

TURKISH COMPETITION AUTHORITY CONCLUDES ITS INVESTIGATION AGAINST EIGHT INSURANCE COMPANIES

On 8 March 2018, the Turkish Competition Board (the “**Board**”) initiated a pre-investigation against a number of insurance companies¹, based on an application by the Insurance Auditing Board of the Turkish Ministry of Treasury and Finance.

As a result of the pre-investigation, the Board initiated a full-fledged investigation on 3 May 2018² in order to establish whether Eureka Sigorta A.Ş. (“**Eureka**”), Aksigorta A.Ş. (“**Aksigorta**”), Allianz Sigorta A.Ş. (“**Allianz**”), Axa Sigorta A.Ş. (“**Axa**”), Dubai Starr Sigorta A.Ş. (“**Dubai Starr**”), Ergo Sigorta A.Ş.³ (“**Ergo**”), Sompo Japan Sigorta A.Ş. (“**Sompo**”) and Zurich Sigorta A.Ş. (“**Zurich**”) had violated Law no. 4054 on the Protection of Competition (the “**Competition Law**”). The investigation focused on the characteristics of the reinsurance and co-insurance sectors, as well as the relevant undertakings’ practices therein.

The investigation was concluded on 23 January 2020 with decision no. 20-06/61-33. In its short-form decision, the Board imposed an administrative fine on Allianz, Dubai Starr, Ergo, Eureka and Sompo for violating Article 4 of the Competition Law. On the other hand, Zurich, Aksigorta and Axa were held not to have violated the Competition Law, and thus were not imposed any fine.

The amount of the fines applied by the Board to each undertaking was calculated by taking either mitigating or aggravating circumstances into account. While details of these calculations were not made public in the short-form decision, it is possible to infer from references to the relevant provisions of the Competition Law that (i) Eureka was held to be in violation for more than five years and thus was subject to the highest fine, at a rate of 0.8% of its annual gross revenue, and (ii) Allianz and Dubai Starr were held to be in violation for one to five years, for which they were subject to administrative fines at a rate of 0.3% of their respective annual gross revenues. The Board found no aggravating factors in respect of Sompo and Ergo, and these two companies were imposed administrative fines amounting to 0.2% of their respective annual gross revenues. On the other hand, administrative fines imposed on all five undertakings were reduced by one-fourth to three-fifths based on mitigating factors. Details of the Board’s assessment regarding the adjustment of fines will be disclosed once the reasoned decision is published.

The investigation was based on allegations of exchange of competitively sensitive information between insurance companies with respect to their activities in the market for “*high-risk voluntary insurance (including project finance)*” in Turkey. Indeed, under Turkish competition law, the exchange of competitively sensitive information can result in the restriction of competition by artificially increasing transparency in the market, thereby facilitating coordination of competitive behaviour between undertakings. Similarly, the exchange of competitively sensitive information with the aim of restricting or eliminating competition would be considered a restriction by object⁴.

The Board has an extensive enforcement record regarding allegations of anti-competitive information exchange, whereby large monetary fines have been imposed upon investigated undertakings. For instance, in its landmark *Automotive decision*⁵, the Board held that car distributors had violated the Competition Law by way of exchanging sensitive information related to their future prices, stocks, and sale strategies, and imposed a total administrative fine of ca. TRY 277 million on 15 car distributors.

¹ Decision no. 18-07/126-M dated 8 March 2018

² Decision no. 18-13/240-M dated 3 May 2018

³ Ergo was acquired by HDI Sigorta A.Ş. in 2019.

⁴ Guidelines on Horizontal Cooperation Agreements, para. 49 and 54 (<https://www.rekabet.gov.tr/Dosya/guidelines/7-pdf>)

⁵ Decision no. 11-24/464-139 dated 18 April 2011

Similarly, in its recent *Poultry decision*⁶, the Board held that several poultry producers had violated the Competition Law by way of exchanging information on future pricing and/or supply restriction strategies. A total administrative fine of ca. TRY 156 million was thus imposed on nine poultry farmers.

The recent decision is the latest link in the Board's chain of scrutiny of the insurance sector in Turkey. For instance, on 19 July 2017, the Board concluded an investigation against 32 insurance companies and the Insurance Association of Turkey⁷. The Board ultimately held that the investigated entities' practices in the market for compulsory financial liability insurance for motor vehicles did not violate competition law. Another example would be the ongoing investigation against the Insurance Association of Turkey and OSEM Sertifikasyon A.Ş., a certification and standard setting company. The investigation seeks to determine whether OSEM's standard setting and certification practices regarding repair centres and replacement part suppliers restrict competition as per Article 4 of the Competition Law. The investigation is still in process, with the initial investigation term of six months expected to expire at the end of February 2020.

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⁶ Decision no. 19-12/155-70 dated 13 March 2019

⁷ Decision no. 17-23/383-166 dated 19 July 2017