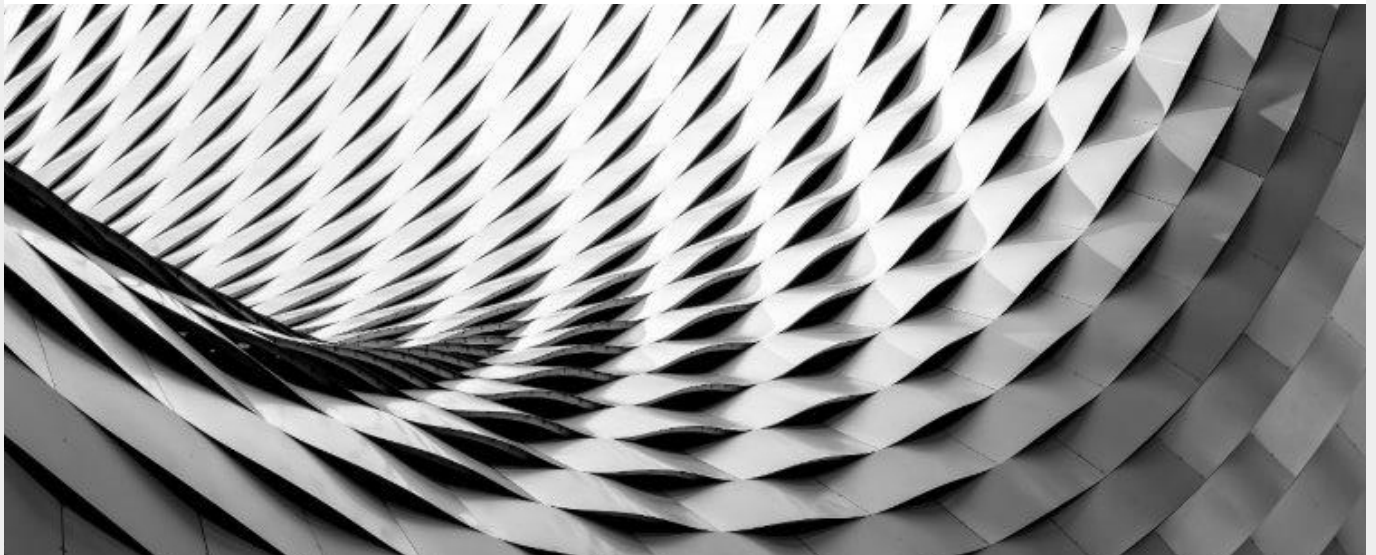


The Legislative Proposal of Amendments to the Law on Protection of Competition has been approved by the Grand National Assembly of Turkey

June 2020



Dear Colleagues, Clients and Friends,

The Legislative Proposal of Amendments to the Law No. 4054 on Protection of Competition (the “**Legislative Proposal**”) has been approved by the Grand National Assembly of Turkey on 16 June 2020. The Legislative Proposal mainly aims to conform the Law No. 4054 on Protection of Competition (the “**Law No. 4054**”), which has been in effect since 1997, with the European Union Competition Law, of which the practices are closely followed by the Turkish Competition Authority, and make it in conformity with contemporary market conditions. The envisaged amendments to the Law No. 4054 are as follows:

1. The “*De minimis*” Principle

The amendment made to the Article 41 of the Law No. 4054 allows the Board not to investigate the agreements, concerted practices, or decisions and practices of associations of undertakings between competitors, which do not significantly restrict competition, except for hard-core violations such as price fixing, market sharing or customer allocation by competitors and restriction of supply, by taking into account certain thresholds, such as market share and turnover. This concept, which is called as “*de minimis*” principle in practice, is an established application in the European Union Law and will be introduced to the Turkish Competition Law with the amendments of the Legislative Proposal. The Turkish Competition Board (the “**Board**”) has been authorized to issue a communique in order to determine the criteria and principles, such as market share and turnover thresholds, for the implementation of the *de minimis* principle.

2. “Significant Impediment of Effective Competition” Test in Mergers and Acquisitions

The amendment made to Article 7 of the Law No. 4054, which relates to evaluation of mergers and acquisitions by the Board, replaces the dominance test with the “significant impediment of effective competition” test applied in the European Law. By this change, it is aimed that a more effective evaluation of the unilateral effects and coordination effects, which may occur as a result of mergers and acquisitions, will be conducted. With the said evaluation test, in addition to transactions that would result in creation of a dominant position or strengthening an existing dominant position, transactions that may significantly impede competition can also be prohibited.

