MOROĞLU ARSEVEN

COMPETITION ROUND UP

2023 & 2024 | Türkiye

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Introduction

The years of 2023-2024 witnessed significant developments in competition law. In 2025, it is anticipated that there will be developments in many areas and that the current level of investigation burden will increase. We present to your attention the Competition Round Up 2023-2024, in which we report all the developments in 2023 and 2024 and include the anticipations and forecasts for 2025. We will be happy to assist you if you would like more detailed information.

MOROĞLU ARSEVEN

Table of Contents

1. LEGAL BACKGROUND **6**
1.1. Regulatory Framework **8**
1.1.1. Oversight and Enforcement 8
1.1.2. The Board's Structure 9
1.1.3. Information-Gathering Powers of the Authority 9
1.1.4. On-site Inspection Decisions 16
1.1.5. Attorney–Client Privilege 26
1.2. Investigation Process **32**
1.2.1. Complaint Procedure 32
1.2.2. Preliminary Investigation 32
1.2.3. Full-Fledged Investigation 33
1.3. Negative Clearance and Exemption **34**
1.3.1. Negative Clearance 34
1.3.2. Individual Exemption 40
1.3.3. Block Exemption 46
1.4. Commitment and Settlement Mechanisms **48**
1.4.1. Commitment 48
1.4.2. Settlement 66

2. BOARD ACTIVITY **75**
2.1. Headline Figures **78**
2.1.1. Graphs of Administrative Monetary Fines (2023 & first 6 months of 2024) 80
2.1.2 Fines in Significant Cases 80
2.1.3. Number of M&A Transactions (Article 7) 82
2.1.4. New Investigations Initiated 100
2.2. Notable Decisions of 2024: A Year Focused on RPM & Cartel Cases and the Standard of Proof **102**
2.2.1. Significant RPM Cases 102
2.2.2. Significant Cartel Cass 109
2.2.2.1. Retail Investigations 119
2.2.2.2. Human Resources Investigations 122
2.2.3. Developments Regarding the Standard of Proof 130
2.3. Abuse of Dominance Cases **136**

3. SECTOR INQUIRIES **150**
3.1. Sector Inquiry on the Cement and Ready-Mixed Concrete Markets **152**
3.2. Sector Inquiry on the Earthquakes of February 2023 **154**
3.3. Sector Inquiry on Retailing of Fast-Moving Consumer Goods in Türkiye **156**
3.4. Sector Inquiry on Online Advertising **160**
3.5. Sector Inquiry on Mobile Ecosystems **162**
3.6. Sector Inquiry on the Red-Meat Market **166**
3.7. Sector Inquiry on the Fuel Sector **168**

4. LEGISLATIVE DEVELOPMENTS **170**
4.1. Legislative Changes in the Regulation on Active Cooperation for Detecting Cartels **174**
4.2. Draft Law on the Amendment of the Law No. 4054 **176**
4.2.1. Emergence, Purpose and Scope of the Draft Law 176
4.2.2. Important Definitions Introduced into the Draft Law 176
4.2.3. Additional Obligations for Undertakings Considered Hold Significant Market Power in the Draft Law 180
4.2.4. Obligations and Principles Regarding On-Site Inspections in the Draft Law 180
4.2.5. Increased Sanctions in the Draft Law 181
4.3. Legislative Changes Within the Scope of the Law Amending the Turkish Commercial Code and Certain Laws **182**
4.4. "Guidelines on Competition Infringements in Labor Markets is Published **184**
4.5. "Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position" is Published in Official Gazette **186**
5. CONCLUDING REMARKS **189**

I. LEGAL BACKGROUND

MOROĞLU ARSEVEN

1.1. Regulatory Framework

1.1.1. Oversight and Enforcement

Article 167 of the Constitution of the Republic of Turkey ("**Constitution**") requires the state to take all necessary measures to provide and promote healthy and orderly transactions in money, credit, capital, goods and services, as well as to prevent monopolies and cartels.

Accordingly, the Turkish Competition Authority (“**Authority**”) was established in 1997 and, under Law No. 4054 on Protection of Competition (“**Competition Law**”), was authorised with preventing cartelization and monopolization, increasing consumer welfare, contributing to the beneficial functioning of the relevant product/geographical markets and ensuring that the investment environment functions in a healthy way by decreasing entry barriers. The Authority is an active, independent and autonomous administrative authority.

The Competition Board (“**Board**”) operates as the Authority’s decision-making body and, inter alia, conducts preliminary as well as full-fledged investigations, operates settlement and commitment mechanisms, establishes sectoral inquiries and imposes administrative monetary fines for violations of the competition law.

The Board considers issues and allegations regarding::	
Anti-competitive agreements and concerted practices	**Article 4**
Negative clearance and individual exemptions	**Article 5**
Abuse of dominant position	**Article 6**
Merger or acquisition	**Article 7**

1.1.2. The Board’s Structure

The Board consists of seven members, as follows:	
Chairman	Birol KÜLE
Deputy Chairman	Ahmet ALGAN
Board Member	Şükran KODALAK
Board Member	Hasan Hüseyin ÜNLÜ
Board Member	Ayşe ERGEZEN
Board Member	Cengiz ÇOLAK
Board Member	Rıdvan DURAN

1.1.3. Information-Gathering Powers of the Authority

The Authority holds wide powers to:

- initiate preliminary investigations and full-fledged investigations, both ex officio and on receipt of complaints.
- request any and all kinds of information and documents it deems necessary from any public institution, organization, undertaking or association of undertakings when carrying out its duties under the Competition Law. Those concerned must submit the requested information after receiving an official information request conveyed by the Authority,
- request written or oral statements on particular issues, and
- conduct on-site inspections at the premises of undertakings and review all books, notes and electronic communications, including personal devices containing work-related correspondence, and make copies if needed.

It should be noted that the Turkish Constitutional Court ("**TCC**") has issued a recent and significant decision stating that the Board's exercise of its authority to perform on-site inspections without a court decision is contrary to Article 20 of the Constitution regulating the privacy of private life and Article 21 regulating the inviolability of an individual's personal domicile. Although Article 15 of the Competition Law empowering the Authority to make on-site inspections is still in force, it is foreseen that the TCC’s decision will bring some changes in the legislation.

Decision Type
Submission of false/misleading information.

Market
Not defined.

Claim(s)
Submission of false/misleading information.

Board Decision and Sanction
An administrative fine was imposed for the violation of Article 16 of the Competition Law.

Saint-Joseph Private French Highschool Decision[1]

In 2013, a preliminary investigation was initiated against a number of private French high schools to determine whether the schools had fixed school fees through anti-competitive agreements and entered into a gentleman's agreement to prevent student transfers among themselves.

In respect of the allegation of price fixing, the schools revealed that they had convened regularly to deliberate and reach consensus on a range of issues including pricing, educational requirements, academic timetables and cultural activities, and had ultimately decided on school fees collectively. The Board determined that the annual school fee lists submitted to The Ministry of Education further supported these claims.

Within the scope of the investigation, the Board requested detailed information about the additional course fees of Turkish teachers and subsequently concluded that Saint Joseph French High School ("**Saint Joseph**") had submitted false and misleading information that led to incorrect assessment of parameters affecting teacher salaries. The Board also examined the student acceptance criteria of the schools. However, it was decided that there were no gentleman's agreements concluded between the schools on this issue.

Consequently, the Board decided to impose an administrative fine on Saint Joseph at the rate of 0.1% of the annual net revenues at the end of the fiscal year 2022 for submitting false and misleading information. However, since this amount could not be below the lower limit foreseen under the Competition Law, the Board decided to impose an administrative fine of TRY 105,688.00.

[1] The Board's Saint-Joseph Private French Highschool Decision dated 17.08.2023 and numbered 23-39/752-261.

Farmasi Decision[2]

Decision Type
Submission of false/misleading information.

Market
Not defined.

Claim(s):
Submission of false/misleading information.

Board Decision and Sanction:
An administrative fine was imposed for the violation of Article 16 of the Competition Law.

The Board initiated an investigation against Farmasi Enternasyonal Ticaret Anonim Şirketi (“**Farmasi**”) concerning an alleged violation of Article 4 of the Competition Law. Following the Board’s request for information from Farmasi regarding the amount of export resales for the relevant years, it was found that Farmasi had submitted false and misleading information.

During the investigation process, it was found that the Entrepreneur Success Guide on Farmasi’s website contained a provision stating: “*Entrepreneurs, except for e-commerce applications approved by Farmasi, cannot create and manage e-commerce sites where Farmasi products are sold. In the permitted websites, there is an obligation to sell at the catalog sales price.”*

In addition, according to the “Prohibited Actions” section in e-mail correspondence dated 27 April 2021 obtained during the on-site inspection, if it was determined that the entrepreneur violated this prohibition and sold at a price lower than the catalog price, his/her screen would be closed for not less than 21 days. The entrepreneur had to correct its prices within 24 hours and notify Farmasi. If the same action was repeated or the prices were not corrected within this penalty period, the screen closure period would be extended.

Moreover, the investigation determined that a further “Regulation for Entrepreneurs” was included in the booklet titled Entrepreneur Success Guide, which was in force on 01 July 2017.

As a result, it was determined from the documents obtained during the on-site inspection that the agreement provided by Farmasi to the Board following the Board’s request for information did not include the prohibited actions referenced in the Entrepreneur Success Guide in the email correspondence. Additionally, during the investigation process, it was revealed from internet archives that the Regulation for Entrepreneurs claimed to have been added by the enterprise in 2018 was actually present as early as 2017.

Farmasi stated that the mistake had been made by the certified public accountant which is a independent auditor and that they had sent incorrect information unintentionally. The Board rejected this defense, asserting that Farmasi held full responsibility for every document submitted during the investigative phase and also the Board emphasized that furnishing false information on financial tables was not within the scope of the right of defense. Consequently, the Board decided to impose an administrative fine of 0.1% of the undertaking's annual net sales revenues at the end of the 2021 financial year on the grounds that false information was submitted.

[2] The Board’s Farmasi Decision dated 26.01.2023 and numbered 23-06/69-20.

MOROĞLU ARSEVEN

Sahibinden Decision[3]

On 30 September 2021, the Board initiated an investigation to determine whether Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret A.Ş. (“**Sahibinden**”) had abused its dominant position.

During the full-fledged investigation, the Board requested Sahibinden to provide the number of ads published, regardless of whether they were reposted, in order to examine whether the activities of competitors were hindered by preventing corporate members from transferring their ads to other platforms. However, the Board determined that the information submitted by Sahibinden in response to the Authority’s information requests constituted providing false/misleading information.

Even after it was decided that the data submitted was false and misleading, Sahibinden persisted in relying on the inaccurate data. Therefore, the Board imposed an administrative fine on Sahibinden at the rate of 0.1% of the annual net revenues at the end of the fiscal year 2021.

Decision Type
Submission of false/misleading information.

Market
Not defined.

Claim(s):
Submission of false/misleading information.

Board Decision and Sanction:
An administrative fine was imposed for the violation of Article 16 of the Competition Law.

3 The Board’s Sahibinden Decision dated 17.08.2023 and numbered 23-45/839-295

1.1.4. On-site Inspection Decisions

As you may recall, WhatsApp correspondence was also subjected to examination in line with the Guideline on the Review of Digital Data in On-Site Inspections, and the Board imposed penalties even if the correspondence deleted during the on-site inspection could be restored. However, in some decisions, it is observed that the Board has created exceptions to this practice.

Within the scope of this section, the decisions sanctioned by the Board will be included, followed by the decisions that go beyond its usual practice:

MOROĞLU ARSEVEN

a. Decisions Including Sanctions

TCC Decision[4]

Decision Type
Constitutional Court Decision.

Market
The production and distribution for passenger cars and commercial vehicles.

Applicant
Ford Otomotiv Sanayi A.Ş. (“**Ford**”).

Court’s Decision
TCC concluded with a majority of votes that although the on-site inspection carried out at the workplace of Ford is in compliance with Article 15 of the Competition Law, the on-site inspection violated Article 21 of the Constitution guaranteeing the inviolability of an individual's personal domicile.

Within the scope of the investigation, the Authority experts (“**Authority Experts**”) had conducted an on-site inspection at the Ford’s workplace. As a result of the on-site inspection, the Authority Experts obtained 78 documents, including emails retrieved from the computers of Ford’s personnel.

Ford argued that the immunity of domicile under Article 21 of the Constitution could only be breached with a judge's authority and that the on-site inspection carried out by the Authority Experts at the Ford workplace did not contain sufficient legal safeguards.

TCC stated that the Competition Law's authorization of the Authority Experts to conduct on-site inspections at premises without a judge's decision was a violation of the immunity of domicile under the Constitution. According to the TCC decision, the on-site inspection conducted at Ford’s workplace constituted an interference with the immunity of domicile, as documents were obtained from the computers of the undertaking's officials.

Moreover, TCC observed that Article 21 of the Constitution allows for the entry, search, or seizure of property within an individual's domicile with the written order of a legal authority only in cases where there is an imminent need to prevent delay. However, Article 15 of the Competition Law grants the Board extensive authority to conduct dawn raids without delineating specific parameters for situations where delay would be prejudicial. TCC concluded that the authorization granted by Article 15 of the Competition Law to authorities other

[4] Constitutional Court’s Decision dated 09.11.2022, numbered 2020/67 E. and 2022/139 K.

than the court in cases of emergency was not in line with the guarantee of immunity of domicile under Article 21 of the Constitution.

In the light of these considerations, the TCC concluded that "domicile" includes the private areas of workplaces. Therefore, the current wording in Article 15 of the Competition Law violates the immunity of domicile.

The decision of the TCC is significant as it establishes a delicate balance between the increasing regulatory powers of the Authority and the fundamental rights as well as freedoms guaranteed to the undertakings by the Constitution and evaluates each rule in terms of the principles of legality, legitimate purpose and proportionality. In addition, the decision stipulates for the first time the necessity for the Authority to obtain a court decision to conduct on-the-spot inspections, as workplaces are considered private property.

Developments regarding the decision are awaited.

Koyuncu Eletronik Decision[5]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s):
Obstruction of on-site inspection.

Board Decision and Sanction:
As a result of the obstruction of the on-site inspection, it was decided to impose an administrative fine of 0.5% of the net sales revenues of Koyuncu Elektronik Bilgi İşlem Sistemleri Sanayi ve Dış Ticaret AŞ ("**Koyuncu Elektronik**") in 2022.

During an on-site inspection at Koyuncu Elektronik, it was determined that some e-mails in the e-mail accounts of some employees were deleted after the on-site inspection was initiated by the Authority Experts.

Although the deleted e-mail correspondence was recovered and all of the deleted data was subject to examination, the Board concluded that the deletion of the e-mail data after the on-site investigation started was in the nature of obstructing the on-site inspection by considering it as the elimination of possible evidence and findings. On the basis of the deletion process, the Board decided to impose an administrative fine of 0.5% of the undertaking's net sales revenues in 2022.

[5] The Board's Koyuncu Elektronik Decision dated 21.09.2023 and numbered 23-45/839-295

Oyak Çimento Decision[6]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s):
Obstruction of on-site inspection.

Board Decision and Sanction:
As a result of the obstruction of the on-site inspection, it was decided to impose an administrative fine of 0.5% of the net sales revenues of Oyak Çimento Fabrikaları A.Ş. ("**Oyak Çimento**") in 2021.

During an on-site inspection at Oyak Çimento, it was noticed that some employees deleted certain WhatsApp conversations on their phones during the on-site inspection. The log records related to the deletion were detected by means of a forensic computing device.

Although the employees who had deleted the Whatsapp conversations contacted an undertaking operating in the field of informatics and ensured that all the deleted correspondences were restored, the Board concluded that the act of data deletion performed on the mobile device during the on-site inspection constituted obstruction of the on-site inspection. Based on the deletion process, the Board imposed an administrative fine of 0.5% of the undertaking's Türkiye-related net sales revenues for the year 2021.

[6] The Board's Oyak Çimento Decision dated 26.01.2023 and numbered 23-06/75-24

MOROĞLU ARSEVEN

Empa Gayrimenkul Decision[7]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s):
Obstruction of on-site inspection.

Board Decision and Sanction:
As a result of the obstruction of the on-site inspection, it was decided to impose an administrative fine of 0.5% of the net sales revenues of Empa Gayrimenkul Pazarlama A.Ş. ("**Empa Gayrimenkul**") in 2022.2.

The Board decided to conduct an investigation to determine whether there was a violation by real estate agents operating in Ankara through setting prices together for real estate sales and rental fees. In this context, the Authority Experts visited the office of Empa Gayrimenkul for an on-site inspection, and the owner of the undertaking, as well as the President of the Ankara Professional Chamber of All Realtors, came to the headquarters of the undertaking.

The owner of Empa Gayrimenkul prevented the Authority Experts from conducting an on-site inspection, stating that he was the president of an NGO with more than 4,000 members and that he did not consent to the current inspection, as the personal information of the members could fall within the scope of the inspection.

As a result of the obstruction of the on-site inspection, the Board imposed an administrative fine of 0.5% of the Empa Gayrimenkul's Türkiye-related net sales revenues for the year 2022.

[7] The Board's Empa Gayrimenkul Decision dated 161.03.2023 and numbered 23-14/244-80

Happy Center Decision[8]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s)
Obstruction of on-site inspection.

Board Decision and Sanction
It was decided to impose an administrative fine on the relevant undertaking due to the fact that the on-site inspection was obstructed.

During the on-site inspection carried out at the headquarters of Altun Gıda İhtiyaç Tüketim Maddeleri İnşaat Sanayi ve Ticaret A.Ş. ("**Happy Center**"), it was determined by the Authority Experts that the message contents of some Whatsapp groups on mobile devices, which are the personal assets of the employees but were determined to contain data belonging to the undertaking by the verbal declaration of the users, were deleted by the Happy Center employees.

Accordingly, within the scope of the ongoing investigation; it was decided that the on-site inspection carried out on 11.04.2023 was obstructed by Happy Center, and therefore, in accordance with Article 16 of the Competition Law, an administrative fine of 0.5% of Happy Center's net sales revenues for 2022 was imposed.

[8] The Board's Happy Center Decision dated 11.05.2023 and numbered 23-21/407-138

MOROĞLU ARSEVEN

Softtech Decision[9]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s)
Obstruction of on-site inspection.

Board Decision and Sanction
As a result of the obstruction of the on-site inspection, it was decided to impose an administrative fine of 0.5% of the net sales revenues of the related undertaking in 2022.

During the on-site inspection conducted at the Softtech Yazılım Teknolojileri Araştırma Geliştirme ve Paz. Tic. Anonim Şirketi ("**Softtech**") headquarters as part of the investigation, it was detected that some e-mails were deleted on the computer of Softtech's Human Resources Specialist during the on-site inspection.

As a result of the evaluation, the Authority Experts concluded that the deletion conducted by Softtech's employees during the on-site inspection constituted obstruction of the on-site inspection. Hence, the Board imposed an administrative fine of 0.5% of Softtech's Türkiye-related net sales revenues for the year 2021.

[9] The Board's Softtech Decision dated 15.9.2022 and numbered 22-42/614-258.

MOROĞLU ARSEVEN

b. Decisions Not Including Sanctions

Berkler Danışmanlık Decision[10]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s)
Obstruction of on-site inspection.

Board Decision and Sanction
The Board decided that the on-site inspection was not obstructed and therefore no administrative fine was imposed.

During the on-site inspection, the owner of Berkler Danışmanlık ve Gayrimenkul Ticaret Ltd. Şti. (“**Berkler Danışmanlık**”), who was not present on-site, was notified by phone and was asked to come to the site. When the owner's mobile device was examined on his arrival, it was determined that WhatsApp correspondences had been deleted. Since the owner, who performed the deletion process, was not present at the on-site inspection address during the inspection and was not aware of the warnings made by the Authority Experts stating the data should not be deleted, the Board concluded that the on-site inspection had not ben obstructed and therefore no administrative fine was imposed.

[10] The Board's Berkler Danışmanlık Decision dated 23.03.2023 and numbered 23-15/267-90.

Balsu Gıda Decision[11]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Claim(s)
Obstruction of on-site inspection.

Board Decision and Sanction:
The Board decided that the on-site inspection was not obstructed and therefore no administrative fine was imposed.

The Board initiated a preliminary investigation regarding the alleged violation of Articles 4 and 6 of the Competition Law by Ferrero International and its subsidiaries (“**Ferrero**”) and subsequently decided to initiate an investigation under Article 41 of the Competition Law. As part of the investigation, an on-site inspection was conducted on April 27, 2023 at Balsu Gıda Sanayi ve Ticaret A.Ş. ("**Balsu**"), one of Ferrero's suppliers.

During the inspection, it was determined that approximately 1,500 emails had been deleted from a computer used by Balsu's sales manager. However, these emails were recovered and reviewed, and no documents indicating any violation were found. Additionally, the fact that Balsu was not a direct party to the investigation, led to an evaluation suggesting no intent to conceal information.

For these reasons, the Board concluded that the on-site inspection was not obstructed by Balsu and decided that no administrative fine should be imposed on the company.

[11] The Board's Balsu Gıda Decision dated 17.08.2023 and numbered 23-39/727-250.

1.1.5. Attorney–Client Privilege

Attorney–client privilege is protected under Turkish law; however, its scope and elements are rather generic compared to common-law jurisdictions. Under Article 36 of the Attorneyship Law, attorneys cannot disclose any document or information obtained while practicing their profession. There are also related provisions in the Code of Penal Procedure (“**CPP**”) regulating the issues concerning attorney–client privilege and the exemption of attorneys from ordinary criminal investigation processes due to these privileges.

Under Article 130 of the CPP, attorney offices and residences can only be searched under a court warrant and with the participation of a registered bar association representative under the supervision of the public prosecutor. The attorneys working in that office, the president of the bar association or the attorney representing the president of the bar association may assert that an item to be seized is subject to attorney–client privilege. In this situation, the item is placed inside a separate envelope or package to be stamped. If the courts determine, within 24 hours, that the item is subject to attorney–client privilege, the seized item will be returned immediately to the attorney.

Furthermore, under Article 58 of Attorneyship Law, an attorney cannot be searched except where caught in the act for a crime that falls within the jurisdiction of the high criminal court. Investigations against attorneys or members of the organs of the Union of Turkish Bar Associations or other bar associations for crimes arising from their duties or committed during their duty are carried out by the public prosecutor of the place where the crime was committed, with the permission of the Republic of Türkiye Ministry of Justice.

In reference to the provisions of the Attorneyship Law and the CPP, in practice, attorney–client privilege applies very broadly to all materials and information that comes to the knowledge of attorneys while they practise their profession, which also includes information uncovered during internal investigations.

The attorney–client privilege rule applies to information that relates to a non-client third party, as long as the information is obtained during the performance of the attorney's professional duties. However, this does not prevent the third party from disclosing the information within the scope of any juridical proceedings, subject to the third parties’ own legal rights and protections in any given case.

Nevertheless, there is no specific provision or clear guidance in relation to what extent the attorney–client privilege is applicable to in-house legal counsel. The principle of attorney–client privilege, in the spirit of the law, requires legal counsel to be independent; therefore, the validity of the principle for in-house counsel is a controversial topic that needs attention on a case-by-case basis. Within the precedents of the Board, there is a distinction on the application of this rule between external and in-house counsel.

Although there are no rules stipulating attorney–client privilege in the competition law, pursuant to the Board’s practice, case law and administrative judicial decisions, correspondence and documents containing legal opinions may fall under the scope of attorney–client privilege if the following all apply:

- There is no employment agreement between the company and the independent attorney creating an employee–employer relationship.

- The communications are conducted between an independent attorney and the company.

- The correspondence is made for the purpose of exercising the undertaking’s right of defense.

[12] Ankara Regional Administrative Court 8th Administrative Case Chamber’s decision numbered 2018/658 E and 2018/1236 K.

Accordingly, documents and correspondence that are considered to fall under the scope of attorney–client privilege should not be subject to review during an on-site inspection or conveyed to the Authority within an information request.[12]

However, correspondence and/or documents that are not directly related to the exercise of the right of defense, such as documents or communications drafted to determine a company's compliance stage and/or to assist or conceal a current or upcoming competition violation, are considered by the Authority not to benefit from attorney–client privilege, which is clearly differentiated from the provisions of the CPP and of the Attorneyship Law.

Additionally, paragraph 12 of the Guidelines on the Examination of Digital Data in On-Site Inspections dated 08.10 2020 and numbered 20-45/617 further implements the Board's approach towards attorney–client privilege issues by indicating that[13] :

"(12) Data copied during on-site inspections are protected under the principle of attorney-client privilege. Accordingly, any correspondence between a client and an independent lawyer with no employee employer relationship with the client aimed at the exercise of the client's right to defense is accepted to belong to the professional relationship and are covered by the attorney/client privilege. However, correspondence that is not directly related to the exercise of the right to defense do not benefit from the privilege, especially if they involve giving assistance to an infringement of competition or concealing an ongoing or future violation."

In the light of the above, attorney–client privilege is currently not a settled subject in competition practice, and time will show how the Authority will position itself due to its contrary approach to the CPP and Attorneyship Law.

[13] Guidelines on the Examination of Digital Data in On-Site Inspections, paragraph 12.

Rüstem Eyüboğlu Decision[14]

Decision Type
Attorney–client privilege/obstruction of on-site inspection.

Market
Not defined.

Claim(s):
Obstruction of on-site inspection.

Board Decision and Sanction:
The Board decided that the on-site inspection was not obstructed and that no administrative fine would be imposed on Rüstem Eyüboğlu Eğitim Kurumları A.Ş.

This decision highlights detailed assessments concerning various aspects such as desktop and browser applications, access and control of WhatsApp across different devices, and the technical opinion sought from the Information Technologies Department. Notably, the examination of the investigated undertaking's lawyer maintained a consistent stance, asserting that the lawyer, as a salaried employee, did not fall under attorney–client confidentiality, especially as the correspondence received was unrelated to the right of defense. Despite this, considering the proactive cooperation and assistance provided by the undertaking's employee, the Board found no tangible evidence of obstruction or difficulty during the on-site inspection and therefore refrained from imposing any penalties on the undertaking.

[14] The Board's Rüstem Eyüboğlu Decision dated 10.11.2022 and numbered 22-51/756-314.

MOROĞLU ARSEVEN

Storytel Decision[15]

Decision Type
Attorney–client privilege

Market
Not defined.

Claim(s)
Return of the certain documents obtained from an on-site inspection in accordance with attorney–client privilege.

Board Decision and Sanction
The documents in question did not meet attorney–client privilege.

The Board rejected the return of the correspondence on the grounds that the correspondence was not directly related to the exercise of the right of defense and that the document dated from a date prior to the start date of the preliminary investigation in which the on-site inspection was conducted.

The above recent decisional practice of the Board clearly demonstrates the increase in the Authority's information-gathering powers and jurisdiction regarding review, inspections and assessment during on-site inspections, information requests and attorney–client privilege.

