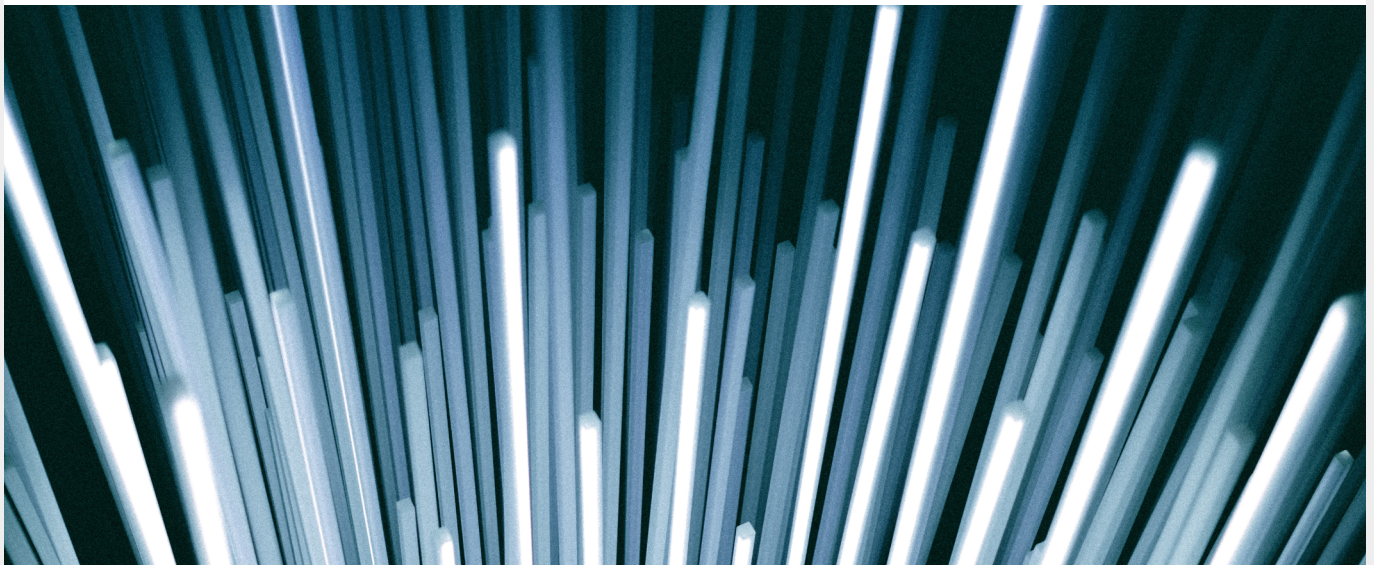


Turkish Competition Authority's Communiqué on Commitments and Communiqué on De Minimis enter into force *March 2021*



Dear Clients, Colleagues and Friends,

The Turkish Competition Authority (the “**Authority**”) has recently issued (i) Communiqué No. 2021/2 on Proposed Commitments for Preliminary Investigations and Investigations Regarding Anti-Competitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (the “**Communiqué on Commitments**”) pursuant to Article 43(3) of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”) and (ii) Communiqué No. 2021/3 on the Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings Which Do Not Significantly Restrict Competition (the “**Communiqué on De Minimis**”) pursuant to Article 41(2) of Law No. 4054. These communiqués have entered into force upon their publication in Official Gazette No. 31425 dated March 16, 2021. A summary of the main points addressed by these communiqués is provided below.

Communiqué on Commitments

1. Purpose and scope

The Communiqué on Commitments governs the procedures and principles regarding (i) the commitments proposed by undertakings and associations of undertakings to eliminate competitive issues arising within the scope of Article 4 or Article 6 of Law No. 4054 during an on-going preliminary investigation or a full-fledged investigation, (ii) the process for the Turkish Competition Board (the “**Board**”) to decide that these commitments will become binding upon undertakings or associations of undertakings, and (iii) the monitoring of these commitments.

The Communiqué on Commitments covers the commitments proposed by undertakings or associations of undertakings in order to eliminate competitive issues arising within the scope of Article 4 or Article 6 of Law No. 4054, except for hard-core violations.

Hard-core violations excluded from the scope of the Communiqué on Commitments include the agreements or concerted practices, as well as the decisions and actions of associations of undertakings, the object of effect of which is directly or indirectly to prevent, distort or restrict competition, or which will likely lead to the prevention, distortion or restriction of competition in a given market for goods or services, with regard to the following:

- Price fixing among competitors; allocation of customers, suppliers, regions or trading channels; restriction of the amount of supply, or setting quotas; bid rigging; or exchange of competitively sensitive information such as projected prices or production/sales volume; or
- Determination of fixed or minimum sales prices of the buyers/resellers in the commercial relationship between undertakings active at different levels of the production or distribution chain.

2. Commitment submission process

The parties that wish to terminate an investigation conducted against them may apply to the Authority to submit commitments during a preliminary investigation or a full-fledged investigation. The Communiqué on Commitments also applies to investigations that are ongoing as of the date of its entry into force.

Requests for commitment submission during an investigation process must be conveyed to the Authority within three months of the legal service of the investigation notice. Requests received by the Authority after this date will not be taken into consideration. Pursuant to the Communiqué on Commitments, the proposed commitments should be commensurate with the competition concerns, suitable to solve such concerns, and capable of being effectively implemented within a short time. General statements of the parties indicating that they will comply with Law No. 4054 do not constitute commitments. Depending on the nature of the competition concerns, behavioural and structural commitments can be submitted either on a stand-alone basis or altogether.

3. Evaluation and decision on binding commitments

If the Board considers that competition concerns can be resolved through the submitted commitments, it may decide not to initiate a full-fledged investigation or may decide to terminate the investigation by making the commitments binding for the relevant parties at any stage of the commitment process. This decision of the Board does not include any assessment as to whether the agreement, decision or practice that leads to competition concerns constitutes a breach.

Communiqué on De Minimis

1. Purpose and scope

The Communiqué on De Minimis aims to (i) determine the criteria that will be taken into account in the evaluation of the agreements, concerted practices, and decisions and practices of associations of undertakings that do not significantly restrict competition in a given market, with the exception of hard-core violations; and (ii) regulate the procedures and principles to determine that the relevant agreements, concerted practices and decisions will not be subject to an investigation pursuant to Article 41(2) of Law No. 4054.

2. Agreements and decisions which do not significantly restrict competition

In accordance with Article 5 of the Communiqué on De Minimis, agreements would not significantly restrict competition in the relevant market if the following conditions are met (except for hard-core violations):

- the total market share of the parties to the agreement does not exceed 10% in any of the markets affected by the agreements made between competing undertakings; or
- the market share of each party to the agreement does not exceed 15% in any of the markets affected by the agreements between non-competitors.

Except for hard-core violations, in case the total market share of the members of the association of undertakings does not exceed 10% in any of the markets affected by the decision, the relevant decision would not significantly restrict competition in the relevant market. In accordance with Article 5 of the Communiqué on De Minimis, the agreements and decisions that do not significantly restrict competition in the market may not be subject to investigations by the Board.

The Communiqué on De Minimis also applies to investigations and preliminary investigations that are ongoing as of the date of its entry into force.



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