;
    - restrictions on the performance of sales by members of a selective distribution system to unauthorised distributors; or
    - parts being supplied by the provider with a view to combining them, preventing the purchaser from selling them to competitors of the provider who holds the position of a producer.

- Restrictions on passive sales.
- Restrictions on sales between members of a selective distribution system.
- Imposing non-compete obligations on purchasers for an indefinite period or for a duration in excess of five years.

With regards to horizontal restraints, exchanges of information among competitors that is sensitive to market competition in Türkiye is prohibited under Article 4.

Article 4 of the Competition Law also prohibits cartel activities in Türkiye. The provision therefore prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices that have (or may have) as their object or effect the prevention, restriction or distortion of competition.

Article 4 provides a non-exhaustive list of prohibited practices that would be considered cartel behaviour, which includes:

- Fixing prices.
- Allocating markets/customers.
- Restricting outputs or placing quotas on goods/items/markets and so on.
- Bid-rigging.
- The sharing of competitively-sensitive information (see above).

The term "cartel" is not explicitly defined in the Competition Law, but rather, all forms of restrictive agreements are prohibited under the Competition Law.

The assessment of whether an agreement restricts competition by object is based on the:

- Content of the agreement.
- Objectives the agreement is seeking to obtain.
- Precise economic and legal context.

The parties' intentions are irrelevant to the finding of liability but may also be taken into consideration in this assessment.

According to the *TCA Guidelines on Horizontal Cooperation Agreements*, restrictive effects are assessed on the basis of their adverse impact on at least one of the parameters of the competition in the market, such as price, output, quality, product variety or innovation.

Monopolies and Abuses of Dominance

4. Are there specific rules that apply to monopolistic or dominant companies?

In addition to regulating restraints of trade, Article 6 of the Competition Law also regulates dominant undertakings, prohibiting them from abusing their dominant position. Article 6 applies to both dominant suppliers and purchasers. Collective dominance is also recognised in Türkiye. Further details can be found in the *Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings* (Abuse of Dominance Guidelines).

The Competition Law provides a non-exhaustive list of abuses, which is similar in substance to Article 102 of the TFEU (see *Question 6*).

5. How is dominance/monopoly power determined?

Dominance is defined in the Competition Law as "the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers" (Article 3).

When making an assessment of market dominance, the first step is to define the relevant market(s) by analysing both product and geographical dimensions, as well as the level of demand and supply substitution, in accordance with the *Guidelines on the Definition of the Relevant Market*. Similar to the EU's competition rules, the Abuse of Dominance Guidelines outline several factors that the TCA will consider when making an assessment of market dominance:

- **Market share.** There is no definitive level of market share level that would categorically determine an undertaking's dominant position in a market. However, the Board deems a market share of 40% or more to be a strong indication of dominance. Entities with less than 40% may still be considered dominant depending on market conditions (*TCA Decision No. 10-78/1645-609 on Privatisation of Electricity Distribution Companies of 16 December 2010*). The Board also takes into consideration the stability of an undertaking’s market share.
- **Any barriers to entry.** These are barriers that limit or prevent new competitors from entering a market and play a crucial role in determining dominance. These may include legal, economic and/or technological barriers.
- **Buyer power.** If buyers can switch suppliers easily or negotiate more favourable terms, the likelihood of dominance decreases. However, if an undertaking is a key or irreplaceable supplier, this strengthens the argument for the undertaking being considered dominant.

6. Are there any recognised categories of behavior that may constitute abusive conduct?

Article 6 of the Competition Law provides a non-exhaustive list of recognised categories of behaviour that may constitute abusive behaviour, which includes:

- Directly or indirectly preventing other undertakings from entering into an area of commercial activity or performing actions that are intended to complicate the activities of competitors in the market.
- Directly or indirectly discriminating between purchasers with equal status by offering different terms for other purchasers with equal rights, obligations and actions.
- Any conduct that is intended to distort the competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by that party's dominance in a particular market.
- Any conduct that restricts the production, marketing or technical development to the prejudice of consumers.

The Abuse of Dominance Guidelines provide further examples of abusive behaviour, in the following categories:

- **Exclusionary abuses.** These are practices intended to exclude competitors from the market and include behaviours such as:
    - refusal to deal/refusal to supply,
    - predatory pricing;
    - tying.
    - rebate systems;
    - price/margin squeezing; and
    - exclusive dealing.
- **Exploitative abuses.** These are practices intended to take advantage of customers through excessive pricing and/or unfair and exploitative contract terms.
- **Discriminatory abuses.** These practices involve applying different conditions to equivalent transactions without justification, thereby disadvantaging certain customers or suppliers.

Exemptions and Exclusions

7. Are there any exemptions from the competition laws? If so, what are the criteria for individual exemptions or block exemptions?