[15] The Board's Storytel Decision dated 30.03.2023 and numbered 23-16/274-94

MOROĞLU ARSEVEN

1.2. Investigation Process

1.2.1. Complaint Procedure

Consumers and undertakings have the right to submit complaints (which may also be anonymous) to the Authority on undertakings' activities that they believe have harmed a competitive market structure. The Board can also initiate *ex officio* investigations based on its own knowledge and market observations, as well as sectoral inquiries.

The Board can expressly reject complaints that it does not consider serious. Complaints are deemed to have been rejected if the Board does not respond to the applicant within 60 days.

1.2.2. Preliminary Investigation

An appointed case team prepares a report within 30 days and presents it to the Board.

The Board decides within 10 days whether it is necessary to proceed to a full-fledged investigation.

1.2.3. Full-Fledged Investigation

A full-fledged investigation is initiated either directly or after a preliminary investigation.

(An amendment made to the Competition Law published in the Official Gazette on 29 May 2024 has made a significant change that altered the entire investigation process, as it removed the obligation to submit the first written defense and the third written defense and made these both optional for the investigated parties. We address this issue in section 4.3 of the Competition Round-Up.)

With the termination of the investigation phase, an oral hearing is held, if the Board deems this necessary or a party requests it.

The Board must grant its short decision within:

- 15 days of the oral hearing.
- 30 days of the end of the investigation period (if no oral hearing takes place).

MOROĞLU ARSEVEN

1.3. Negative Clearance and Individual Exemption

If an agreement potentially causes competition law concerns, the parties can voluntarily or, if the conditions are met, will be required to apply for either a negative clearance or individual exemption.

1.3.1. Negative Clearance

The Board may grant a negative clearance, which essentially indicates that, based on the available information, an agreement, decision, practice, or merger and acquisition does not violate Articles 4, 6 or 7 of the Competition Law.

Decision Type
Negative clearance and exemption.

Market
Not defined.

Notified by
ETS Ersoy Turistik Servisleri A.Ş.(“**ETS**”).

Board Decision and Sanction:
Within the scope of Article 8 of the Competition Law, the Board has decided to grant a negative clearance to the contracts concluded between ETS and Biletal İç ve Dış Ticaret AŞ ("**Biletal**").

Ucuzabilet Decision[16]

A contract has been signed between ETS and Biletal to ensure the integration of the transportation services of the bus companies that Biletal has contracted with into the Ucuzabilet platform on the routes and times.

In addition, the parties have authorized only the Ucuzabilet website and mobile application as sales channels in order for Biletal to carry out online sales activities in the contract. The Board considered that within the scope of the contract, a vertical relationship was established in terms of B2B service and intermediary service for bus ticket sales; examined whether the provisions of the contract gave rise to the determination of the resale price in respect of bus tickets. In the examination carried out pursuant to Articles 4, 6 and 7 of the Competition Law, it was concluded that the contract did not contain provisions violating the Competition Law, and it was decided to grant an negative clearance to the related contracts.

[16] The Board's Ucuzabilet Decision dated 28.12.2023 and numbered 23-61/1190-425.

Doğuş Otomotiv Decision[17]

Decision Type
Negative clearance and exemption.

Market
Automotive sales and after-sales services.

Notified by
Doğuş Otomotiv Servis ve Ticaret A.Ş. ("**Doğuş Otomotiv**").

Board Decision
The Board has decided that a negative clearance cannot be granted to the application in question, but that the relevant application benefits from the block exemption.

Doğuş Otomotiv requested a negative clearance to recommend a base salary for employees of its authorized dealers and service centers, or alternatively, an evaluation for exemption if the negative clearance could not be granted.

The Board's recommendation of a base wage to authorized dealers and dealers to be taken into account in the wages of their employees has been considered as a vertical relationship within the scope of the Competition Law. In addition, it was stated that the relevant application can be considered as the resale price maintenance in accordance with the provision 4/a of the Communiqué No. 2002/2.

It was stated that the vertical relationship between Doğuş Otomotiv and the dealers on the determination of the base fee was established in terms of the services provided, not on the basis of the workforce, and it was stated that a negative clearance could not be granted to the agreement.

However, pursuant to the Communiqué No. 2002/2, since the *"provider's maximum or recommended price determination"* is included in the scope of block exemption, it has been decided that the relevant application can benefit from the block exemption.

[17] The Board's Doğuş Otomotiv Decision dated 07.09.2023 and numbered 23-41/796-280.

MOROĞLU ARSEVEN

The Banks Association of Türkiye Decision[18]

Decision Type
Obstruction of on-site inspection.

Market
Not defined.

Request(s)
Negative clearance or, if this is not possible, an exemption to the provision of the Recommendation Decision included in the public announcement of the Banks Association of Turkey dated May 26, 2022, regarding the "determination of the transition spread recommendation within the framework of Basis Exploration Analysis studies for transactions that include TRLIBOR and will be subject to transition".

Board Decision and Sanction
It was decided that a negative clearance could be granted to the provision in question.

The Banks Association of Türkiye requested a negative clearance or, if this was not possible, an exemption in relation to the provisions of its recommendation dated 26 May 2022 ("**Recommendation**") regarding the "determination of the transition spread recommendation within the framework of Basis Exploratory Analysis studies for transactions involving TRLIBOR that are subject to transition".

The Recommendation related to the announcement of the imminent discontinuation of LIBOR, a type of benchmark interest rate, and the transition process to ensure that the obligations related to TRLIBOR-linked financial products in Türkiye could continue with the Turkish Lira Overnight Reference Rate (TLREF), which was to be adopted as the new local benchmark interest rate instead of TRLIBOR, and to ensure the healthy conversion between both interest rates in this framework.

[18] The Board's The Banks Association of Türkiye Decision dated 01.12.2022 and numbered 22-53/805-331

MOROĞLU ARSEVEN

The Board determined that the financial products that could be affected by the Recommendation were contracts that had already been concluded and that, therefore, the competitive process in the pricing phase had ended. In this respect, the Recommendation was considered to have no impact on this competitive process, which had already been completed in the pricing phase. The Board concluded that the determination of the calculation methodology was carried out in a transparent manner with the broad participation and contribution of all stakeholders, particularly the financial market regulatory authorities. In addition, the Board considered that it was important to note that the work on the Recommendation was in line with global developments.

The Board considered that the Recommendation:

- Only applied to financial contracts that had been concluded with TRLIBOR in the past and where the competitive process at the pricing stage had ended.
- Did not have a restrictive effect on competition in the market due to the fact that it covered a very limited product portfolio in terms of contract type and transaction volume.
- Was prepared through a transparent process with the broad participation and contributions of regulatory public authorities and sector stakeholders and was approved by regulatory public authorities.
- Was advisory and non-binding, and the contracting parties were free to determine the calculation method and rate of their choice.

The Board also concluded that the Recommendation did not constitute a restriction of competition. The Board found that the provisions of the Recommendation regarding the spread calculation method and determination of the rates were not in violation of Article 4 under the current circumstances and that the relevant provision of the Recommendation would be granted a negative clearance pursuant to Article 8.

1.3.2. Individual Exemption

he Board may grant an individual exemption for agreements that are initially deemed to be anti-competitive pursuant to Article 4 of the Competition Law but that also cumulatively fulfil all the following criteria:

a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods or provision of services.
b) Benefiting consumers.
c) Not eliminating competition in a significant part of the relevant market.
d) Not limiting competition more than is necessary to achieve the goals in (a) and (b).

Garanti Bank Decision[19]

Decision Type
Revocation of exemption.

Market
Not defined.

Claim(s)
The allegation that certain provisions in the Bonus Credit Card Program Sharing Agreements (**"Bonus Agreements**") excessively restrict competition.

Board Decision and Sanction
The Board decided that some provisions in the Bonus Agreements restrict competition and decided the agreements to be amended or terminated within 9 months.

The Board conducted a review to determine whether the individual exemption previously granted through various Board decisions to the Bonus Agreements, executed separately between Türkiye Garanti Bankası A.Ş. and the program members Alternatif Bank A.Ş., Denizbank A.Ş., ICBC Turkey Bank A.Ş., ING Bank A.Ş., Şekerbank Türk A.Ş., Türk Ekonomi Bankası A.Ş., and Türkiye Finans Katılım Bankası A.Ş. within the scope of the Bonus Credit Card Program, should be revoked.

The Board decided that certain provisions currently included in the Bonus Agreements—such as prohibiting member merchants from simultaneously offering POS services from more than one Bonus member bank or payment institution, preventing banks participating in the Bonus program from joining another co-branded card program, and requiring Bonus-branded credit cards to be used only on Bonus-branded POS devices—were compliant with Article 5 of the Competition Law and deemed these provisions to fall within the scope of individual exemption. However, it decided to exclude some provisions from the exemption on the grounds that they excessively restricted competition. In this context, it was decided that:

- The provision preventing a member merchant in the Bonus program network from engaging in discussions or establishing a new contractual relationship with other banks or payment institutions in the Bonus program for one month after the termination of its membership agreement,

- Resulting in the inability to conduct installment transactions using Bonus-branded credit cards at the relevant merchant during this one-month waiting period, was deemed neither reasonable nor proportional and thus required removal from the agreements.

- Additionally, the restriction preventing member merchants with an active contractual relationship with a Bonus member bank or payment institution from engaging in discussions with another Bonus member bank or payment institution was decided to be narrowed. It will exclude discussions initiated by merchants seeking proposals to switch service providers.

- The six-month card replacement period, foreseen for banks leaving the Bonus program to remove the Bonus logo from Bonus-branded cards they issued, was deemed insufficient. The period was revised to a minimum of nine months. During this time, the cards would remain ineligible for installment transactions and reward point accrual, and this provision was also required to be removed from the agreements.

- Restrictions preventing Bonus member banks from organizing campaigns to attract each other's customers were decided to be limited to campaigns that directly target campaigns organized by other Bonus member banks.

- Provsions requiring payment institutions to ensure that the merchants they serve refrain from making statements such as the Bonus program's other card/loyalty applications offer fewer rewards or are more expensive to be removed from the agreements.

The Board ruled that the Bonus Agreements could only qualify for exemption under Article 5 of Law No. 4054 if the above conditions were met. Consequently, it decided that the Bonus Agreements, which could not benefit from an individual exemption in their current form, must either be amended and notified to the Authority within 9 months from the notification of the reasoned Board decision or the agreements and the cooperation under the Bonus program must be terminated within the same period. Otherwise, actions would be initiated against the parties to the agreements pursuant to the Competition Law.

[19] The Board's Garanti Bank Announcement dated 12.12.2024 and numbered 24-53/1172-505.

Decision Type
Investigation.

Market
POS services.

Complainant
Confidentiality request.

Claim(s)
Violation of Article 4 of the Competition Law through customer restrictions on payment institutions by QNB Finansbank Anonim Şirketi (“**QNB**”).

Board Decision
The Board decided to grant QNB an individual exemption provided under Article 5 of the Competition Law.

QNB Finansbank Decision[20]

It was claimed that certain banks engaged in debit and credit card issuance activities in Türkiye had violated competition regulations by preventing payment institutions from accessing their POS services and by engaging in various exclusionary actions. The complaint related to the fact that, during the establishment of the infrastructure for physical POS integration between QNB and payment institutions, physical POS integrations had been carried out only for customers for whom QNB did not currently offer POS services.

The Board determined that the practice could be considered a customer restriction but that the restriction served to ensure the security of payment services and customer satisfaction. By developing the physical POS infrastructure by testing workflows on a limited customer group, it was considered that the disruptions and security vulnerabilities arising from establishing a physical POS connection to cover all customers could be prevented or minimized through the necessary technical preparations.

The Board considered that restricting cooperation by excluding the merchants to which QNB currently provided physical POS services was a reasonable practice in terms of establishing more reliable workflows in the market, as this practice contributed to the provision of better-quality services covering all customers in the market in the long term and created efficiency in the market.

According to the Board's assessment, the customer restriction applied by QNB met the following criteria:

- It did not apply to virtual POS services.
- It only covered QNB's current customers and did not cover businesses that could be considered potential customers of QNB.
- It aimed to minimize customer dissatisfaction and any other risks that might arise due to problems that might occur during the establishment of the technical infrastructure needed to work with payment institutions in physical POSs.
- It was an objective practice that served the purpose of limiting the impact of disruptions that might occur during the development of technical infrastructure.

It was concluded that QNB's action subject to investigation was granted an individual exemption.

[20] The Board’s QNB Finansbank Decision dated 08.12.2022 and numbered 22-54/833-343.

TOGG & Bosch Decision[21]

Decision Type
Negative clearance and exemption.

Market
Maintenance and repair services for Türkiye'nin Otomobili Girişim Grubu Sanayi ve Ticaret AŞ. ("**TOGG**") brand vehicles.

Notified by
TOGG.

Board Decision
The Board has decided to grant individual exemption to the agreements concluded between TOGG and Bosch Sanayi ve Ticaret A.Ş. ("Bosch") within the scope of Article 5 of the Competition Law.from the block exemption.

It was planned to open between 4,050-5,000 authorized service points throughout Turkey by the relevant undertakings and it was aimed to conduct individual agreements with Bosch Authorized Chain Services within the framework of the Global Service Network Agreement signed with Bosch. Since there was no exclusivity provision in the agreements with Bosch, it was stated that TOGG can also work with other maintenance and repair chains.

First of all, the agreements were examined by the Board in terms of block exemption; however, it was concluded that it could not benefit from the block exemption due to criteria such as market share and termination period. However, it was determined that the cooperation between TOGG and Bosch had contributed to developments such as providing assurance in the maintenance and spare parts supply of electric vehicles through after-sales services, reducing the carbon footprint and raising awareness of renewable energy solutions. The Board evaluated factors such as the benefits to be provided to the consumer with an effective service network and the reduction of transition costs. In addition, it was stated that as a result of the cooperation, it was expected to provide benefits to consumers, cost advantage and increase in service quality.

Finally, it was determined that short termination periods would facilitate the transition of services to alternative providers, and considering all these issues, it was evaluated that the agreements did not restrict competition more than necessary and it was concluded that the relevant agreements would benefit from individual exemption.

[21] The Board's TOGG & Bosch Decision dated 21.12.2023 and numbered 23-60/1160-415 .

Shell & Trugo Decision[22]

Decision Type
Negative clearance and exemption.

Market
Operation of electric charging stations.

Notified by
Trugo Akıllı Şarj Cozumleri Sanayi ve Ticaret AŞ ("**Trugo**").

Board Decision
The Board has decided to grant an individual exemption to the agreement concluded between Trugo and Shell & Turcas Petrol A.Ş. ("**Shell**") within the scope of Article 5 of the Competition Law.

The charging network agreement between Shell and Trugo covered the establishment and operation of electric vehicle charging stations at Shell-branded fuel stations with the cost sharing of both parties.

The parties also aim to offer their own loyalty programs and services to each other's customers. The Board considered this agreement as an arrangement that includes horizontal cooperation and exclusivity provisions; and considered the network operation agreement to be signed between Shell, Trugo and dealers as a vertical agreement. In the examination carried out pursuant to Article 5 of the Competition Law, it was determined that the agreement supported economic and technical development by reducing costs and increasing customer satisfaction, and that the use of electric vehicles contributed to the environment through emission reduction and was therefore beneficial for consumers. In addition, it was concluded that competition would not be adversely affected due to the presence of major players such as ZES and Eşarj as well as new ventures such as Trugo and Shell in the market and that the agreement did not create the effect of market closure.

Although the agreement contains restrictions, such as Trugo's commitment not to install other charging points at certain stations, it was decided that it met the conditions for individual exemptions taking into account the return on investments and therefore an individual exemption was granted to the agreement.

[22] The Board's Shell & Trugo Decision dated 21.12.2023 and numbered 23-60/1159-414

1.3.3. Block Exemption

The Authority has issued a range of communiqués providing exemptions for certain agreements and industries, including urum, belirli anlaşmalar ve sektörler için muafiyetler sağlayan bir dizi tebliğ yayınlamıştır:

- Vertical agreements.
- The motor vehicle sector.
- Research and development agreements.
- Technology transfer agreements.
- The insurance sector.
- Specialization agreements.

Agreements that meet the conditions for a block exemption are automatically exempted from Article 4 of the Competition Law. The parties do not need to apply to or notify the Board. The Board has also published guidelines to assist in interpreting and applying the block exemptions.

MOROĞLU ARSEVEN

Mercedes-Benz Türk A.Ş. Decision[23]

Decision Type
Exemption.

Market
Market for maintenance, repair and spare parts services for Mercedes-Benz branded heavy commercial vehicles.

Notified
Mercedes-Benz Türk A.Ş. (“**MBT**”).

Board Decision
Within the scope of Article 5 of the Competition Law, the Board has decided that the authorized service agreement concluded between MBT and Gelecek Otomotiv Sanayi ve Ticaret AŞ ("**Gelecek Otomotiv**"), which is a uniform contract, benefits from block exemption.

The agreements subject to the notification stipulate that the after-sales maintenance, repair services and spare parts sales for Mercedes-Benz trucks and buses will be carried out in accordance with the principles of the quantitative selective distribution system. MBT currently offers these services with a qualitative selective distribution system, and with the transition to quantitative selective distribution, it is aimed to increase quality standards and ensure customer satisfaction. In addition, it is aimed to improve accessibility and total quality with a more rational distribution of authorized services.

According to the evaluations made by the Board, MBT's market share remains below the thresholds set for block exemption in Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector numbered 2017/3 (“**Communique No. 2017/3**”), therefore it was concluded that the agreements could benefit from block exemption. In addition, it was concluded by the Board that the term conditions and termination procedure of the agreements were drafted in accordance with the Communiqué No. 2017/3.

It was considered that the provisions such as the fact that the agreements were not subject to certain limitations and that the free determination of the recommendation prices was allowed. In addition, it was decided that the provisions which concern that only the spare parts provided by MBT would be used in the repairs under the warranty, were also in accordance with the Communiqué No. 2017/3. In this context, it was concluded that the agreements in question could benefit from block exemption.

[22] The Board’s Mercedes-Benz Türk A.Ş. Decision dated 15.02.2024 and numbered 24-08/142-58 .

MOROĞLU ARSEVEN

1.4. Commitment and Settlement Mechanisms

As investigations have increased both in terms of number and complexity, are taking longer, have high public costs, expose undertakings' trade secrets and deteriorate their public image, the Authority has deemed it necessary to support its traditional investigation methods with alternative procedures. Accordingly, settlement and commitment mechanisms similar to those practiced in various other jurisdictions entered into force under the Competition Law with the Law No. 7246 Amending the Law on the Protection of Competition ("**Law No. 7246**") published in the Official Gazette dated 24.06 2020 and numbered 31165.

Although there is a violation determination after the initiation of a full-fledged investigation in both mechanisms, there is no administrative fine sanction in the commitment mechanism, since the Board deems that the violation is eliminated by the commitments. In the settlement mechanism, the undertaking accepts the alleged violation and faces an administrative monetary fine that may be reduced by 10% to 25%.

1.4.1. Commitment

The commitment mechanism was introduced into the competition law legislation by Article 43 of the Competition Law. Under the commitment mechanism, the parties are given the opportunity to submit a commitment during the preliminary investigation or full-fledged investigation stages of an ongoing investigation, provided that the subject matter of the investigation does not contain a clear and serious violation allegation. If the Authority approves this commitment, it becomes binding for the parties, and the Authority may decide not to conduct a full-fledged investigation (if the investigation is at the preliminary investigation stage) or may decide to terminate the investigation (if the investigation is at the full-fledged investigation stage).

To apply for a commitment within the scope of the Communiqué No. 2021/2 on Commitments to be Submitted in Preliminary Investigations and Full-Fledged Investigations Regarding Competition-Restricting Agreements, Concerted Practices and Decisions and Abuse of Dominant Position:

- The alleged violation must not have the characteristics of a clear and serious violation, defined as:
  - ◊ price fixing between competing undertakings; allocations of customers, suppliers, territories or trade channels; restrictions of supply or impositions of quotas; collusion in tenders; exchanging competitively-sensitive information such as future prices, production or sales volumes; and/or
  - ◊ resale price maintenance through the establishment of a fixed or minimum selling price of the buyer in vertical relationships.
- The application to the commitment mechanism should be submitted to the Authority within three months starting from the notification of the full-fledged investigation
- The commitment should be submitted pursuant to the acceptance of the commitment during the negotiation period by the Authority.
- The commitment should be clear, proportionate and suitable, and address the competition concerns in a short period of time.

If all the above conditions are met, the Authority may decide to terminate the preliminary investigation or full-fledged investigation process initiated against the undertaking. Since its implementation, undertakings have been seen to have rapidly adopted the commitment mechanism.

Çiçeksepeti Decision[24]

Decision Type
Investigation.

Market
Not defined.

Claim(s)
The claim that the Competition Law has been violated by preventing competitors from entering the market.

Board Decision and Sanction
It was decided to terminate the investigation due to the submission of commitments and not to impose an administrative fine on the relevant undertaking.

The Board initiated an investigation against Çiçeksepeti Internet Services A.Ş. ("**Çiçeksepeti**") on the allegation that it violated competition by closing its platform services to third-party vendors and acting in favor of its own dealers. However, the investigation was terminated with the acceptance of the commitments submitted by Çiçeksepeti. Commitments have included the presence of third-party vendors on the platform who meet certain conditions, transparency in search results, and ranking based on certain criteria. Çiçeksepeti will fulfill these commitments within 90 days and implement them in a binding manner for two years.

[24] The Board's Çiçeksepeti Announcement dated 21.11.2024 and numbered 24-49/1096-466.

MOROĞLU ARSEVEN

Meta Platform Decision[25]

Decision Type
Investigation.

Market
Not defined.

Claim(s)
The claim that Meta Platforms, Inc. ("**Meta**") violated Article 6 of the Competition Law by merging user data between its Threads and Instagram applications..

Board Decision and Sanction
Due to the violation of Article 6 of the Competition Law, it was decided to apply behavioral measures.

The investigation into Meta was initiated by the Board due to Meta's connection of the Threads app with Instagram and its policy of merging data between the two platforms. This was in violation of Article 6 of the Competition Law. The Board found that Meta continued to combine data obtained from Instagram and Threads applications, and that this behavior violated competition, despite the obligations stipulated by a previous decision.

The Board took a temporary injunction to prevent the anti-competitive effects of Meta's data aggregation practices, and a fine of approximately 335 million TL was imposed on Meta. However, Meta continued the process by not complying with these measures and offering solutions to address the concerns.

Meta committed that on 30.10.2024, as of the date when the Threads application will be relaunched in Türkiye, users will be able to use the Threads application without the need for an Instagram account and their data will only be merged with the consent of the users. These commitments were accepted by the Board and were assessed to be sufficient to address competition issues arising from Meta's behavior.

As a result, Meta's commitments were accepted and the investigation was terminated and Meta's commitments were made binding by the Board.

[25] The Board's Meta Platforms Announcement dated 23.11.2024 and numbered 24-45/1053-450.

MOROĞLU ARSEVEN

Decision Type
Investigation.

Market
Sale of broadcasting rights to primary football content, sale of highlights of Turkish Super Lig matches, open TV broadcasting, football commentary program broadcasting on open TV.

Complainant
Confidentiality request.

Claim(s)
The allegation that the Competition Law's Article 6 has been violated through anti-competitive discriminatory pricing policies.

Board Decision and Sanction
It was decided to conclude the investigation as a result of the submission of commitments and not to impose an administrative fine on the relevant undertaking.

Krea Decision[26]

In 2022, the Board initiated an investigation into allegations that Krea İçerik Hizmetleri ve Prodüksiyon A.Ş. (“**Krea**”) discriminatorily offered the broadcasting rights of Turkish Super League and 1st League football competitions to secondary broadcasters. In this context, it was assessed whether Krea's conduct was in violation of the Competition Law. Krea submitted commitments to address competition concerns, but its initial commitment offers were rejected. The investigation was continued with input from third parties and Krea's continued willingness to offer commitments, and a revised commitment text was submitted by Krea in 2023.

In the Board's decision, the effects of sports broadcasting rights on competition in media markets were evaluated, and the role of football broadcasting rights in determining market dynamics was emphasized. It was stated that the processes of purchasing, selling and distributing broadcasting rights are of critical importance in terms of competition law, and that the abuse of market power in these processes may adversely affect competition. It was also stated that there is no substitute for Turkish Super Lig football competitions and this situation has been accepted by the competition authorities.

Consequently, the Board considered that Krea held a monopoly position in the sale of Super League summary broadcasting rights and that it pursued a discriminatory sales policy that distorted competition between open TV channels. The revised commitment submitted by Krea was found sufficient to terminate discriminatory sales policies and eliminate the risk of distortion of competition, and this commitment was accepted by the Board as binding and the investigation was terminated.

[26] The Board's Krea Decision of the Board dated 14.09.2023 and numbered 23-43/826-292

Decision Type
Investigation.

Market
Consumer durables, consumer electronics and small household appliances.

Complainant
Initiated ex officio and also applications with confidentiality requests.

Claim(s)
Violation of Article 4 of the Competition Law through resale price maintenance and online sales restrictions on authorized dealers.

Board Decision and Sanction
The Board decided to impose an administrative fine for the violation of Article 4 of the Competition Law by determining the sales price of its re-sellers by the undertaking.

Arçelik Decision[27]

The Board evaluated a revised commitment package within the scope of an investigation initiated in relation to allegations that Arçelik Pazarlama Anonim Şirketi ("**Arçelik**") had limited online marketplace sales of Arçelik-branded products exclusively to authorized dealers and engaged in resale price maintenance. As a result of the investigation that resulted in the Board Decision dated 08.09.2022 and numbered 22-41/580-240, which was previously published, the following practices were deemed to raise competition concerns:

- A restriction on the ratio of sales made online to total sales.
- Requiring distributors to pay a higher price for products to be resold online than for products to be offered on-site at stores.
- Banning distributors from selling on online marketplaces.

However, the Board stated that the supplier may establish certain conditions that must be fulfilled by the distributor, limited to online sales, but these conditions should be equivalent to the sales conditions offered in stores and should not be a deterrent to online sales. In the letter of commitment submitted by Arçelik, the conditions required for authorized dealers to sell in online marketplaces were reviewed and it was observed that various conditions had been removed or changed in order to eliminate competition violations. As a result of the evaluation of the revised conditions, it was concluded that all conditions were objectively concrete, reasonable and acceptable in terms of factors that increased the quality of distribution, brand image and potential efficiency.

In this context, although it was decided to terminate the investigation in terms of the allegation that authorized dealers were prevented from selling via the internet, the investigation process continued regarding the allegations of determination of the resale price.

Within the scope of the investigation, it was determined from the correspondence between the employees that the employees tried to keep the retail prices of the re-sellers at a certain level, and if the proposed price was not complied with by the re-sellers and fell below this price, the employees intervened in the seller who reduced the price and had the prices revised. For this reason, the Board decided to impose an administrative fine of TRY 365,379,161.06 on Arçelik for violating Article 4 of the Competition Law by determining the sales price of its re-sellers.

[27] The Board's Arçelik Decision dated 03.08.2023 and numbered 23-36/682-235.

MOROĞLU ARSEVEN

META Decision[28]

Decision Type
Investigation.

Market
Social networking services, consumer communication services and online display advertising.

Complainant
Initiated ex officio by the Board and application by Hamdi Pınar.

