

Recent Developments under Turkish Competition Law

2024 Winter Issue

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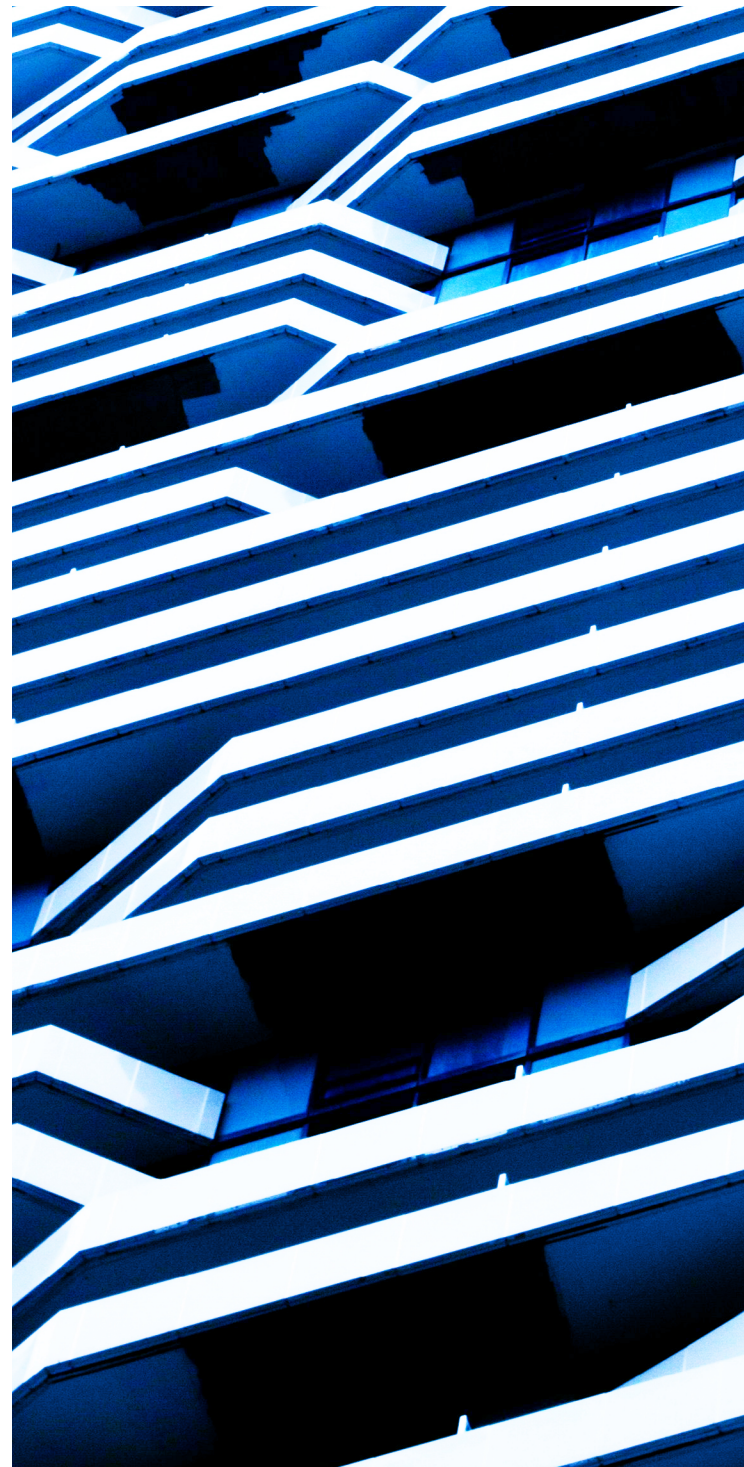
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Introduction

We begin this Winter Edition 2024 with a recap of 2023, which was another significantly active year for the Turkish Competition Authority (“**TCA**”). Indeed, in 2023, Turkish competition law witnessed a significant surge, characterized by noteworthy precedents alongside fresh sector inquiries initiated by the TCA into digital platforms, online advertising, mobile ecosystems, and fast-moving consumer goods (“**FMCG**”). The TCA dedicated its attention to a multitude of investigations, with particular emphasis placed on notable abuse of dominance violations involving well-known tech platforms such as Meta (Facebook), Sahibinden, and Trendyol.