The prohibition on restrictive agreements and practices does not apply to agreements that benefit from a block exemption or an individual exemption issued by the TCB.

Individual Exemptions

It may be possible for agreements between undertakings, concerted practices and decisions of associations of undertakings to be exempted on an individual basis under Article 5 of the Competition Law. According to Article 5, an undertaking may be exempt from the Article 4 prohibition if the prohibited agreement can satisfy all of the following requirements:

- It ensures new developments, improvements and/or economic or technical improvements to the production or distribution of goods, or the provision of services.
- Consumers will benefit from the developments, improvements and so on mentioned in the first point above.
- It must not eliminate competition for a significant part of the relevant market.
- It must not, more than is necessary, restrict competition in order to achieve the goals set out in the first two points listed above.

It is possible for undertakings or associations of undertakings to apply to the TCA to have the Board confirm that the relevant prohibited agreement or practice meets the requirements of exemption. The TCA has also published the explanatory guidelines on how it will make assessment on providing an individual exemption (see *Guidelines on the General Principles of Exemption).*

Block Exemptions

Restrictive agreements and practices may also benefit from a specific block exemption.

TCA Block Exemption Communiqué No. 2002/2 on Vertical Agreements (Communiqué No. 2002/2) provides that vertical agreements may be exempt from the Article 4 prohibition when the market share of the provider in the relevant market that provides the goods and services (which relate to the subject matter of the restrictive agreement) does not exceed 30%. However, Communiqué No. 2002/2 stipulates certain limitations on those agreements which may benefit from this exemption, such as:

- Agreements which prevent the purchaser from determining its own resale prices. The block exemption can therefore only be applied to such an extent that the provider may determine the maximum resale price, or recommend the resale price, on the condition that this resale price does not transform into a fixed or minimum resale price as a result of the pressure or encouragement by any of the parties.
- Agreements which include restrictions on certain regions or customers where or to whom the goods or services, which are the subject of the contract, can be sold on by the purchaser, other than in the following cases:
    - where the restriction does not cover sales to be made by customers of the purchaser by the provider with regards to active sales to an exclusive region or exclusive group of customers that have already been assigned to it or to a purchaser;
    - where the restriction relates to sales made to a purchaser that operates at the wholesale level and the restriction relates to sales to end users;
    - the restriction relates to the performance of sales by the members of a selective distribution system to unauthorised distributors; or

- where or when it is possible, parts being supplied by the provider with a view to combining them, placing a restriction of the purchaser's ability to sell them to competitors of the provider who holds the position of a producer.

- Where there is a selective distribution network: restrictions on active or passive sales to end users, which must be performed by members operating at the retail level (provided that this right has been reserved as to the prohibition to prevent unauthorised sellers in the distribution network).
- Where there is a selective distribution network: preventing the purchase and sale between those various members of distribution network**.**
- Where or when it is possible in relation to goods formed by combining parts, any prohibition by the provider of such parts against the selling of such parts as spare parts to end users, or to repairers that have not been authorised by the purchaser for the maintenance or repair of goods, in agreements between the provider who sells such parts and the purchaser who combines them.

8. Is it possible to obtain guidance from the authority as to whether an agreement or practice is likely to restrict competition?

It is not possible to obtain guidance from the TCA as to whether an agreement or practice is likely to restrict competition.

However, it is possible for undertakings or associations of undertakings to formally apply to the Board to request clearance that an agreement or practice does not violate Articles 4, 6, or 7 of the Competition Law (Article 8, Competition Law). These applications cannot be carried out an anonymous basis.

Once the Board receives the undertaking's or association's application, it may, on the basis of information it receives, grant a negative clearance certificate indicating that an agreement, decision, practice or merger/acquisition (as applicable) is not contrary to Articles 4, 6 or 7 of the Competition Law. Application and issuance of negative clearance certificates are carried out on a formal basis.

In relation to merger/acquisition transactions, the negative clearance certificate may be issued by the Board after a merger filing has been submitted to its records, or the parties may separately apply for a negative clearance certificate. If the Board determines that a filing submitted to its records does not fall within its jurisdiction, it may issue a negative clearance certificate *ex officio*, or make such assessment based on the application of the relevant parties. Accordingly, it is possible for the TCA to assess whether it will grant clearance to a transaction, after it determines that the relevant transaction falls within the scope of the Competition Law through a negative clearance application.

The Board may, after issuing a negative clearance certificate, revoke its opinion at any time if:

- Any change occurs in any event constituting the basis of the decision.
- The relevant undertaking or association of undertaking fails to fulfil the terms or obligations resolved.

- The Board has rendered the decision on the basis of incorrect or incomplete information concerning the agreement in question.