3. Commitment and Settlement Procedures

3.1. Commitment

The commitment procedure, a concept adopted by the European Union legislation, is introduced into the Turkish Competition Law with the amendment made to Article 43 of the Law No. 4054. In this context, the Board may decide to not initiate an investigation or to terminate an on-going investigation by evaluating the commitments offered by the relevant undertakings or undertaking associations in a preliminary inquiry or investigation launched against anti-competitive agreements, concerted practices and decisions pursuant to Article 4 of the Law No. 4054, and abuse of the dominant position pursuant to Article 6.

Accordingly, during a preliminary inquiry or investigation in progress, in case the Board considers the commitments offered for the elimination of the competitive problems arising from the Articles 4 or 6 of the Law No. 4054 to be sufficient, it may decide not to initiate an investigation or to terminate the on-going investigation by rendering these commitments binding in terms of the relevant undertakings or associations of undertakings. However, hard-core violations such as price fixing, territory or customer allocation between competitors are excluded from the scope of the commitment procedure.

3.2. Settlement

By virtue of introducing the settlement procedure adopted in the European Union legislation into the Turkish Competition Law, the amendment made to the Article 43 of the Law No. 4054 aims to use public resources more efficiently through rapid conclusion the investigation process. . Accordingly, within the scope of the settlement procedure, following the initiation of the investigation, upon request of the concerned parties or *ex officio* basis, the Board may initiate a settlement procedure taking into account the procedural benefits to result from the expeditious completion of the investigation process. The Board may settle with the undertakings or associations of undertakings, on which an investigation have been initiated, and which have accepted the existence and the scope of the violation, until official service of the investigation report, and the process may be terminated with a final decision, including determination of violation and administrative fines. The settlement procedure will allow a reduction in the administrative fines up to twenty-five percent.

4. Structural Remedies

The amendment made to Article 9 of the Law No. 4054 allows the Board to order structural remedies in its final decision. Accordingly, if the Board concludes that Article 4 (anti-competitive agreements, concerted practices and decisions), Article 6 (abuse of the dominant position) or Article 7 (mergers and acquisitions) of the Law No. 4054 has been violated, it can state in its final decision the conducts to be fulfilled or abstained from and the structural measures concerning the undertakings to transfer certain of their activities, shares or assets to the relevant undertakings or associations of undertakings for the establishment of competition. However, the article states that behavioral and structural remedies must be necessary for the effective termination of the violation and be proportionate, and legal assurance is provided to the undertakings by stipulating that the

structural measures constitute an exceptional authority, which may be implemented simply in cases where the behavioral remedies introduced earlier did not yield results.

5. Clarification of the “Self-Assessment” System in Exemption Procedures

The amendment made to the Article 5 of the Law No. 4054 stipulates that, if certain conditions are met, agreements, concerted actions between undertakings and decisions of the associations of undertakings shall be exempted from the scope of the Article 4 of the Law No. 4054 and emphasizes a “self-assessment” system which clarifies that it is optional to apply to the Board for determination of existence of the exemption conditions.

6. Clarification of the Authority to Examine the Electronic Data within the scope of On-Site Examination

The amendment made to the Article 15 of the Law No. 4054 clarifies the scope of the on-site examination powers, and the authority to examine, print out and make copies of the data and documents of undertakings and associations of undertakings, which are kept electronically or in information systems, as well as the ones kept physically.

7. Extension of the Period for Submitting Additional Written Opinions

The amendment made to the Article 45 of the Law No. 4054 enables the 15-day period set forth in the Law for preparation of additional written opinion during an investigation period to be extended once by means of a Board decision in case of reasonable grounds.

Finally, certain regulations regarding the administrative functioning of the Authority, in particular, for complying with name change of the Ministry which the Authority is affiliated, increasing the number of Vice-Presidents from two to three, and allowing the implementation of Article 104 of the Banking Law No. 5411 concerning criminal and legal liabilities of the Authority’s personnel, have been adopted with the Legislative Proposal.

Please do not hesitate to contact us for any further information on this briefing.



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