In particular, these in-depth assessments into the digital markets have paved the way for new regulations in 2023, one of them being the new e-commerce law, for a more stringent regulatory environment for online marketplaces and other participants in the e-commerce sector. While we will cover this development under the first title of the Winter Edition; in brief, the new e-commerce legislation heralds substantial forthcoming changes for the competitive dynamics of the e-commerce sphere, particularly affecting its major players and notably the “gatekeepers.”

Furthermore, 2023 clearly demonstrates the TCA's dedication to efficiency, as it completed a year advancing commitment and settlement procedures. In particular, in August 2023, the TCA announced that it found EssiLux breached its commitment against exclusivity and simultaneously abused its dominant position. In December 2023, the TCA also imposed a daily administrative monetary fine on Meta due to its failure to comply with obligations previously imposed as a result of its abuse of dominant position. The second title of this Winter Edition will shed light on the non-tolerance policy of the TCA for non-compliance with commitments.

As for settlements, following legislative amendments, 92 companies admitting to infringements paid approximately TRY 836 million in administrative fines. These revisions have collectively fostered a more efficient and transparent legislative framework for both businesses and consumers. One of the recent developments on the topic concerns the TCA's decisions of Beypazarı and Kınık (both mineral water companies), which marked the inaugural application of settlement and leniency mechanisms in tandem. Both companies applied for settlement and leniency resulting in a total reduction of fines by 60% for Kınık and 55% for Beypazarı. We will demonstrate how the settlement mechanism works through recent settlement examples involving investigations in the cosmetics and personal care sector under this Winter Issue.

On a relevant note, the last quarter of 2023 also witnessed significant developments and revisions to the Regulation on Active Cooperation for Detecting Cartels (“**Leniency Regulation**”). The key amendments include encompassing cartel facilitators within the leniency mechanism, extending support for leniency applications concerning violations not subsequently identified as cartels, and adjusting discount ranges for administrative fines, which we will provide a detailed summary of below under this Edition.

From a merger control perspective, the TCA published its yearly report for 2023, which summarizes the statistics: The TCA evaluated 217 transactions, marking a noticeable decrease from the 245 transactions reviewed in the preceding year. This decline can be partially attributed to adjustments in jurisdictional thresholds implemented in 2022, deviating slightly from the decade-long average of 219 transactions. This Winter Edition finally will summarize the yearly report as well as the important numbers and will highlight one of the most remarkable merger decisions of 2023, *Microsoft/Activision Blizzard*.

We trust you will find this Winter Edition helpful.

Togan Turan



The New E-Commerce Legislation and Its Impact on the Gatekeepers

by Selen Toma, İrem Deyneli

In today's rapidly advancing technological landscape, the way businesses operate, and consumers engage with products and services has undergone a profound transformation. Digital marketplaces have surged in popularity due to their convenience, accessibility, and diverse offerings, leading to a pressing need for comprehensive e-commerce legislation. Law No. 7416, Amending the Law on the Regulation of Electronic Commerce ("**New E-Commerce Law**"), published in the Official Gazette on 7 July 2022, aims to establish a stricter regulatory framework for online marketplaces and other e-commerce sector players. With the recent expiration of the grace period on 1 January 2024, e-commerce intermediary service providers are now required to comply with the New E-Commerce Law, which brings significant changes ahead for the competitive landscape of the e-commerce space, its key players, and precisely the "gatekeepers".

Below are some important obligations imposed on e-commerce intermediary service providers which aim to protect overall competition in the e-commerce sector:

Private Labels: E-commerce platform providers are prohibited from selling products under their own trademarks or acting as intermediaries for such sales. Additionally, these platforms cannot promote each other or facilitate access between them. While

this measure seeks to prevent the monopolization of intermediary services, it inadvertently restricts the display of competitive pricing from various sellers within a single platform. Furthermore, this may lead consumers to mostly prefer the platforms established solely for the respective private labels, thereby reducing visibility for smaller sellers.

