Main Developments in Competition Law and Policy 2020: Turkey

Main Developments in Competition Law and Policy 2020: Turkey

Article by M. Fevzi Toksoy, Bahadır Balkı

I. INTRODUCTION

The year of 2020 will probably remain in everybody's mind as a year of COVID, lock-downs, masks, and businesses trying to survive by adjusting their business models to the new reality. For the competition law professionals this year would also be associated with various competition law developments in attempt to simplify life of various stakeholders in the new reality.

2020 brought certain changes to the legal scene in the Republic of Turkey ("**Turkey**") just as in other parts of the World. To name a few, the Turkish Competition Authorotiy ("**TCA**"), among other interesting cases, initiated several COVID-19 related investigations, and finally adopted long-awaited (and debated) amendments to Law No 4054 on Protection of Competition ("**Turkish Competition Law**"). Following such legal developments in Turkey, the TCA kept itself busy with developing and adopting secondary legislation, i.e. Guidelines on the Examination of Digital Data during On-site Inspections, and De Minimis Notice to clarify the respective amendments to the Turkish Competition Law and make them "user friendly".

Below we summarize the key competition law developments/cases in Turkey in 2020. Part II of this essay deals with the law reform. Part III focuses on substantive issues, whereas Part IV highlights the main procedural issues that occurred in 2020 and deserve our attention. Part V provides insights into the upcoming future policies that were debated in 2020. Part VI is about concluding remarks and main takeaways of 2020.

II. LAW REFORM 2020 - What's new in Turkey

Amended Turkish Competition Law: SIEC test and more

June 2020 brought amenments to the Turkish Competition Law.[1] The main changes concern the "settlement" mechanism and the substantive test for assessing concentrations. The reform aimed at providing and/or clarifying the legal basis of the practices that have already been implemented *de facto* by the TCA. Let us get into more detail of those main amendments to the Turkish Comptition Law.

The SIEC (Significant Impediment of Effective Competition) test replaces the "dominance test" in Turkey for the assessment of the notifiable concentrations.

The settlement mechanism between the TCA and the companies within the scope of an investigation is available now officially. A company may settle by applying to the TCA until the notification of

the investigation report admitting that it has committed a violation within the ongoing investigation. In return for this, the amount of the administrative fine may be reduced by up to 25%.

The commitment mechanism (similarly to EU Article 9 commitment decisions) is now also envisaged under the Turkish Competition Law. The companies concerned can benefit from the commitment mechanism by making commitments to address current competitive concerns. In this case, the TCA may decide not to initiate a full-fledged investigation or to terminate investigations conducted against companies. The implementation of the commitment mechanism is intended to save time and resources, and so that investigation processes can be concluded in a much shorter time. The TCA's decision in relation to HAVAŞ case[2] in November 2020 is the first example of the the commitment mechanism in practice after the respective amendments to the Turkish Competition Law.

As regards on-the-spot inspections, those cover also the digital assets of a company concerned. The TCA already has been able to examine the company servers and correspondences made via WhatsApp. The legal basis of this inspection power is strengthened by clarifying the wording in the relevant provision of the law.

And finally, de minimis is introduced in Turkey. Except for hard-core violations such as price-fixing, market or customer allocation, the TCA will not initiate a full-fledged investigation against violations not exceeding the market share and turnover thresholds that will be announced with a forthcoming Communiqué.

Generally speaking, the amended Turkish Competition Law brings more compliance with the EU competition rules and eliminates uncertainties and respective discussions arising from the Turkish Competition Law. Certain provisions are amended to ensure more certainty and explicit legal basis for the already applied practices by the TCA.

Digital Data Examination

Following amendments to the Turkish Competition Law, the TCA published its Guidelines on the Examination of Digital Data during On-site Inspections ("**Digital Data Examination Guidelines**") to resolve questions that might arise in practice in relation to the review and collection of digital data in the course of on-site inspections. The remarkable points that the Guidelines include: (i) the possibility of the examination of portable communication devices such as personal mobile phones, based on the scope of their usage, (ii) the use of forensic software and hardware tools during on-site inspections, and (iii) the continuation of inspections at the headquarters of the TCA.