9. Is any conduct excluded from the scope of the competition laws?

Exclusions

Bilateral conduct regarding both vertical and horizontal relationships may be excluded under the *de minimis* rule under the *Communiqué on Agreements, Concerted Practices, and Decisions and Practices of Associations of Undertakings that do not Significantly Restrict Competition (Communiqué No. 2021/3)*.

Pursuant to the *de minimis* rule (and with the exception of *naked* (hard-core) violations):

- For agreements executed between competing undertakings: the *de minimis* exclusion will apply if the total market share of the parties to the agreement does not exceed 10% in any of the relevant markets affected by the agreement.
- For agreements executed between non-competing undertakings: if the market share of each of the parties does not exceed 15% in any of the relevant markets affected by the agreement, it will be considered that such agreements do not significantly restrict competition in the relevant markets.

There are also several sector-specific communiques which stipulate exclusions under specific block exemptions for agreements in relation to certain matters and/or sectors, including:

- The automotive sector under *Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector* (Communiqué No. 2017/3).
- R&D agreements under *Block Exemption Communiqué on Research and Development Agreements* (Communiqué No. 2016/5).
- Specialisation agreements under *Block Exemption Communiqué on Specialisation Agreements* (Communiqué No. 2013/3).
- The insurance sector under *Block Exemption Communiqué in relation to the Insurance Sector* (Communiqué No. 2008/3).
- Technology transfer agreements under *Block Exemption Communiqué on Technology Transfer Agreements* (Communiqué No. 2008/2).

See also *Question 5*.

Statutes of Limitation

Communiqué No. 2002/2 provides that agreements that contain a non-compete obligation imposed on a purchaser for an indefinite period, or for a period in excess of five years, will not benefit from the exemption. The relevant limitations are also explained thoroughly under the *TCA Guidelines on Vertical Agreements*.

Penalties

10. What penalties or sanctions are available for breaching the competition laws?

Orders

The Board is authorised to take all necessary measures to terminate any breaches of competition law, including eliminating any de facto and/or *de jure* consequences of unlawful actions by undertakings and taking any further actions necessary to restore market competition in Türkiye.

Once the Board confirms the existence of a restrictive agreement or practice, it is deemed legally invalid and unenforceable, along with all associated legal consequences.

Under Article 9 of the Competition Law, the Board is authorised to impose behavioural or structural remedies on the relevant parties (including an order for undertakings to transfer certain businesses, partnerships shares or assets) provided these are proportionate to the violation and necessary to terminate it. Structural remedies will generally only apply in cases where prior behavioural remedies have proved to be ineffective**.**

In some cases, the Board may simply send an opinion letter to the concerned undertakings regarding their views on how to terminate a violation. In practice, this is typically used when the conduct in question does not warrant a full investigation or any interim measures from the Board.

Fines and Monetary Remedies

The Board can impose administrative fines on undertakings in accordance with the Competition Law and the *TCA Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuse of Dominance* (Regulation on Fines).

The Competition Law stipulates a maximum limit to the administrative fines that may be imposed by the Board at 10% of the annual gross revenues of the relevant parties. In accordance with the Regulation on Fines, the fines that may be imposed following a violation vary depending on:

- The duration of the violation.
- The existence of any aggravating factors, such as the violator:
    - repeating the violation;
    - maintaining a cartel after receiving an investigation notification;

    - not meeting its commitments;
    - coercing other undertakings into coming the violation; and
    - providing no assistance during on-site investigations.

- Any mitigating factors, for example, the violator:
    - assisting with the on-site inspection;
    - encouraging co-operation with the government authorities;
    - being coerced into the violation by other undertakings;
    - voluntarily making the payment of damages to those harmed; and
    - terminating any other violations.

The Board may also impose fines on the relevant parties for procedural violations pursuant to Article 16 of the Competition Law. Such violations may be imposed where the violator has:

- Provided false or misleading information or documents in its applications for exemption and negative clearance, as well as in merger control filings.
- Completed on transactions that are subject to the Board's approval, without the authorisation of the Board.
- Provided incomplete, false or misleading information in response to the TCA's requests for information and during on-site inspections.
- Prevented or hindered on-site inspections.

Personal Liability

According to the Competition Law, where administrative fines are imposed on undertakings or associations of undertakings, those managers or employees that are found to have had a decisive influence on the violation may be fined up to 5% of the penalty that was imposed on the undertaking or association. The recourse of the fines is a legal matter under the *Turkish Code of Obligations No. 6098 of 11 January 2011* (Code of Obligations). In the Turkish legal system, where an employee's intentional misconduct or gross negligence directly causes a violation, employers are permitted to seek compensation from the responsible employee. In such cases, the courts will assess factors such as the:

- Employee's intentions.
- Severity of the actions.
- Actual harm caused.