Self-Preferencing: Through their intermediary services, e-commerce platforms gain access to sales data from competing sellers using their platform. Considering that e-commerce service providers also conduct direct sales to consumers under their private labels, this leads to concerns about the potential abuse of power. The New E-Commerce Law bans e-commerce intermediary service providers from using data obtained from commercial users, including competitors, to maintain fair competition.

Data Portability: E-commerce intermediary service providers must now offer technical infrastructure for sellers to transfer their sales data at no cost, ensuring free and effective access to both raw and processed data. The significance of data portability was highlighted in the Turkish Competition Board's (the "**Board**") *Nadirkitap* decision dated 7 April 2022 and numbered 22-15/273-122. This aims to promote competition and innovation by reducing entry barriers for new services and fostering interoperability across platforms.

E-Commerce License: E-commerce intermediary service providers exceeding a net transaction volume of TRY 15 billion and 100,000 transactions in the previous calendar year are obligated to pay a license fee, which exponentially increases based on the e-commerce platform's net transaction volume, starting from 1 January 2025. The licensing fee ties the net transaction volumes of e-commerce platforms to specific monetary values, subjecting them to a licensing fee calculated cumulatively as they surpass each threshold, with the amount from the previous threshold being added to the calculation for each subsequent threshold exceeded.

Additional Restrictions: As net transaction volumes increase, additional restrictions are imposed on e-commerce intermediary service providers. For example, platforms exceeding a net transaction volume of TRY 45 billion and 100,000 transactions must allocate budgets for advertisements and discounts. Furthermore, those reaching a net

transaction volume of TRY 90 billion and 200,000 transactions face even more stringent restrictions, including a prohibition on offering logistics and e-money services.

In light of the key changes brought by the New E-Commerce Law, while the introduction of the aforementioned measures may aim to protect smaller players, it risks burdening established e-commerce platforms, the “gatekeepers”, by disproportionately affecting them through imposing costly compliance requirements. Indeed, the restrictions imposed based on monetary thresholds serve as a disincentive for undertakings to expand and grow within the e-commerce sector, potentially harming innovation and development in the overall market. Accordingly, one question to always keep in mind is whether the balance between safeguarding the rights of all stakeholders and promoting innovation in this dynamic realm is properly set. It is safe to say that the effects of the New E-Commerce Law will be subject to further discussions within the competition law area in the upcoming days.



The Turkish Competition Authority Does Not Overlook Non-Compliance

by Gülçin Dere, Sabiha Ulusoy

The Board has recently imposed a daily administrative monetary fine on the economic unity comprising Meta Platforms, Inc. (formerly Facebook Inc), Meta Platforms Ireland Limited (formerly Facebook Ireland Limited), and WhatsApp LLC (together referred to as “Meta’s Economic Unity” or “Meta”) to be

implemented each day starting from 12 December 2023. This action was taken as Meta failed to comply with obligations previously rendered due to its abuse of dominant position.

How Did Meta Violate the Competition Rules?

In its decision dated 20 October 2022 and numbered 22-48/706-299 (the “Final Decision”), the Board unanimously found that Meta holds a dominant position in the markets for personal social networking services, consumer communication services, and online display advertising¹. Additionally, it was unanimously decided that by amalgamating the data collected by the basic services of Facebook, Instagram, and WhatsApp, a restriction on competition was created, violating Article 6 of Law No. 4054 on Protection of Competition (“Law No. 4054”) by hindering the activities of its competitors operating in the personal social networking services and online display advertising markets and by establishing a barrier to entry therein.

In addition to the administrative monetary fine of TRY 346,717,193.40 (approx. EUR 10,535,314)² imposed on Meta, the following obligations were imposed: (i) to submit the necessary measures to the TCA within one month at the latest from the notification of the reasoned decision, (ii) to implement the necessary measures within six months from the notification of the reasoned decision, and (iii) to submit annual reports to the TCA periodically for five years from the commencement of the implementation of the first compliance measure.