Claim(s)
Violation of Article 6 of Competition Law through abuse of dominant position by WhatsApp's updated data policy.

Board Decision and Sanctions
The Board decided to impose administrative fine and behavioral remedies for violation of Article 6 of the Competition Law.

The Board initiated a full-fledged investigation to determine whether Meta Platforms, Inc, Meta Ireland Limited, WhatsApp LLC and Madoka Turkey Bilişim Hiz. Ltd. Şti. ("**Meta**") had violated Article 6 of the Competition Law by updating the WhatsApp platform's terms of use and privacy policy to impose an obligation for users to accept the sharing with Meta of user data held by WhatsApp in order to continue using WhatsApp after 8 February 2021. The Board also suspended the enforcement of WhatsApp's terms of use and privacy policy and informed the relevant users of the investigation, under Article 9 of the Competition Law.

The market position of the entities operating in the relevant markets and, in this framework, whether Facebook was in a dominant position were evaluated. In these evaluations, the number of monthly and daily active users of the entities, their market shares calculated based on these numbers, the frequency of use of the relevant services, and consumer preferences, as well as barriers to entry and buyer power, were taken into account. Additionally, factors such as network effects, economies of scale and data power in the market were considered together with the characteristics of digital platform economies. As a result of all these evaluations, it was concluded that Facebook was in a dominant position in the personal social networking services and consumer communication services markets.

The role of data in platform economies and the competition law concerns arising from data in these platform markets were evaluated. Furthermore, in order to evaluate the data aggregation practices, the relevant legal framework and the studies in the literature regarding the evaluation of these practices as abuse were examined. As a result of the evaluations, it was concluded that data aggregation may be considered an exploitative abuse as well as an exclusionary abuse by creating barriers to entry and making it difficult for competitors to operate.

It was determined that Facebook collected information such as user name, password, date of birth, e-mail address, phone number, device information, accounts used for financial transactions, usage habits, content in posts and similar information within the scope of personal social networking services, as well as information such as user name, password, phone number, profile photo, profile information, location information, device information, accounts used for financial transactions, contacts in the user's contacts list and usage habits within the scope of consumer communication services. It was also understood that Facebook used the information obtained within the scope of basic platform services in its other services and combined the information obtained from different services.

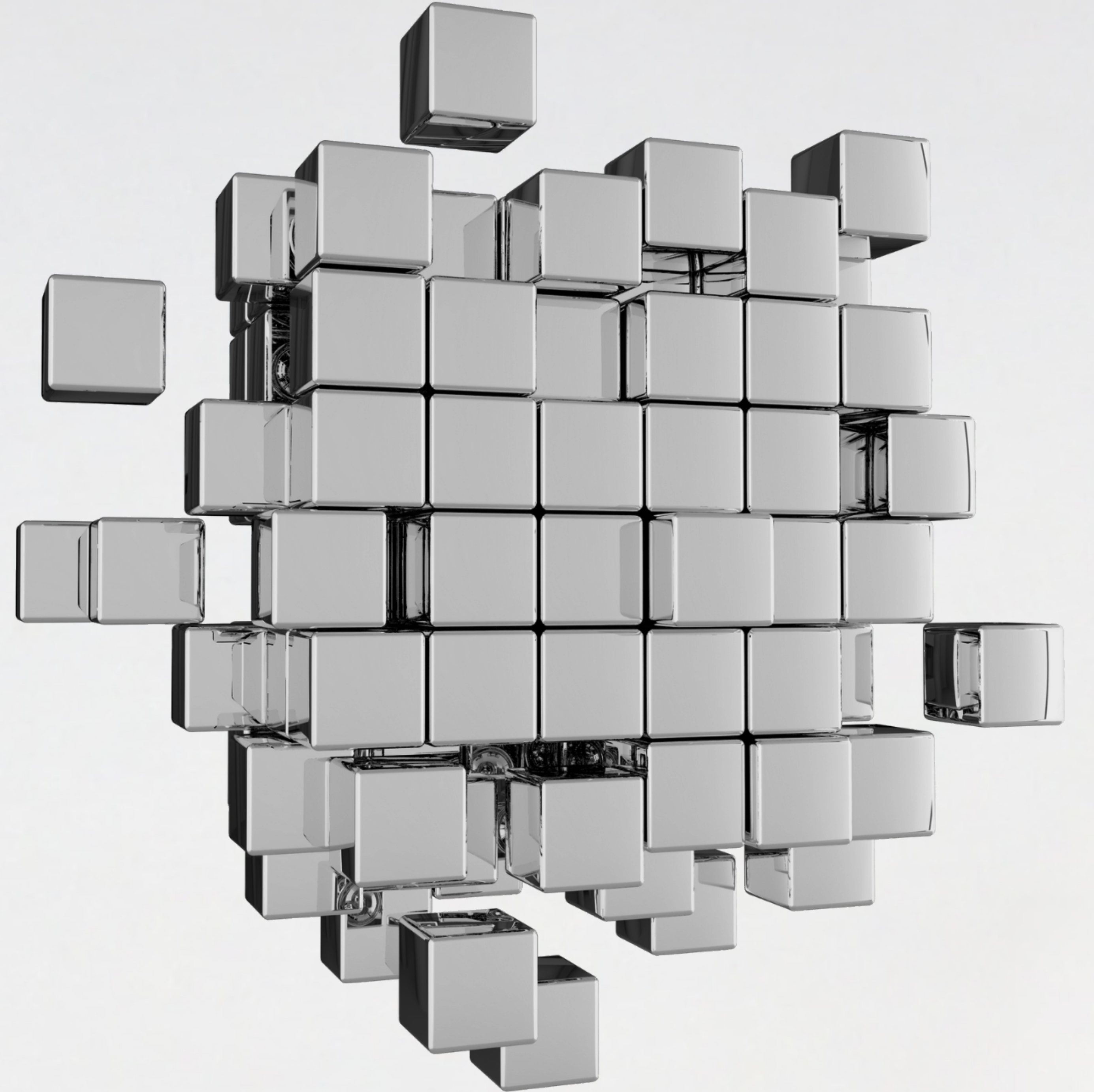
[28] The Board's Meta Decision dated 20.10.2022 and numbered 22-48/706-299

This data aggregation practice was evaluated as an exclusionary abuse, and the effects of the practice in both the social networking services market and the online display advertising services market were examined. It was concluded that the data was critical for the provision of activities in both social networking and online advertising services, and it was not possible for competitors to create or access a dataset equivalent to the dataset aggregated by Facebook. It was concluded that this situation constituted an entry barrier for both markets.

As a result of all these clarifications, analyses and evaluations, it was concluded that Facebook's practices of aggregating data obtained from the services it provided constituted a violation of Article 6 of the Competition Law.

The Board unanimously decided to impose an administrative fine of TRY 346,717,193.40 on Meta (excluding Madoka Turkey Bilişim Hiz. Ltd. Şti) with the determination that Meta obstructed competitors' activities in the online display and personal social networking services markets, and prevented competitors' market entry, by merging users' data collected from Meta's core services Facebook, Instagram and WhatsApp. Accordingly, in addition to the monetary fine imposed on Meta, the Board also required Meta to:

- Submit to the Board the necessary measures to end the infringement and to ensure the establishment of effective competition in the market within one month at the latest from the notification of the reasoned decision.
- Take the necessary measures within six months from the notification of the reasoned decision.
- Submit a report to the Board once a year for five years from the start of implementation of the first compliance measure.



Mey İçki Decision[28]

Decision Type
Investigation.

Market
Not defined.

Complainant
Confidentiality request.

Claim(s)
Violation by Mey İçki Sanayi ve Ticaret A.Ş. ("**Mey İçki**") of Article 6 of the Competition Law by making the activities of its competitors more difficult through its investments in sales points and the provision of financial benefits to customers.

Board Decision
The Board accepted the commitment text submitted by the undertaking as eliminating competition problems, thereby making the commitments binding for the undertaking and terminating the initiated full-fledged investigation. The Board decided to appoint a third party to follow up and control commitments.

The Board initiated a full-fledged investigation against Mey İçki for allegedly violating the Competition Law by preventing the sale of competing products at sales points. During the investigation process, Mey İçki applied for the initiation of the commitment process regarding the allegations. At the end of the negotiation process, on 28 September 2022, Mey İçki accepted the nine following commitments:

1. To stop signing Investment Support Contracts ("**YDS**") with "rakı points" and to stop all support provided to "rakı points" through YDSs.
2. From the date Mey İçki submitted a commitment proposal (2 February 2022) onwards, not to sign new YDSs with any sales points that have already signed or will sign YDSs during the commitment period, for a duration of three years from the date of signature.
3. To ensure that payments to sales points under YDSs are completed within a maximum of three months following the completion of the investments made through YDSs.
4. To provide a copy of the relevant YDS agreement to all sales points that have signed a YDS with Mey İçki, regardless of whether they are "rakı points" or not, on request.
5. To stop all menu support provided to "rakı points".
6. To stop all shelf/module support provided to "rakı points".
7. To provide informational letters to each sales point that is not a "rakı point" but that will receive a YDS, menu, or shelf/module support, subject to the approval of the Authority. These letters will be provided along with the relevant YDS.
8. Within two months following the notification of the Board's reasoned decision accepting Mey İçki's commitments, to send informational letters regarding the commitments to every Mey İçki customer's on-premises consumption and traditional-channel sales point in Türkiye. These letters will be sent annually in April for the duration of the commitments, subject to the approval of the Authority.
9. To include additional annexes in the informational letters sent out within two months following the notification of the Board's reasoned decision, explaining Mey İçki's internal policies and practices regarding the recommended 70% shelf allocation rate.

As a result, the Board made the commitments binding for the undertaking and terminated the investigation.

[29] The Board's Mey İçki Decision dated 06.10.2022 and numbered 22-45/670-284.

Decision Type
Preliminary investigation.

Market
Not defined.

Complainant
Confidentiality request.

Claim(s)
Abuse by Obilet Bilişim Sistemleri A.Ş. (“**Obilet**”) of its dominant position in the market through exclusivity agreements.

Board Decision and Sanctions
The Board accepted the commitment text submitted by Obilet as eliminating competition problems, thereby making the commitments binding for the undertaking and terminating the preliminary investigation.

Obilet Decision[30]

The Board initiated a preliminary investigation against Obilet. This was due to allegations that Obilet had been preventing bus companies with whom it sold tickets, from collaborating with competing online ticket comparison and sales websites, through exclusivity clauses in their contracts, thereby excluding its competitors from the ticket sales market. Before the initiation of a full-fledged investigation, Obilet submitted a commitment package to the Authority stating that it would not include exclusivity clauses in its contracts or engage in any actual behaviour or giving of guidance to the carriers that might have that effect. Following the Authority’s acceptance of Obilet’s commitment package, the Authority terminated the preliminary investigation without initiating a full-fledged investigation against Obilet.

[30] The Board’s Obilet Announcement dated 18.08.2023 and numbered 23-27/521-177. (The reasoned decision has not been published)

MOROĞLU ARSEVEN

Ferrero Fındık Decision[31]

An investigation was launched to determine whether Ferrero has violated Articles 4 and 6 of the Competition Law.

Since Ferrero had a dominant position in the market where hazelnuts are used as inputs in the production of chocolate and confectionery, and it was alleged that it had reduced market prices through framework agreements with its suppliers, that it had unilaterally used its purchasing power in the hazelnut purchase market, and therefore violated competition by creating socio-economic negative effects on the market. Ferrero made commitments not to purchase shelled hazelnuts below the intervention reference price and to support competition in the market.

As a result, it was decided by the Board to accept the commitments made by Ferrero, to make them binding on Ferrero and to terminate the investigation.

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Determination of whether Ferrero Fındık İthalat İhracat ve Tic. A.Ş. ("**Ferrero**") violated Articles 4 and 6 of the Competition Law.

Board Decision and Sanctions
The Board accepted that the commitment text submitted by the undertaking was of a nature to eliminate competition problems, made the commitments binding on the undertaking and terminated the investigation initiated.

[31] The Board’s Ferrero Fındık Decision dated 07.03.2024 and numbered 24-12/213-87.

Decision Type
Preliminary investigation.

Market
Multi-category E-Marketplace.

Complainant
Initiated ex officio by the Board.

Claim(s)
Determination of whether DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. ("**Trendyol**") violated Article 4 of the Competition Law.

Board Decision and Sanctions
The Board accepted that the commitment text submitted by the undertaking was of a nature to eliminate competition problems, made the commitments binding on the undertaking and terminated the investigation initiated.

Trendyol Decision[32]

The Board launched an investigation in 2023 to evaluate the allegations that the automatic pricing mechanism offered by Trendyol to sellers has restrictive effects on competition. During the investigation process, Trendyol submitted commitments to eliminate competition problems, these commitments were found sufficient and the relevant commitments were made binding in accordance with Article 43 of the Competition Law. In this context, the investigation ended with commitment.

Trendyol's accepted commitments are as follows:

- Not mandating the use of the automated pricing mechanism for merchants and not offering similar incentives.
- Disallow rule definitions that target specific merchants in the automated pricing mechanism.
- Removing the "Equalize to Buybox Price" option and editing the "Stay Under" and "Stay Over" options in a neutral way.
- Not considering the use of the automatic pricing mechanism in the Buybox algorithm as a criterion.
- Informing vendors of the specifics of the mechanism, but not sharing other vendors' data.
- To provide training content and to provide competition law training to employees.
- To submit compliance reports to the Authority for 3 years.

The commitments will be implemented within 60 days from the notification of the short decision to Trendyol and will be valid as long as the automatic pricing mechanism is in place.

The reasoned decision has not yet been published.

[32] The Board's Trendyol Decision dated 28.11.2024 and numbered 23-49/940-M.

1.4.2. Settlement

In essence, the competition law settlement procedure is a 25% discount from the fine imposed at the end of the investigation in return for the investigated undertaking's acceptance of the existence and scope of the violation and the finalization of the decision.

The main purpose of the settlement mechanism is to accelerate the investigation process, manage public resources properly and finalize the investigation processes at an early stage. The settlement mechanism is regulated under Article 43 of the Competition Law, and further guidance is provided under the newly introduced "*Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position*".

Under the settlement mechanism:

- The settlement procedure should be initiated, and the settlement text should be conveyed to the Authority before the issuance of the investigation report.
- The Board's evaluation of the settlement text and determination of the discount will take into account:
  - ◊ the number of investigation parties,
  - ◊ whether a considerable portion of the investigation parties applied for settlement,
  - ◊ the scope of the violation and the quality of the evidence, and
  - ◊ whether it is possible to arrive at a common understanding with the investigated parties regarding the existence and scope of the violation.
- If the undertaking and the Authority reach a common understanding as to the existence and scope of the alleged violation:
  - ◊ the undertaking may benefit from a reduction to the administrative monetary fine of 10% to 25%,
  - ◊ the investigation is terminated with a final settlement decision,
  - ◊ the undertaking waives its rights to appeal the administrative monetary fine and settlement text to the administrative courts, and
  - ◊ the decision is deemed to be the final decision.

Importantly, there is no rule stipulating that settlement negotiations will always result with settlement. In the event that either **(i)** the undertaking fails to submit the settlement text within the time given, **(ii)** the settlement text is not found to remedy the competition concerns, **(iii)** the Board decides to terminate the settlement process, or **(iv)** the settlement party withdraws from the settlement process, it will be accepted that the process has not resulted in a settlement for the relevant party, and the ordinary full-fledged investigation process will follow. In this scenario, the information and documents submitted by undertaking within the scope of the settlement negotiations will be excluded from the file and will not be used as a basis for the final decision taken as a result of the investigation.

Another important point is that the settlement discount rate is at the Board's discretion. Accordingly, the following recent decisions of the Authority may shed light on both the settlement mechanism and the discount rates applied by the Board.

Duracell Decision[33]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Alleged violation of Article 4 of the Competition Law by determining the resale price of the buyers and restricting the territories and customers to whom they will sell.

Board Decision and Sanctions
The Board decided that there was a violation of Article 4 of the Competition Law by determining the resale price, and accordingly, the investigation was concluded through a settlement procedure with respect to the practices of the buyers in determining the resale price.

An investigation was initiated to determine whether Duracell Satış ve Dağıtım Ltd. Şti. ("**Duracell**") violated Article 4 of the Competition Law by setting the resale prices of its buyers and restricting the regions and customers to which they could sell.

The investigation revealed that Duracell determined the sales prices of its distributors and retailers operating in downstream markets, provided various incentives to buyers who complied with the requested sales prices, and applied pressure on buyers who did not comply by halting product supply or withdrawing incentives. Furthermore, it was found that as part of its business policy, Duracell regularly monitored retail sales prices, and when shelf prices deviated from the expected levels, it intervened.

As part of the investigation, Duracell submitted a settlement text, explicitly acknowledging the existence and scope of the violation, as well as the maximum administrative fine rate and amount foreseen in the interim settlement decision.

It was concluded that Duracell violated Article 4 of the Competition Law by determining the resale prices of its buyers. Following the settlement procedure, a 25% reduction was applied to the administrative fine, resulting in an administrative fine of 8,558,678.65 TL being imposed on Duracell. Thus, the investigation conducted by the Board was concluded through a settlement procedure regarding Duracell's practices of determining the resale prices of its buyers.

[33] The Board's Duracell Decision dated 08.02.2024 and numbered 24-07/117-49.

Natura Decision[34]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law through resale price maintenance.

Board Decision
It was decided to end the investigation through settlement and to impose an administrative fine.

During on-site inspections conducted at Mopaş Marketçilik Gıda San. Ve Tic A.Ş. (“**Mopaş**”) on 9 December 2021 and at Gülmar Gıda Sanayi Ticaret Taahüt Ltd. Şti. (“**Citygross**”) on 10 December 2021, suspicious documents were obtained indicating that Natura Gıda Sanayi ve Ticaret A.Ş. (“**Golf**”) intervened in the resale prices of retailers.

Based on these documents, the Authority decided to conduct a preliminary investigation against Golf in relation to a violation of Article 4 and then initiated a full-fledged investigation. While the investigation was ongoing, Golf requested settlement under Article 43. In the settlement text, the existence and scope of the violation were accepted, their appeal right was waived, and the maximum administrative fine discount rate was requested. The Board decided to impose an administrative fine of TRY 7,241,818.69 over the undertaking’s net sales revenues for 2021, to apply a 25% discount as a result of the settlement procedure, reducing the fine to TRY 5,431,289.02, and to terminate the investigation through the conclusion of the settlement procedure.

[34] The Board’s Natura Decision dated 23.11.2022 and numbered 22-52/771-317.

MOROĞLU ARSEVEN

Hiksan Teknoloji Decision[35]

Decision Type
Investigation.

Market
Manual breast pumps.

Complainant
Confidentiality request.

Claim(s)
Violation of Article 4 of the Competition Law through resale price maintenance.

Board Decision
It was decided to end the investigation through settlement and to impose an administrative fine.

In the full-fledged investigation, a settlement text was submitted to the Authority by Hiksan Teknoloji Sanayi ve Ticaret Ltd. Şti. In the settlement text, the existence and scope of the violation were accepted, their appeal right was waived, and the maximum administrative fine discount rate was requested. The Board decided to impose an administrative fine of TRY 60,438.74 over the undertaking’s net sales revenues for 2021, to apply a 25% discount as a result of the settlement procedure reducing the fine to TRY 45,329.05 and to terminate the investigation through the conclusion of the settlement procedure.

[35] The Board’s Hiksan Teknoloji Decision dated 22.12.2022 and numbered 22-56/882-365

Kınık Maden Suları Decision[36]

Decision Type
Investigation.

Market
"Natural mineral water (plain mineral water)" and "flavoured mineral water (flavoured mineral water)".

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law through information exchange and resale price maintenance.

Board Decision
It was decided to end the investigation through settlement and to impose an administrative fine.

Within the scope of the full-fledged investigation, a settlement text was submitted to the Board by Kınık Maden Suları A.Ş. In the settlement text, the existence and scope of the violation were accepted, their appeal right was waived, and the maximum administrative fine discount rate was requested. The Board decided to impose an administrative fine of TRY 2,322,328.75 over the undertaking's net sales revenues for 2020, to apply a 25% discount as a result of the settlement procedure and a 35% discount as a result of acting in accordance with the active cooperation regulation, reducing the fine to TL 928,931.50, and to terminate the investigation through the conclusion of the settlement procedure.

[36] The Board's Kınık Maden Suları Decision dated 14.04.2022 and numbered 22-17/283-128.

Aslan Ticaret Decision[37]

Decision Type
Investigation.

Market
Not defined.

Complainant
Confidentiality request.

Claim(s)
Violation by Aslan Ticaret Dayanıklı Tüketim Malları ve Ltd. Şti. ("**Aslan Ticaret**") of Article 4 of the Competition Law through resale price maintenance and restricting the online sales of its dealers on e-marketplace platforms.

Board Decision
It was decided to end the investigation through settlement and to impose an administrative fine.

The Board initiated a full-fledged investigation against Aslan Ticaret based on the allegation that Article 4 of the Competition Law had been violated by imposing resale price maintenance requirements on its dealers and restrictions on its dealers' online sales through e-marketplace platforms.

During the full-fledged investigation, a settlement text was submitted to the Board by Aslan Ticaret. In the settlement text, the existence and scope of the violation were accepted, their appeal right was waived, and the maximum administrative fine discount rate was requested. The Board decided to impose an administrative fine of TRY 4,013,024.56 over the undertaking's net sales revenues for 2021, to apply a 25% discount as a result of the settlement procedure, reducing the fine to TRY 3,009,768.42, and to terminate the investigation through the conclusion of the settlement procedure.

[37] The Board's Aslan Ticaret Decision dated 08.12.2022 and numbered 22-54/834-344.

II. BOARD ACTIVITY

The years 2023 and 2024 was busy in many aspects for Türkiye and globally. Significant regulations came into force, and the number of investigations continued to increase gradually. According to the statistics provided by the European Commission[38], the total number of case investigations of which the Network has been informed was 148 in 2022, which was 145 in 2021. In terms of regulations, as a result of the discussions about platform economies, the European Union has comprehensively regulated digital markets.

In relation to Turkish competition law practice, cartel investigations were initiated in various sectors, including traditional sectors such as cement but also in the retail, human resources and car manufacturing markets. New types of infringements such as hub-and-spoke cartel violations or gentlemen's agreements regarding the transfer of employees were discussed. These unusual and important cases have also initiated an important discussion regarding the standard of proof for cartel cases.

Besides investigations under Article 4 of the Competition Law, 2023 and 2024 was also an interesting year for Article 6-related infringements, as digital players such as Meta and Google were the subject of separate full-fledged investigations that provided a glimpse of the Authority's eagerness to review significant digital market players, platforms and gatekeepers.

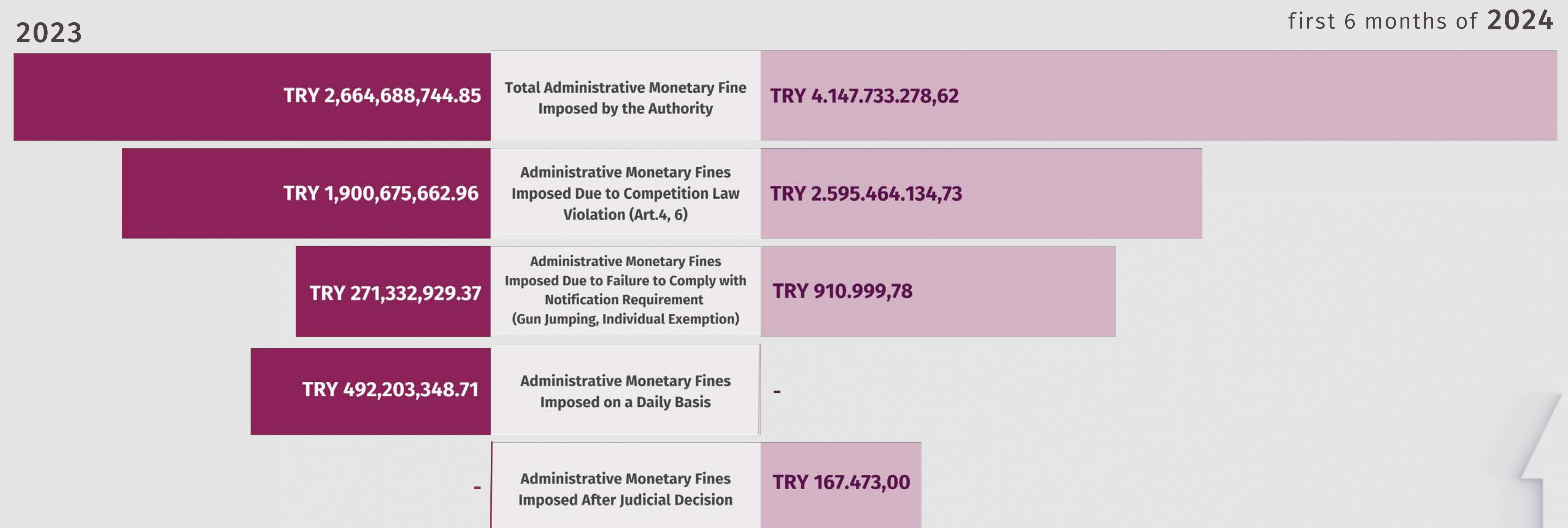
Accordingly, after providing information on the headline figures for 2023 and 2024, we will discuss the Authority's significant cartel investigations and the new types of cartel infringements together with the required standard of proof. We will then evaluate the abuse of dominance cases.