According to the Digital Data Examination Guidelines, information systems such as servers, desktop computers/laptops, portable devices that belong to the undertaking, and all storage media, e.g., CD, DVD, USB, external hard disc, backup files, and cloud services can be subject to examination by the staff of the TCA. Whilst assessing whether a portable communication device can be subject to examination, it does not take into account the ownership of the device but

its area of usage. Accordingly, to assess whether the device contains any digital data that belong to the undertaking, a swift review will be conducted. In particular, portable communication devices that are found to be solely used for personal purposes will not be subject to inspection. On the other hand, devices found to contain data that belong to the undertaking can be inspected via forensic tools.

During the inspection, in addition to the search tools available within the systems of the undertaking, forensic software and hardware tools that allow for a comprehensive search concerning digital data also can be used. The Guidelines bring a parallel approach with European rules by introducing forensic IT tools. In addition, if deemed necessary, any digital data to be examined can be copied to a separate data storage unit as a whole or partially with forensic tools. Upon confirming their originality by calculating hash values, this data can be transferred to and, after indexing, examined on the computers of the TCA staff with forensic tools.

Undertakings under inspection have the duty to refrain from interfering with the data and the environments where the data is kept. In addition, it is explained that the undertaking is obligated to aid the examination concerning their information systems during the inspection. Accordingly, the undertaking, for example, is obligated to provide information concerning the software and hardware of the information technologies used, assign administrative permissions, grant remote access to the employees' e-mail accounts, isolate computers and servers from the network, restrict access to corporate accounts of users, and recover backup commercial data when needed.

The Guidelines, excluding the examination of digital data seized from mobile phones, envisages that if deemed necessary, the examination can continue at the forensic information laboratory located on the premises of the TCA. If it is decided that the examination will continue on the premises of the TCA, the necessary digital data, upon calculating and comparing the hash values, will be transported to three separate data storage units, two of which will be taken by the TCA staff in sealed envelopes. The undertaking concerned will receive a written invitation to send an authorized representative to represent the undertaking during the breaking of the seal of the envelope and the continuing examination at the forensics information laboratory.

Trade secret statements made both during the inspections conducted on the premises of the undertaking and the headquarters of the TCA concerning digital data considered to be evidence will be evaluated under the Communiqué on the Regulation of the Right of Access to the File and Protection of Trade Secrets numbered 2010/3 (akin to Article 28 of Council Regulation No. 1/2003).

Copied data will benefit from attorney-client privilege where the correspondences were made between an impartial attorney (with whom the undertaking does not have a labor contract) and client with the aim of using the right of defense. Correspondences made not directly related to the right of defense, especially correspondences made to aid a competition violation or to cover a continuous violation or a violation which will take place in the future will not benefit from attorney-client

privilege, thereby, from the benefit of this protection.

Generally speaking, the Digital Data Examination Guidelines are closely modeled after the EC's Explanatory note on inspections pursuant to Article 20(4) of the Council Regulation and aim at establishing a general framework of the examination of all kinds of data kept on electronic media and information systems and/or on the examination and protection of these data in the case that the inspection continues at the headquarters of the TCA.

De Minimis

Finally, the [draft] **De minimis Communique**,[3] which is currently at the stage of its public consultations, provides a safe harbor for certain agreements that do not appreciably restrict competition in the market. According to it there are market-share thresholds for agreements concluded between (a) competing and (b) non-competing undertakings – the aggregate market share of the parties to the agreement does not exceed 10% and 15% respectively on any of the markets affected by the agreement in question. This is the case provided that the agreements do not have as their object the restriction of competition, any hard-core restrictions of competition (e.g. price fixing, market/customer allocation etc.). Even in such situations, the TCA reserves its discretion to initiate a full-fledged investigation, meaning that the market share test will not be the only criterion to determine the de minimis. . This is particularly when it is difficutl to determine the market shares of the parties to the agreement.

But overall, the amendments to the Turkish Competition Law in 2020 may be said to be in line with the European approach.

COVID-related announcements

The TCA made four announcements in relation to its policies in times of COVID in March 2020. The first two announcements[4] are related to maintaining competitive markets. In particular, the TCA explicitly warned the market players from the food sector (fresh fruits and vegetable markets) about refraining from applying excessive prices. It made it clear that the prices would be monitored and severe administrative fines would be applied to all those perpetrators (the maximum thresholds available of 10% of the annual gross revenue of the undertaking) to those who distort the well-functioning of the market mechanism with anti-competitive behaviours especially by applying excessive prices.[5]

The last two announcements made in April 2020[6] aim at reminding about the TCA’s filing procedure and filing timeline.The TCA emphasized that all applications, petitions, and information document submissions procedures can be submitted via Internet. Concentrations that are subject to the TCA’s clearance must be filed within the usual time framework as envisaged by the Turksih Competition Law. The announcements clearly state that there is no excuse for failing to fulfil obligations (within the deadlines) under the Turkish Competition Law.