Non-Compliance of Meta with the Obligations

On 10 January 2024, the TCA published its announcement regarding Meta’s non-compliance with the remedies imposed by the Final Decision. According to the announcement, Meta received the reasoned decision on 9 September 2023 and requested a time extension until 9 December 2023. Meta submitted its first round of compliance

¹ The investigation was initiated to evaluate Facebook’s proposed update, scheduled to take effect on 8 February 2021. This update sought permission to utilize the data of WhatsApp users in Türkiye within the framework of other Facebook services.

² EUR equivalent of TRY amount is calculated at the following rate: EUR 1 = TRY 32.91.

measures within the deadline and resubmitted a revised version to the TCA on 19 December 2023. The Board discussed the compliance measures in its meeting of 21 December 2023 and resolved as follows with its decision numbered 23-60/1162-417:

The expressions and explanations under the title “Confirming the Choice with the Commencement of the Compliance Remedy” are not adequate to fulfill the obligation imposing that “*Meta should submit the necessary measures to the TCA within one month at the latest from the notification of the reasoned decision to terminate the said violation and to ensure the establishment of effective competition in the market*” which is laid down in the Board’s Final Decision.

Since the Board accepted Meta’s time extension request for a one-month period to submit the necessary measures to the TCA until 9 December 2023, and considering that the deadline for Meta to submit its Final Compliance Remedy to the TCA expired on 11 December 2023 pursuant to the Final Decision, the Board imposed a daily administrative monetary fine of TRY 4,796,152.96 (approx. EUR 145,735) on Meta starting from 12 December 2023 until the Final Compliance Remedy is submitted to the TCA’s records, pursuant to Articles 17(1)(a) and 17(2) of Law No. 4054.

Implementation of Article 17(1)(a) of Law No. 4054

Article 17 of Law No. 4054, which regulates the imposition of proportional administrative monetary fines, stipulates that the Board shall impose on undertakings and associations of undertakings an administrative fine for each day, amounting to five in ten thousand of annual gross revenues of the relevant undertakings generated by the end of the financial year preceding the decision. “*Non-compliance with the obligations or commitments introduced in the Board’s final decision or interim measure decision*” is listed as one of those cases under Article 17(1)(a) – which serves as the basis for the daily administrative monetary fine imposed on Meta.

This is not the first instance where the Board imposed daily administrative monetary fines due to non-compliance with obligations or commitments introduced in the Board’s decisions³. In 2017, the Board

initiated a phase II investigation regarding the merger notification of Luxottica Group S.p.A. (“**Luxottica**”) and Essilor International S.A. (“**Essilor**”). Both parties were active in the optical market, where the Board carried out evaluations in terms of horizontal effects and conglomerate effects. The Board conditionally approved the transaction subject to certain structural and behavioural commitments with its decision dated 1 October 2018 and numbered 18-36/585-286 (the “**2018 Decision**”). In 2021, the Board examined the practices of the merged entity, namely EssilorLuxottica S.A. (“**EssilorLuxottica**”), and concluded that (i) the agreements where optical lenses and optical machinery are offered together, as well as the merged entity’s other practices, created a de facto exclusivity that was exclusionary, and (ii) therefore, violated Article 6 of Law No. 4054. In addition to the abuse of dominant position, the Board concluded that EssilorLuxottica violated the commitments rendered with the 2018 Decision. Consequently, due to the failure to comply with the commitments, the Board imposed a daily administrative monetary fine on EssilorLuxottica of TRY 492,191,132 (approx. EUR 14,955,671) for a period of 1096 days⁴, with its decision dated 17 August 2023 and numbered 23-39/749-259. This case is known as the longest fine ever due to non-compliance with commitments⁵.

