Fintech in Turkey: Regulation & Competition Law Update

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Article by Muhammed Safa Uygur

A lot has changed in the outlook of fintech regulatory ecosystem since the last four months in Turkey. Starting from Central Bank's Regulation on Payment Services and Electronic Money and Payment Service Providers; Turkish Competition Authority, with its game-changing Report on Financial Technologies in Payment Services, and Banking Regulation and Supervision Agency ("BRSA"), issuer of the Rules on the Operation of Digital Banks and Service Model Banking, have been vigorous for setting the rules of the game in fintech industry. Finally, the Finance Office of Turkish Presidency's Fintech Ecosystem Status Report has revealed the upcoming National Fintech Strategy Paper's fundamental aims, along with the good news on the establishment of Istanbul Finance and Technology Base. In this brief, we summarise the latest developments in Fintech industry from Turkey.

A term unique to the beginning of the 21st century, Fintech has been a transformative experience for finance sector throughout the globe. As the technology facilitated access to information and raised new opportunities for established institutions, start-ups and consumers as well, policy makers have been also very active in regulating the industry with a view to enhance consumer experience, to promote consumer rights, to attract investment and to support new entries and promote competition in the sector. In line with this, Turkey has taken significant steps towards the promotion of fintech industry, potentially leading to a vibrant ecosystem rising as an alternative to traditional banking services.

The outlook of fintech regulatory ecosystem is substantially different than what it was four months ago. Moreover, it appears that further progress is on the way as the President's Office is expected to publish National Fintech Strategy Paper any moment. The National Fintech Strategy Paper was announced by the Finance Office of the Turkish Presidency on its Fintech Ecosystem Status Report, which was published in December last year. In this report, the Office stated that, following the completion of the relevant regulations, a further establishment of nearly a hundred new fintech companies is expected, alongside the already present 350 companies. According to the report, in 2021 alone, the volume of investments in fintech industry reached to 64 million USD. It is also noteworthy that in 2019, Pay U's acquisition of the Turkish fintech start-up, iyzico, for 165 million USD made its mark in history as one of the biggest start-up exits in the country.

As for the National Fintech Strategy Paper, the Office pointed to three objectives which it sought to attain: i) communication of the future aims of fintech ecosystem in a clear manner, ii) to achieve competitiveness of the country in the sector, iii) to ensure the creation of a regulatory design which would support new business models. Although the details of the objectives are yet to be seen, regulatory actions by Central Bank, Competition Authority and Banking Regulation and Supervision Agency already hint at a supportive environment for start-ups and other new entrants.

Central Bank's 'Regulation on Payment Services and Electronic Money and Payment Service Providers' has brought about significant changes in such context. In particular, the Regulation laid down an arm's length rule for incumbents (i.e. banks), aiming to open up the infrastructure for alternative payment service providers ("APSPs"). The rule specified an obligation to provide infrastructure services to APSPs on equal or similar terms under which the infrastructure provider delivers those services to its own commercial clients, business partners and other APSPs. Notably, the regulation also laid down detailed rules on payment initiation service providing and account information service providing activities (e.g. rules on data security and standards).

Following up the Central Bank, BRSA's Rules on the Operation of Digital Banks and Service Model Banking introduced new business models in financial services sector which were highly relevant to fintech industry. While digital banking brought about a new business model for banking without the existence of physical branches, service model banking enabled banks to operate via interface providers in an open banking setting. The Rules signalled a new era as it signified the introduction of asymmetrical regulations for different types of business models in finance sector, as suggested by the Competition Authority in its Report on Financial Technologies in Payment Services.

While the Central Bank and the BRSA laid down the regulatory foundations of the fintech industry, Competition Authority published a game-changing report on the sector. The 'Report on Financial Technologies in Payment Services' was of utmost importance both for incumbents and new entrants as it dealt with infrastructure providing services under the umbrella of the rules on abuse of dominant position. As the Authority drawn parallels from the case-law on telecommunications and energy sectors, significant competition law risks for infrastructure providers have emerged, particularly on markets where payment service providers compete with incumbent banks. Along with the vigorous enforcement under competition law rules, it is expected that the move will have major repercussions on the markets for payment systems.

"Fintech ecosystem is under the spotlight", said Birol Küle, the chairman of the Competition Authority in a recent interview. Indeed, there seems to be a lot of tasks for the Competition Authority in the upcoming days, judging from the raised eyebrows of the Authority against incumbent banks for possible exclusionary conducts. In particular, the Authority could be expected to focus on refusal to supply, discriminatory conduct and margin squeeze behaviours in markets where banks compete with fintech companies. For instance, the Competition Authority might possibly intervene in cases where banks refuse to deal with fintech companies to provide virtual or physical POS services or to grant extra benefits to existing fintech customers such as extra instalments or advantage points. Moreover, incumbents' common credit cards schemes might be under scrutiny in case they present discriminatory features against fintech companies. Finally, incumbent banks will be under a lot of stress when pricing their services because significantly low prices might potentially lead to predatory pricing and/or margin squeeze allegations against them.

As the fintech market flourishes, the Authority also shows a genuine concern for safeguarding innovation and competition. Notably, recent changes in Merger Communiqué illustrates a particular interest towards takeovers in tech industries. According to new amendments, lowered thresholds will apply to the acquisition of 'technology undertakings', which cover digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals, and health technologies. Thus, parties should notify mergers and acquisitions in case where the total turnover of the transaction parties is more than 750 million TRY (approximately 72 million EUR or 85 million USD) in Turkey or more than 3 billion (approximately 287.3 million EUR or 338 million USD) globally (excluding the target's turnover). The amendments will take effect on 4th of May.

In a nutshell, fintech industry has been attracting lots of attention from market players and regulators in Turkey. Particularly, regulators strive to safeguard a fair and level playfield for all market participants along with the Finance Office which has communicated plans which aim to encourage investments in the sector. Moreover, the Competition Authority's game-changing report on the sector is of special importance as the Authority signals rigid enforcement standards with the purpose to open payment systems markets for new entrant fintech companies. Surely, the watchdog will make its presence felt for a longer period to ensure that market players are fully compliant with the competition rules. Last but not least, it will scrutinise mergers and acquisitions more closely through lowered notification thresholds. In that respect, transaction parties should mind the lowered thresholds to avoid gun-jumping violations, which could result in an administrative fine by 1‰ of annual gross revenues.