To sum up, the 2020 year was challenging, new and contributed significantly to the shaping of the competition law in Turkey. COVID in this sence is not only the virus that has affected our personal lives and habits, it has also had impact on the competition law and its enforcement, and showed that competition authorities and legal framework can be rather flexible and understanding when and where needed.

III. SUBSTANTIVE ISSUES

In this section we would like to emphasize on the main substantive issues that arouse in 2020 in Turkey, such as resale price maintenance, excessive pricing, discount practices and cartels, and support those with the actual cases that we believe are worth of your attention.

Resale price maintenance ("RPM")

The Turkish competition law provides that retailers are free in determinig their own resale prices; hence dictating/imposing a minimum resale price by suppliers on retailors is prohibited. This trend has slowly been moving towards an effects-based approach in fact in both jurisdictions.

As for the actual RPM cases 2020, the TCA was quite "generous" in imposing fines on the companies for their RPM practices, particularly on the the *pertrolium companies*. The TCA investigated activities of BP Petrolleri A.Ş. ("BP"), OPET Petrolcülük A.Ş. ("Opet"), Petrol Ofisi A.Ş. ("PO"), Shell & Turcas Petrol A.Ş. ("Shell") and Güzel Yakıt Akaryakıt A.Ş.'s (formerly: Total Oil Türkiye A.Ş.) ("Total") and imposed a record administrative fine totalling TRY 1,502 billion (EUR 265,371.02 million)[7] on the companies for violation of Article 4 of Turkish Competition Law by way of RPM. The fine imposed on the companies amounted to 1% of their 2018 annual gross revenue. Within the scope of the investigation, the TCA assessed documents obtained during on-site inspections, compared ceiling prices reported by the relevant undertakings subject to investigation to their dealers and Energy Market Regulation Authority ("EMRA") with the minimum resale prices applied by the dealers. As regards Total, no document that could indicate the RPM was found. The comparison of Total's recommended and resale prices applied by dealers also showed that those were quite different. Therefore, it was concluded that Total did not violate Article 4 of the Turkish Competition Law.

Another significant RPM case of 2020, despite no violation confirmed, is in relation to Red Bull in Turkey. The decision analyses the standard contractual clauses between *RebBull* and its distributors, assesses RedBull's "perfect store" as well as premium systems to come to the conclusion that there was no violation of the competition law by Red Bull.The investigation into RedBull conducted in 2019 was aimed at establishing whether the company had violated the Competition Law by applying resale price maintenance practices and creating de-facto exclusivity in the energy drink market. Among the main allegations made by the complainants, former distributors of Red Bull were the following: (i) determining distributors' minimum resale prices and discount rates they were to offer to retailers; (ii) obliging distributors to use the mobile sales distribution computer system in which it determined the distributors' resale prices and confirmed the discounts and did not allow discounts to

be set in the system without its approval; (iii) forcing certain sales points, especially at bars and night clubs, to sell only Red Bull's products in its refrigerated display cabinets by procuring its cabinets under the terms of its safekeeping agreements; and (iv) creating *de facto* exclusivity via certain discounts applied in the market. We will focus on the RPM allegations only here.

In assessing the RPM allegations, the TCA primarily drew attention to a clause contained in the standard contracts signed between Red Bull and its distributors, that "in any case, the Dealer is free to set resale prices for the Products at their sole discretion." Furthermore, in accordance with the information obtained from Red Bull's five largest customers, although there was a resale price recommended by Red Bull, it did not interfere with the distributors concerning prices.

The TCA also analyzed the *"perfect store"* system, i.e., Red Bull's business model applied at the sales points to improve its marketing and sales operations, to determine whether the compliance with the recommended price criteria in the respective system indirectly resulted in resale price maintenance. Ultimately, the TCA considered that compliance with the recommended price criteria was not determinant for becoming a perfect store. The respective system and criteria were not designed with the purposes of determining, punishing or rewarding stores which did not comply with the respective criteria.

The TCA found no violation of competition law by Red Bull and decided to close the investigation without imposing any administrative fines on Red Bull. However, this decision also shows that the TCA closely monitors the FMCG markets and is willing to investigate any claims. It is important to mention that during the investigation phase, Red Bull decided to remove the compliance with the recommended price criteria from the perfect store system completely, to leave no room for doubt and show full commitment to competition law compliance.