Although the implementation of Article 17(1)(a), resulting in a daily administrative monetary fine, is quite rare, it should be noted that the Board attaches great importance to compliance with obligations or measures regardless of whether the case is related to a merger notification or a full-fledged investigation. In situations of non-compliance, such as (i) submission of remedies after the deadline determined by the Board expired, (ii) submission of insufficient remedies that do not fulfill all the obligations, or (iii) no longer

a daily monetary fine on Google’s economic unity since the compliance package did not fulfill the obligations rendered by the Board’s investigation decision. Additionally, refer to the Google Android II decision dated 9 January 2020 and numbered 20-03/30-13, where the Board imposed a daily monetary fine for a period of 60 days starting from the date of the Android I decision until Google submitted a compliance package that fulfilled the obligations. Also, see the Board’s Isttelkom decision dated 13 February 2020 and numbered 20-10/120-70, and the TURSAB decision dated 15 April 2004 and numbered 04-26/284-62.

- 4 See “*Competition Newsletter*” published by the TCA on 2 November 2023. The newsletter is available at the following link: https://www.rekabet.gov.tr/Dosya/competition-newsletter_issue1_tca.pdf
- 5 The TCA’s announcement is available at the following link: <https://www.rekabet.gov.tr/tr/Guncel/essilorluxottica-s-a-hakkinda-yurutulen--aba76c1d6e45ee118ec600505685da39>

³ Please also see the Google Android I decision dated 7 November 2019 and numbered 19-38/577-245, where the Board imposed

maintaining the implementation of obligations at later stages, undertakings would face the risk of significant daily administrative monetary fines. Therefore, it is crucial to comply with the Board's decisions in the best possible way, as the TCA monitors the undertakings until it ensures that effective competition is established and maintained.



RPM Cases in Cosmetics and Personal Care Sector Concluded Through Settlements

by Deniz Benli, Ece Bezmez

In recent years, resale price maintenance (“RPM”) cases have garnered significant attention in the cosmetics and personal care industry in Türkiye. Following its decisions of 13 April 2023, the Board initiated a number of full-fledged investigations into the activities of various companies in the cosmetics and personal care sector. These investigations focused on allegations related to RPM, internet sales restrictions, and hub-and-spoke arrangements.

On 14 November 2023, the Board concluded these investigations with a combination of settlements and commitments. A total of TRY 108,566,510 (approx. EUR 6.2 million) in fines was imposed on nine companies found to be involved in anti-competitive practices. Notably, all nine companies chose to settle, a route increasingly favoured by undertakings aiming to mitigate the fines imposed and reduce the duration of the investigations. Six of the companies in question also offered commitments, which were deemed sufficient and accepted by the Board. The specifics

of such commitments will be outlined in the reasoned decision. The largest fines imposed were as follows:

- L’Oreal Türkiye faced the most significant penalty, totalling TRY 87,387,007.53 after a settlement discount, for its alleged involvement in both resale price fixing and internet sales restrictions.
- Ayaz ve Ortakları Ltd. Şti. faced allegations of participating in a hub-and-spoke cartel and was fined approximately TRY 1,083,338.41 after a settlement discount.

The remaining undertakings all faced allegations of price fixing and internet sales restrictions and faced fines as follows:

- SB Grup Kozmetik Anonim Şirketi faced a fine of approximately TRY 184,675.76.
- Easyvit Sağlık Ürünleri Sanayi AŞ. faced fines totalling approximately TRY 1,217,437.18.
- ELCA Kozmetik Limited Şirketi faced fines totalling approximately TRY 7,909,453.64.
- Farmatek İç ve Dış Tic. AŞ faced fines totalling approximately TRY 2,716,256.69.
- Glohe Bitkisel Ürünler San. ve Tic. AŞ faced fines totalling approximately TRY 925,805.74.
- Rebul JCR Kozmetik Pazarlama AŞ faced a fine of approximately TRY 5,357,950.92.
- Sistem Kozmetik San. ve Tic Ltd. Şti faced fines totalling approximately TRY 1,784,584.28.