While employees can be held liable, companies are generally responsible for their employees' actions within the scope of their duties, meaning the company may remain accountable even if the employee is found liable.

While there are no criminal sanctions under the Competition Law, bid-rigging in public tenders may be criminally prosecuted with three to seven years of imprisonment (Article 235, *Turkish Criminal Code No. 5237 of 26 September 2004*).

Immunity/Leniency

It is possible to obtain immunity or leniency from fines or other sanctions under the Competition Law through the leniency programme, which is aimed at detecting and disrupting cartels. The relevant legal framework is outlined under the *TCA Regulation on Active Cooperation for Detecting Cartels* (Cartels Regulation) and the Competition Law.

The leniency mechanism allows companies and individuals involved in a cartel to receive immunity or reductions in fines depending on the timing and nature of their co-operation. If a company is the first to come forward and disclose its involvement in the cartel and provides significant evidence before the TCA initiates a formal investigation, it can receive full immunity from fines. The general requirements are that:

- The applicant has not coerced other parties into participating in the cartel.
- The information provided enables the authority to open an investigation.

If the applicant is not the first to come forward, or if the investigation has already started, they may still be eligible for a reduction in fines. The amount of the reduction depends on when they apply, and the value of the evidence provided, for example:

- Typically, the first company to co-operate after an investigation has begun, can receive a fine reduction of 25% to 50%.
- Later applicants can receive smaller reductions ranging from 20% to 40% or 15% to 30%, depending on their timing and the quality of the information.

The leniency programme also applies to managers and employees of the company. If the company qualifies for immunity or leniency, the same protection can be extended to its managers and employees who co-operate with the investigation. Additionally, leniency applicants must cease their participation in the cartel and maintain full co-operation with the competition authority throughout the investigation process.

This system incentivises early disclosure of cartel behaviour and aligns closely with international practices, making it an important tool for cartel detection and enforcement.

Third Party Damages Claims

11. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or abuse of dominance? Are collective/class actions possible?

Third parties can claim damages for losses suffered as a result of a prohibited restrictive agreement or abuse of dominance under the Competition Law. Article 57 of the Competition Law provides that any person or entity harmed by anti-competitive

practices, such as cartels, restrictive agreements, or abuse of dominance, can file a civil lawsuit to seek compensation. This allows individuals or companies who have suffered harm from such practices to recover the damages they have incurred.

Follow-on/Standalone Actions

It is possible for third parties to claim damages both on a follow-on basis and on a standalone basis. The relevant court does not have to wait for the Board to render a decision in relation to the existence of a violation of Competition Law. The relevant court is therefore authorised to conduct its own assessment with regard to the existence of a violation and whether a claim of damages should arise in accordance with Article 49 of the Code of Obligations and Article 57 of the Competition Law. Accordingly, it is possible for the same issue to be brought before the relevant courts and the Board simultaneously and this may even result in different assessments. However, in practice, the Turkish courts tend to dismiss compensation claims, and/or halt proceedings for damages, until the Board has rendered its own decision on the matter.

In terms of compensation, the claimant can request full compensation for the losses suffered, which includes both actual damages (direct financial losses) and lost profits. Additionally, Turkish law provides for the possibility of treble damages, meaning that if the claimant can prove the infringement was committed intentionally, they may be awarded up to three times the amount of the actual damages.

Claimants who seek damages must be able to prove:

- The existence of the anti-competitive conduct.
- The harm they have suffered.
- A direct causal link between the conduct and the damage.

Procedures or Rules

The relevant courts for filing damage claims arising from Competition Law violations are the general competent civil courts of first instance. Additionally, damages claim filings can also fall under the jurisdiction of specialised courts, in accordance with the legal status of the claimant and the subject of the dispute. For instance, if a claimant is qualified as a merchant, the commercial courts of first instance would be authorised. The High Court of Appeal is authorised as the authority of appeal in respect of damage claims arising from Competition Law violations.

The procedures for stand-alone and follow-on damages actions do not differ. As the courts also have the authority to make their own assessment regarding the alleged violation, the TCA decisions are not binding for the courts. However, in practice, courts often dismiss compensation claims or suspend civil proceedings related to damages until the Board has issued a decision on the matter.

The Competition Law does not stipulate specific statute of limitations for damages claims arising from Competition Law violations. Article 72 of the Code of Obligations provides for three different limitation periods for making a claim for compensation:

- Two years from the time the claimant becomes aware of the damage and the identity of the person(s) liable for the damage.
- Ten years from the date of the violation.

- The relevant stipulated time limitation where a longer limitation period has been provided for under Turkish criminal law for the relevant conduct.