[38] https://competition-policy.ec.europa.eu/european-competition-network/statistics_en

MOROĞLU ARSEVEN

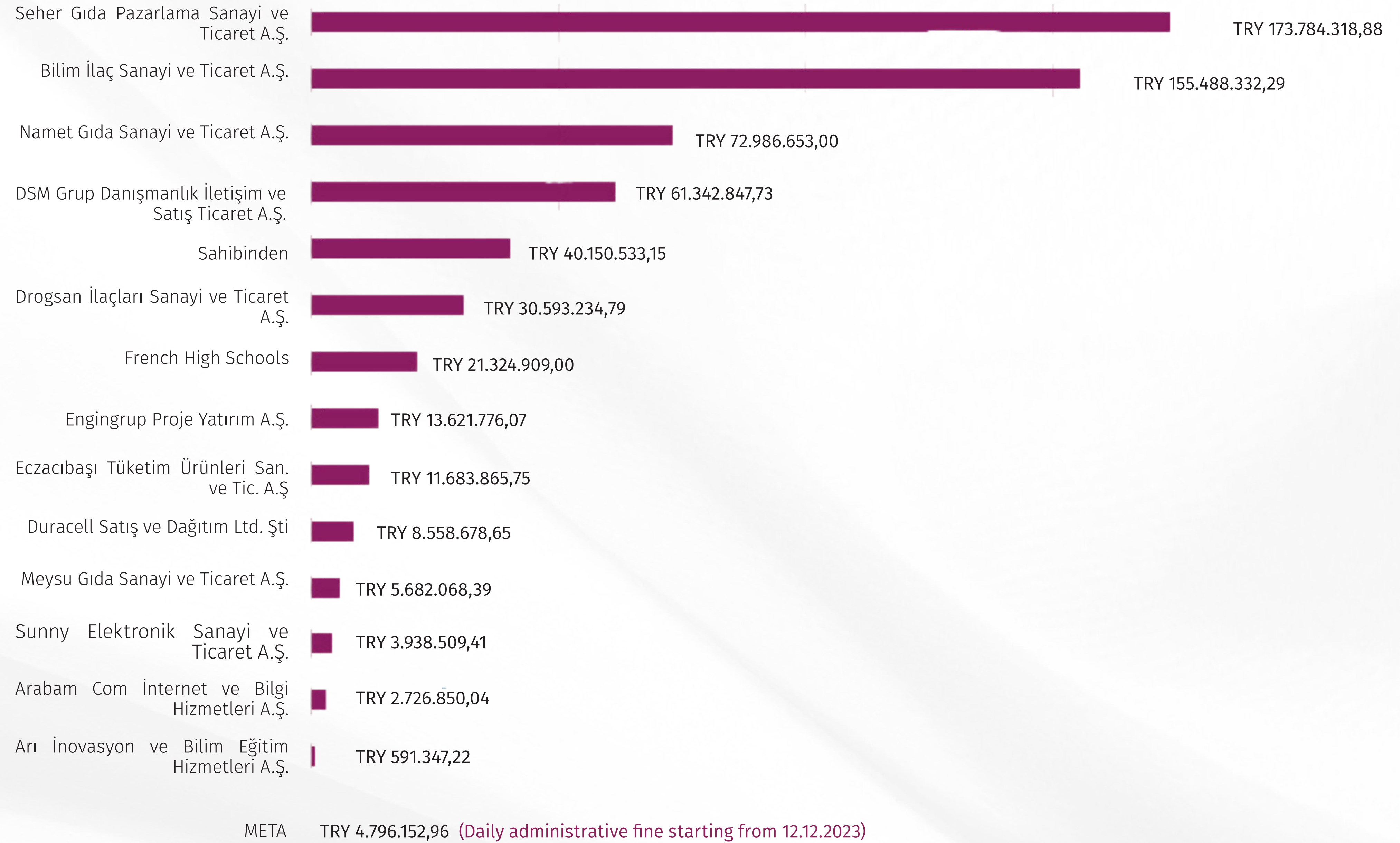
2.1. Headline Figures

2.1.1. Chart of Administrative Monetary Fines (2023 & first 6 months of 2024)

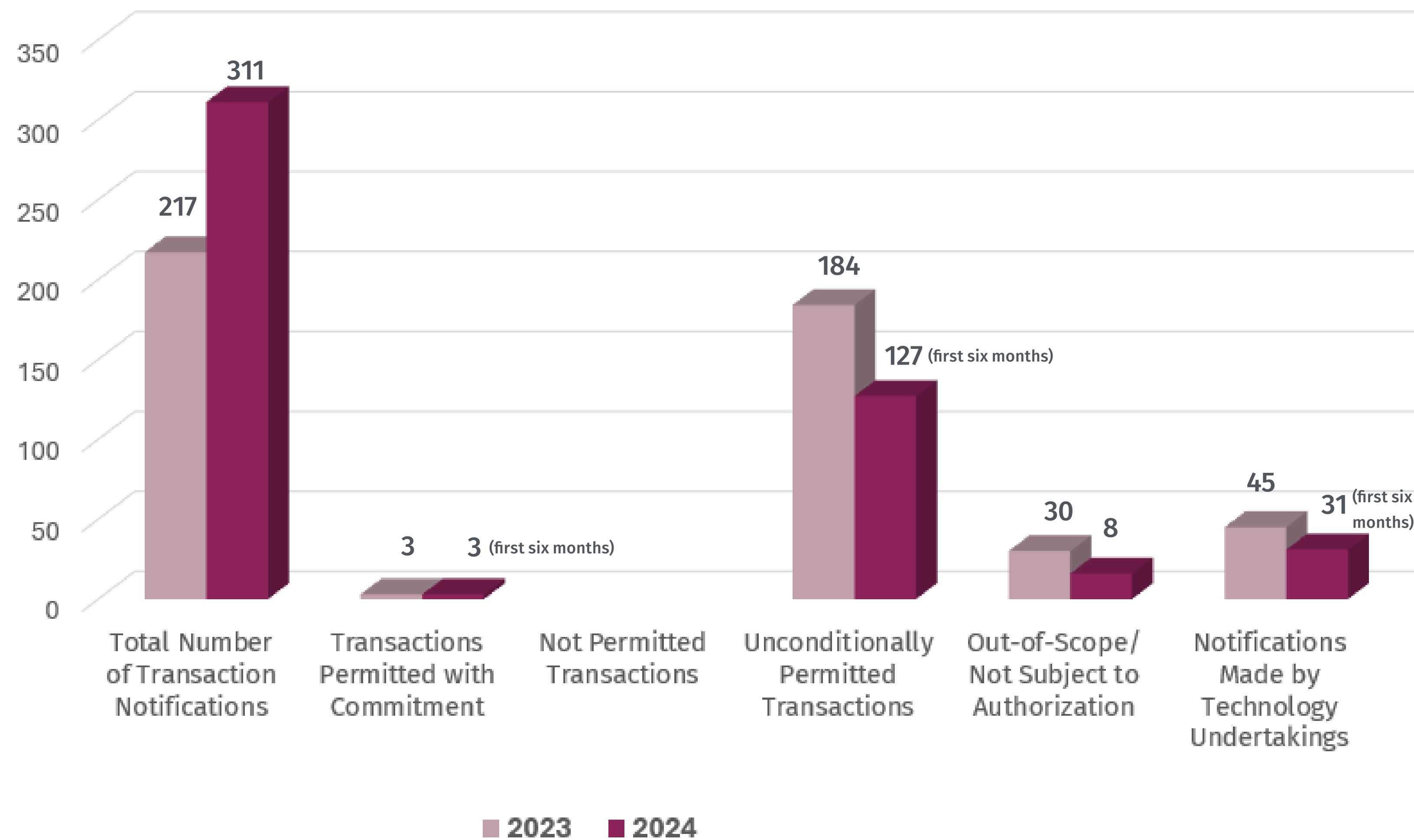


MOROĞLU ARSEVEN

2.1.2. Fines in Significant Cases



2.1.3. Number of M&A Transactions (Article 7)



In the 2024 Merger and Acquisition Outlook Report published by the Authority, it was stated that a total of 311 merger and acquisition transactions were reviewed in 2024. Of these, 131 involved target companies established in Turkey, with the total transaction value set at TRY 191 billion 917 million (USD 5.85 billion). Excluding privatizations, the total value of these transactions was approximately TRY 223 billion (USD 6.81 billion). The 6 transactions related to privatizations had a total value of TRY 31 billion 363 million (USD 957 million).

Among the reviewed transactions, 164 were mergers and acquisitions conducted by foreigners abroad, with a total value of TRY 17 trillion 186 billion (USD 524.35 billion). 8 transactions were excluded from the scope due to no change in control, and 2 transactions were subject to a final review.

Of the 311 transactions, 75 involved parties of Turkish origin, 167 involved entirely foreign companies, and 53 involved companies from both origins. Excluding out-of-scope and privatization transactions, the total value of mergers and acquisitions involving Turkish-origin companies was TRY 69 billion 665 million (USD 2.13 billion), while the total value of transactions involving foreign companies was TRY 17 trillion 186 billion (USD 524.35 billion). The total transaction value for transactions involving both Turkish and foreign companies was recorded as TRY 119 billion 688 million (USD 3.65 billion).

As of 2024, the total transaction value for investments made by foreign investors in Turkish-origin companies is approximately TRY 99 billion (USD 3.03 billion). The total transaction value of foreign investors' transactions for Turkish companies, including privatizations, constitutes 44.5% of the total projected transaction value for Turkish companies.

According to economic sectors, mergers and acquisitions involving Turkish-origin target companies were most frequently seen in the fields of “computer programming, consultancy, and related activities” and “electricity generation, transmission, and distribution,” with the highest transaction value recorded in “retail trade.” In privatization transactions, the highest transaction value was in the field of “culture, arts, entertainment, leisure, and sports.”

Finally, it was stated that mergers and acquisitions notified to the Authority were concluded with a final decision an average of 12 days after the last notification date.

MOROĞLU ARSEVEN

Microsoft Activation Blizzard Decision[39]

Decision Type
Merger-Acquisition.

Market
Game development and publishing, game distribution, licensed product sales, online video advertising, console hardware and cloud gaming, game distribution.

Request(s)
Approval of the acquisition of sole control of Activision Blizzard Inc. ("**Activision Blizzard**") by Microsoft Corporation ("**Microsoft**").

Board Decision and Sanctions
The acquisition of the sole control of Activision Blizzard Inc. by Microsoft Corporation was authorized as there was no significant decrease in effective competition as a result of the transaction.

The notification requested approval for the acquisition of the sole control of Activision Blizzard by Microsoft.

Microsoft offered Xbox game consoles and Surface series personal computers to the market in the gaming sector. In addition, Microsoft developed, published and distributed games for PCs, game consoles and mobile devices through Xbox Game Studios, a collection of 24 first-party (controlled) game developers, as well as publishing and distributing games developed by second- and third-parties, which were not controlled by Microsoft game developers.

Activision Blizzard was a company incorporated in California, USA in 2008, and its principal activities were the development, publishing and distribution of games.

As of the date of the review, the transaction had been unconditionally authorized by the competition authorities of Brazil, Chile, South Korea, Japan, Saudi Arabia, Serbia, South Africa and Ukraine; conditionally authorized by the European Commission with commitments; and not authorized by the UK Competition and Markets Authority ("**CMA**"). In addition, the review process was ongoing in the US, New Zealand, Canada and Australia.

The opinions of the undertakings operating in the sector regarding the transaction subject to the notification were obtained. Letters were obtained from the players, and interviews were held.

The relevant markets were analyzed, and detailed explanations regarding the markets were provided.

- Game Development and Publishing Market
  The assessments to be made for the game development and publishing sector were based on two separate markets, namely "computer and console games" and "mobile games".

- Game Distribution:
  The assessments of the game distribution industry assumed that all digital distribution models were in a single market.

- Game Play Tools: Hardware Gaming and Cloud Gaming:
  Considering the data obtained within the scope of the file, it was first evaluated whether cloud gaming and hardware gaming were in the same product market and then whether hardware gaming should be sub-divided by gaming hardware.

- The Distinction between Cloud Gaming and Hardware Gaming:
  Contrary to the previous decisions of competition authorities and the statements of Microsoft and some industry stakeholders, cloud gaming could not be considered under the heading of game distribution and could be evaluated within the scope of game-playing tools, and, since it offered a different experience from game hardware and differed in terms of demand and supply substitution, it could be defined as a separate and singular market from game hardware under game playing tools.

[39] The Board's Activision Blizzard Decision dated 13.07.2023 and numbered 23-31/592-202.

MOROĞLU ARSEVEN

- Hardware Gaming in the Gaming Hardware Segment:

  The assessments to be made for gaming hardware within the scope of the file were carried out by taking into account the hypothetical console gaming and cloud gaming markets in which the parties to the transaction operated and which were considered to be impacted by the transaction.

- Licensed Product Sales:

  It was considered that there was no need to make a precise relevant product market definition regarding the sale of licensed products related to games within the scope of the file both because the revenues of the parties from the sale of licensed products had a very low share in their total revenues and because it would not change the assessment to be made. However, the assessments to be made regarding the market for licensed product sales were made by assuming that all products were in a single market.

- Online Video Advertising:

  Accordingly, it was not deemed necessary to define a precise relevant product market for online display advertising within the scope of the case, considering both the fact that the parties' revenues from online display advertising had a very low share in their total revenues and that it would not change the assessment to be made.

The relevant geographic market was identified as "Türkiye", as the distribution, marketing, sales and pricing of the relevant products were generally similar across Türkiye. However, global markets were also taken into account, and assessments were made based on the fact that many publishers generally produce video games in a single version for worldwide distribution, there were no significant price differences between regions, the vast majority of games are released globally and can be played in more than 40 languages, digital distribution channels are not subject to cross-border restrictions and the same game publishers competed in all major regions.

As for the turnover thresholds of the parties, since the turnover thresholds were not sought for the acquired undertaking in transactions regarding the acquisition of technology undertakings, it was concluded that the transaction was subject to approval.

The activities of the parties to the transaction overlapped horizontally in terms of the "Game Development and Publishing", "Game Distribution", "Licensed Product Sales" and "Online Video Advertising" markets, and vertically in terms of the "Console Hardware and Cloud Gaming" and "Game Distribution" markets.

As a result of the examination and evaluations made within the framework of the information available in the file, it was concluded that the transaction subject to the notification would not significantly reduce effective competition and that the transaction would be approved.

Decision Type
Merger-Acquisition.

Market
Social networking services, online advertising services, data licensing services.

Notified by
Initiated ex officio by the Board.

Transaction(s)
Regulatory review of the transaction for the acquisition of sole control of Twitter Inc. by Elon R. MUSK.

Board Decision and Sanctions
The transaction regarding the acquisition of the sole control of Twitter Inc. by Elon R. MUSK was approved since there was no significant decrease in effective competition. However, it was decided to impose an administrative fine on Elon R. MUSK at the rate of one thousandth of his net sales revenues generated in Türkiye for the year 2022 since the transaction had been carried out without the approval of the Board.

Twitter Decision[40]

Unofficial announcements started to be made on 14 April 2022 regarding the acquisition of Twitter Inc. (“**Twitter**”), and, subsequently, it was understood that the transaction had been completed on 27 October 2022 due to published announcements and news.

Accordingly, information and documents were requested regarding the completion of the Mergers and Acquisitions Notification Form and its Annexes, as well as explanations for not notifying the transaction to the Board. The response letter and documents regarding the requested information and documents were submitted to the Board.

It was determined that Elon R. MUSK's worldwide turnover in the fiscal year 2021 exceeded TRY 3 billion. Therefore, since the turnover threshold of TRY 250 million was not required for the acquired undertaking in transactions regarding the acquisition of technology undertakings, and, since the world turnover of at least one of the transaction parties exceeded the threshold stipulated in the relevant article, it was concluded that the transaction was subject to the Board's approval.

As a result of the examination of the fields of activity of the parties to the transaction subject to the file, it was concluded that there were no horizontal or vertical overlaps between the activities of the parties on a global scale and in Türkiye.

The closing of the transaction took place after both the publication and the effective date of the relevant communiqué. Therefore, it was concluded that the transaction subject to the file had not been notified even though it was subject to approval, and, therefore, an administrative fine should be imposed on Elon R. MUSK as the transferee.

The transaction was approved, since it could not significantly decrease effective competition, and an administrative fine was imposed on Elon R. MUSK, the acquirer, at the rate of one-thousandth of their net sales revenue obtained in Türkiye for the year 2022.

[40] The Board’s Twitter Decision dated 02.03.2023 and numbered 23-12/197-66.

Photomath Decision[41]

Decision Type
Merger-Acquisition.

Market
Online homework and study help ("**HSH**") tools, android app store services.

Transaction(s)
The acquisition of sole control of Photomath Inc. by Google LLC.

Board Decision and Sanctions
The acquisition of sole control of Photomath Inc. by Google LLC was approved as there was no significant decrease in effective competition.

The notification requested approval for the acquisition by Google LLC ("**Google**") of sole control of Photomath Inc ("**Photomath**"), a provider of online HSH tools.

Photomath was an undertaking incorporated in California, USA in December 2014 that operated only in the online HSH tools market in Türkiye.

Whereas, as part of its general search services, Google offered Google Search on the internet through its website and on smart mobile devices through the Google Search App. Google also operated in the online HSH tools market through Socratic and Google Search.

The activities of Google and Photomath were considered to overlap horizontally in the "online HSC tools market for mathematics" (online HSC tools) in Türkiye. Google's activities in the "search services" and "Android app store services" markets and Photomath's activities in the online HSH tools market also overlapped vertically. However, the market shares to be realized after the transaction were quite low, the transaction would not increase the level of concentration in any relevant product market in Türkiye, and effective competition would not be significantly decreased after the transaction. The transaction was therefore approved.

[41] The Board's Photomath Decision dated 28.04.2023 and numbered 23-19/354-121.

MOROĞLU ARSEVEN

Alleghany Corporation Decision[42]

Decision Type
Merger-Acquisition.

Market
Non-life reinsurance market.

Transaction(s)
Indirect acquisition of Alleghany Corporation ("**Alleghany**") by Berkshire Hathaway Inc ("**Berkshire**").

Board Decision and Sanctions
The indirect acquisition of Alleghany by Berkshire was approved as there was no significant lessening of effective competition as a result of the transaction.

The application requested approval for the indirect acquisition of Alleghany by Berkshire.

Berkshire operated in the non-life reinsurance market through its subsidiaries Berkshire Hathaway Reinsurance Group and General Reinsurance AG. Berkshire's turnover from non-life reinsurance activities in the Turkish market consisted of sales through brokers and direct sales. Alleghany managed an investment business in property and casualty reinsurance and insurance, and it supported its subsidiaries operating in these areas.

Considering the parties' activities in Türkiye, it is understood that there was a horizontal overlap between Berkshire and Alleghany's activities in the non-life reinsurance market. However, the Board concluded that there was no horizontal overlap between the parties in terms of their activities falling within the scope of technology undertakings. Within the scope of technology undertaking activities, it was also assessed that there was no vertical overlap between the parties in Türkiye.

In this framework, it was assessed that the total market share of the parties after the transaction would remain below the relevant value in terms of premium revenue.

It was also understood that there would not be significant concentration in the global market if the notified transaction was realized. As a result, it was concluded that the transaction subject to the notification would not result in a significant decrease in effective competition in the market, and the transaction was approved.

[31] The Board's Ferrero Fındık Decision dated 07.03.2024 and numbered 24-12/213-87.

MOROĞLU ARSEVEN

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Acquisition of some shares of Hızlıpara Ödeme Hizmetleri and Elektronik Para A.Ş. (“**Hızlıpara**”) through a capital increase by venture capital investment funds established and managed by Re-Pie Portföy Yönetimi A.Ş. (“**Re-Pie**”).

Board Decision and Sanctions
The acquisition of some of the shares of Hızlıpara by venture capital investment funds established and managed by Re-Pie through a capital increase was approved since there was no significant decrease in effective competition.

Hızlı Para Decision[43]

The notification requested approval for the acquisition of shares of Hızlıpara through a capital increase by venture capital investment funds established and managed by Re-Pie.

Since there was a marriage relationship between Mahmut Savaş and Müge Selin Savaş, it was evaluated that the shareholders in question could be considered as the economic entity of the Savaş family; in this respect, Hızlıpara was under the sole control of the Savaş family prior to the planned transaction.

The Savaş family, through its controlled undertakings, operated in the fields of logistics services, foreign exchange office operations, precious metals mining and payment services. When the activities of Hızlıpara, the Savaş family, Re-Pie and the undertakings controlled by Re-Pie were analyzed, it was assessed that there was no horizontal and/or vertical overlap between the activities of the joint venture and the acquirer undertaking, and the activities of the main undertakings that would have joint control.

Consequently, it was concluded that the transaction would not significantly decrease effective competition in any goods or services market in the whole or part of the country, in particular by creating a dominant position or strengthening an existing dominant position, and the acquisition was approved.

[43] The Board’s Hızlı Para Decision dated 08.12.2022 and numbered 22-54/842-347

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Acquisition of Stellantis Otomotiv Pazarlama AŞ. (“**Stellantis**”) by TOFAŞ Türk Otomobil A.Ş. (“**Tofaş**”).

Board Decision and Sanctions
The transaction regarding the acquisition of Stellantis Otomotiv Pazarlama A.Ş. by TOFAŞ Türk Otomobil A.Ş. was not approved on the grounds that the commitments were not sufficient to allow the transaction.

Tofaş & Stellantis Decision[44]

The Board found that the commitments for the acquisition of Stellantis N.V. by Tofaş, which is jointly controlled by Stellantis and Koç Holding A.Ş. ("**Koç Holding**"), were found to be insufficient.

During the application process, as a result of the preliminary review held on November 23, 2023 in accordance with Article 10 of the Competition Law, the relevant transaction was taken to the final review. Although Stellantis and Koç Holding made certain commitments to address competition concerns in the transaction regarding the acquisition through Tofaş, the Board decided that these commitments were not sufficient to approve the transaction.

[44] The Board's Tofaş & Stellantis Announcement of the Board dated 24.10.2024 and numbered 24-43/1027-M

Monrol & Curium Final Review Decision[45]

The notification for the acquisition of the sole control of Eczacıbaşı Monrol by Curium was taken for final examination by the Board. It should be noted that pursuant to Article 7 of the Competition Law, mergers and acquisitions are suspended and cannot be implemented until the final decision. However, the fact that it is subject to final review does not mean that the transaction will not be approved.

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Acquisition of sole control of Eczacıbaşı Monrol Nükleer Ürünler Sanayi ve Ticaret A.Ş (“**Eczacıbaşı Monrol**”) by Curium International Trading B.V (“**Curium**”).

Board Decision and Sanctions
The notification for the acquisition of sole control of Eczacıbaşı Monrol by Curium was taken for final review by the Board.

[45] The Board's Board's Monrol & Curium Announcement dated 25.07.2024 and numbered 24-31/729-M

MOROĞLU ARSEVEN

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Acquisition of sole control of of OYAK Çimento Fabrikaları AŞ ("**OYAK**") by Taiwan Cement Corporation ("**TCC**") through the transfer of shares to TCC Amsterdam Holdings B.V. ("**TCC Amsterdam**").

Board Decision and Sanctions
It was decided that the transaction subject to notification was subject to approval and It was decided to approve the transaction because there was no significant reduction of effective competition as a result of the transaction.

Taiwan Cement Corporation Decision[46]

In the notification ,approval of the acquisition of the sole control of by TCC through the transfer of shares to TCC Amsterdam was requested.Within the scope of the notification, it was concluded that the transaction subject to the file would not result in a significant reduction of effective competition, especially the creation or strengthening of a dominant position in any market in Türkiye.

According to the scope of the file, the Board decided to approve the transaction because there was no significant reduction of effective competition as a result of the transaction.

[46] The Board's Taiwan Cement Corporation Decision No. 24-05/90-38 dated 18.01.2024

Şenpiliç ve Yemsel Decision[47]

In the notification, approval of the acquisition of all of the shares of Yemsel Tavukçuluk Hayvancılık Yem Hammaddeleri Sanayi ve Ticaret AŞ by Şenpiliç Gıda Sanayi AŞ.

Although Şenpiliç was the undertaking with the highest market share in the chicken meat market where there was horizontal overlap in terms of the transaction subject to the file, it was stated that the market share of Yemsel, which was the subject of the acqusition, was low enough not to cause competition concerns, and that the increase in Şenpiliç's market share as a result of the transaction would be limited considering the market shares of many competing players operating in the market.

In terms of vertical overlap, it was determined that there were many players in the chicken feed market and ready-to-eat food market, and that the negligible market share of Yemsel in the chicken meat market, would not create a result that would strengthen the existing vertically integrated structure of Şenpiliç, would not cause an input or customer restriction in terms of these markets, and would not create a competitive concern in these markets.

According to the scope of the notification, the transaction subject to notification was subject to approval and the Board decided to approve the transaction because there was no significant reduction of effective competition as a result of the transaction.

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Acquisition of all shares of Yemsel Tavukçuluk Hayvancılık Yem Hammaddeleri San. ve Tic. AŞ's ("**Yemsel**") by Şenpiliç Gıda Sanayi AŞ ("**Şenpiliç**").

Board Decision and Sanctions
It was decided that the transaction subject to notification was subject to approval; the Board decided to approve the transaction because there was no significant reduction of effective competition as a result of the transaction.

[47] The Board's Şenpiliç and Yemsel Decision dated 05.05.2023 and numbered 23-20/401-136

MOROĞLU ARSEVEN

Decision Type
Merger-Acquisition.

Market
Not defined.

Transaction(s)
Establishment of a full-functional joint venture by TotalEnergies Marketing Services ("**TEMS**") and The Hydrogen Company ("**H2C**").

Board Decision and Sanctions
It was decided that the transaction subject to notification was subject to approval and the transaction was approved due to the fact that there was no significant reduction of effective competition as a result of the transaction.

TotalEnergies and The Hydrogen Company Decision[48]

The notification requested approval for the establishment of a fully functional joint venture by TEMS and H2C.

Within the scope of the notification, it was stated that the joint venture had no plans to operate in Türkiye. As a result of the evaluations, it was concluded that the transaction would not result in a significant reduction of effective competition.

According to the scope of the file, the transaction subject to notification was subject to permission and the Board decided to approve the transaction because there was no significant reduction of effective competition as a result of the transaction.

[48] The Board's TotalEnergies and The Hydrogen Company Decision dated 11.01.2024 and numbered 24-03/52-15

MOROĞLU ARSEVEN

2.1.4. New Investigations Initiated

The Board initiated several new investigations in 2023-2024. The following is a selection of notable investigations recently launched by the Board.