The settlement mechanism was introduced in June 2020 and has been applied in more than 25 Board decisions thus far. Notably, the investigations against Seher Gıda Pazarlama Sanayi ve Ticaret A.Ş., a milk and dairy products producer known for its İçim Süt brand, and Letgo Mobil İnternet Servisleri ve Ticaret A.Ş., a second-hand shopping platform, were concluded with settlements on 30 November 2023 and 20 July 2023, respectively. The introduction of the settlement mechanism aimed to streamline the investigation process, reducing time and costs for both the Board and investigated parties. Under this mechanism, the Board may settle with the investigated parties, provided they acknowledge the existence and scope of the violation. As a result, the administrative fine imposed on the investigated parties may be reduced by ten to twenty-five percent.

The unanimous decision to settle of all nine investigated undertakings this time underscores a growing inclination among businesses to avoid costly and lengthy investigation processes, further reinforcing the success of the settlement regime. With the establishment of this system, the Board also gains an instrument to expedite decision-making processes, thereby freeing up more resources to address other cases. In fact, the settlement mechanism significantly reduced the expected investigation duration, bringing it down to seven months from the typical lengthy process that could span up to one and a half years. This increase in efficiency enhances the detection rate and overall effectiveness of its enforcement efforts. Given its recent success, it is clear that the settlement mechanism will remain a useful tool in the TCA's arsenal and an attractive alternative to costly investigations for investigated businesses.



New Leniency Regulation – What to Expect?

by Gamze Boran, Oğulcan Halebak

The final quarter of 2023 has brought certain exciting developments and changes to the Leniency Regulation. In September 2023, the TCA published a new draft of the Leniency Regulation for public consultation. At that time, the Leniency Regulation, which provides cartelists with the opportunity to obtain leniency and discounted fines (or even no fine at all) provided they cooperate with the TCA to detect cartels, had been in force for over 14 years. Thus, the changes in the Leniency Regulation were

long overdue, and the new draft was welcomed by the sector. In December 2023, the new Leniency Regulation entered into force after its publication in the Official Gazette⁶.

The principal amendments to the Leniency Regulation can be listed as follows: **(i)** incorporation of cartel facilitators into the leniency mechanism, **(ii)** introduction of the requirement to submit documents with significant added value, **(iii)** support of leniency applications for violations that are not later identified as cartels, **(iv)** certain timing restrictions for applications, **(v)** changes to discount ranges for administrative fines, and **(vi)** certain procedural amendments.

Detailed information on the amendments and the implications of the new Leniency Regulation can be found within our relevant legal alert available here.

The TCA also held a webinar before the end of 2023 to clarify the new provisions contained in the new Leniency Regulation and the issues that differ from the previous regulation that was repealed. The TCA also signalled the issuance of a new guideline for the implementation of the new Leniency Regulation, which is expected to set the main principles of the leniency mechanism.

During the webinar, the TCA confirmed that a focus point for the amendments was to clarify the distinction between the leniency mechanism, which is essentially a method of obtaining evidence for cartels, and the settlement procedure, which is an alternative file conclusion procedure. The TCA also emphasized that prior to 2020 when the settlement procedure was introduced to Turkish competition law, the leniency procedure, going beyond its main function, had been utilized like the settlement procedure. This prompted the TCA to make a clearer distinction between the two separate regimes to ramp up the deterrence of the sanctions. Accordingly, the TCA analysed similar mechanisms used in different jurisdictions and brought a similar concept to the Turkish leniency regime, which obliges leniency applicants to submit documents with significant added value to be able to benefit from immunity in fines.

It was also highlighted by the TCA that providing clarity on parties of a hub-and-spoke cartel benefiting from the leniency regulation was of importance and providing a

⁶ TCA's full English version of the Leniency Regulation can be accessed through this link.

legal ground for the so-called hubs was achieved with the addition of the definition of “cartel facilitator”. While there were no legal obstacles for the cartel facilitators to benefit from the leniency regime prior to this addition, the TCA emphasized that the additional provision in this respect aimed at clarifying and supporting the possibility of such parties to benefit from leniency, which could be a reassuring step for cartel facilitators to help the TCA to unearth more cartels.