Class/Collective Actions

Turkish legislation does not allow for class actions or representative claims in the traditional sense. While Article 73 of *Law No. 6502 on Consumer Protection* permits class actions by consumer organisations, these are limited to consumer law violations and do not extend to antitrust infringements. Similarly, Article 58 of the *Turkish Commercial Code* allows for class actions by trade associations against unfair competition, but this provision is not applicable to private antitrust suits under the Competition Law.

However, Article 113 of the *Turkish Code of Civil Procedure No. 6100* enables associations and legal entities to initiate group actions. This type of action allows for the protection of members' interests, the determination of rights, or the removal of illegal situations. Importantly, these group actions do not cover damages claims and can be brought as a single lawsuit, with the court's verdict encompassing all individuals within the group. While Turkish law allows for individual claims for damages, the absence of collective action mechanisms makes it necessary for affected parties to pursue their cases separately.

Appeals

12. Is there a right of appeal against any decision of the authority? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?

The Competition Law does not stipulate any specific provisions regarding appeals, and therefore the general principle set out under *Administrative Procedural Law No. 2577 of 6 January 1982* (Administrative Procedure Law) applies.

According to Articles 7 and 8 of the Administrative Procedure Law, judicial review can be sought for administrative decisions and acts by filing an appeal within 60 calendar days from the receipt of the reasoned decision by the relevant court, provided that no other time limitations are stipulated under specific legislation.

Appeals against the Board's decision must be filed before the administrative courts of Ankara, which involves two rounds of petition exchanges and (if requested) an oral hearing to be held in Ankara. It is possible for the parties to appeal the first instance court's decision before the Regional Administrative Court within 30 days as of its service. If the parties wish to further appeal the Regional Administrative Court’s decision, they may do so before the Council of State within 30 days as of the service of the decision of the Regional Administrative Court. However, for third parties to appeal such a decision, they must be able to prove that they have a legitimate interest. Accordingly, there must be a legitimate, current and significant causal link between the relevant decision of the Board and the relevant third party. Usually, if the causal link can be established, the courts will consider that the relevant third party has a legitimate interest.

Merger Control

13. What merger control rules apply to mergers and acquisitions in your jurisdiction?

Article 7 of the Competition Law prohibits mergers and acquisitions that would result in a significant lessening of effective competition, particularly if the merger or acquisition would result in the creation or strengthening of a dominant position in any part of the Turkish market.

TCA Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4) provides that mergers and acquisitions must be notified to the TCA, which must provide its authorisation for the transaction to be considered legally valid under Article 7 (see *Question 15*).

The legal regime for merger control in Türkiye is further governed by:

- *TCA Communiqué No. 2013/2 on the Procedures and Principles to be Pursued in Pre-notifications and Authorisation Applications to be Filed with the TCA in order for Acquisitions via Privatisation to Become Legally Valid* (Communiqué No. 2013/2).
- *TCA Guidelines on Cases Considered as Mergers and Acquisitions and the Concept of Control* (Guidelines on the Concept of Control).
- *TCA Guidelines on Concerned Undertakings, Turnover and Ancillary Restrictions in Mergers and Acquisitions.*
- *TCA Guidelines on the Assessment of Horizontal Mergers and Acquisitions.*
- *TCA Guidelines on the Assessment of Non-horizontal Mergers and Acquisitions.*
- *TCA Guidelines on Acceptable Remedies in Mergers and Acquisitions* (Guidelines on Acceptable Remedies).

14. What are the relevant jurisdictional triggering events?

Notifiable Transactions

The Turkish merger control regime is triggered when the following occurs:

- The transaction involves the merger of two or more undertakings, or the acquisition of direct or indirect control over all or part of one or more undertakings by one or more undertakings or by one or more persons who currently control at least one undertaking, through the purchase of shares or assets, through contract or through any other means.

- There is a permanent change to the control of at least one of the undertakings.

(Article 5, Communiqué No. 2010/4.)

If the transaction exceeds the applicable jurisdictional thresholds in relation to the annual turnover and/or assets of the merging undertakings (see below) under Article 7 of Communiqué No. 2010/4, the transaction is subject to a mandatory *ex ante* (before the event) merger control filing (see *Question 15*).

Transactions which are closely related, subject to conditions, or executed swiftly through securities within a short timeframe are considered as a single transaction under Communiqué No. 2010/4.

For details of the latest jurisdictional thresholds see, *Merger Control Quick Compare Chart: Türkiye*.

To compare jurisdictions, see the *Merger Control Quick Compare Chart*.

For details of the latest thresholds from the Türkiye competition authority, see *www.rekabet.gov.tr/tr/Guncel/rekabet-kurulundan-izin-alinmasi-gereken-82269c8a8f9bec11a21c00505685ee05*.