Excessive pricing

Another important issue for Turkey is excessive pricing. The law prohibits the abuse of a dominant market position, including the imposition of unfair pricing in the form of excessive prices.The largest online platform's *Sahibinden.com* excessive pricing case is worth attention. It was reviewed by the Turkish Administrative Court, following which the TRY 10,680,425.98 (approximately EUR 1,681,956) fine was annulled based on the standart of proof. It sheds some light on the interpretation of “excessive”. In its decision, the Administrative Court stressed that clear and precise evidence without any doubt is required for imposing sanctions due to excessive pricing. In this regard, it considered whether the TCA's decision met the standards of proof for determining an excessive pricing violation. Accordingly, it was highlighted that: (i) the abuse of dominant position via excessive pricing is limited and exceptional in competition law, (ii) only intervention on price increases is not considered a competition violation unless it is proven that it harms the competition and thus consumer welfare, and (iii) the determinations and evaluations must be clear, precise and should not give rise to doubt. In this regard, the Administrative Court concluded that the TCA's decision had been established based on observation, without any concrete and indisputable evidence, and therefore considered it unlawful. Accordingly, the Administrative Court decided to annul the

TCA's decision. Currently, the case is under review/reassessment by the TCA.

Discount practices/ rebates

Although being very common in business, and may in fact bring about efficienciesfor customers and consumers, drebates may also have an anticompetitive potential (e.g. excluding competitors from the market) when implemented by the dominant company.

We cannot but mention here the case of the Turkish beverage producer *Mey İçki,* which although initially dates back 2017, but brings about interesting developments in 2020 from from the substantive and procedural law perspective. On 14 May 2020 the Ankara Regional Administrative Court's 8th Administrative Chamber ("**Regional Court**") annulled the decision of the Ankara 2nd Administrative Court ("**Administrative Court**"), in which a lawsuit against the TCA's Mey Içki decision had been dismissed. The main message here is that dominance should be evaluated separately in terms of each product market, i.e. violations in different product markets (although they arise from the behaviours that are part of the same strategy) should be fined separately. The case brings clarity to the application of *ne bis in idem* principle by the TCA.[8]

The TCA, following the annulment decision of the Administrative Court of Turkey, decided to impose an administrative fine of TRY 41,542,125 (approx. EUR 4,431,709.44) on Mey İçki for violating the Turkish Competition Law (the "Mey-III Decision, June 2020") by way of abusing its dominant position in the gin and vodka markets via its discount and visibility practices during 2014-2016.

Mey İçki was previously investigated and fined for its practices. With its decisions in February 2017 ("Mey-I Decision," in relation to raki market), and in October 2017 ("Mey-II Decision" in relation to gin and vodka markets), the TCA examined and found certain violations by Mey İçki of Article 6 of the Turkish Competition Law by way of abusing its dominant position in the respective markets in Turkey. Mey İçki was fined by the TCA TRY 155,782,969 (approx. EUR 37.9 million)[9] with regards to its practices in the relevant product market of rakı (traditional Turkish alcoholic drink). With respect to the calculation of the administrative fine, the TCA concluded that since Mey İçki's practices in the vodka, gin, and rakı markets (i) had the same characteristics, (ii) had been realised within the same period, and (iii) were part of a general strategy, and that as Mey İçki had been fined over its total turnover in the Mey-I Decision (without making any distinction between the turnovers achieved in the rakı, gin and vodka markets), there was no need to impose a separate administrative monetary fine on Mey İçki II.

However, the Administrative Court of Turkey annulled the TCA's Mey-II decision in February 2020. It stated that because vodka, gin, and raki products differ from each other in terms of their qualities, usage purposes, and prices in the eyes of consumers, violations realized in separate product markets (even if they arise from the same general strategy) should be fined separately.

IV PROCEDURAL ISSUES

On-the-spot inspections – evidence

On-the-spot inspections constitute one of the most important tools available for the Competition Authorities in investigating whether the competition rules have been violated. Indeed, this authority is vital in revealing competition law violations. There have been some developments in this area in Turkey.