The TCA also provided insight into the reasoning behind the new provision in the legislation, which enables potential parties of a cartel violation to apply and benefit from leniency, even if it is decided that the violation is **not a cartel** at the end of the investigation. In light of previous cases where leniency applicants were unable to benefit from full immunity in fines as the violation of the leniency applicant was found at a later stage to not constitute a cartel⁷, the new Leniency Regulation has set the legal basis of similar applicants to benefit from immunity, which is expected to eliminate concerns of undertakings that hesitate to apply to the leniency program due to uncertainties regarding the nature of the infringement. Although expected, the TCA also clarified during the webinar that the relevant provision is to be applied for violations that could be considered as a cartel in the first instance, which means that undertakings that engage in certain horizontal violations may be able to enjoy this new rule, while vertical restrictions are still out of the scope of the leniency regime.

Final Thoughts

After a long overdue amendment to the active cooperation regulation of Turkish competition law, it is safe to say that there are quite positive expectations regarding the effects and the possible efficiencies the new Leniency Regulation can bring about, easing the burden of long and extensive investigations, both from a preservation and good governance of public resources and the resources of undertakings. A new guideline is also expected from the TCA for the application of the new Leniency Regulation, which is set to clarify any vague definitions in the new legislation and how the TCA plans to implement the new rules.

⁷ See the Board’s Hyundai Dealers decision dated 16 December 2013 and numbered 13-70/952-403. Please also see the Board’s *Syndication Loans* decision dated 28 November 2017 and numbered 17-39/636-276 for an example of full immunity being granted although the violation does not constitute a cartel.



A Quick Overview of the Turkish Competition Authority’s M&A Overview Report for 2023

by Kansu Aydoğan Yeşilaltay, Ece Bezmez

On 5 January 2024, the TCA released its long-awaited M&A Overview Report for the year 2023 (“**Report**”), which offers important insights into key trends and statistics related to mergers, acquisitions, and privatization transactions reviewed by the Board during the previous year.

Transaction Volumes and Trends

In 2023, the Board assessed 217 transactions, representing a noticeable decrease compared to the 245 transactions reviewed in the previous year. This 11% decline can partly be attributed to adjustments in jurisdictional thresholds made in 2022 and slightly deviates from the decade-long average of 219 transactions. Despite the peak in transaction numbers occurring in 2021, there has been a consistent decline over the past two years. Interestingly, despite the decrease in the number of transactions, the transaction volume in 2023 exceeded the ten-year average, experiencing a significant 57.4% increase in its USD value compared to 2022.

Global Reach and Transaction Parties

Out of the 217 transactions assessed, 94 targeted Turkish companies, while 113 involved foreign entities. German-origin investors led with 8 transactions, followed by Dutch-origin investors. However,

countries such as Sweden, Japan, Israel, and Spain, which invested in Turkish target companies in 2022, did not make any investments in 2023.

Transactions Involving Turkish Entities

Transactions involving Turkish entities were diverse, including 39 transactions with exclusively Turkish parties, 34 transactions with both Turkish and non-Turkish parties, and 9 transactions with solely non-Turkish parties, indicating the international nature of M&A activities in Türkiye.

Key Sectors

The Report highlights key sectors in global M&A transactions, such as computer programming, consulting, programming and publishing, food product manufacturing, chemical product manufacturing, basic pharmaceutical product manufacturing, and wholesale and retail trade and vehicle repair. For M&A transactions with Turkish targets, the sectors with the highest number of transactions were electricity generation, energy transmission and distribution, and computer programming and consultancy. The animal production industry recorded the highest transaction value.

Commitments and Phase II Reviews

The Report does not make any reference to transactions that were cleared conditionally in 2023, indicating that none of the cleared transactions required behavioural or structural commitments to address competitive concerns. As for Phase II reviews, the Board initiated a more in-depth investigation process for only one concentration.

Review Timelines

On average, the Board took approximately 13 calendar days to reach decisions on completed or subsequently submitted filings, although this does not include extra time spent on multiple information requests common in merger control cases.

Conclusion

In conclusion, the M&A Overview Report for 2023 offers valuable insights into the dynamics of mergers, acquisitions, and privatization transactions in Türkiye. It provides perspectives on trends and investment prospects in the country.



