
TCA is Looking into Banking Sector, Once Again

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On 17 January 2020, the Turkish Competition Authority (“TCA”) carried out dawn raids at the premises of more than 20 banks. The unannounced visits were reportedly conducted as part of a preliminary inquiry into deposit, credit, foreign exchange, bond, bill, equity and brokerage services of banks operating in Turkey. According to articles 40 and 41 Law No. 4054 on the Protection of Competition (“**Competition Law**”), the rapporteurs entrusted with the preliminary inquiry are required to submit a preliminary inquiry report to Turkish Competition Board within 30 days as of the initiation of preliminary inquiry. Following the submission of the report to the Board, the Board shall decide within 10 days whether or not to initiate a full-fledged investigation. For the time being the subject and scope of the preliminary inquiry is not made public however, considering the deadlines of TCA, the results of it will be expected by the first half of March 2020.

At this point, we must look back into the TCA’s history with banking sector as it includes three massive investigations, resulting with fines.

May be one the most important decisions of the Turkish competition law history, the second full-fledged banking investigation, is TCA’s “12 Banks Decision^[1]”, taken in 2013 as a result of the investigation conducted to determine whether 12 banks violated Article 4 (*i.e.* the article which prohibits anti-competitive agreements and concerted practices) of the Competition Law. The decision established that 12 banks violated Article 4 of the Competition Law in the deposit, credit and credit card services markets under a “*single continuous infringement*” between the 2007 and 2011 and the TCA issued total sum of administrative fines amounting to TRY 1.1 billion (approximately USD 620 million based on the decision date’s exchange rate) against the banks, which is still biggest administrative fine issued by TCA as a result of a single investigation.

Following the TCA’s decision, fined banks appealed the 12 Banks Decision. The court of first instance and its superior court, Council of State, refused the annulment requests of the 12 Banks Decision. Following these rejections, the fined undertakings requested for a revision of decision from Council of State, as the last step of judicial review. Surprisingly, Council of State yielded positive decisions for fined banks in the second half of 2019; annulled the decisions of court of first instance regarding the rejection of the annulment request of the 12 Banks Decision and sent the files back to the court of first instance for reconsideration. In its reasoning, the Council of State argued that the TCA failed to reveal beyond a reasonable doubt that all 12 banks have acted under a general framework agreement or a common plan (single continuous agreement) to coordinate their behaviors in deposits, credits and credit cards markets. Upon Council of State’s revision decisions,

the court of first instance persisted on its first ruling and once again rejected annulment request of the 12 Banks Decision.

Today, judicial review of 12 Banks Decision is still pending before courts. It should be also noted that 12 Banks Decision led to initiation of thousands of actions for damages and these cases are dependent on finalization of 12 Banks Decisions' judicial review.

In addition to the foregoing, TCA's "*Corporate Banking Decision*[\[2\]](#)" which was taken in 2017 as a result of the investigation initiated upon a leniency application, against 13 banks providing loans to corporate customers in Turkey is also noteworthy. The concerned investigation was conducted in order to determine whether those banks violated Article 4 of the Competition Law by sharing competition sensitive information such as interest rates and maturity of current loan agreements, and various other matters on the financial transactions.

As a result of the investigation, the TCA resolved to fine three of the investigated banks (including the lenient bank) due to engaging with anti-competitive practices through the exchange of competition sensitive information. Although the lenient bank was found to be violating the Competition Law, it received full immunity for its active cooperation with the TCA for purposes of revealing the violation under the paragraph 6 of the Article 16 of the Competition Law. The Corporate Banking Decision constitutes a landmark practice since it is the first example of where the lenient enjoyed full immunity from the fine imposed although the violation was not regarded as a hardcore cartel; and other banks were fined a total amount of more than TRY 21 million (approximately USD 5 million based on the decision date's exchange rate).

As can be observed from the foregoing cases, the TCA keeps its eye wide open on the banking activities in Turkey. The decisions resulting with fines against the banks relate to the anti-competitive information exchanges among competing banks and each of those decisions can be deemed a landmark case. Therefore, the outcome of the newly initiated preliminary inquiry arouses a considerable amount of interest.

[\[1\]](#) TCA's decision dated 08.03.2013 and numbered 13-13/198-100

[\[2\]](#) TCA's decision dated 28.11.2017 and numbered 17-39/636-276.