Undertakings	Allegation
17 Construction Chemicals Producers: • Akkim Kimya San. ve Tic. A.Ş. • BASF Türk Kimya San. ve Tic. Ltd. Şti. • Chryso-Kat Katkı Malzemeleri San. ve Tic. A.Ş. • Egecrete Yapı Kimyasalları A.Ş. • Ekan Kimya San. ve Tic. A.Ş. • Fosroc Yapı Kimyasalları San. ve Tic. A.Ş. • İksa Beton ve Yapı Kimyasalları San. ve Tic. A.Ş. • Kalekim Lyksor Kimya San. A.Ş. • Kordsa Teknik Tekstil A.Ş. • Mapei Yapı Kimyasalları İnş. San. ve Tic. A.Ş. • Master Builders Solutions Yapı Kimyasalları San. ve Tic. Ltd. Şti . • Polisan Yapıkim Yapı Kimyasalları Sanayi A.Ş. • Polipropilen Elyaf San. ve Dış Tic. A.Ş. • Sika Yapı Kimyasalları A.Ş. • Yapıchem Kimya Sanayi A.Ş. • Beton ve Harç Katkıları Kimyasal Katkı Maddeleri Üreticileri Derneği, • Yapı Ürünleri Üreticileri Federasyonu	Anti-competitive agreements among competitors (Article 4) Exchange of competitively sensitive information (Article 4) Resale price maintenance and imposition of regional/ customer restrictions on distributors (Article 4) Imposing territorial and customer restrictions, including the internet sales (Article 4)
• Meta Platforms Inc.	Abuse of dominant position (Article 6)
17 Ready-Mixed Concrete Producers Operating in Ankara Province: • Baştaş Hazır Beton Sanayi ve Ticaret A.Ş. • Birlik Hazır Beton ve Yapı A.Ş. • Güven Grup Hazır Beton Hafriyat İnşaat Madencilik Petrol Nakliyat Ticaret Ltd. Şti. • Kandemir Beton İnşaat Nakliyat Sanayi ve Ticaret A.Ş. • Kocalar Hazır Beton ve İnşaat Malz. Nak. Sanayi Ticaret Ltd. Şti., • Kolsan İnşaat Otomotiv Sanayi ve Ticaret A.Ş. • Limmer Beton İnşaat Sanayi ve Ticaret A.Ş. • Oyak Çimento Fabrikaları A.Ş. • Limak Çimento Sanayi ve Ticaret A.Ş. • Ozan Hazır Beton İnşaat Madencilik Nakliye Petrol Otomotiv Kuyumculuk Ticaret A.Ş. • Polat Hazır Beton ve Beton Prefabrik Yapı Elemanları Sanayi ve Ticaret A.Ş. • SUysal Beton İnşaat Nakliyat Hafriyat Sanayi ve Ticaret Ltd. Şti. • SY Ankara Hazır Beton İnşaat Nakliyat Turizm Sanayi ve Ticaret Ltd. Şti. • Votorantim Çimento Sanayi ve Ticaret A.Ş. • Yiğit Hazır Beton Sanayi ve Ticaret Ltd. Şti. • YuBet İnşaat Petrol Nakliye Gıda Sanayi ve Ticaret Ltd. Şti. • Zirve Gurup Hazır Beton İnşaat Petrol Madencilik Nakliyat Sanayi ve Ticaret A.Ş.	Anti-competitive agreements among competitors (Article 4)
• Erikli Su A.Ş. • Meşrubat Sanayi A.Ş. • Ticaret A.Ş. ve Pınar Su A.Ş. • İçecek Sanayi ve Ticaret A.Ş.	Price fixing (Article 4)

Undertakings	Allegation
• Namet Gıda Sanayi ve Ticaret A.Ş.	Resale price maintenance (Article 4)
• Duracell Satış ve Dağıtım Ltd. Şti.	Resale price maintenance and imposition of regional/customer restrictions on distributors (Article 4)
• Canon Eurasia Görüntüleme ve Ofis Sistemleri A.Ş.	Resale price maintenance (Article 4)
• Frito Lay Gıda San. ve Tic. AŞ	Conduct that complicates and excludes the activities of competitors (Articles 4 and 6)
• Türkiye Şişe ve Cam Fabrikaları AŞ ve iştiraki Şişecam Çevre Sistemleri AŞ	Conduct that complicates and excludes the activities of competitors (Articles 4 and 6)
• İntema İnşaat ve Tesisat Malzemeleri Yatırım ve Pazarlama AŞ	Resale price maintenance and imposition of regional/ customer restrictions on distributors (Article 4)
• Otoyol İşletme ve Bakım A.Ş. • ZES Dijital Ticaret A.Ş.	Anti-competitive agreements among competitors (Article 4) Abuse of dominant position (Article 6)
• Mars Entertainment Group AŞ (MARS) • Cj Enm Medya Film Yapım ve Dağıtım AŞ	Abuse of dominant position (Article 6)
• Adidas Spor Malzemeleri Satış ve Pazarlama Anonim Şirketi	Resale price maintenance (Article 4)
• Med Yapım Televizyon ve Filmcilik Anonim Şirketi • Ay Sanat Prodüksiyon ve Yapım Anonim Şirketi • MA Distribution Televizyon ve Filmcilik Anonim Şirketi • Yek Teknoloji Pazarlama Anonim Şirketi • Key Networks Holding Anonim Şirketi	Behaviors that complicate and exclude the activities of their competitors (Articles 4 and 6)
• Apple Inc. ve Apple Teknoloji ve Satış Limited Şirketi	Abuse of dominant position (Article 6)
• Biota Bitkisel İlaç Ve Kozmetik Laboratuarları AŞ • Derma Cos İlaç Medikal Ve Kozmetik Sanayii Ve İç Ticaret AŞ • Derma-Cos Kozmetik Sanayi Ticaret İthalat Ve İhracat Limited Şirketi	Resale price maintenance (Article 4) Imposition of territory and customer restrictions, including internet sales (Article 4)

2.2. Notable Decisions: Focus on RPM & Cartel Cases and the Standard of Proof

2024 was, as expected, an important year with regards to cartel cases and the standard of proof.

2.2.1. Significant RPM Cases

Decision Type
Investigation.

Market
Cosmetics and personal care products.

Complainant
Initiated ex officio by the Board.

Claim(s)
Alleged violation of Article 4 of the Competition Law by setting the resale price of resellers.

Board Decision and Sanctions
The Board decided that Article 4 of the Competition Law was violated by resale price maintenance and accordingly, the investigation was terminated through settlement procedure.

Flormar Investigation[49]

An investigation was initiated to determine whether Kosan Kozmetik Pazarlama ve Tic. AŞ ("**Flormar**") violated Article 4 of the Competition Law by determining the resale price of its resellers.

In line with the findings subject to the examination, it was concluded that Flormar, through its field employees, closely monitored the sales price of the re-sellers, contacted the sellers who sold products at a lower price than the specified price and had their prices revised, and in this respect, Flormar violated Article 4 of the Competition Law by interfering with the resale price of its buyers. In this context, Flormar requested a settlement.

Within the scope of the investigation, the existence and scope of the violation and the maximum administrative fine rate and amount stipulated in the settlement interim decision were clearly accepted by the undertaking in the settlement text sent by Flormar.

It was decided that Flormar violated Article 4 of the Competition Law by determining the sales price of its resellers, that a 25% discount will be applied to the administrative fine to be imposed on the undertaking as a result of the settlement procedure, and in this context, an administrative fine amounting to 5.430.372,68-TL was imposed on the undertaking as a result of the settlement procedure, and thus, the investigation conducted by the Board was terminated through the settlement procedure.

[49] The Board's Flormar Decision dated 30.03.2023 and numbered 23-16/284-98

Tractor Manufacturers Investigation[50]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law by certain undertakings operating in the tractor production and marketing sector.

Board Decision and Sanctions
Since Hattat Traktör Sanayi ve Ticaret AŞ ("**Hattat Traktör**") determined the resale price at the final sales points, it was decided to impose an administrative fine on Hattat Traktör.

The investigation into whether some undertakings operating in the tractor production and marketing sector violated Article 4 of the Competition Law by **(i)** fixing the resale price of dealers, **(ii)** exchanging competitively sensitive information and **(iii)** entering into agreements restricting competition, was concluded.

The Board decided that Hattat Traktör determined the resale price at the final sales points and imposed an administrative fine of TRY 20,675,810.53 and decided that there was no competitively-sensitive information exchange with respect to other undertakings party to the investigation.

The reasoned decision has not yet been published.

[50] The Board's Tractor Manufacturers Investigation dated 05.01.2023 and numbered 23-01/17-M

Eczacıbaşı Investigation[51]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law through hub-and-spoke agreements and resale price maintenance practices.

Board Decision and Sanctions
It was decided to terminate the investigation through settlement and to impose an administrative fine.

The Board initiated a full-fledged investigation against Eczacıbaşı Tüketim Ürünleri San. ve Tic. A.Ş. ("**Eczacıbaşı**") concerning a violation of Article 4 of the Competition Law by becoming a party to a hub-and-spoke cartel to coordinate the price increases of retailers, and resale price maintenance practices.

Eczacıbaşı made a settlement application accepting the existence and scope of the infringement, waiving its appeal rights and requesting the highest administrative monetary fine discount available (25%). The Board decided to impose an administrative fine of TRY 11,683,865.75 over the undertaking's annual net sales for 2021, to apply a 25% discount as a result of the settlement procedure reducing the fine to TRY 8,762,899.32, and to terminate the investigation through the conclusion of the settlement procedure.

[51] The Board's Eczacıbaşı Investigation dated 09.03.2023 and numbered 23-13/212-68.

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law through resale price maintenance practices.

Board Decision and Sanctions
The investigation was concluded through the settlement procedure, and an administrative fine was imposed.

Uludağ Investigation[52]

The Board initiated an investigation against Erbak Uludağ Pazarlama Satış ve Dağıtım A.Ş. ("**Uludağ**") on the allegation that Article 4 of the Competition Law had been violated by Uludağ being a party to the resale price determination practices.

From the documents obtained within the scope of the investigation, it was determined that the retailers who reduced their prices without Uludağ's knowledge were warned by Uludağ and then their resale prices were increased again.

Uludağ filed a settlement application acknowledging the existence and extent of the violation, waiving its rights to appeal, and requesting the highest available administrative fine reduction (25%). The

[52] The Board's Uludağ Investigation dated 05.10.2023 and numbered 23-47/897-317.

Namet Investigation[53]

An investigation was initiated against Namet Gıda Sanayi ve Ticaret A.Ş. ("**Namet**") on the allegation of violation of Article 4 of the Competition Law by being a party to the practices of fixing the resale price.

From the documents obtained within the scope of the investigation, it was determined that Namet regularly monitored retail shelf prices, sales prices that were not at the desired level were described as "broken prices" by Namet in its internal correspondence, and that retailers were contacted and intervened in prices that were not at the desired level.

Namet submitted a settlement application, acknowledging the existence and scope of the violation, waiving its right to object, and requesting the maximum available administrative fine reduction (25%). The Board decided to impose an administrative fine of 97,315,538.65 TL based on Namet's net sales revenue for 2022. After applying the 25% reduction from the settlement procedure, the fine was reduced to 72,986,653.99 TL. The investigation was concluded through the settlement procedure.

The reasoned decision has not yet been published.

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Violation of Article 4 of the Competition Law through the practice of fixing the resale price.

Board Decision and Sanctions
Termination of the investigation through settlement and imposition of administrative fines.

[53] The Board's Namet Investigation dated 28.09.2023 and numbered 23-46/869-307

Decision Type
Preliminary investigation.

Market
Not defined.

Complainant
Heybem Gıda and İhtiyaç Maddeleri Dayanıklı Tüketim Malları Pazarlama Turizm İnşaat Sanayi Ticaret Ltd. Şti.

Claim(s)
Violation of Article 4 of the Competition Law through the practice of determining the resale price.

Board Decision and Sanctions
The Board determined that no violation had occurred and therefore did not initiate an investigation.

Nuh Preliminary Investigation[54]

The Board initiated an investigation against Nuh'un Ankara Makarnası San. ve Tic A.Ş. (“**Nuh**”) for alleged violation of Article 4 of the Competition Law through resale price maintenance by its dealers and retailers.

During the examinations carried out within the scope of the investigation, it was determined that there was no information or document showing that Nuh interfered with the shelf prices in its communications with its buyers, that the price reported by the undertaking to its customers was advisory and that no intervention was made regarding the prices.

During the on-site preliminary investigations, no information or documents were found indicating that Nuh tried to convert the recommended shelf prices into fixed prices through the practice of fixing the resale price. Since there was no evidence of interference with shelf prices at points of sale in Nuh's correspondence with customers or in its internal correspondence, the examination did not cast doubt on his practices for fixing the resale price. The Board did not find a violation and decided that there was no need to initiate an investigation.

[54] The Board's Nuh Preliminary Investigation dated 03.08.2023 and numbered 23-36/681-234 .

MOROĞLU ARSEVEN

2.2.2. Significant Cartel Cases

2023 saw significant cartel cases including investigations into the retail and white-meat markets that defined hub-and-spoke infringements.

Mastercard & Visa Decision[55]

The Board decided to initiate an investigation against Mastercard Europe SA, MasterCard Europe SA Istanbul Liaison Office and Masterpass Teknoloji Hizmetleri AŞ, controlled by Mastercard Incorporated, and Visa Europe Limited, Visa Europe Services LLC and Visa Europe Services LLC Turkey Representative Office, controlled by Visa Inc. in order to determine whether they violated Articles 4 and 6 of the Competition Law through various exclusionary acts in the schema services and digital wallet services markets.

Decision Type
Preliminary Investigation.

Market
Not defined.

Claim(s)
Violation of Articles 4 and 6 of the Competition Law by excluding the activities of its competitors.

Board Decision and Sanctions
The Board decided to initiate an investigation.

[55] The Board’s Mastercard & Visa Decision dated 21.11.2024 and numbered 24-43/1015-M

Decision Type
Preliminary investigation.

Market
Tire production and distribution in the automotive industry.

Claim(s)
Allegation of violation of Articles 4 and 6 of the Competition Law by engaging in conduct that is exclusionary and restrictive to the activities of its competitors.

Board Decision
The Board decided to initiate an investigation.

Automotive Sector Decision[56]

Following the preliminary investigation to determine whether certain undertakings operating in the tire production and distribution sector in the automotive industry had violated Articles 4 and 6 of the Competition Law, the Board decided to initiate an investigation against the following undertakings: Abdulkadir Özcan Otom. Lastik. San. Tic. AŞ, Abdullah Özdoğan Ticaret Otomotiv Petrol İnşaat Makina Sanayi İthalat ve İhracat Limited Şirketi, Aydın Lastik Sat. Ser. Hiz. Ltd. Şti., Brisa Bridgestone Sabancı Lastik Sanayi ve Ticaret, Cengizler Oto Lastik Pazarlama İnş. Turizm Nakliyat Tekstil Emlak İthalat ve İhracat Sanayi Ticaret Limited Şirketi, Goodyear Lastikleri T. AŞ, Gürlas Oto Lastik San. Tic. Ltd. Şti., Hankook Lastikleri AŞ, Kardeşler Ulaşım Jant Mot. Araçlar Servis Hizmetleri Ticaret Ltd. Şti., Michelin Lastikleri Ticaret AŞ, Modül Lastik Otomotiv Ticaret Anonim Şirketi, Otomotiv Lastikleri Tevzi AŞ, Özcanlar Lastik San. ve Tic. Ltd. Şti., Pirelli Otomobil Lastikleri AŞ, Prometeon Turkey Endüstriyel ve Ticari Lastikler AŞ, Prolas Otom. Nak. Hırdavat San. ve Tic. Ltd. Şti., and Tatko Lastik Sanayi ve Ticaret AŞ.

[56] The Board's Automotive Sector Announcement dated 21.11.2024 and numbered 24-49/1091-M.

MOROĞLU ARSEVEN

Film Production Companies Decision[57]

Decision Type
Preliminary Investigation.

Market
Not defined.

Claim(s)
Allegation of violation of Articles 4 and 6 of the Competition Law by engaging in conduct that is exclusionary and restrictive to the activities of its competitors.

Board Decision
The Board decided to initiate an investigation.

The Board decided to initiate an investigation to determine whether Med Yapım Televizyon ve Filmcilik Anonim Şirketi, Ay Sanat Prodüksiyon ve Yapım Anonim Şirketi and MA Distribution Televizyon ve Filmcilik Anonim Şirketi violated the Competition Law in relation to the actions of Med Yapım Televizyon ve Filmcilik Anonim Şirketi, Ay Sanat Prodüksiyon ve Yapım Anonim Şirketi and MA Distribution Televizyon ve Filmcilik Anonim Şirketi regarding the distribution of domestic TV series abroad, the actions of Med Yapım Televizyon ve Filmcilik Anonim Şirketi and Ay Sanat Prodüksiyon ve Yapım Anonim Şirketi restricting competition in labor markets, and the actions of Yek Teknoloji Pazarlama Anonim Şirketi and Key Networks Holding Anonim Şirketi excluding their competitors.

[57] The Board's Film Production Companies Announcement dated 24.10.2024 and numbered 24-40/956-M(1-3) (Reasoned decision has not been published).

MOROĞLU ARSEVEN

Association of Architects & Engineers Investigation[58]

Decision Type
Investigation.

Market
Electrical engineering services.

Complainant
Confidentiality request.

Claim(s)
Violation of Article 4 of the Competition Law through hub-and-spoke agreements and determination of minimum project prices.

Board Decision
It was decided to terminate the investigation through settlement and to impose an administrative fine.

The Board initiated a full-fledged investigation against a group of electrical engineers who were members of the Türk Mühendis ve Mimar Odaları Birliği Elektrik Mühendisleri Odası Alanya İlçe Temsilciliği ("**EMO Alanya**") based on an allegation that Article 4 of the Competition Law had been violated through hub-and-spoke agreements and determination of minimum project prices.

The Board considered that the action in question fell within the scope of the definition of a cartel, as hub-and-spoke agreements are prohibited anti-competitive agreements.

Based on the documents obtained during the on-site inspection, it was ascertained that a group of electrical engineers operating within EMO Alanya had drafted a protocol via a WhatsApp group they had established and had communicated their intent to implement this protocol. The WhatsApp group members had agreed among themselves to set a minimum project wage and put it under a protocol and to try to determine deterrent methods for those who did not comply with the protocol.

From the information and documents obtained within the scope of the file it was concluded that the group had determined the minimum project prices by agreeing among themselves through the WhatsApp group, and that the correspondence was an agreement between the group among themselves rather than a decision of the union of undertakings.

In the full-fledged investigation, a settlement text was submitted to the Board by the group of electrical engineers together with a settlement request. Within the framework of the settlement texts submitted, the existence and scope of the violation in terms of Article 4 of the Competition Law and the maximum administrative fine rate and amount foreseen for the conduct of the relevant parties to determine the minimum price by agreement between them were expressly accepted by the undertakings. Accordingly, the Board accepted the settlement proposal and decided to grant a reduction of 25% to all the five investigated undertakings, which was the highest applicable discount rate. As a result of the Board's final decision, due to the violation of Article 4 of the Competition Law, the Board imposed administrative monetary fines amounting to:

1. TRY 8,238.17 on Tunahan Solakoğlu.
2. TRY 20,515.48 on Alanya Sistem Mühendislik Elektrik Proje Taahhüt İnşaat Turizm ve Sanayi Ltd. Şti.
3. TRY 123.13 on Fatih Akçocuk.
4. TRY 371.15 on Ahmet Batuhan Burakçın.
5. TRY 55.60 on Mustafa Yetgin.
6. TRY 288.53 on Murat Fevzi Yıldız.
7. TRY 24.60 on Selman Şahin.
8. TRY 70.20 on Tuncay Bilsay Ergün.
9. TRY 307.19 on Emre Taşçı.
10. TRY 2,799.49 on Hakan Pekuygun.

[59] The Board's Association of Architects & Engineers Investigation dated 05.01.2023 and numbered 23-01/25-11.

Decision Type
Investigation.

Market
Animal feed market.

Complainant
Ticaret Bakanlığı Tüketicinin Korunması ve Piyasa Gözetimi Genel Müdürlüğü.

Claim(s)
Allegation of engaging in anti-competitive agreements/concerted practices.

Board Decision and Sanctions
It was decided that Article 4 of the Competition Law had been violated through concerted practices and an administrative fine was imposed.

Animal Feed Companies Investigation[59]

The Board initiated a full-fledged investigation against seven undertakings operating in the animal feed market for allegedly violating the Competition Law by engaging in an agreement/concerted practice to determine animal feed prices: Abalıoğlu Yem Sanayi A.Ş. (“**Abalıoğlu**”), C.P. Standart Gıda ve Ticaret A.Ş. (“**C.P.**”), Matlı Yem Sanayi ve Ticaret A.Ş. (“**Matlı**”), Rtm Tarım Kimya San. ve Tic. A.Ş. (“**RTM**”), Erişler Yem San. ve Tic. A.Ş. (“**Erişler**”), E.R. Yem Gıda Tarım Ürünleri San. Tic. Ltd. Şti. (“**E.R.**”) and Gürsoy Yem Gıda ve Hayvancılık San. ve Tic. A.Ş. (“**Gürsoy Yem**”).

The Board found that, in the light of the information and findings obtained within the scope of the investigation, Abalıoğlu, C.P., Matlı and Erişler, which were active in the feed market, had violated Article 4 of the Competition Law through a concerted practice/agreement on communication to exchange competitively sensitive information and eliminate strategic uncertainty.

However, during the on-site inspections conducted within the scope of the investigation, it was observed by the Board that the participants operating in the sector closely monitored the price lists of competitors and that the undertakings took these price lists into consideration when preparing their own price lists. Based on the fact that it was common practice to evaluate market conditions by following the information of competitors from publicly available sources, it was concluded that RTM, Ödemiş and Toros could not be charged with violation since no determination could be made to show that there was an exchange of competitively-sensitive information, and, therefore, the information and documents were not sufficient to prove that the undertakings had violated Article 4 of the Competition Law.

As a result, based on the on-site inspections and the information and documents obtained from the case file, it was concluded that Abalıoğlu, C.P., Matlı, and Erişler had entered into an agreement to fix animal feed prices. However, the Board decided that there was no need to impose administrative fines on Gürsoy Yem, E.R., and RTM, as no evidence was found regarding the existence of concerted practices. In its final decision, the Board imposed administrative fines as follows for violations of Article 4 of the Competition Law:

1. TRY 40,516,029.59 on Abalıoğlu.
2. TRY 44,780,758.04 on C.P.
3. TRY 58,392,233.77 on Matlı.
4. TRY 15,702,799.53 on Erişler.

[59] The Board’s Animal Feed Companies Investigation dated 25.04.2022 and numbered 22-19/310-135.

Biopharma & Transorient & Tunaset Investigation[60]

Decision Type
Investigation.

Market
Biopharma products.

Complainant
Biopharma Logistics Uluslararası Taşımacılık Sanayi ve Ticaret Anonim Şirketi. (“**Biopharma**”)

Claim(s)
Violation of Article 4 of the Competition Law through customer allocation and market sharing.

Board Decision and Sanctions
It was determined that Article 4 of the Competition Law was violated through customer/market sharing agreements and an administrative fine was imposed.

Biopharma applied for the active cooperation process, and the Board initiated an investigation against Biopharma, Transorient International Transportation and Trade Inc. ("**Transorient**"), and Tunaset Biofarma Logistics Services Inc. ("**Tunaset**") based on the claims that they violated Article 4 of the Competition Law by signing customer allocation agreements and establishing indefinite non-compete obligations for shared customers.

It was determined that there was no buyer-supplier relationship between the parties to the agreement and that the alleged competition violation was not related to any merger or acquisition transaction. Therefore, no evidence was found in the file to indicate a non-compete obligation within the scope of ancillary restraints.

In assessing whether customer allocation agreements constituted a violation, it was emphasized that the bargaining power of the customers involved in the allocation was irrelevant; the mere fact that the parties allocated customers was sufficient to establish the infringement.

As a result, it was concluded that Transorient, Tunaset, and Biopharma violated Article 4 of the Competition Law through customer allocation agreements. The Board, by majority vote, decided to impose administrative fines as follows due to the violation of Articles 4 of the Competition Law.

1. TRY 2,918,622.95 on Transorient.
2. TRY 242,136.45 on Tunaset.
3. The Board did not impose an administrative monetary fine on Biopharma due to the Regulation on Active Cooperation.

[60] The Board's Biopharma & Transorient & Tunaset Investigation dated 26.05.2022 and numbered 22-24/390-161.

MOROĞLU ARSEVEN

Egg Production Decision[61]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
Claims that undertakings operating in the egg production sector violated Article 4 of the Competition Law by engaging in various anti-competitive practices.

Board Decision and Sanctions
Administrative fines were imposed on undertakings found to have violated Article 4 of the Competition Law.

Within the scope of the case, it was determined that the parties to the investigation, consisting of competitor undertakings engaged in the production and sale of eggs, had entered into an agreement aimed at price-fixing, regional allocation, and harmonization of commercial policies in their relations with chain markets.

As a result of the evaluations conducted based on the findings obtained during the investigation, administrative fines were imposed on certain undertakings. However, for some undertakings, no findings were found indicating a violation of the Competition Law, and it was decided that there was no ground to impose administrative fines on them.

[61] The Board's Egg Production Decision dated 26.10.2023 and numbered 23-50/979-356

Danone and Nestle Decision[62]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim that the undertakings under investigation violated Article 4 of the Competition Law by exchanging competitively sensitive information.

Board Decision and Sanctions
The Board determined that Nestle Türkiye Gıda Sanayi A.Ş. ("**Nestle**") had violated Article 4 of the Competition Law and decided to impose an administrative fine accordingly.

An investigation was initiated into claims that Danone Tikveşli Gıda ve İçecek San. ve Tic. AŞ ("**Danone**") and Nestle violated Article 4 of the Competition Law by exchanging competitively sensitive information.

Based on the findings identified in the case, it was determined that Nestlé shared non-public, future price lists, price information, return, discount, and payment terms, while no evidence was found indicating that Danone committed any violations.

It was concluded that Nestlé violated Article 4 of the Competition Law, and that the actions deemed as violations did not meet the exemption conditions outlined in Article 5 of the Competition Law. Therefore, an administrative fine of 260,183,629.08 TL was imposed on Nestlé. Additionally, no evidence was found that Danone violated the Competition Law, and consequently, no administrative fine was imposed on the relevant company.

[62] The Board's Danone and Nestle Decision dated 28.12.2023 and numbered 23-61/1205-429

2.2.2.1. Retail Investigations

Retail I and Retail II Decisions[63]

The Board had initiated an investigation regarding the pricing behavior during the COVID-19 pandemic of certain chain stores operating in the retail of food and hygiene products, as well as undertakings operating as suppliers at the producer and wholesale levels ("**Retail I**").

The Board unanimously decided that the investigated chain stores, Yeni Mağazacılık A.Ş. ("**A101**"), BİM Birleşik Mağazalar A.Ş. ("**BİM**"), CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş. ("**Carrefour**"), Şok Marketler Tic. A.Ş. ("**ŞOK**") and Migros Tic. A.Ş. ("**Migros**"), as well as 15 investigated suppliers, had violated the Article 4 of the Competition Law through hub-and-spoke practices and exchanged competitively sensitive information on future prices, price change dates, seasonal activities and special offers through their common suppliers.

The Retail II decision ("**Retail II**") is important as it (**i**) defines hub-and-spoke as a cartel (whereas in the Board's previous decisions it was deemed to be part of "other violation") and (**ii**) determines the criteria for hub-and-spoke violations together with the required burden of proof.

Decision Type
Investigation.

Market
Production/supply of cleaning/hygiene products, food products, retail sale of cleaning/hygiene products and retail sale of food products.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim of engaging in behavior that restricts competition.

Board Decision and Sanctions
It was decided that certain undertakings had violated Article 4 of the Competition Law through hub-and-spoke agreements and resale price maintenance practices, and administrative fines were imposed on the relevant undertakings.

[63] The Board's Retail I Decision dated 28.10.2021 and numbered 21-53/747-360, and Retail II Decision dated 15.12.2022 and numbered 22-55/863-357

In this regard, the following must be present for a hub-and-spoke infringement violation determination by the Board:

- Spoke A (in this case the chain store) conveyed competitively sensitive information to the hub B (in this case the supplier) with the aim of affecting the strategic decisions of a competitor, spoke C.
- The hub B then in fact conveyed the competitively sensitive information to the competitor, spoke C (as intended by spoke A).
- Spoke C in fact used the relevant information knowing that the strategic information belonged to its competitor spoke A.

In addition, the hub must have **(i)** established the conditions of the anti-competitive agreement among the spokes separately, **(ii)** coordinated the concurrences of wills or the common understanding among the spokes, and **(iii)** made certain that all the spokes complied with the anti-competitive agreement.

Based on these grounds set out in the Board's Retail I decision, the Board started Retail II by including some other suppliers in relation to the evidence inspected in Retail I investigation.