In addition to adopting its Digital Data Examination Guidelines (see Section ii.ii above), the TCA with its 2020 decisions reminds us that email correspondence, as well as WhatsApp messages, constitute important evidence in revealing/proving anticompetitive practices. For instance, in March 2020 the TCA decided to impose an administrative fine on Kaynak Tekniği San. ve Tic. A.Ş. (*Askaynak*) under the Turkish Competition Law for hindering an on-the-spot inspection by preventing access to the sales director's private Yahoo email account. The business-related correspondences were conducted via a Yahoo e-mail account, as found by the case handlers during another on-spot inspection within the competitor's premises.[10]

The Askaynak case serves as a practical example and reminder of the following: (i) it is the duty of all employees to disclose all matters related to the company's business activities upon the request of the competition authority; (ii) email correspondence constitutes important evidence in revealing/proving anticompetitive practice; and (iii) preventing case handlers from examining a personal email account that also has been used for business-related correspondences, as well as deleting some of those emails before their review by the competition authority, constitute serious violations of the Turkish Competition Law and are subject to a fine.

Additionally, as follows from the TCA's *Groupe SEB decision*[11], the emails of an employee who has resigned may be examined, and the arguments regarding the company's applicable standards or the applicable data protection legislation would not be deemed as valid justification for stalling the on-site inspection.

As for WhatsApp communications, those may also serve as evidence in the investigations. In *Truck drivers' wages case*,[12] the TCA carried out dawn raids at the premises of the undertakings and found WhatsApp conversations related to fixing truck drivers' wages. The communications indicated that the officials from the investigated undertakings settled on a wage-fixing agreement. The TCA relied on WhatsApp communications and accepted them as evidence to substantiate the wage-fixing agreement. This proves that the TCA will continue to inspect and rely on WhatsApp communications realized between undertakings.

Right to due defence

Compliance with the right to defence in the course of the antitrust investigations is vital. The TCA in the circumstances of COVID pandemic announced that the investigations (particularly in relation to excessive pricing policies) may be conducted in shorter timeframes. Normally, those are to be finalized withing six months (with a possibility of another six month extension). At the same time

the TCA emphacised that such announcement[13] should not be interpreted as infringement of the undertaking's right to due defence. On the contrary, the undertakings are in fact granted an up to 30 days time extension to submit their written defences, upon their request, as well as submit their missing argument at a later stage of the investigation, if they were unable to finalize their written defences on time.

Misleading information and gunjumping

The TCA with its reasoned decision concerning the acquisition of sole control of Johnson Controls International's ("JCI") power solutions business unit by *Brookfield Asset Management Inc.* ("Brookfield") in July 2020 emphasized on the importance of complying with concentration control formalities, as well as paying due care while calculating turnovers since that may trigger sanctions for providing false and misleading information. Although the TCA had authorised the transaction, it decided to impose two separate administrative fines on Brookfield on the grounds that (i) the concerned acquisition had been realized without the prior authorization of the TCA (equal to 0.1% of the turnover generated by Brookfield in 2018), and (ii) the notifying party had provided false and misleading information regarding Brookfield's turnover.

In calculating the administrative fine due to gun-jumping, the TCA requested additional information regarding Brookfield's turnover. Brookfield had submitted its turnover information without the turnover generated by Graftech (which was controlled by Brookfield) in 2018. Therefore, the TCA's clearance decision had been based on false and missing information. The conclusion as to whether the transaction was subject to the TCA's authorization, as well as the relevant market determinations in the case were not affected due to such misleading information. Nevertheless, the TCA decided to impose an administrative fine since the information provided by Brookfield had been false and misleading.

The case is of particular importance and interest as it demontrated the TCA's persistent scrutiny over previous concentration control filings.

Incomplete info

*The TCA's fine in Apex case**[14]** reminds us of importance of providing complete information in due time to the TCA.* Following its preliminary inquiry upon claims of excessive increase in virus protective face mask prices, the TCA initiated an investigation in May 2020 to determine whether the Turkish Competition Law was violated. The TCA requested information to be assessed within the scope of the investigation from Apex regarding its (i) mask fabric production, as well as (ii) mask production. Apex was notified of the necessity to provide the requested information by 10 June 2020 and 16 June 2020, respectively. However, Apex provided the requested information on 23 June 2020 via email. Although the responses were found sufficient in relation to mask fabric production, the information in the said email regarding the mask production was determined as incomplete and requested to be completed. Apex provided the requested information regarding its mask production on 6 July 2020, but the information was still incomplete - different mask types

were not listed separately and information regarding production quantity and sales quantity was missing. The TCA indicated that Apex should submit its complete responses by 8 July. However, Apex did not provide the requested information in due time and did not complete the missing information regarding mask production despite having been contacted numerous times.