Intra-group transactions and other transactions which do not lead to a change in control on a lasting basis such as transfer of securities granting minority rights are not considered mergers or acquisitions under Article 5 of Communiqué No. 2010/4. Similarly, certain transactions will fall outside the scope of Article 7 of the Competition Law when the transaction:

- Relates to undertakings whose ordinary operations involve transactions with securities on their own behalf or on the behalf of others.
- Involves the temporarily holding of securities purchased for resale purposes (provided the voting rights from those securities are not used to affect the competitive policies of the undertaking which issued the securities in question).
- Involves the acquisition of control by a public institution or organisation by operation of law and due to divestment, dissolution, insolvency, suspension of payment, bankruptcy, privatisation, or a similar reason.

(Article 6, Competition Law.)

In addition, the formation of a joint venture which would permanently fulfil all the functions of an independent economic entity will also be considered an acquisition for the purposes of the Competition Law (see *Question 23*).

The general threshold for turnover (as provided in Article 7 of Communiqué No. 2010/4) does not apply to transactions that involve the acquisition of technology companies which operate in the Turkish geographical market or have R&D activities in Türkiye, or which provide services to users in Türkiye (this is known as the "technology undertaking exception"). See *Question 22*.

Control

Article 5(2) of Communiqué No. 2010/4 stipulates that "control" can be acquired through a transfer of rights, contracts or other instruments which, separately or together, allow for a legal or de facto exercise of decisive influence over an undertaking. These instruments consist of ownership rights or operating rights over all or part of the assets of an undertaking, which grant decisive influence over the structure or decisions of the bodies of an undertaking. Control may be acquired by right holders, or by persons or undertakings who have been empowered to exercise such rights in accordance with a contract, or who (while lacking such legal rights and powers) have de facto strength to exercise such rights.

An acquisition of a minority interest that does not per se result in a change of control will not be subject to merger control. However, if the acquisition of a minority interest confers the shareholder with certain veto rights that may affect the strategic decisions of the company (such as veto rights regarding the annual budget, business plan, appointment of senior management and so on) the transaction may become subject to filing.

Notification

15. What are the notification requirements for mergers? Are they mandatory or voluntary?

Persons or undertakings that are parties to the transaction, or their representatives, can make the notification filing, jointly or severally (Article 10, Communiqué No. 2010/4). The party making the filing must notify the other party to the transaction.

Notification must be made to the TCA.

Transactions considered to be mergers or acquisitions that fall within the scope of Article 5 of Communiqué No. 2010/4 are subject to a mandatory prior notification, provided the turnover thresholds in Article 7 of Communiqué No. 2010/4 are met. In accordance with the *TCA Guidelines on Cases Considered as Mergers and Acquisitions and the Concept of Control* (Guidelines on the Concept of Control), a transaction is subject to notification if it results in a lasting change of control and meets/exceeds jurisdictional thresholds (see *Question 14*).

The recent (2022) Amendment Communiqué (*Communiqué No. 2022/2*, see *Question 22*) introduced a new *sample notification form*, which should be used for merger control filings.

However, certain types of mergers in the banking sector are exempt from notification. For example, *Law No. 5411 on Banking of 19 October 2005* (Banking Law) provides that Articles 7, 10 and 11 of the Competition Law will not apply where the market sector share of the banks involved in the merger or acquisition does not exceed 20%.

Procedure and Timetable

16. What are the procedures and timetable?

The merger review process conducted by the TCA comprises two phases:

- A preliminary review (Phase I).

- An in-depth investigation (Phase II).

The competition regime in Türkiye does not set deadlines for filing a notification in Türkiye. However, if a merger or acquisition is implemented without the prior authorisation of the Board, the parties may be subject to administrative fines under Article 16 of the Competition Law (see *Question 20, Implementation Before Approval or After Prohibition (Gun-Jumping)*). The date of implementation of the transaction is considered to be the date in which the change of control occurs.

For an overview of the notification process, see *Türkiye Merger Notifications Flowchart*.

Phase I

As soon as the Board becomes notified of the merger or acquisition falling within Article 7 of the Competition Law, it must perform a preliminary examination within 15 days and will either:

- Authorise the merger or acquisition following its preliminary review.
- Notify the parties to the transaction (in a preliminary objection letter) that the transaction must be suspended and cannot be put into effect until the final decision, together with any other measures deemed necessary.

(Article 10, Competition Law.)

If the Board does not respond to the parties' notification or take any action concerning the parties' application within the 15-day timeframe, the related merger or acquisition agreements can take effect and will become legally valid 30 days from the date of their notification. It should be noted, however, that any requests for information of the TCA will restart the 30-day clock back to day 1 (which is counted from the date the parties' responses are submitted to TCA).

Phase II

If the Board considers the details of the transaction to be more complicated and views the transaction to potentially give rise to significant competition concerns, it may initiate a Phase II review. With the Phase II review, the Board initiates a fully-fledged investigation in which its case team has six months to prepare and finalise an investigation report (which can be extended for an additional period of up to six months). On receipt of the report, the parties have 30 calendar days to respond and submit their written defence to the TCA. This period can be extended for another 30 days.