The Board stated that, in terms of the standard of proof, as the level of detail in the evidence pointing to the coordination between retail undertakings through suppliers increases, the reliability of this indication or evidence will also increase. The subject of and parties to the communication were clearly understood from the documents obtained within the scope of the file, and it was concluded that the documents met the standard of proof in relation to resale price maintenance.

Based on the hub-and-spoke violaton criteria set out in the Retail I investigation, the Board decided that there was a violation of Article 4 of the Competition Law through agreements or concerted practices in the nature of a hub-and-spoke cartel for the purpose of determining retail sales prices by ensuring and maintaining coordination between the retailers regarding sales prices and price increases, and by mediating the sharing of competitively sensitive information such as the retailers' future prices and price increase dates within this framework. The suppliers were jointly and equally liable with the retailers for this violation.

As a result, the Board imposed administrative monetary fines against 12 suppliers for hub-and-spoke infringement and against 10 suppliers for resale price maintenance violation. As A101, BIM, Carrefour, ŞOK and Migros were initially fined in the Retail I Investigation, under the "*ne bis in idem*" principle, the Board decided not to impose a new administrative fine on these chain stores.

2.2.2.2. Human Resources Investigations

Private Schools Investigation[64]

An investigation was initiated to determine whether private schools operating in Kocaeli had violated Article 4 of the Competition Law.

The investigation process resulted in a settlement in terms of eighteen undertakings, and it was decided that Doğa Koleji violated Article 4 of the Competition Law regarding the non-solicitation of employees in the labor markets and wage-fixing, and an administrative fine of TL 591,347.22 was imposed.

The reasoned decision has not yet been published.

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim that Article 4 of the Competition was violated through non-solicitation and wage-fixing.

Board Decision and Sanctions
It was decided to impose an administrative fine on Arı İnovasyon ve Bilim Eğitim Hizmetleri AŞ ("**Doğa Koleji**")

[64] The Board's Private Schools Investigation dated 23.11.2023 and numbered 23-54/1061-M

MOROĞLU ARSEVEN

Pharmaceutical Industry Investigation[65]

An investigation was initiated by the Board into the undertakings operating in the pharmaceutical sector as to whether they violated Article 4 of the Competition Law due to the gentlemen's agreements they made with competitors in the market not to hire each other's employees in the labor market.

Within the scope of the investigation, a settlement application was made by Bilim and Drogsan. As a result of the settlement application, the Board decided to impose an administrative fine of TRY 30,593,234.79 on Drogsan and TRY 155,488,332.29 on Bilim on the grounds that the relevant undertakings entered into a gentleman's agreement with their competitors in the labor market and violated Article 4 of the Competition Law.

The reasoned decision has not yet been published.

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim that some undertakings operating in the pharmaceutical sector violated Article 4 of the Competition Law.

Board Decision and Sanctions
In respect of Bilim İlaç Sanayii ve Ticaret AŞ ("**Bilim**") and Drogsan İlaçları Sanayi ve Ticaret AŞ ("**Drogsan**"), it was decided to end the investigation with settlement and to impose an administrative fine on the related undertakings.

[65] The Board's Pharmaceutical Sector Investigation dated 21.02.2024 and numbered 24-09/165-M

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim that the determination of school registration fees and wages of Turkish teachers violated Article 4 of the Competition Law.

Board Decision and Sanctions
It was decided to impose administrative fines on the French high schools for violating Article 4 of the Competition Law.

Investigation of French High Schools[66]

An investigation was initiated against some French private educational institutions (Private Istanbul Saint-Joseph French High School, Private Istanbul Saint Benoît French High School, Private Istanbul Notre-Dame de Sion French High School, Private Istanbul Saint-Michel French High School, Private Istanbul Sainte Pulchérie French High School) for violating Article 4 of the Competition Law.

The Board considered that the undertakings that were parties to the investigation violated Article 4 of Law No. 4054 by **(i)** determining the school registration fees and the factors that make up the fee, and **(ii)** determining the wages of Turkish teachers, and decided to impose an administrative fine on the net sales revenues of the relevant undertakings for 2023.

The reasoned decision has not yet been published.

[66] The Board's French Highschool Investigation dated 10.11.2022 and numbered 22-51/776-M

Decision Type
Investigation.

Claim(s)
The claim of engaging in anti-competitive agreements through non-solicitation and/or wage-fixing agreements with the aim of restricting competition in the labor market.

Board Decision and Sanctions
The Board decided to impose administrative monetary fines on 8 undertakings. 12 investigated undertakings were not imposed with administrative fine.

Labor Force Investigation Dated 2022

The Board initiated investigation into 20 undertakings, most of which operate in the technology sector, on the grounds that these companies concluded non-solicitation and/or wage-fixing agreements to restrict competition in the labor market.

It was unanimously decided that eight undertakings **(i)** concluded agreements to prevent each other's employees from being poached and to restrict employee mobility, and **(ii)** executed agreements to fix salaries, artificially depriving wages of their true value, which constituted a violation of Article 4 of the Competition Law.

The Board further stated that these actions could not benefit from the individual exemption provided under Article 5 of the Competition Law.

As a result, the Board, with different justifications presented by Board Members Hasan Hüseyin ÜNLÜ and Berat UZUN, decided unanimously to impose an administrative fine of 90,240,001.37 TL. The fines imposed on each undertaking are as follows:

1. TRY 724,877.82 on Egem Bilgi İletişim Ticaret A.Ş.
2. TRY 4,115,386.43 on Etiya Bilgi Teknolojileri Yazılım Sanayi ve Ticaret A.Ş.
3. TRY 11,428,409.23 on Innova Bilişim Çözümleri A.Ş.
4. TRY 3,824,079.86 on i2i Bilişim Danışmanlık Teknoloji Hiz. ve Paz. Tic. A.Ş.
5. TRY 1,619,63.42 on Pia Bilişim Hizmetleri A.Ş.
6. TRY 7,441,079.06 on Ericsson Telekomünikasyon A.Ş.
7. TRY 5,243,243.58 on Netaş Telekomünikasyon A.Ş.
8. TRY 57,300,961.97 on Turkcell İletişim Hizmetleri A.Ş.

It was decided that no administrative fine should be imposed on the following 12 undertakings since no evidence of violation was found:

1. Akgün Yazılım Pazarlama ve Tic. Ltd. Şti. Anadolu Restoran İşletmeleri Ltd. Şti.
2. Amdocs Yazılım Hizmetleri A.Ş.
3. Argela Yazılım ve Bilişim Teknolojileri San. ve Tic. A.Ş.
4. Comodo Yazılım Sanayi ve Ticaret A.Ş.
5. Fonet Bilgi Teknolojileri A.Ş.
6. Inspirit Bilgi Teknolojileri Yazılım Danışmanlık Tic. Ltd. Şti.
7. Kale Yazılım San. ve Tic. A.Ş.
8. Kalitte Profesyonel Bilgi Teknolojileri Basım ve Yayıncılık Ltd. Şti.
9. Magis Teknoloji A.Ş.
10. Netrd Bilgi Teknolojileri ve Telekomünikasyon A.Ş.
11. Vitelco Bilişim Hizmetleri Danışmanlık Ltd. Şti.
12. 4S Bilgi Teknolojileri A.Ş.

The reasoned decision has not yet been published.

Labor Force Investigation Dated 2021

Decision Type
Investigation.

Claim(s)
The claim of concluding non-solicitation and/or wage-fixing agreements.

Board Decision and Sanctions
The Board decided to impose administrative fines on 16 undertakings. 11 undertakings completed the investigation through a settlement procedure, and 21 investigated undertakings did not receive an administrative monetary fine.

The Board initiated an investigation against 32 undertakings (subsequently increased to 48), without taking into consideration the relevant markets they operated in, due to the claim that the undertakings had conducted non-solicitation and/or wage fixing agreements so as to restrict competition in the overall labor market.

It was unanimously decided that 16 undertakings had **(i)** entered into non-solicitation agreements to prevent the employment of each other's employees and to restrict the mobility of employees, and **(ii)** conducted agreements to fix wages, which artificially deprived wages of their real value, constituting a violation of Article 4 of the Competition Law. The Board then indicated that the acts in question could not benefit from individual exemption provided under Article 5 of the Competition Law.

Consequently, the Board unanimously decided (with different reasons submitted by the Board Members Hasan Hüseyin ÜNLÜ and Berat UZUN) to impose administrative monetary fines totalling TRY 151,147,901.82. The fines imposed for each company were as follows:

1. ATRY 2,159,522.60 on Arvato Lojistik Dış Ticaret ve E-Ticaret Hizmetleri A.Ş.
2. TRY 2,183,227.89 on Bilge Adam Yazılım ve Teknoloji A.Ş.,
3. TRY 49,831.55 on Binovist Bilişim Danışmanlık A.Ş.
4. TRY 517,883.20 on Çiçeksepeti İnternet Hizmetleri A.Ş.
5. TRY 4,834,124.55 on D-Market Elektronik Hizmetler ve Tic. A.Ş.
6. TRY 18,021,702.86 on Flo Mağazacılık ve Paz. A.Ş.
7. TRY 6,513,239.09 on Koçsistem Bilgi ve İletişim Hizmetleri A.Ş.
8. TRY 59,590,457.10 on LC Waikiki Mağazacılık Hizmetleri Tic. A.Ş.
9. TRY 1,094,131.66 on Sosyo Plus Bilgi Bilişim Teknolojileri Danışmanlık Hizmetleri Tic. A.Ş.
10. TRY 7,293,869.36 on TAB Gıda San. ve Tic. A.Ş.
11. TRY 41,022,658.16 on Türk Telekomünikasyon A.Ş.
12. TRY 1,116,070.57 on Veripark Yazılım A.Ş.
13. TRY 1,218,089.30 on Vivense Teknoloji Hizmetleri ve Tic. A.Ş.
14. TRY 5,319,292.25 on Vodafone Telekomünikasyon A.Ş.
15. TRY 192,973.74 on Zeplin Yazılım Sistemleri ve Bilgi Teknolojileri A.Ş.
16. TRY 20,827.94 on Zomato İnternet Hizmetleri Tic. A.Ş.

It was decided that no administrative fine should be imposed on the following 21 undertakings since no evidence of violation was found:

1. 441 29 Medya İnternet Eğitimi ve Danışmanlık Reklam Sanayi Dış Tic. A.Ş.
2. Anadolu Restoran İşletmeleri Ltd. Şti.
3. Doğuş Planet Elektronik Ticaret ve Bilişim Hizmetleri A.Ş.
4. Etiya Bilgi Teknolojileri Yazılım San. ve Tic. A.Ş.
5. Google Reklamcılık ve Paz. Ltd. Şti.
6. Grupanya İnternet Hizmetleri İletişim Organizasyon Tanıtım ve Paz. A.Ş.
7. Havas Worldwide İstanbul İletişim Hizmetleri A.Ş.
8. İş Gıda A.Ş.
9. Logo Yazılım Sanayi ve Tic. A.Ş.
10. Meal Box Yemek ve Teknoloji A.Ş.
11. Migros Tic. A.Ş.
12. Mobven Teknoloji A.Ş.
13. Mynet Medya Yayıncılık Uluslararası Elektronik Bilgilendirme ve Haberleşme Hizmetleri A.Ş.
14. Net Danışmanlık Eğitim ve Tic. Ltd. Şti.
15. Noktacom Medya İnternet Hizmetleri San. ve Tic. A.Ş.
16. NTV Radyo ve Televizyon Yayıncılığı A.Ş.
17. Peak Oyun Yazılım ve Paz. A.Ş.
18. Pizza Restaurantları A.Ş.
19. Sahibinden Bilgi Teknolojileri Paz. ve Tic. A.Ş.
20. Valensas Teknoloji Hizmetleri A.Ş.
21. Yeşil Vadi Tarım Gıda A.Ş.

The reasoned decision has not yet been published.

MOROĞLU ARSEVEN

2.2.3.Developments Regarding the Standard of Proof

An analysis of the Board's decisions regarding preliminary investigations and full-fledged investigations in recent years, and especially in the last year, reveals the importance of the standard of proof. The level of suspicion required to turn preliminary investigations into full-fledged investigations and the standard of proof required to establish the existence of a competition violation are increasingly being discussed and becoming the subject of decisions.

Cartel cases are considered to be the most serious violation under competition law and are subject to the highest penalty rate under the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices, Decisions Limiting Competition and Abuse of Dominant Position. For this reason, the standard of proof required for cartels is high, in proportion to the penalty, and the violation needs to be demonstrated with clear and concrete evidence in a way that leaves no room for doubt. In this context, several recent decisions are important in terms of developments regarding the standard of proof for cartels.

Google Court Decision[67]

Decision Type
The Court of Appeal's decision.

Market
General search services market.

Court's Decision
Dismissal of the appeal made by Google.

Board Decision and Sanctions
The Board decided to initiate an investigation.

The Board examined the claim that Google Reklamcılık ve Paz. Ltd. Şti., Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc.'s economic unity ("**Google**") had abused its dominant position in the general search services market by promoting its local search and accommodation price comparison services to the exclusion of its competitors. As Article 6 of the Competition Law had been violated, the Board imposed an administrative fine of TRY 296,084,899.49, as well as requirements to submit annual reports and providing competing local search services.

Google filed a lawsuit in relation to the fact that their application for access to all had been rejected. The Court dismissed the lawsuit on the grounds that there had been no violation by the partial rejection of the application for access to all information and documents on Google and the preliminary investigation reports. The appeal was also rejected with the appeal decision dated 10.06.2022 and numbered E:2020/962, K:2022/1522 issued by the Ankara 8th Administrative Court.

[67] Ankara Regional Administrative Court 8th Administrative Case Chamber's decision numbered 2022/1262 E and 2023/17 K.

The Saga Continues – Poultry Producers vs. White-Meat Market Decision[68]

The Board initiated an investigation concerning the Turkey Poultry Producers Association ("**TÜKEBİR**") and its affiliated unions, on the grounds that they violated Articles 4 and 6 of the Competition Law by setting breeding fees and boycotting integrators by cutting off supply to non-compliant integrators.

Following this, the Board conducted a thorough investigation and determined that, since the producer unions have the right to negotiate agreements with poultry producers, they are entitled to negotiate producer prices. Additionally, the Board assessed that the producers were not in a dominant position in the broiler chicken farming market. Therefore, the Board concluded that no violation of the Competition Law was found, and no administrative fines were imposed on the relevant undertakings.

Decision Type
Investigation.

Market
White-meat and poultry producer market.

Complainant
Initiated following the application of the White Meat Industrialists and Breeders Association ("BESDBİR") and applications requesting confidentiality.

Claim(s)
The claim of engaging in anti-competitive pricing behavior and the abuse of dominant position.

Board Decision and Sanctions
The Board made no finding of a violation and did not impose an administrative fine.

[68] The Board's Poultry Growers vs. White Meat Market Decision dated 15.06.2023 and numbered 23-27/522-178.

MOROĞLU ARSEVEN

Ophthalmic Lens Manufacturers Decision[69]

The Board initiated a preliminary investigation against EssilorLuxottica S.A., Beta Optik Sanayi ve Ticaret Ltd. Şti., Cemfa Optik San. ve Tic. A.Ş., Gelişim Optik A.Ş., Hoya Turkey Optik Lens Sanayi ve Ticaret Anonim Şirketi ve Seiko Optical Europe GmbH Merkezi Almanya İstanbul Merkez Şubesi, Merve Gözlük Camı San. ve Tic. A.Ş., Opak Lens San. ve Tic. A.Ş. and Türkiye Gözlük Sanayicileri Derneği regarding a possible violation of Article 4 of the Competition Law by determination of resale prices through information exchange between competitors.

The Board found that undertakings operating in the production and wholesale market of ophthalmic lenses communicated product price information to opticians mainly through price lists in electronic or written form. The Board concluded that the sharing of these price lists by opticians with another supplier for the purpose of negotiation to obtain more competitive commercial terms did not constitute exchanging of competitively-sensitive information.

As a result, the Board concluded that the undertakings involved in the production and wholesale of ophthalmic lenses were not engaged in any agreement with the purpose or effect of restricting competition and decided that there was no need to initiate an

Decision Type
Preliminary investigation.

Market
Manufacture and wholesale of ophthalmic lenses.

Complainant
Initiated ex officio by the Board.

Claim(s)
The claim that undertakings operating in the production and wholesale market of ophthalmic lenses violated Article 4 of the Competition Law by jointly determining prices.

Board Decision and Sanctions
It was concluded that the undertakings operating in the ophthalmic lens production and wholesale market were not in agreement with the purpose and/or effect of restricting competition.

[69] The Board's Ophthalmic Lens Manufacturers Decision dated 05.01.2023 and numbered 23-01/6-5.

Vatan Bilgisayar & Media Markt & Teknosa Decision[70]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated as a result of the application of Osman Sözen, Hulusi Genç, and applications with confidentiality requests.

Claim(s)
The claim of violating Article 4 of the Competition Law by exchanging competitively sensitive information.

Board Decision and Sanctions
It was that Article 4 of the Competition Law had not been violated by exchanging competitively sensitive information and there was no need to impose an administrative fine.

Within the scope of the investigation, the claims that Sunny Elektronik Sanayi ve Ticaret AŞ ("**Sunny**") violated Article 4 of the Competition Law by imposing an internet sales ban on its resellers, setting resale prices and mediating indirect information exchange between Media Markt Turkey Ticaret Limited Şirketi ("**Media Markt**"), Vatan Bilgisayar Sanayi ve Ticaret A.Ş. ("**Vatan**") and Teknosa İç ve Dış Ticaret A.Ş. ("**Teknosa**") were evaluated.

An examination was conducted to determine whether Mediamarkt, Vatan, and Teknosa violated Article 4 of the Competition Law through indirect information exchange via Sunny. During the investigation, Sunny's settlement request regarding the determination of resale prices was accepted by the Board, and it was concluded that Sunny's actions related to determining resale prices violated Article 4 of the Competition Law. However, no violation was found regarding Sunny's involvement in indirect information exchange, and there were insufficient findings to support the accusation of indirect information exchange against Mediamarkt, Vatan, and Teknosa.

As a result, the investigation concluded that there was insufficient evidence to determine that Mediamarkt, Vatan, and Teknosa violated Article 4 of the Competition Law, and therefore, no administrative fines were imposed on these companies.

[70] The Board's Vatan Bilgisayar & Media Markt & Teknosa Decision dated 26.10.2023 and numbered 23-50/978-355.

MOROĞLU ARSEVEN

2.3. Abuse of Dominance Cases

Decision Type
Investigation.

Market
General search services.

Complainant
- Cimri Bilgi Teknolojileri ve Sistemleri AŞ
- Unknown Complainant

Claim(s)
The claim that the related economic integrity abused its dominant position in the overall search services market through certain features on the search engine results page.

Board Decision and Sanctions
It was decided to impose administrative fines and behavioral remedies due to the violation of Article 6 of the Competition Law.

Google Decision[71]

The investigation conducted against Google Reklamcılık ve Pazarlama Ltd. Şti., Google International LLC, Google LLC, Google Ireland Limited, and Alphabet Inc. ("**Google**") examined whether Google violated competition in YouTube advertising and online advertising technology services.

The Board determined that Google had a dominant position in the demand-side platform services market, and that it used this dominance to provide an unfair advantage to its supply-side platform, and that this behavior prevented competition. Thereupon, an administrative fine of TL 2,607,563,963.59 was imposed on Google and an obligation was imposed on Google to provide equal conditions to third-party supply-side platforms within 6 months. The Board also decided that a daily fine will be imposed in case of non-fulfillment of obligations.

[71] The Board's Google Announcement dated 12.12.2024 and numbered 24-53/1180-509.

Decision Type
Investigation.

Market
Wholesale fixed broadband internet services market.

Complainant
- Vodafone Net İletişim Hizmetleri A.Ş. (“**Vodafone**”)
- Cem Kaya
- Unknown complainant
- Superonline İletişim Hizmetleri A.Ş. (“**Superonline**”)
- TurkNet İletişim Hizmetleri A.Ş. (“**Turknet**”)

Claim(s)
Alleged abuse of dominant position by preventing competitors from offering services and acquiring subscribers on unreasonable and unfair grounds.

Board Decision and Sanctions
The Board did not find any evidence of abuse of dominant position and did not impose an administrative fine.

TT Decision[72]

The Board initiated a full-fledged investigation regarding claims that Türk Telekomünikasyon A.Ş. (“**TT**”) had a dominant position in the wholesale fixed broadband internet services market and that it had prevented its competitors in the retail fixed broadband services market from providing services and acquiring subscribers for unreasonable and unfair reasons, in violation of Article 6 of the Competition Law.

The Board determined that TT was in a dominant position in the wholesale fixed broadband internet services market and subsequently assessed whether TT’s behaviour constituted an abuse of dominance.

The Board determined that refusals by TT to provide infrastructure to internet service providers (“**ISP**”) by not allocating ports to them were indirect refusals to enter into contracts, and that such behaviour could also constitute discrimination. It was therefore appropriate to assess the refusals to allocate ports as a refusal to enter into a contract, as the allegations were a natural consequence of the refusal to provide goods.

Further, the Board examined whether the following conditions for a refusal to conclude a contract to be an anticompetitive practice were present:

- The refusal had to relate to a product or service that was indispensable to allow participation in the downstream market.
- The refusal had to be likely to eliminate effective competition in the downstream market.
- The refusal had to be likely cause consumer harm.

The Board concluded that the first condition was met, since the infrastructure owned by TT was a necessary element for ISPs to provide services to end users, as it was not economically feasible to create new infrastructure as an alternative to the existing infrastructure in the short term.

However, as a result of the economic analysis, it was determined that there had been an increase, albeit limited, in the market shares of ISPs, that TT’s behavior within the scope of the file did not have a negative impact on the market shares of other ISPs, and that there was no elimination of effective competition. Therefore, the Board decided that the second condition was not met.

Finally, the Board assessed the rate at which applications to TT were concluded (in other words, the proportion of ports actually allocated to ISPs) and examined the number of cancellations of the undertakings’ applications for plain to xDSL, PSTN and xDSL in 2015–2019. The Board concluded that there was a very small difference between TT’s subsidiary TTNet A.Ş. and its closest competitor, and that the data did not indicate a significant anti-competitive closure rate in the market.

As a result of these assessments, no finding was made that TT’s behaviour within the scope of the investigation made it difficult for the activities of competing undertakings requesting ports/infrastructure and led to anti-competitive market closure, and no finding was made that TT had abused its dominant position within the scope of Article 6 of the Competition Law by refusing to conclude contracts during the period under investigation.

[72] The Board’s TT Decision dated 30.09.2021 and numbered 21-46/667-332.

Martı Decision[73]

n the complaint filed by HOP, it was alleged that Martı holds a dominant position in the relevant product market and has abused its dominant position through discriminatory actions. The Board decided that no action had to be taken under the Competition Law. As a result of the lawsuit filed by the complainant for the annulment of the Board's decision, the Board's decision, which was made without a preliminary investigation and without due process, was annulled. Subsequently, the Board decided to conduct a preliminary investigation regarding the allegation that Martı had a dominant position in the relevant product market and had violated the Competition Law by abusing its dominant position. Martı asked to submit a commitment to eliminate the competitive concerns subject to the investigation.

The main concern was whether Martı had caused anti-competitive market closure by excluding its competitors through below-cost pricing behaviour. As a result of the Board's assessment of the commitments, the Board concluded that the commitments were proportionate to the competition problems, suitable to eliminate these problems, fulfillable in a short time and effectively enforceable, taking into account the fact that the market shares were constantly and rapidly changing, since the e-scooter market was a new and still developing market.

As a result, the investigation was concluded with the acceptance of the commitments.

Decision Type
Investigation.

Market
E-scooter.

Complainant
HOP Teknoloji A.Ş. (“**HOP**”)

Claim(s)
Evaluation of the commitments submitted within the scope of the investigation against Martı İleri Teknoloji A.Ş. (“**Martı**”).

Board Decision and Sanctions
The commitments offered by Martı were accepted as they addressed the identified competition issues, and the investigation was concluded with these commitments becoming binding for the relevant undertaking.

[73] The Board’s Martı Decision dated 08.09.2022 and numbered 22-41/587-247.

Allergan Decision[74]

Decision Type
Investigation.

Market
Botulinum toxin.

Complainant
Ulusal Ecza Tıbbi Cihazlar Deposu–Uğur Gümüş ("**Ulusal Ecza Deposu**").

Claim(s)
The claim that Allergan Pharmaceuticals Inc. ("**Allergan**") abused its dominant position by not supplying its Botox-branded product to Ulusal Ecza Deposu.

Board Decision and Sanctions
The Board unanimously decided that Allergan had not violate Article 6 of the Competition Law and therefore there was no reason to impose an administrative fine.

Ulusal Ecza Deposu filed a complaint against Allergan. A preliminary investigation, which was initiated to evaluate the claims that Allergan had abused its dominant position with the Botox product, ended in 2013 without an investigation, and the matter was brought to the administrative jurisdiction by Ulusal Ecza Deposu. Following the annulment decision, the Board initiated a new investigation against Allergan to determine whether Article 6 of the Competition Law had been violated.

First of all, the Board underlined that, even if an undertaking is in a dominant position, it can independently choose the undertakings it wishes to work with. However, if the product or service provided by the undertaking becomes a necessary element for the activities of its competitors, the undertaking in the dominant position may be required to contract with them.

The Board evaluated the alleged conduct within the scope of paragraph 43 of Guidelines on the Assessment of Exclusionary Conduct by Dominant Undertakings in relation to the conditions of **(i)** indispensability, **(ii)** eliminating competition in the downstream market and **(iii)** consumer harm, and it concluded that the activities of Allergan would not lead to abuse of a dominant position at the theoretical level.

[74] The Board's Allergan Decision dated 08.09.2022 and numbered 22-41/594-248.

In line with determinations and examinations obtained from the market, the Board stated that:

- Botox products constituted a very small part in the product portfolio of pharmaceutical warehousing activities and that it was not possible to argue that Botox alone was indispensable for pharmaceutical warehousing activities.
- Botox was not essential even for the own activities of Ulusal Ecza Deposu, because Ulusal Ecza Deposu generated more revenue from the sales of Botox's substitute, Dysport, and, therefore, competition between brands would not be adversely affected.
- Since the market share of Ulusal Ecza Deposu in Botox distribution—even in the years when it reached its highest level—was quite low and was not at a level that would affect competition, it would not cause any harm to the consumer.
- When the usage purposes of Botox within the scope of reimbursement were examined, there were many pharmaceutical warehouses that distributed the relevant product. Since the product variety accessible to the consumer was not affected, consumer harm could not be seen in terms of usage purposes that were not within the scope of reimbursement.

The Board also stated that for a refusal to supply/sell behavior to be considered an abuse, three conditions must be met simultaneously, and concluded that the behavior in question did not meet any of these conditions.

Additionally, the Board evaluated the discrimination claim and noted that when comparing the average unit prices of Allergan's sales to pharmaceutical warehouses over the years, it was not possible to observe discriminatory pricing applied to Ulusal Ecza Deposu. In fact, the Board pointed out that a more competitive price was applied to Ulusal Ecza Deposu.