As a result, in terms of the responses of the Apex regarding *mask fabric production,* the TCA imposed on Apex a fine amounting to 0.1% of its 2019 annual gross revenue determined by the TCA on the ground of its failure to provide the requested information within the time specified. Also, Apex faced periodic fines of 0.05% per day of its 2019 annual gross revenue for 12 days, commencing from 11 June 2020, the day following the final day determined to provide the requested information, until 23 June 2020, the day on which the undertaking provided the requested information. In terms of its *mask production,* the TCA determined that Apex had obstructed the evaluation of the claims and findings within the scope of the investigation considering that it had not provided the information as requested, had not used ordinary care to provide the requested information where many other undertakings were able to provide the same requested information. Eventually, due to its failure to provide the requested information regarding the mask production within due time, Apex received periodic fines of 0.05% per day of its 2019 annual gross revenue commencing from 9 July 2020, the day following the final day determined to provide the requested information, until the TCA was provided with said information.

V. THE UPCOMING FUTURE

Digitalization

The main message of 2020, where a lot of plans and initiatives were disrupted due to pandemy, is that competition must be preserved well in the digital world. But it is not that easy as it seems, since “here can be a constant risk that by abusing their power, big companies will push a market to the tipping point, where competition is gone for ever.”[15]

The TCA closely monitors developments relates to the digital economy and competition law. In 2020 it initiated a sector inquiry to complete its Report on Digitalisation and Competition Policy. Additionally, the TCA has been quite active this and previous year in digital markets (i.e. investigating Google, Sahibinden.com, etc.). Therefore, the topic of competition law in digital era is among the hot ones in Turkey. The results of the sector inquiry are expected to shape the competition rules to be applied to the digital markets in line with the respective developments in the EU comeptition law.

Sustainability

Another hot topic of 2020 that has been on the agenda of competition authorities, as well as international organizations,[16] is competition law and sustainability/environment. In this respect, we cannot but mention the European Green Deal that aims to make Europe the first climate-neutral continent by 2050, and the ongoing debate on how the EU competition policy can best support the

Green Deal. According to M. Vestager, the “competition rules already play a vital supporting role, in helping us achieve our green goals. Competition drives the innovation that develops new technologies which can help us do more, with less harm to the environment. Competition also helps to keep prices down, so we can more easily afford to invest in going green…”[17]

The public consulations in relation to the Green Deal are expected to provide a better understanding to companies as well as to the competition authorites on how to encourage beneficial cooperation without a fear of antitrust fines. The better guidance of course on the existing rules is the key to ensure that the competition rules do not create obstacles to meeting sustainability goals.

Similar policy developments are expected to take place in Turkey in the near future…

VI. CONCLUDING REMARKS

While preparing this review, we did our best not to emphasize of COVID pandemic. However, this turned out to be impossible obviously. It became our new reality that have shaped our lives as well as competition law. In Turkey, just like in other parts of the world, we could observe how competition law and competition authorities showed their flexibility and adaptivity to the new circumstances that businesses were faced with.

As the main takeaways of 2020, we would like to name the following:

- The Turkish Competition Law shall continue to apply irrespective of the pandemic times, with certain deviations, but again only with a specific approval /announcement of the competition authority;
- Digitalization is a good thing and the usage of internet/online markets has become a new normal in the circumstances of 2020; and
- Pricing policies/hikes (especially those in the food and pharma sector) have been and will continue to be under a special attention of the TCA.

In addition to that in 2020 we observed several interesting cases that brought clarity to certain competition law issues and principles; competition law reform in Turkey that finally brought its rules into a fuller conformity with the EU standards, including the development of the secondary legislation for a better understanding of the law provisions; as well as debates on the role of competition law in digital world and sustainability. We expect 2021 bring us more clarity and certainty as for these important issues.

[1] On 16 June 2020 the Turkish Parliament approved the long-awaited amendments to Law No. 4054 on the Protection of Competition. It came into force on 24 June 2020.

[2] The TCA evaluated the commitment submitted by HAVAŞ (an undertaking providing customs-bonded temporary storage services) as part of the investigation into whether it violated Article 6 of the Turkish Competition Law. As a result of the evaluation, the TCA closed the investigation without any fine imposed on HAVAŞ.

