
The Turkish Competition Authority Initiates its First Pandemic Related Investigation Against 29 Undertakings

The Turkish Competition Authority Initiates its First Pandemic Related Investigation Against 29 Undertakings Operating in the Different Levels of Food and Cleaning/Hygiene Products Market and Announces that it will Investigate the Pricing Behaviours

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The Turkish Competition Authority (“TCA”) on March 23, 2020 gave its heads up to undertakings that it was “closely following the price increases”, which it referred to as “opportunistic” during the pandemic. As such, the TCA warned in its announcement that it will impose the highest fines allowed by the Turkish Competition Law on all the undertakings, if they engage in anticompetitive practices during the COVID-19 pandemic.

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 products market. The announcement refers to its previous warning explained above and has the following statements:

- The TCA may complete its investigation faster than its “normal practice”.
- The TCA “to a serious extent” came into the conclusion that the excessive price

increases observed in the market may violate the competition rules as a result of its monthlong analysis conducted during the pre-investigation period.

According to the Turkish Competition Law, the TCA shall conclude an investigation within six months, which may be extended for another six months. The TCA usually utilize this extension and conclude the investigations generally in one year. It appears this time, however, that the TCA is likely to conclude the investigation earlier given the nature of the situation that stems from the pandemic. The language of the announcement, therefore, should not be interpreted that the undertakings’ right to defence, which is protected by the highest norms, is hindered in any way. On the contrary, the TCA recently announced that the undertakings will be granted a time extension (up to 30 days) to submit their written defences, if they so request [3]. In this same announcement, the undertakings were further allowed to submit their missing arguments on a later stage of the investigation, in case they were not able to finalize their written defences on time.

As such, although the announcement emphasizes that the TCA came into conclusion “to a serious extent” that the observed practices may infringe the competition rules, this statement does not directly signify that the investigation will be resulted with a finding that the undertakings in fact violated the competition rules.

According to the announcement, the undertakings that are under the investigation operate in different levels of various sectors. 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. If the former, the TCA should first establish that the undertaking in question is in dominant position in the market that they operate. If the latter, it would be interesting to see the investigated anti-competitive agreement, given these undertakings are operating in many different industries.

This investigation demonstrates that the Turkish watchdog, as it emphasized in its previous announcement, during the pandemic will continue to closely monitor the market behaviour to assess whether these practices are the results of an anti-competitive arrangement or an abuse of dominant power. The language of the announcement moreover indicates that the TCA's approach in its investigations will be quite rigorous during the pandemic.