In conclusion, the Board determined that there were more than 40 depots distributing the Botox product at the time of the complaint, that Allergan's profit margins and price levels set for the distribution phase were subject to the price levels determined by the Turkish Medicines and Medical Devices Agency, and that there was no significant difference in the average unit price among pharmaceutical depots. Therefore, the possibility of Allergan maintaining Botox prices above a certain level was ruled out.

This decision is important as it sheds light on the conditions under which refusal to contract or supply is considered a violation and the circumstances under which a undertaking's freedom of contract is protected, providing insight into the Board's approach on this matter.

Trendyol Decision[75]

Decision Type
Investigation.

Market
E-marketplace.

Complainant
Confidentially requet.

Claim(s)
Abuse of dominant position in the market through the use of third-party sellers' data.

Board Decision and Sanctions
Due to the violation of Article 6 of the Competition Law, it was decided to impose administrative fines and behavioral remedies.

The Board initiated a full investigation to determine whether DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. ("**Trendyol**") violated Article 6 of the Competition Law.

The data obtained within the scope of the investigation revealed that Trendyol interfered with the product rankings on the platform and increased the scores of its own brands by multiplying them by coefficients, leading to higher scores for its own brands and thus promoting its own brands.

The Board unanimously decided to impose an administrative fine of TRY 61,342,847.73 against Trendyol with the determination that Trendyol was in a dominant position in the multi-category e-marketplace market and it unfairly advantaged its own retail activity by interfering with the algorithm and using the data of third-party sellers selling on the marketplace, and that these actions impeded the activities of its competitors.

Accordingly, in addition to the administrative fine imposed on Trendyol, the Board decided to impose the following obligations on Trendyol:

- Taking all necessary measures to avoid any interventions made through algorithms and coding that provide an advantage over competitors,
- Avoiding the use of any data obtained and generated from marketplace activities for private branded products related to retail activities, and taking all necessary technical, administrative, and organizational measures for this purpose,
- Storing any parametric and structural changes made to the algorithm models used for product ranking and brand filtering purposes within the marketplace for a period of three years in a correct and structured manner,
- Storing all codes related to algorithms used for product ranking and brand filtering purposes, as well as all codes affecting the algorithms used for these purposes, in a versioned and irrefutable manner for three years,
- Storing user access and authorization records, along with administrative audit records, related to all software used for carrying out business processes within the marketplace for three years in an irrefutable manner,
- Ensuring the fulfillment of the obligations listed in items a, b, c, d, and e within three months from the notification of the reasoned decision to the undertaking, and submitting an application to the Authority three months before the expiration of the three-year period regarding the extension of the obligations for another three years,
- Submitting the compliance measures prepared by the undertaking to the Authority no later than one month before the deadline granted to them, and
- Providing annual periodic reports to the Authority for a five-year period starting from the implementation of the first compliance measure.

[75] The Board's Trendyol Announcement dated 26.07.2023 and numbered 23-33/633-213

Sahibinden Decision[76]

Decision Type
Investigation.

Market
Online platform service for real estate sales/rentals.

Complainant
Marmara Motorlu Araç Satıcıları Derneği, Hasan Şaka, Rahman Bayın.

Claim(s)
Abuse of dominant position by Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret A.Ş. ("Sahibinden") in the online platform services market for real estate and vehicle sales/rentals via imposing excessive pricing.

Board Decision and Sanctions
The Board unanimously decided that Sahibinden had not violate Article 6 of the Competition Law and therefore there was no need for the imposition of an administrative fine.

A complaint was filed against Sahibinden. The preliminary investigation, which was initiated to evaluate the claims that Sahibinden abused its dominant position, ended with the initiation of an investigation in 2022.

First of all, the Board made an analysis on the prices applied by the undertakings in the market for real estate and vehicle sales services for both individual and corporate users. As a result of the analysis of the data, it was evaluated that the prices of Sahibinden were not significantly higher in terms of individual real estate and individual vehicle categories. Similarly, it was assessed that the impact of the additional fee imposed by the Sahibinden on corporate users was limited in the market and did not have a significant impact on the members.

The data obtained in the user survey conducted by the Authority within the scope of the investigation were evaluated as the decrease in the number of advertisements on the Sahibinden platform and the shift of the advertisements to other platforms, which will cause the consumer looking for real estate/vehicles to turn to other platforms, which will increase inter-platform competition in the medium-long term, and this will have a positive effect on consumer welfare:

The Board made the following evaluations in line with the findings and examinations obtained from the market:

- Sahibinden dominated the online platform service for real estate sales/rentals and vehicle sales activities of corporate members and online platform service markets for real estate sales/leasing and vehicle sales activities of individual members.

- It was determined that the difference between Sahibinden's prices and its closest competitor decreases on average, and even its competitor prices are higher from time to time.

- In terms of reflecting the price increases applied by the Sahibinden to the final consumer by the platform users, no serious effect was observed that would require intervention within the scope of competition law.

The Board stated that according to the excessive price theory, direct consumer damage must be demonstrated in order to make a finding of violation, and decided that under the current circumstances, no significant impact of Sahibinden's behavior was observed and it was determined that there was no effect that would complicate the activities of corporate members.

As a result, the Board unanimously decided that Sahibinden had a dominant position in the online platform service for real estate sales/leasing and vehicle sales activities of corporate members and the online platform service for real estate sales/leasing and vehicle sales activities of individual members, but did not violate Article 6 of the Competition Law and therefore there was no need for the imposition of administrative fines.

[76] The Board's Sahibinden Decision dated 13.07.2023 and numbered 23-31/604-204.

Mackolik Decision[77]

Decision Type
Investigation.

Market
Not defined.

Complainant
Initiated ex officio.

Claim(s)
Determination of whether Articles 4 and 6 of the Competition Law were violated.

Board Decision and Sanctions
Implementation of behavioral measures due to violation of Article 6 of the Competition Law.

The Board decided to initiate an investigation to determine whether Mackolik İnternet Hizmetleri A.Ş ("**Mackolik**") violated Articles 4 and 6 of the Competition Law.

As a result of the investigation, it was decided that temporary measures would be applied to Mackolik under Article 9 of the Competition Law. As part of these temporary measures, the Board decided to limit the advertisements displayed in the banner and pop-up ad spaces on the websites and mobile applications of Nesine, Mackolik, and Sahadan to prevent Nesine from gaining a preferential position over its competitors.

In addition, it was stated that the procedures followed by Mackolik on its websites and mobile applications should be reviewed, and it was emphasized that a transparent advertising policy should be followed and no discrimination should be made between virtual betting dealers. Within the scope of the commitments offered; Mackolik will submit a technical report to the Authority by the 10th day of each month on the operation of the algorithms that will be displayed in the advertising areas on rotation.

Mackolik will provide similar content on Nesine's platform to other virtual betting companies without giving privileges to Nesine, and will inform other betting companies in order to prevent de facto exclusivity in these areas. In addition, by clicking on the betting odds, it will be ensured that referrals to different virtual betting companies are made equally to all virtual betting companies.

The Board requested Mackolik to submit a report within 15 days on how these obligations will be fulfilled. The Board decided that Mackolik should avoid practices that would lead to de facto exclusivity by eliminating the distinction between old and new websites.

[77] The Board's Maçkolik Announcement dated 07.09.2023 and numbered 23-41/797-281 (Reasoned decision has not been published).

MOROĞLU ARSEVEN

Sahibinden S-ATS Decision[78]

Decision Type
reliminary Investigation.

Market
Online second-hand cars.

Complainant
Confidentiality request.

Claim(s)
The abuse of the dominant position in the online platform service market for vehicle sales activities of corporate/individual members by Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret A.Ş. ("**Sahibinden**") in the online second-hand vehicle buying and selling service market.

Board Decision and Sanctions
The Board unanimously decided to dismiss the complaint and not to initiate an investigation.

Sahibinden launched a service called the S-Vehicle Supply System (“**S-ATS**”) in March 2023, enabling corporate sellers to sell second-hand vehicles to corporate buyers through an auction system, in addition to the vehicle sales market for its long-standing corporate/individual members.

After the launch of the S-ATS service, a complaint was filed against Sahibinden, claiming that by using its dominant position in the online platform service market for vehicle sales, it would effectively monopolize the vehicle supply market.

An initial investigation was initiated by the Board to evaluate whether the dominant position was being leveraged. Based on the findings and investigations obtained during the preliminary investigation, the Board made the following assessments:

- It has been understood that Sahibinden uses user and advertisement information obtained within the scope of its activities in the online listing market to promote the S-ATS service and attract users, on the other hand, the relevant data is publicly viewable/public data and is used only for marketing and promotional activities.
- When the traffic received by S-ATS is compared to the traffic received by Sahibinden, it is seen that it is even smaller than some competitors for mobile applications. Accordingly, it is not possible to infer that the traffic owned by Sahibinden was directed to S-ATS.
- Sahibinden is among the smallest players in the online used car buying and selling services market in terms of the number of vehicles up for tender.

As a result, since the Board concluded that the alleged acts did not constitute a violation of competition in light of the information obtained within the scope of the file, it was decided that there was no need to initiate an investigation and to take an temporary injunction decision.

[78] The Board's Sahibinden Decision dated 07.12.2023 and numbered 23-56/1114-396.

III. SECTOR INQUIRIES

A Glimpse Into Different Industries By The Authority

3.1. Sector Inquiry on the Cement and Ready-Mixed Concrete Markets

The cement sector is the sector in which the fourth highest number of administrative fines are imposed, with a share of 4.3% of the total competition violation penalties imposed by the Board, and it is the first sector where exclusively the manufacturing industry has been considered. In this context, the Authority published the Cement Sector Inquiry Report in June 2016.

The Report initially provides a definition of cement, followed by an overview of the structure of the cement sector in Türkiye and a review of the previous decisions made by the Board. In the continuation of the report, the cement sector was subjected to a detailed economic analysis, and the relationship between efficiency and competition law in the sector was analyzed.

Cement is briefly defined in the Report as a hydraulic binding material obtained by grinding a mixture of natural limestone and clay after heating at high temperature. The Report found that there are many undertakings operating in the cement sector in Türkiye, despite the existence of sectoral and economic barriers to entry. However, the sector was determined to be characterized by oligopoly markets with a small number of firms on a geographical regional basis due to transportation and investment costs.

One of the points particularly mentioned in the Report is that cement is one of the most important cost items in the production of ready-mixed concrete, which means that many cement producers are also active in the ready-mixed concrete sector, and that vertically integrated structures in the sector are widespread and important.

As a result of detailed analyses, it has been determined that cement production creates specific regional "hinterlands" and that entry into the sector is not easy due to its economic and legal dimensions. The production efficiencies of the players in the sector have been measured, and these efficiency levels have been compared with price levels.

Within the scope of the Report, when examining the competition conditions among companies affiliated with the same undertaking, it was found that, in terms of intra-group competition, the undertakings generally shared a city/customer. It was also observed that there is no symmetry in the market share of the undertakings nationwide, with the five largest companies controlling approximately 50% of the market. The sector's growth rate is higher than the economy's growth rate, and prices have been increasing above inflation. It was noted that sales to customers, such as public institutions, non-governmental organizations, and competitor ready-mix concrete plants, were made at different and/or higher prices compared to other customer types.

This analysis reveals the existence of the competition issues highlighted in the Board's decisions from previous years. However, as was the case before, determining whether the issues arise from the competition violation claims in the complaint letters or from the rational preferences of the undertakings in the context of oligopolistic dependence is beyond the scope of this study.

As a result, the Authority has identified the following significant findings and the measures to be taken, which are briefly outlined below in the Report:

- The main problems are the high price increases frequently mentioned in the complaint petitions and the allegations of region sharing.

- In addition, simulation results using econometric techniques reveal that most regions are driven by "joint profit maximization" behavior. The relationship between efficiency scores and costs was revealed and it was found that high efficiency led to low costs.

- Considering the low-efficiency firms, it was concluded that firms operating in the sector should increase their efficiency levels and ensure that this increase brings about the effects expected from a competitive market.

- When analyzed in terms of market sharing claims, it was stated that the sector was far behind the competitive level it should have.

All these findings reinforced the assessment that the market exhibits regional and even provincial concentrations, and that competitive dynamics do not function effectively.

Since June 2016, the Board has initiated numerous preliminary investigations and investigations and issued decisions. While these decisions are based on various competition violations, as revealed in the sector report, the majority of them are related to alleged violations of the Competition Law through allegations of customer sharing and price fixing in a certain region.

3.2. Sector Inquiry on the Earthquakes of February 2023

After 6 February 2023, in the aftermath of the disastrous earthquake in 11 different provinces of Türkiye, which affected a large number of people, the Authority started a number of procedures both to take precautions for the future and to identify the undertakings to be held liable.

Within this scope, on 17 March 2023, a sector review was launched to identify competition problems that may arise in the relevant markets. Under the sector review, it is envisaged that a permanent and fast communication channel will be established with the stakeholders in the disaster zone, especially public institutions such as chambers and stock exchanges. The aim is to quickly identify possible competitive problems that may delay both social and economic recovery in the earthquake zone, and to ensure that proactive steps can be taken by coordinating with other relevant public institutions and organizations when necessary. In this way, it will be possible, on the one hand, to prevent undertakings from engaging in anticompetitive activities in the face of sudden and high demand for certain sectors, and, on the other hand, to provide the necessary guidance for the competitive design of cooperation between undertakings during the reconstruction of the region.

In addition to the sector review, the Board initiated investigations against 17 ready-mixed concrete producers operating in Ankara and Kırıkkale provinces in December 2022 and five ready-mixed concrete producers operating in Adana and Osmaniye provinces in January 2023. Finally, within the scope of the investigations conducted in the earthquake zone, an investigation was initiated in October 2023 against 19 ready-mixed concrete producers operating in Aydın and 17 ready-mixed concrete and cement producers operating in Hatay and Malatya.

The Board did not limit its earthquake-related actions only to the cement and ready-mixed concrete sectors and decided to increase the upper limit of Şişecam's supply quantity, which was limited by a previous decision, to prevent the undertakings' economic activities from being stopped and their exclusion from the market due to the earthquake in Kahramanmaraş and neighboring provinces.

3.3. Sector Inquiry on Retailing of Fast-Moving Consumer Goods in Türkiye

The Fast-Moving Consumer Goods (“**FMCG**”) retail sector has been one of the areas carefully monitored by the Authority due to its important position in a changing and developing world. In this context, the Authority published the Preliminary Report of the Sector Inquiry on FMCG (“**Preliminary Report**”) on 5 February 2021, and the Final Report of the Sector Inquiry on FMCG Retail (“**Final Report**”) on 30 March 2023.

In the Preliminary Report, in brief, it is stated that the concentration in the FMCG retail market has increased over the years, and the largest four undertakings (i.e., BİM, A101, ŞOK and Migros) constitute the dominant undertakings in the retail sector, that the private label products affect the market in many ways, and, if the buyer power of the retailers in the sector is abused, it may lead to a weakening of the effectiveness of the traditional market. As a result of all these factors, the Authority has presented various proposals for the FMCG retail sector to prevent the abuse of buyer power and to regulate the sector.

The issues addressed in the Final Report are in the following order: **(i)** the structure of FMCG retail in Türkiye, **(ii)** buyer power and the impact of buyer power on the sector, and **(iii)** the new regulations that may occur in the FMCG market in the near future and the issues that may be subject to review by the Authority.

The Authority primarily evaluated the FMCG retail market under three categories: the organized market, the traditional market and the digital market.

The Final Report states that FMCG retailers operate in many regions in Türkiye with stores of different structures and that it is possible to characterize these stores as hypermarkets, supermarkets and discount markets (“**Organized Markets**”) and specialized stores such as grocery stores, butchers, greengrocers, grocers, dried nuts and fruits shops, pharmacies and perfumeries (“**Traditional Markets**”). It assessed that organized markets have established an important position in the market and have left traditional markets behind through their fast development.

The other important factor determined by the Authority is the role of digital markets, whose effectiveness has increased with the COVID-19 pandemic. It is anticipated in the report that digital markets will continue to grow rapidly in the coming years.

In the Final Report, buyer power and the impact on the sector in the event of abuse of buyer power were extensively discussed and evaluated in relation to **(i)** the definition and the effects of abuse of buyer power, **(ii)** the impact of private label products, and **(iii)** Chinese wall practices, which are among the methods that can be used to eliminate the detrimental effects of buyer power.

Buyer power, as defined by the Authority, is the ability of undertakings or retailers to set the prices of the products they purchase from suppliers/manufacturers below a competitive level. In the FMCG retail sector, it was determined that the fact that a retailer has buyer power provides them various advantages, including but not limited to **(i)** charging additional fees to manufacturers/suppliers under different names, such as a total invoice discount, **(ii)** extending payment terms, and **(iii)** unilateral amendment of contracts. This situation may disrupt the structure of the competitive market from time to time, which will collectively make market entry more closed and disrupt the competitive structure.

Private label products, which have been preferred by many undertakings, especially in recent years, are defined by the Authority as products that retailers supply at low cost and sell at low prices. The development of private label products has also led to an increase in the buyer power of undertakings over manufacturers. For all these reasons, suppliers consulted during the preparation of the Final Report argue that the presence of private label products in the market

should be kept at a level that does not hinder the development of branded products.

The Final Report determines that the level of concentration in the organized retail market for fast moving consumer goods increased, reaching 77% by the end of 2021, up from 26% in 2010. It was noted that "*it is essential that practices that may lead to a decrease in the income of these actors and weaken their incentives to invest, open to new markets and develop new products should be prevented*", and that such allegations would be examined to establish a healthy market structure.

In order to prevent the abuse of buyer power, regulate the market and ensure a healthy environment, the Authority stated that it was necessary to implement various regulations addressing this issue. Accordingly, the Authority has listed **(i)** the behaviors that should be prevented and **(ii)** the behaviors that can only be applied if explicitly regulated in the contract between the parties. Some of the behaviors are as follows:

Behaviors to be Prohibited:

- Payment terms exceeding 30 days for perishable agricultural and food products.
- Payment terms exceeding 60 days for other agricultural and food products.
- Unilateral contract modifications by the buyer.
- Payment requests that are not related to the transaction.

Behaviors Allowed Only If Explicitly Regulated in the Contract Among the Parties:

- Return of unsold products.
- Payment by the supplier for listing, shelf, stock costs, promotions, marketing and advertising.
- The buyer charging the supplier for staff to be stationed in areas used to sell the supplier's products.

It was also stated that an independent audit unit should be established, and administrative fines should be imposed on the turnover of the undertaking as a preventive measure. For dispute resolution, it was suggested that it would be beneficial to implement regulations to enable alternative dispute resolution methods such as **(i)** settlement, **(ii)** mediation and **(iii)** arbitration, and that the application to alternative dispute resolution methods does not prejudice the right of complaint before the relevant unit.

The Final Report states that the Authority will continue to closely scrutinize the FMCG retail sector and that legislative efforts are underway to preserve the competitive structure of the market.

3.4. Sector Inquiry on Online Advertising

On 12 January 2021, the Authority launched a sector inquiry to evaluate domestic and foreign trends in the internet advertising industry, while also identifying structural and behavioral competition law issues and looking for potential remedies in the form of legislative and policy reforms. The preliminary report ("Preliminary Report") on the online advertising sector was published on 7 April 2023.

According to the examinations in the Preliminary Report as of 2021, online advertising surpassed television advertising to become the medium that received the highest share of advertising expenditures.

In line with the opinions received from the undertakings, although it was stated that the relationship between online and offline advertising is characterized as a substitution relationship by only a small portion of the undertakings, it was understood that the two types have a complementary relationship, especially due to the difference in targeting and measurement mechanisms. It was concluded that there is no substitutional relationship between online advertising and offline advertising and that these two types of advertising constitute different relevant product markets.

In terms of the relationship between online advertisement types, the following evaluations were made:

- Since search-based advertising is used to encourage purchases, and display advertising is used to create brand awareness in the mind of the user, there is no substitution, and they create different sub-markets within the online advertising industry.
- Listing advertising and search advertising differs from display advertising, which aims to create or increase brand awareness in the user's mind, and search-based advertising, which is the last stage of the purchasing process, which aims to direct users to purchase.
- Video advertising and other types of display advertising are differentiated, and there is a complementary relationship between them.
- Social media platforms are advantageous compared to other display advertising channels in terms of targeted advertising. Display advertising carried out over social media platforms differs from display advertising carried out over other platforms.

The Authority constantly monitors the concerns about tying, favoring and leverage effects in line with the approach of other competition authorities worldwide. The Preliminary Report offers important implications, which are briefly described below:

- One of the primary concerns with this market is that vertically integrated ad technology providers, if they serve both advertisers and publishers, have a conflict between their own interests and those of their customers.
- The Authority is of the opinion that the access by third-party service providers to user data should be prevented for the healthy functioning of the market.
- However, the problem of transparency is seen as an important problem in the advertising technology supply chain. Since advertisers and publishers may not have enough information about the supply chain, advertisers may not have complete information about the difference between payment and the price that publishers receive. In addition, ad technology providers should not prevent independent parties from measuring the performance of their services.

We are of the opinion that the Authority aims to eliminate these concerns with the new regulations to be made under the Competition Law.

MOROĞLU ARSEVEN

3.5. Sector Inquiry on Mobile Ecosystems

The Authority initiated a market study into mobile ecosystems on 24 April 2023. The Authority mentioned that **(i)** among the main elements of this ecosystem, mobile smart devices have potential direct effects on consumers, and **(ii)** the mobile ecosystem's complex structure and its layers and, particularly, the interrelatedness of each layer may raise competitive concerns. Additionally, the announcement made on the Authority's website noted that the odds of competition related violations may increase due to the market power, big data advantage, network effects and the simultaneous operation capability in various sub-markets held by the players.

The previous market studies concerning mobile ecosystems launched by the Japan Fair Trade Commission ("**JTFC**") and, the UK Competition and Markets Authority ("**CMA**") may be used by the Authority and provide guidance to mobile ecosystem players on what to expect and refrain from during their operations.

The JFTC finalized and published the report ("**JFTC Report**") on 9 February 2023. This market study concentrates on the lack of "*competitive pressure*" in the market and mainly on the interconnection between mobile OS and app distribution services in the app market and smartphone-related markets.

The CMA finalized its study and published its report on 10 June 2022 ("**CMA Report**"). The CMA's market study focuses on a "*highly competitive dynamic market for mobile devices and the associated software*", as well as the business models of both Apple and Google and their decision-making processes in managing their ecosystems.

The mobile ecosystem is a multi-tiered structure consisting of mainly **(i)** hardware products (e.g. mobile devices), **(ii)** applications and services (e.g. mail, social media apps, calculator, message apps, etc.) and **(iii)** software infrastructure (e.g. mobile cloud, network, etc.). The tiers of a mobile ecosystem are interconnected, and all these resources may function as a unit together.

That said, in the JFTC Report, the mobile ecosystem is described using the following example: "*On a smartphone, there is a layered structure consisting of the smartphone device, the mobile OS (mobile operating system), the app store, and native apps. The entire four layers around the mobile OS are called the mobile ecosystem.*"

As per the JFTC Report, mobile ecosystems are defined as smartphones, and this ecosystem's tiers, or "*layers*", as described in the report, are as follows: **(i)** "*Native Apps*" are applications that are running on a specific mobile OS, they might or might not be pre-installed or user-installed apps and these are developed by various developers like Google and Apple Inc. ve Apple Teknoloji ve Satış Limited Şirketi ("**Apple**"). **(ii)** "*App Store*" is the platform where consumers provide native apps that have been deemed eligible by the app store operator. **(iii)** "*Mobile OSs*" are operating systems that have been installed on smartphones before its purchase by a customer. **(iv)** "*Devices*" are the smartphones and devices developed and provided to the consumers by various companies, including Google and Apple.

The JFTC's market definition in the report is based on these layers, and the device layer is defined as the "*device market*", the mobile OS layer is defined as the "*mobile OS market*", application layers are defined as the "*app market*" and the "app distribution service market" is defined as the "*distribution of apps or web services via app stores or browsers*". According to the CMA Report, mobile ecosystems are defined as the consolidation of mobile devices, mobile OS and applications.

The CMA did not include a formal market definition in its final report, *"but instead looked at the competitive constraints faced by Apple and Google from across the sector including focusing on direct indicators of market power and barriers to entry and expansion"*.

The JFTC indicated these markets are dominated by Apple and Google, and, consequently, their dominance does in fact create difficulties for other entities entering these markets, which demonstrates a lack of competitive pressure in the market. The JFTC also mentioned the restriction of access by Apple and Google using their position as mobile OS providers, as well as their disadvantageous treatment of app developers in rankings by using their position as the app store operators.

In competition within and between Apple and Google, the CMA noted that their weakness in competition created fewer choices for consumers, and the prices were higher than anticipated. Therefore, the ecosystems would be harmful to consumers without intervention.

As to the CMA Report, their positions and effects on the market allow Apple and Google the ability to determine management and operation of the marketplace with their unilateral decisions. The CMA concluded that Apple and Google both held exertive control over their ecosystems that allowed them to determine "the rules of the game". It was decided by the CMA that "intervention" was necessary to transform Apple's and Google's powerful positions in the market.

The JFTC reiterated that, considering the current state of the market, Apple's and Google's adverse effects on the market and consequently on consumers should be suppressed by increasing competitive pressure. Therefore, the JFTC proposed to ensure competitive pressure in the mobile OS and app distribution markets by preventing self-preferencing in the app market as well as other smartphone-related markets and establishing fairness in rulemaking for the mobile ecosystem. In addition, the JFTC mentioned that it was "*desirable*" for Apple and Google to introduce and form new ecosystems to promote competition where the construction of new ecosystems relied on product and service developers other than Apple and Google.

The JFTC's final proposal was to introduce *ex-ante* regulation. As the Antimonopoly Act is not sufficient to scrutinize cases involving a mobile OS provider or an app store operator, the JFTC suggests that new regulations might be required.

The CMA proposed the initiation of a market investigation into mobile browsers and cloud gaming, as well as opening new investigations into Apple and Google concerning their app store payment practices. The CMA also reiterated the desirability of the introduction of *ex-ante* regulations to ensure the status of the market.

With the announcement published by the Authority on 06.06.2024, it was decided to initiate an investigation against Apple Inc. ve Apple Teknoloji ve Satış Limited Şirketi ("**Apple**") with the Board's decision dated 21.05.2024 and numbered 24-23/525-M to determine whether Apple has violated Article 6 of the Competition Law by not allowing the use of alternative payment systems in the App Store and applying anti-steering provisions to mobile application developers.[79]

In explaining the reason for the initiation of the investigation, the Board stated that the application developers were prevented from informing users about payment channels outside the application, such as the website of the application developer, and that it should be examined whether consumers' ability to access better options (at a lower price) was restricted due to the fact that they were not aware of the existence of alternative payment channels and the difference between the price within the application and the price outside the application. In addition, in-app links to alternative channels outside the app are also blocked. In this respect, the Board stated that whether Apple eliminates the freedom of choice of app developers by requiring its own payment system and prevents other payment systems from entering the Apple ecosystem is another suspicion that should be examined.