Once the Board has received the parties' written defence, two different scenarios may apply, depending on whether the case team maintains or changes its opinion as stated in the investigation report:

- If, following receipt of the parties' defence, the case team changes its opinion as indicated in the investigation report, it will prepare the additional written opinion within 15 calendar days. The parties then have 30 calendar days to respond to the new written opinion and submit their second written defence.
- If, following receipt of the parties' defence, the case team maintains its opinion as indicated in the investigation report, no additional written opinion will be required and accordingly, no written defence would need to be submitted by the parties.

In either scenario, an oral hearing may be held between 30 to 60 calendar days after the finalisation of the investigation phase, either on the Board's own initiative (*ex officio*) or following a request by the parties. The Board will then submit a short-form version of its decision to the parties within 15 calendar days following the date of the oral hearing.

During Phase II, the Board conducts a thorough examination and will then decide to:

- Approve the transaction without conditions.
- Approve the transaction with conditions.
- Prohibit the merger or acquisition.

On average, Phase II reviews have taken about 228 days, or about eight months, from the date of notification.

Publicity and Confidentiality

17. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

The TCA typically publishes a public announcement on its *website* on receiving a merger notification and posts a follow-up announcement once a decision regarding the notification has been rendered.

Publicity

The initial announcement will appear on the TCA's website shortly after the notification is officially recorded. This announcement essentially includes a non-confidential summary of the transaction as provided by the parties in the *notification form*, detailing:

- The parties involved.
- A brief description of the transaction.
- Confirmation that the transaction has been notified to the TCA.

Third parties are invited through this announcement to provide any comments or concerns regarding the transaction.

The second announcement from the TCA will include the same information as the first, along with the Board's assessment of the transaction and its decision to approve or not approve it.

Finally, within six months after a decision is rendered, a reasoned decision is published on the TCA's website. The level of detail in each reasoned decision may vary.

Automatic Confidentiality

There is no automatic confidentiality within the scope of Turkish competition laws.

Confidentiality on Request

Parties can identify any trade secrets by stipulating these in the notification form in accordance with *Communiqué No. 2010/3 on the Right to Access the Case File and the Protection of Commercial Secrets*.

Any information identified as confidential within this scope will be redacted by the TCA in its decision, and a non-confidential version will be published.

Substantive Test

18. What is the substantive test?

Competition law in Türkiye makes use of the significant impediment of effective competition (SIEC) test. Therefore, a transaction will be prohibited if it would result in an SIEC within a market for goods or services in the entirety or a portion of the country, particularly if this creates or strengthens a dominant position in the market.

Article 13 of Communiqué No. 2010/4 sets out the relevant factors to be considered when assessing whether an SIEC applies to the transaction. These include:

- The structure of the relevant market.
- The actual and potential competition among domestic and foreign-based undertakings.
- The status of the undertakings within the market, including their:
    - economic and financial power;
    - alternative sources for suppliers and customers; and
    - ability to access sources of supply.
- Any barriers to entering the market.
- Any supply and demand trends.
- Consumer interests.
- Activities benefiting the consumers.

Mergers and acquisitions which significantly lessen effective competition in all or part of Türkiye, including through creation or strengthening of a dominant position, must not be authorised.

Merger Remedies

19. What are the types of remedies that can be required as conditions of merger clearance?

It is possible for parties to submit commitments to remedy any concerns the Board may have in relation to the potential for violations of Article 7 of the Competition Law and Article 14 of Communiqué No. 2010/4. Commitments can be submitted by the parties at any point during Phase I or Phase II of the Board's review of the transaction.

Commitments from the parties can be both behavioural and/or structural. Depending on the nature of the commitments, they may also be subject to time limitations. However, structural remedies typically take priority over behavioural remedies (this does not vary with regard to whether they are provided during Phase I or Phase II).

Compliance remedies usually have their own (different on a case-by-case basis) reporting processes, which are approved or modified by the Board accordingly. The Turkish merger control regime does not set any specific monitoring timeframes for compliance.

Penalties

20. What are the penalties for failing to comply with the merger control rules?

Failure to Notify Correctly

If the transaction is subject to mandatory notification under Communiqué No. 2010/4 (see *Question 14*) and the relevant parties fail to make any notification to the TCA, the Board will conduct an examination of the merger or acquisition on its own initiative once it becomes aware (in any way) of the transaction (for example, following a complaint, following the assessment of other transactions of the parties, from third parties, and/or through the media). As a result of this examination:

- Where the TCA decides that the concentration does not significantly impede competition: it may allow the merger or acquisition but will impose fines on those concerned due to their failure to notify.
- Where the TCA finds that the concentration significantly impedes competition: it will make a determination for:
    - the parties to be subject to fines for their failure to notify;
    - the merger or acquisition transaction to be terminated;
    - all de facto situations committed contrary to the law to be eliminated;

- any shares or assets acquired to be returned, if possible, to their former owners, within those terms and duration as determined by the Board, or if this is not possible for them to be assigned and transferred to third parties;
- for the acquiring persons to be prevented from participating in the management of the target undertakings until these are assigned to their former owners or third parties; and
- any other measures deemed necessary to be taken.

