

THE TURKISH COMPETITION LAW GETS A MAKEOVER

The legislative proposal regarding the amendment of Law No. 4054 on the Protection of Competition (the “**Law No. 4054**”) has been approved by the Grand National Assembly of Turkey on 16 June 2020, and officially enacted into law by way of publication in the Official Gazette no. 31165 on 24 June 2020.

Some of the most important amendments, which aim at improving the effectiveness of Turkish competition law and better aligning Turkish competition legislation with the European Union, are as follows:

Introduction of a “de minimis” rule

Concordantly with the European Competition Law, the introduction of a “*de minimis*” rule allows the Turkish enforcer not to open an investigation into anti-competitive practices that do not have a significant effect on competition. “*Hard-core*” violations, such as price fixing, market sharing or customer allocation between competitors, are excluded from the scope of the “*de minimis*” rule and must be investigated regardless of their actual or potential effects on competition. It is expected that details regarding the scope and application of this rule -such as turnover or market share thresholds of undertakings involved in the anti-competitive practice, interpretation of “significant effect on competition” of the lack thereof- will be determined by soft law to be published by the Turkish Competition Authority (the “**Authority**”) at a later stage.

Introduction of a “significant impediment to effective competition” test in merger control review

The introduction of a “*significant impediment to effective competition*” (“SIEC”) test, which is applied in the European Competition Law, will enable a more holistic evaluation of proposed mergers and acquisitions. The amendment will allow the prohibition of a proposed deal if it significantly reduces effective competition, as opposed to the current “*dominant position*” test, where the idea is to determine whether a transaction will create or strengthen a dominant position.

Clarification regarding the Authority’s dawn-raid authorities

The amendments clarify the Authority’s powers to examine, print out and make copies of the data and documents of undertakings concerned during dawn-raid inspections, including those that are kept electronically or in IT systems. As such, the amendment provides an effective method to reveal secret cartels and other anti-competitive practices, in line with the recent technological developments.

Commitment and Settlement Procedures

The introduction of a commitment procedure will allow the Authority not to initiate or to terminate an on-going investigation, in case the undertaking(s) in question offer commitments that effectively remedy the relevant competition concerns. The Authority will have the option to resume an investigation in case it is considered that the commitments are not an effective remedy, if the relevant undertakings fail to comply with the commitments, or in case the Authority accepted the commitments based on incomplete, incorrect or misleading information. “*Hard-core*” violations cannot benefit from the commitment regime.

The introduction of a settlement procedure will allow the parties to reach a settlement with the Authority during a competition law investigation. Settlement includes a reduction of the administrative monetary fines by up to 25%, and the admittance by investigated undertakings of a competition law violation. It is expected that settlement and commitment procedures will provide significant procedural efficiency and reduce the public cost that results from full-fledged investigations.

Structural Remedies

The amendments allow the Authority to impose structural remedies, which require a structural change on the part of the undertaking(s) concerned (e.g., divestment), in addition to behavioural remedies, designed to regulate the future conduct thereof. Structural remedies must be proportionate and adequate in respect to the violation, and can only be ordered in case behavioural remedies which were previously imposed, have not been adequate in remedying competition concerns.

Clarification regarding the “self-assessment” of undertakings under individual exemption rules

The amendments provide further clarification with respect to the "*self-assessment*" of undertakings in light of the individual exemption rules under Law No. 4054, which was already common before the amendments. However, it should be noted that requests for individual exemption, albeit optional, should be encouraged as a way of establishing competition law culture and providing legal certainty. This is especially true in innovative and data driven digital markets, and sectors that are subject to special exemption rules (e.g., motor vehicles and R&D sectors).

Overall, the amendments of Law No. 4054 seem to have been perceived favourably by undertakings and practitioners alike. In order to ensure legal certainty and transparency, the Authority should nevertheless issue regulations and guidelines to elaborate on the implementation of these new rules. In any case, it can be expected that the practical applications of these rules will mirror the European Union practice, like many other aspects of Turkish competition law regime.

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