TCA's Reasoned Decision on Microsoft's Acquisition of Activision Blizzard

by Büşra Aktüre, Lara Akça

After a year and a half-long assessment of the deal, the TCA finally published its reasoned decision dated 13 July 2023 and 23-31/592-202 regarding Microsoft's acquisition of Activision Blizzard, a leader in the fast-paced gaming industry, known for developing extremely notable games such as *Call of Duty*, *Candy Crush*, and *World of Warcraft*. The transaction, valued at USD 68.7 billion, raised many questions worldwide, as Microsoft would become the world's third-largest gaming company post-transaction by revenue, trailing behind its biggest competitors, namely Tencent and Sony. Accordingly, multiple leading competition authorities worldwide, such as the European Commission ("**Commission**"), the Competition and Markets Authority, and the Federal Trade Commission, publicly expressed their competitive concerns regarding the deal alongside the TCA.

The TCA's review was not without challenges. Although the parties were not required to submit separate commitments to the TCA, the assessment of the deal took a year and a half, and the TCA evaluated in its reasoned decision that commitments submitted to the Commission also applied in Türkiye. The reasoned decision provides further useful insight into how the TCA approached the dynamic, fast-paced gaming sector that involves giant players, as summarized below:

Regarding the definition of the relevant product market, the TCA referred to paragraph 20 of the Guidelines on the Definition of the Relevant Market, which states that a market definition may be omitted if the transaction subject to review does not raise competition concerns within the framework of possible alternative market definitions. Accordingly, the TCA stated that there was no need to make a precise relevant product market definition for game development and publishing services within the scope of the case file, as it would not change the assessment to be made. However, in its assessments on the game development and publishing sector, “*computer and console games*” and “*mobile games*” were considered as two separate markets. While determining the relevant product market for the game distribution market, it was evaluated that the digital game distribution market should be taken as the basis in the evaluation for the transaction, considering that the parties do not have activities in the physical distribution channel. However, digital game distribution can be divided into sub-relevant product markets as “*game distribution for computers*,” “*game distribution for consoles*,” and “*game distribution for mobile devices*” according to game playing devices. Additionally, the assessments for game playing tools were carried out by taking into account the hypothetical console gaming and cloud gaming markets in which the transaction parties operate and in which the transaction was expected to have an impact. Lastly, the TCA stated that a binary division of the online advertising market into search-based and display advertising is generally adopted, and that a possible third relevant market could be defined as in-game advertising, but such an approach would create a very narrow product market scenario.

Regarding competitive concerns, the TCA evaluated each affected market in Türkiye as well as globally affected markets. In this regard, the Commission conducted an in-depth market investigation, confirming that Microsoft could harm competition in

the distribution of games via cloud game streaming services and that its position in the market for PC operating systems would be strengthened. In response to the Commission’s competition concerns regarding the distribution of PC and console games through cloud game streaming services, Microsoft proposed a set of extensive licensing commitments (“**Commitments**”) lasting for ten years. These Commitments include: (i) granting consumers in the EEA a free license, enabling them to stream all existing and upcoming Activision Blizzard PC and console games through any cloud game streaming service they prefer, provided they possess a valid license for those games; and (ii) providing cloud game streaming service providers in the EEA with a corresponding free license, allowing them to offer streaming access to Activision Blizzard’s PC and console games to gamers based in the region. The proposed commitments will make existing and future Activision Blizzard PC titles (“**Eligible Games**”), including Call of Duty, available to cloud gaming services on a global basis.

Overall, after a lengthy assessment, the TCA cleared the transaction on the basis that there was no overlap of the parties’ activities in Türkiye within the scope of cloud gaming services and that there was a very limited possibility of overlap in terms of the parties’ activities in this market on a global scale. The TCA stated that the commitments to the Commission completely eliminated the concerns regarding the closure of the market to competitors. In this context, the TCA concluded that the relevant transaction would not raise anticompetitive concerns within the scope of unilateral effects in the market.

The Microsoft decision represents a detailed analysis of the gaming industry in the Turkish competition law sphere and is expected to be a prominent reference for future merger decisions in the dynamic digital industry.

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