The Board found that another restriction imposed by Apple on app developers in terms of payment services was the requirement of Apple's own payment system for in-app purchases and that Apple received 30% commission income from the sales transactions. During the investigation process, the Board decided to initiate an investigation against Apple, stating that there was a need to examine whether Apple eliminated the freedom of choice of application developers by requiring its own payment system and whether other payment systems were prevented from entering the Apple ecosystem.

[79] The Board's Apple Announcement dated 06.06.2024.

MOROĞLU ARSEVEN

3.6. Sector Inquiry on the Red-Meat Market

On 3 January 2011, the sector inquiry into the Türkiye Red-Meat Sector was launched by the Authority to evaluate the obstacles to the effective functioning of this sector, which is critical for the country's economy, and, thus, to prevent anti-competitive situations that may occur. Additionally, Türkiye Red-Meat Sector and Competition Policy Report ("**Report**") was published.

The Report contains detailed data on both agricultural and animal production.

In addition to focusing on red meat throughout the Report, animal production was evaluated as a whole, and the fact that meat and milk policies complement each other was emphasized.

The Report concludes that the increases in red meat prices indicate the existence of several obstacles to the effective functioning of the sector, and that the findings and assessments in the report suggest that these negative developments stem from the structural problems encountered in the red-meat sector and its development.

As a result of the sector analysis, the Authority enumerated certain anti-competitive practices point by point:

- Assigning the regulatory and supportive activities in the sector to separate public legal entities would lead to more effective results in terms of the functioning of the market economy, primarily in the case of the Meat and Fish Authority (“**MFA**”), which would inevitably lead to a conflict of interest.
- Increasing the current enterprise size and the level of integration in the sector, especially in cattle breeding, would reduce the gap between producer and retail price margins, reduce the number of stages in the supply chain to an effective level, and reduce consumer prices and increase demand.
- The problem of informality in the sector could be significantly reduced through integration, especially horizontally. Strengthening the producer unions in the sector, registering producers, encouraging small-scale cattle breeders in the sector to engage in mergers or horizontal cooperation, encouraging modern breeding methods and benefiting from an exemption within the framework of Article 5 of the Competition Law may all have a positive impact on the level of integration and the development of the competitive environment in the sector.

Since 2011, the Board has initiated several preliminary investigations and investigations across the sector.

In the same year, the Board initiated a preliminary investigation into the allegation that MFA had violated the Competition Law by discriminating in the sale of imported beef cattle. As a result of the preliminary investigation, it was decided that there was no need to initiate an investigation, as MFB was not in a dominant position in the relevant markets.

Similarly, complaints such as (**i**) the claim that the leading undertakings in the red-meat sector agreed to stockpile meat from cattle and put it on the market after increasing the price and (**ii**) the claim that various white-meat producers had violated the Competition Law by charging excessive prices were examined, and it was decided that there was no need for an investigation in both cases.

In a decision issued in 2019, an investigation was initiated against 20 different undertakings for alleged violations of Article 4 of the Competition Law by undertakings operating in the production of chicken meat, and fines were imposed separately for violations of the Article 4 of the Competition Law.

3.7. Sector Inquiry on the Fuel Sector

The fuel market is one of the earliest sectors in Türkiye to be introduced to competition law practices. The Authority states that various competitive concerns have been observed in the fuel market since its early years and the investigations in this regard have taken a significant amount of time. The structural characteristics and developments in this sector, which is regulated by the Energy Market Regulatory Authority ("**EMRA**"), are discussed in the Fuel Sector Report prepared in 2008. Over the past 14 years, various preliminary investigations and inquiries have been conducted at different levels of the fuel sector, such as refining, distribution and dealership, within the framework of the Competition Law. Today, there is a need to re-evaluate the fuel market and examine the changes in the past. In this context, it is aimed to understand the competitive and anti-competitive effects of the sector, to develop appropriate policy recommendations and to reveal the factors that affect the market structure and competition. The Authority initiated a sector review of the fuel market on September 3, 2020 and gathered information on practices in other countries and interviews with sector stakeholders.

The fuel sector review was initiated to analyze competition in the fuel market and to combat the problems identified. The detailed review concluded that there is an important need to increase price competition in the sector. The review summarizes general information on the fuel market, the outlook for the Turkish market and key regulations.

The fuel market is regulated by the Petroleum Market Law No. 5015 and is under the supervision of EMRA. Licensed refineries and distributors have certain obligations in the import, distribution and retail sale of fuel. Market dynamics are affected by factors such as international crude oil prices, exchange rates and market concentration. Regulations in the Turkish fuel market are generally more intense than in other countries.

Within the scope of the fuel sector review, the product supply sources of distributors were analyzed in detail. While distribution companies can procure fuel directly from the refinery, they also have the option of importing or buying from other distributors. Türkiye Petrol Rafinerileri A.Ş. ("**TÜPRAŞ**") was privatized through block sale in 2006 and operated as the sole producer in the market until 2019. With the STAR refinery entering the market in the 2018-2019 period, a two-player structure was formed in the sector. Currently, TÜPRAŞ operates with four refineries and Star Rafineri A.Ş. ("**STAR**") operates with one refinery. According to the analysis, the refining market has not achieved a competitive structure, TÜPRAŞ maintains its determining position in pricing and the competitive pressure created by STAR is limited. Diesel imports by distribution firms are also an important source of competitive pressure, but their pricing largely follows refinery pricing. In addition, it was noted that inter-distributor trade is widespread and is an important source of fuel supply, especially for small distributors. In conclusion, it is emphasized that the concentration rate in the sector is high and refinery investments should be supported to increase competition. The competitive structure in the distribution market is of great importance in terms of its reflection on the retail sales level.

It is stated that the sector has been oligopolistic for a long time with five major distributors holding 76% of the market as of 2022. It was also found that the high concentration in the distribution market has a negative impact on the retail sales market, and that consumers have low price sensitivity and are less likely to conduct price research.

In the fuel sector review, it was stated that the publication of advisory pump prices may have a suppressive effect on competition, but increased price transparency may encourage competition by reducing consumers' research costs. It was emphasized that alternative dealership systems should be established as exclusive agreements of dealers weaken competition.

IV. LEGISLATIVE DEVELOPMENTS

Since 2018, there have been significant legislative developments. Amendments with regards to (**i**) the Amendment of the Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Board ("**Communiqué No. 2022/2**") as well as (**ii**) the Draft Law on the Amendment of the Law No. 4054 on the Protection of Competition ("**Draft Law**") may be seen as ground-breaking developments. In addition, even though it is a recent development, legislative changes within the scope of the Law Amending the Turkish Commercial Code and Certain Laws published in May 2024 are expected to alter the investigation process.

Initial indications are that both legislative developments primarily demonstrate the Authority's aim to adapt its competition legislation to the rapidly developing digital markets and to adjust its assessment tools towards an ex-ante review approach so as to catch and review digital market players and gatekeepers even before any competitively restrictive behaviors occur.

Additionally, as a new development, the regulatory changes under the Turkish Commercial Code and the Law on Amendments to Certain Laws, published in May 2024, are expected to alter the investigation process.

MOROĞLU ARSEVEN

4.1. Legislative Changes in the Regulation on Active Cooperation for Detecting Cartels

The formation of cartels is recognized as a major violation in competition law. For this reason, the Regulation on Active Cooperation for Detecting Cartels ("**Regulation**"), published in the Official Gazette dated 16.12.2023 and numbered 32401, was issued by the Authority in order to increase the active fight against cartels and to eliminate uncertainties in practice.

The first regulation regarding actively cooperating with the Authority in order to detect cartels was made in 2009 with the Regulation on Active Cooperation for the Purpose of Detection of Cartels and has not undergone any major changes since then.

The Regulation provides that undertakings, managers and employees of undertakings that actively cooperate with the Authority might not be fined or may be granted a reduction in fines. Furthermore, the definitions of "Applicant", "Cartel Facilitator", "Cartel Party" and "Value Added Document" have been added, and the definition of "Responsible Unit" has been changed.

The most important addition under the Regulation is the definition of "Cartel Facilitator". As explained in the Regulation, the concept of cartel facilitator refers to undertakings and associations of undertakings that facilitate the establishment and/or maintenance of a cartel through their activities, without operating at the same level of the production or distribution chain as the cartel parties.
The concept of "value-added document" has been introduced in the Regulation, and the Board is required to submit information and documents that will strengthen the Board's ability to prove the cartel, taking into account the evidence available to the Board.

Another amendment is in relation to time limits. The first of these is the introduction of a time limit for active cooperation applications. Accordingly, only information and documents that are submitted "independently from other cartel parties and cartel facilitators within three months following the notification of the investigation, provided that the decision to conduct a preliminary investigation is made before the notification of the investigation report" will be eligible for the discount.

The second amendment stipulates that, if the applicant obtains additional information and documents after the completion of the applications, such information and documents must be submitted to the Authority immediately and before the end of the second written defense period.
Furthermore, the Regulation also paves the way for the application of the Regulation provisions if, as a result of an investigation, it is decided that the violation does not constitute a cartel. In this context, applications by persons who are concerned that there is no cartel and who therefore cannot apply to the Authority have been facilitated.

The Regulation stipulates that, if deemed necessary, the written and/or oral information of the applicant's current managers and employees must be obtained. In cases where it is deemed necessary to consult the written and/or oral information of former managers and employees, it is stated that the applicant must show maximum effort and care to ensure this.

The Regulation also reduces the lower limits of the fines and increases the upper limits.

MOROĞLU ARSEVEN

4.2. Draft Law on the Amendment of the Law No. 4054

4.2.1. Emergence, Purpose and Scope of the Draft Law

As the importance of digital markets is increasing on a global scale, ex ante supervision and regulation of the markets has started to be discussed in Türkiye, as in the EU and many other jurisdictions. Following the publication of the "Digital Markets Act" ("**DMA**") in the Official Journal of the European Union on 12 October 2022, the DMA entered into force on 1 November 2022 and is implemented as from 2 May 2023. Similarly, the Authority submitted the Draft Law document for evaluation of various institutions in October 2022. On examination, the Draft Law can be seen to be inspired by the DMA and Article 19(a) of the German Competition Law.

The preamble of the Draft Law states that changes in consumer habits stimulated by developments in technology and the internet necessitate a change in Competition Law. While there are benefits to consumers from increased innovation and price competition, the benefits of this digital transformation have been mainly attained by large-scale undertakings due to chronic problems such as barriers to entry to digital markets, high entry costs, excessive data processing, unfair use of data, network effects, economies of scale and economies of scope. Article 1 of the Draft Law states that it aims to "*establish and protect a fair and competitive market structure*" in digital markets where market failures are common by envisaging certain "*ex-ante*" obligations for such undertakings, as well as sanctions in case of failure to fulfil these obligations.

The scope of the Draft Law is limited to Article 2 and "undertakings with a significant market share *that provide basic platform services to end users or business users established or residing in the Republic of Türkiye*". This means that the "*effects doctrine*" adopted in the Competition Law has also been adopted in the Draft Law. In other words, an undertaking with significant market power ("**gatekeeper**") that provides a core platform service in Türkiye but that does not have headquarters in Türkiye will fall within the scope of the Draft Law if it provides services to end users and business users established or residing within Türkiye.

4.2.2. Important Definitions Introduced into the Draft Law

The Draft Law proposes the introduction of new concepts and definitions into Article 3 of the Competition Law such as "personal data", "undertaking with significant *market power*", *"end user", "core platform service", "online intermediation services", "online search engines", "online social networking services", "video-sharing platform services", "number-independent interpersonal communication services", "operating systems",* "web browsers", "virtual assistants", "cloud", *"computing services", "online advertising services",* "business *user"* and *"ancillary services".*

In the event the Draft Law enters into force, it will include certain definitions that will be important in terms of determining the scope of the law and clarifying the related obligations and sanctions, including the following:

- Core Platform Services are defined as: *"Online intermediation services, online search engines, online social networking services, video/audio sharing and streaming services, number-independent interpersonal communication services, operating systems, web browsers, virtual assistants, cloud computing services and online advertising services offered by the provider of any of the services."*
- Ancillary Services are defined as: *"Services determined by the communiqué, particularly payment services offered in the context of or together with core platform services, technical services supporting the provision of payment services, in-app payment systems, delivery services, fulfilment, identification or advertising services."*
- The fact that certain services are signified as *"particularly"* in the definition and that these services will be determined by a communiqué to be published by the Authority is worthy of consideration. The Draft Law's reference means that these types of services are not *numerus clausus*. In other words, these services may be extended by a communiqué to be issued by the Board after the Draft Law enters into force.
- Gatekeepers: The definition of *"gatekeepers"* as undertakings with

significant market power is another striking new addition. Since the undertakings considered to be gatekeepers are expected to be subject to some additional obligations, the conditions under which an undertaking will fall into this category should be examined. An undertaking will be deemed to have significant market power if it satisfies the following criteria for one or more core platform services:

- It has a significant impact at a certain scale on the reach of end users or the activities of business users.
- It has the power to sustain this impact in an established and permanent way, or if it can be foreseen that the undertaking will be able to maintain it in an established and permanent way.

According to Article 8/A of the Draft Law, it is foreseen that undertakings determined to be gatekeepers exceeding quantitative thresholds to be specified by a later communiqué will be able to submit any objections to the determination to the Authority within 30 days.

In contrast to the DMA, even if the quantitative thresholds are not exceeded, the Board is authorized to make qualitative determinations by taking into account some or all of the following elements in the context of the structure of core platform services: *network effect, data ownership, vertically integrated and conglomerate structure, economies of scale and scope, deadlock and evolution impact, switching costs, multiple access* and *user trends.* Arguably, subjecting undertakings to obligations based on qualitative criteria without providing quantitative thresholds may expose undertakings to the risk of sanctions.

The determination of an undertaking as gatekeeper under the Draft Law is foreseen as being valid for three years, and, if the undertaking does not apply to the Authority within 90 days before the end of the relevant period, the undertaking will be deemed to have significant market power for the three-year period.

4.2.3. Additional Obligations for Undertakings Considered Hold Significant Market Power in the Draft Law

Article 6/A of the Draft Law aims to impose some additional obligations on undertakings that are considered to be gatekeepers to provide ex-ante protection of the competitive market environment. Although it has been stated that the procedures and principles regarding the obligations imposed on gatekeepers will be determined by a communiqué to be issued after the Draft Law enters into force, the major proposed obligations are as follows:

- Providing fair and transparent conditions to their business users, and not favouring their own goods and services against goods and services of other business users.
- Not using personal data in competition with business users.
- Not making the services they offer to business and end users dependent on the goods and services they offer.
- Not preventing business users from working with competitors.
- Not advertising and offering different prices and conditions on different core platform services.
- Not preventing the entry of competitors by creating barriers to entry to the market.
- Not using end-user data, especially for targeted advertising and other services.

One of the most important articles of the Draft Law is Article 8/A, which was added immediately after Article 8 on negative determination, regulating compliance with Article 6/A and the method of determining undertakings with significant market power. Under Article 8/A there are regulations including, but not limited to, the following:

- Undertakings providing basic platform services must apply to the Authority within 30 days following the exceeding of the thresholds to be determined by the relevant communiqué.
- If the undertaking is found to have significant market power, this decision will be valid for three years.
- Quantitative thresholds are to be determined by the Board by taking into account the annual gross revenues and the number of end users or commercial users in determining the undertakings with significant market power, as well as many other elements to be determined by communiqué.

It should be noted that even if an undertaking does not fall within the scope of "undertaking with significant market power" pursuant to the communiqué to be issued by the Board, it is possible to be considered as such by the Board in the context of the structure of the fundamental platform services.

4.2.4. Obligations and Principles Regarding On-Site Inspections in the Draft Law

On-site inspection is one of the most important competences used by the Board in determining competition violations and is based on Article 15 of the Competition Law. The Draft Law aims to impose additional obligations on undertakings that offer at least one core platform service in Türkiye (regardless of whether they are established in Türkiye) to fulfil certain technical and administrative requirements to enable the use of the Authority's on-site inspection competences.

In addition, another important proposal regarding on-site inspections is the participation of experts who are not primarily professional personnel of the Authority where the inspection requires their special expertise or technical knowledge. Undertakings are likely to be concerned by the participation of experts who are not public officials in on-site inspections where sensitive information that may contain undertakings' trade secrets is obtained. In addition, the Draft Law indicates that the rights and obligations of the expert will also be determined by a communiqué to be issued by the Board.

4.2.5. Increased Sanctions in the Draft Law

The Draft Law would make amendments to Article 16 of the Competition Law to impose administrative fines at the following rates:

- 20% of annual gross income of an undertaking for non-compliance with the obligations imposed on gatekeepers.
- 0.5% of the annual gross income of an undertaking that offers at least one basic platform service in Türkiye for failure to meet the technical and administrative requirements to enable the use of the Authority's on-site inspection competences (which are to be introduced into the second paragraph of Article 15 of the Competition Law).
- 0.1% of the annual gross income of an undertaking for non-compliance with the notification obligations in Article 8/A of the Competition Law or submitting incomplete, incorrect or misleading information or documents, failure to provide documents or failure to do so within the specified period.

As the Draft Law aims to double the upper limit of the current sanction of 10% of annual gross income for violations even in cases where the breach of an obligation has not yet had an impact on the market, an undertaking would encounter an administrative fine of 20% of annual gross salary. While the main principle is that the Board decides on behavioral remedies before making structural remedies, and that structural remedies are only given where behavioral remedies fail to yield results, this amendment would give the Board a competence to directly issue structural remedies.

MOROĞLU ARSEVEN

4.3. Legislative Changes Within the Scope of the Law Amending the Turkish Commercial Code and Certain Laws

The amendment under the Competition Law published in the Official Gazette on 29 May 2024 is a significant change that will alter the entire investigation process, as it removes the obligation to submit the first and the third written defenses and makes these submissions optional.

Article 43(2) of the Competition Law is amended as follows to abolish the obligation to submit a first written defense following the notification of the Investigation Notice, but it is possible for the parties to submit a defense if they wish:

"The Board shall notify the relevant parties of the investigations it has initiated within 15 days from the date of the decision to initiate the investigation. The Board shall send sufficient information about the type and nature of the allegations to the relevant parties together with this notification letter."

With the amendment to the second paragraph of Article 45 of the Competition Law, the obligation of the Investigation Board to prepare an Additional Opinion in each investigation has been abolished. If the opinion of the Investigation Team in the Investigation Report changes after the second written defense, the Additional Opinion must be prepared and notified to the parties. The right of the parties to submit a third written defense in response to the Additional Opinion is also made optional:

"The parties are notified to send their written defenses to the Board within 30 days following the notification of the investigation report. In case justified reasons are presented, this period may be extended once only and up to one time at most. In case there is a change in their opinions in the investigation report as a result of the written defenses received, those assigned to conduct the investigation shall notify all Board members and the relevant parties of their written opinions within 15 days. The parties may respond to this opinion within 30 days."

MOROĞLU ARSEVEN

4.4. Guidelines on Competition Infringements in Labor Markets is Published

The Authority has adopted Guidelines on Competition Infringements in Labor Markets ("**Labor Guideline**") with the decision dated 21.11.2024 and numbered 24-49/1087-RM(4). The aim of the Labor Guideline is to establish a healthy competitive environment in the labor market and to prohibit agreements between employers regarding employee wages or working conditions. Additionally, under the Labor Guideline, agreements on wage-fixing and non-solicitation, as well as information exchanges aimed at restricting competition, are not eligible for exemption.

The Labor Guideline specifies that exchanges of competitively-sensitive information may not have a restrictive effect on competition under certain conditions. These conditions include the exchange of information through an independent third party and the anonymization of data. Furthermore, it is stated that the abuse of a dominant position in the labor market will be evaluated in various ways.

With this development, it is anticipated that competition in labor markets will become more distinct and predictable, and the Authority will continue to closely monitor these markets.

MOROĞLU ARSEVEN

4.5. “Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position” is Published in Official Gazette

The Regulation on Administrative Fines for Anti-Competitive Agreements, Concerted Practices and Decisions, and Abuse of Dominant Position ("**Regulation**") has entered into force on December 27, 2024, replacing the previous regulation published in the Official Gazette dated February 15, 2009, and numbered 27142. With the new regulation, terms such as "Cartel," "Other Violations," and "Active Cooperation" from the previous regulation have been removed, and new terms like "Decisive Effect," "Undertaking," "Undertaking Association," and "Settlement Regulation" have been introduced.

In the basic fine calculation, conditions such as "multiple independent actions" previously specified in the old regulation have been eliminated, and it is now proposed to impose a separate fine for each violation.

Additionally, with the changes introduced by the Regulation, it is understood that the "market power of the relevant undertakings or undertaking associations" will not be taken into account when calculating the base fine. Instead, the nature of the violation and the extent of the damage will be prioritized.

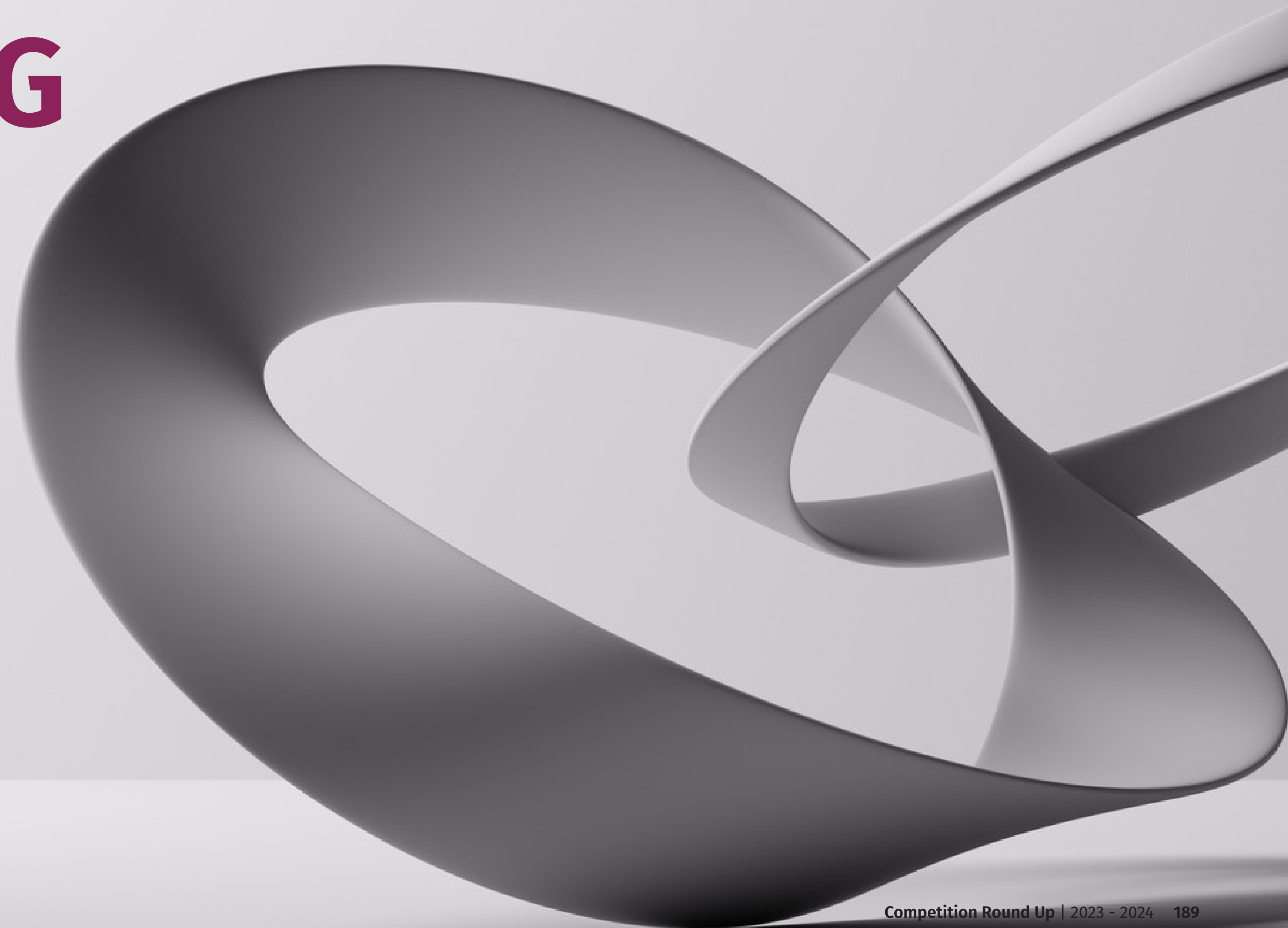
The distinction between "Cartels" and "Other Violations" has been removed, and it is stated that the same fine rate will apply to all violations. The fine rates are differentiated based on the duration of the violation, with the fine increasing by one-fifth for violations lasting more than one year and by one times for violations exceeding five years.

Moreover, aggravating factors for administrative fines now include repeat offenses, the presence of decisive effect, and violations of confidentiality obligations under the Settlement Regulation. In such cases, the fine can be increased by up to one time. It is also emphasized that if a violation continues after the investigation decision, the fine will be increased.

The limit for the reduction rate based on mitigating factors has been removed, and the discount rate is left to the discretion of the Board. Public incentives and voluntary compensation payments from the old regulation have been removed from the text.

The new regulation also specifies that if technical or physical resources provided during on-site inspections lead to the provision of additional information regarding the subject of the inspection, the fine rate may be reduced. Furthermore, the provision regarding fines for the managers and employees of undertakings found to have a decisive effect has been expanded to apply to all violations.

V. CONCLUDING REMARKS



As can be seen from the decisions and developments in the Competition Round Up 2023-2024, the years 2023 and 2024 witnessed significant developments in competition law. However, it is anticipated that developments and legislative amendments will continue unabated in 2025. In particular:

- The investigation-oriented workload of the Competition Board will continue in 2025 and the focus on labor markets and abuse of dominant position will increase along with cartel cases.

- With the amendment to Law No. 4054 on the Protection of Competition regarding the investigation process, it is expected that guiding decisions on how the investigation procedures will be conducted, will be published.

- With the entry into force of the Regulation on Administrative Fines to be imposed in case of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position, case law on the calculation procedure of administrative fines to be imposed on undertakings is expected to provide foresight to undertakings in investigations.

- The publication of the Guidelines on Competition Infringements in Labor Markets provides a clearer legal framework for competition law violations in the labor market, and it is expected that the limits to be observed by undertakings in the labor market will be determined more clearly.

- Obligations to be imposed on undertakings with significant market power and regulations on digital markets are expected to be introduced in 2025.

Our Team

Dr. E. Seyfi Moroğlu, LL.M.
Partner
esmoroglu@morogluarseven.com
T: +90 (212) 377 47 00

Burcu Tuzcu Ersin, LL.M.
Partner
btuzcu@morogluarseven.com
T: +90 (212) 377 47 00

Umay Rona Süerdem
Senior Associate
urona@morogluarseven.com
T: +90 (212) 377 47 00

Hande Afşaroğlu
Associate
hafsaroglu@morogluarseven.com
T: +90 (212) 377 47 00

MOROĞLU ARSEVEN

www.morogluarseven.com

Abdi Ipekçi Caddesi 19-1
Nişantaşı, İstanbul, 34367

T: +90 212 377 4700
F: +90 212 377 4799
info@morogluarseven.com