

Important Amendments to the Competition Law Entered Into Force

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The recent changes made to the Law on the Protection of Competition numbered 4054 (the “**Competition Law**”) grant broader authority to the Competition Board in relation to remedies for competition law concerns, the scope of its assessment for merger control and the data which can be seized during on-site inspections as well as the introduction of new mechanisms such as the long-awaited *de minimis* analysis and commitment and settlement procedures.

The Law numbered 7246 (the “**Amendment**”) entered into force on June 24, 2020, amending the Competition Law. The Amendment brings significant changes to the way competition law has been practiced in Turkey for the past 23 years. How the new rules, summarized below, will shape the practice is expected to be clarified through secondary legislation and guidelines to be issued by the Competition Board as well as court judgments.

Structural Remedies

With the Amendment, the Competition Board will be able to order structural remedies such as the transfer of certain operations, shares or assets of an undertaking in case of an infringement under Article 4 (*prohibiting anticompetitive agreements*), Article 6 (*prohibiting abuse of dominant position*) or Article 7 (*merger control*) of the Competition Law. Based on the Amendment: (i) structural remedies may be imposed only if the behavioural remedies previously imposed in relation to such infringement have not yielded the expected results to restore competition; (ii) the remedies shall be proportionate and necessary to effectively terminate the infringement; and (iii) the relevant undertaking shall be given at least six months to comply with the structural remedies imposed.

A Different Approach to Merger Control

In lieu of the dominance test, the significant impediment of effective competition test (the “**SIEC**”) has been introduced to the Competition Law with respect to merger control rules. With the Amendment, Article 7 of the Competition Law now prohibits mergers and acquisitions that might result in a significant impediment of effective competition in addition to the ones that create or strengthen a dominant position. The European Commission had been using the SIEC test in its merger reviews for a number of years. The details as to how this new test will be applied in Turkey and what type of assessment criteria will be used by the Turkish Competition Board will be clarified through the secondary legislation, which is expected to be issued soon.

Inspection Powers Regarding Digital Records

The authority of the Board regarding the documents it can review and copy during an on-site inspection has been clarified and broadened. With the Amendment, the Board now has the explicit authority to review and

take copies of any and all kinds of data and documents that are stored in physical or electronic environments or in the information systems of the undertakings concerned during on-site inspections.

De Minimis Analysis

Except for hard core restrictions such as price fixing or market sharing, the Board may now decide not to conduct an investigation with regard to infringements that do not significantly restrict competition, based on the criteria, such as market share and turnover thresholds to be set by the Board; *i.e.*, *de minimis* analysis.

Commitment Mechanism

The commitment mechanism, which is new to Turkish competition law, allows the companies to voluntarily submit commitments during preliminary investigations or investigations to eliminate competition law concerns within the context of Article 4 (*prohibiting anticompetitive agreements*) and Article 6 (*prohibiting abuse of dominant position*) of the Competition Law. Based on its assessment of the commitments, the Board may decide not to initiate an investigation or end an ongoing investigation without completing the entire investigation procedure. The Board shall not accept commitments regarding *hard core* infringements such as price fixing, allocation of markets or customers, or restricting supply.

Settlement Procedure

Another mechanism that is new to Turkish competition law is the “settlement” procedure. After the investigation commences, the Board may decide on a settlement procedure upon request of the parties or *ex officio*. With this procedure, the relevant party(ies) admit its participation in the competition law breach and in return they may receive a reduction of up to 25 percent of the fine to be imposed by the Board. The settlement procedure aims to finalize the investigation at an early stage (*i.e.*, without completing all investigative procedures). On the other hand, the party that has settled with the Competition Board cannot file a lawsuit against the fining decision of the Competition Board as it would have already admitted the breach through the settlement procedure.

Individual Exemption

Since 2005, entities have been able to self-assess whether an agreement, concerted practice or a decision of association of undertakings qualifies for an individual exemption under article 5 of the Competition Law and, in case legal certainty is essential, they may request an official evaluation of the matter through an individual exemption application to the Competition Board. The Amendment further clarifies this practice and additionally brings the courts into play with respect to exemption assessments. That is to say that the courts, upon an application, will be able to make a substantive assessment on whether the relevant agreement, decision or practice qualifies for an exemption under competition law. This was a major point of discussion both before and after the Amendment and is expected to be further clarified in the short term.

The Amendment brought significant changes to the Competition Law and details of the procedures that are newly introduced are expected to be clarified with secondary legislation to be issued by the Board.

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