[3] While preparing this article in December 2020, it is still a draft Communiqué on "Agreements, Concerted Practices, and Decisions and Practices of Associations of Undertakings which are Considered not to Appreciably Restrict Competition"

[4] https://www.rekabet.gov.tr/en/Guncel/public-announcement--afef54447272ea118125005056b1ce21 and https://www.rekabet.gov.tr/tr/Guncel/rekabet-kurumu-baskani-birol-kule-nin-ya-19def560896eea11811700505694b4c6

[5] In fact, the TCA announced on May 7, 2020 that it initiated a full-fledged investigation against 29 undertakings, including major supermarket chains, operating in the food and cleaning/hygiene product markets.. These include poultry producers, red meat producers, flour producers, manufacturers for cleaning/hygiene products, health and beauty retailers and supermarkets. The TCA is very likely to investigate both an abuse of dominance, which it has to establish to impose fines for excessive prices, and an anti-competitive agreement such as, for instance, market-sharing, price-fixing or price increase arrangement, which led to higher prices.

[6] https://www.rekabet.gov.tr/tr/Guncel/covid-19-koruma-kontrol-onlemi-duyurusu-6df1b0842d78ea11811800505694b4c6 and

https://www.rekabet.gov.tr/tr/Guncel/duyuru-91e4ba53dc80ea11811800505694b4c6

[7] At the 2018 exchange rate, i.e. EUR 1 = TRY 5.66

[8] The Regional Court's decision has drawn a better-defined framework as to the application of the *ne bis in idem* principle by emphasising that the TCA must separately assess the violations in different product markets and must not rely on the ne bis in idem principle in this regard. Although the TCA decided not to impose a new administrative fine by using its discretion, it actually agreed with the Regional Court's opinion that *ne bis in idem* principle could not be applied in the case at hand.

[9] In 2017, the year-end average exchange rate was EUR 1=TRY 4,11. This was an amount corresponding to 4.2% of its turnover achieved during the preceding financial year.

[10] As part of the preliminary inquiry launched in September 2019, the TCA conducted the on-the-spot inspection at the premises of the company in Kocaeli. Following an explanation concerning on-the-spot inspection procedures to Askaynak employees, the case handlers asked whether the Askaynak's sales director conducted his business-related correspondences solely through his corporate e-mail account or any other personal e-mail accounts. Further to the Askaynak sales director's confirmation that business-related correspondence was conducted solely through the corporate account via Microsoft Outlook, the case handlers showed an e-mail message collected during another on-spot inspection within a competitors' premises, namely Gedik Kaynak, sent from the Askaynak sales director's personal Yahoo e-mail account.

The case handlers thereupon requested the password to the relevant Yahoo account. Although Askaynak's sales director claimed that he did not remember the password, the case handlers accessed it through "I forgot my password" option. After this point, Askaynak's sales director obstructed the case handlers' review of his Yahoo account by not allowing their access and indicated that the account contained personal correspondences. The case handlers warned the Askaynak team that this conduct would be assessed as hindering of an on-site inspection and would lead to the imposition of an administrative monetary fine. Nearly two hours later and after additional warnings that this conduct would be included in the on-site inspection report, Askaynak's sales director allowed the case handlers access to the account.

During the first access to the Yahoo account, the case handlers had noticed that there were 96 unread e-mails and only 73 after-sales directors had given permission for the review. Considering that deleted correspondences in the Yahoo account can be recovered, the case handlers were not able to access to deleted items. Although the sales director indicated that the deleted correspondences had been related to private and personal matters, the case handlers described this conduct in their on-site inspection report as hindering on-site inspection. Consequently, Askaynak was faced with an administrative fine amounting to five per thousand percent of its annual gross revenue of 2018.

[11] No. 20-03/31-14 of 9 January 2020

[12] No 20-01/3-2 of 2 January.2020

[13] The Turkish Competition Authority's Announcement Regarding the Time Extensions (https://www.rekabet.gov.tr/tr/Guncel/duyuru-91e4ba53dc80ea11811800505694b4c6

[14] TCA's decision dated 17.07.2020 and numbered 20-34/451-199 and decision dated 02.07.2020 and numbered 20-32/410-187.

[15] https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/competition-digital-age-changing-enforcement-changing-times_en

[16] Sustainability & Competition Law and Policy – Background Note, December 2020, http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2020)3&docLanguage=En

[17]Green Deal and Competition Policy, September 2020, https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/green-deal-and-competition-policy_en