Accordingly, if the parties implement the transaction without notifying the TCA, they will be subject to an administrative fine of 0.1% of the annual Turkish turnover of the parties for the financial year preceding the date of the decision (applicable to all parties in mergers, the acquirer in an acquisitions, and the party which will ultimately control the joint venture for joint ventures).

A notifiable transaction is considered to be invalid (with all of its consequences), until it is approved by the Board. The Board does not need to prove that the transaction had any influence on the competition of the Turkish markets to administer a monetary fine for failure to notify.

Implementation Before Approval or After Prohibition (Gun-Jumping)

If the parties implement the transaction prior to gaining the approval of the Board, the parties will be subject to the same administrative fines as for their failure to notify (see above, *Failure to Notify Correctly*). This is because under the Turkish merger control regime, the Board considers implementation before approval to be the same type as a violation for failing to answer at all.

Accordingly, if the parties implement the transaction prior to receiving clearance from the Board, they will be subject to an administrative fine of 0.1% of the annual Turkish turnover for the financial year preceding the date of the decision of the parties (applicable to all parties in mergers, the acquirer in an acquisitions, and the party which will ultimately control the joint venture for joint ventures).

A notifiable transaction is suspended pending a clearance decision from the Board. If the Board finds that the parties have violated the suspension requirement, it can impose a minimum administrative fine of TRY167,473 (about EUR6,521) automatically.

Furthermore, if the Board determines that the parties have also (in addition to failing to notify/implement without clearance) violated Article 7 of the Competition Law with the relevant transaction, the Board may:

- Split the merged entity.
- Take any other measures necessary to restore competition.
- Impose a separate administrative fine of up to 10% of the parties' annual Turkish turnover.

(Article 16, Competition Law.)

Appeals

21. Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

Rights of Appeal

Judicial review can be sought for administrative decisions and acts by filing an appeal within 60 calendar days from the receipt of the reasoned decision, provided that no other time limitations have been stipulated under specific legislation (Articles 7 and 8, Administrative Procedure Law).

The Competition Law does not stipulate any specific provisions regarding the right to appeal. Therefore, the general principle set out under the Administrative Procedure Law applies. The decisions of the Board may be appealed only after the relevant parties have received the reasoned decision.

Procedure

See *Question 12*.

Third Party Rights of Appeal

Third parties can appeal the Board's decision before the relevant administrative courts. However, for third parties to appeal such a decision, must be able to prove that they have a legitimate interest in the matter.

22. Has the regulatory authority issued guidelines or policy on its approach in analysing mergers in a specific industry?

The TCA has not issued any guidelines or policies in relation to its approach to analysing mergers in specific industries.

However, in 2022, the TCA amended Communiqué No. 2010/4 and defined "technology undertakings" to mean undertakings operating in the field of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and healthcare technologies (or their related assets). With this amendment, the turnover thresholds set out in Communiqué 2010/4 in relation to the target would not apply to technology undertakings in relation to transactions involving the acquisition of technology undertakings.

In addition, Communiqué No. 2013/2 sets out specific procedures and principles with regards to acquisitions carried out by the Turkish state via privatisation.

Joint Ventures

23. How are joint ventures analysed under competition law?

The term "joint venture" has been defined by the TCA to mean the "integration of two or more independent undertakings in such a way that their resources can be used to increase production capacity, develop a new type of technology or enter a new market" (TCA Dictionary of Competition Terms).

A joint venture has two basic elements:

- The right of joint control that the parent undertakings have over the joint venture.
- The emergence of the joint venture as an independent economic entity with a workforce and assets to realise its objectives. This is also referred to as "full functionality."

The creation of a joint venture that will permanently fulfil all the functions of an independent economic entity is therefore considered to be an acquisition under the Turkish competition law regime.

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- Represented Merz Pharmaceuticals in acquiring neuroscience assets from Acorda Therapeutics.
- Represented Sentry HK Holdings Limited in establishing a JV with Xiamen C&D Commodities.
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- *"Are You a "Technology Undertaking" within the Scope of Merger Control in Turkey?", ABA Business Law Today, July 2023.*
- *"The Intellectual Property and Antitrust Review: Turkey", The Law Reviews, July 2023.*
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