Competition Compliance 2020

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Getting The Deal Through

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Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Peter Crowther of Winston & Strawn LLP, for his continued assistance with this volume.

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Turkey

M Fevzi Toksoy, Bahadır Balkı and Ertuğrul Can Canbolat

Actecon

GENERAL

General attitudes

1 What is the general attitude of business and the authorities to competition compliance?

The Turkish Competition Authority (TCA) welcomes and encourages the competition compliance efforts of undertakings. A competition compliance programme (CCP) is regarded by the TCA as an indicator of good faith and stands out as an effective tool in complying with competition law. The TCA's practice shows that although CCPs are encouraged (and in some cases may be regarded as the undertaking's endeavour to act in compliance with competition law or accepted as a behavioural remedy in merger cases), the mere existence of a CCP cannot be regarded as a sole indicator of an undertaking's compliance with competition law.

In its *Unilever* decision No. 12-42/1258-410 in 2012, the TCA showed a positive approach to Unilever's competition compliance efforts. During dawn raids as part of the investigation into alleged exclusivity practices in the ice-cream market, the TCA found a document with reference to Unilever's CCP and regular competition law training. The existence and content of the document illustrated Unilever's endeavour to act in compliance with competition law, and to some extent served as grounds for the TCA's decision not to initiate a fully fledged investigation. A similar approach was taken by the TCA in the *Efes* decision No. 12-38/1084-343 in 2012.

The TCA pursued a similar approach in its *Frito Lay* decision No. 13-49/711-300 in 2013 by emphasising that CCPs constitute one of the significant policies of the TCA; however, the mere existence of CCPs cannot be regarded as a sole indicator of an undertaking's compliance with competition rules. Moreover, in the *Industrial Gas* decision No. 13-49/710-297 in 2013, although it recognised that having a CCP in place may be a positive feature, the TCA nevertheless highlighted that it could not be deemed a mitigating factor in determining the fine.

In the *Banking* decision No. 17-39/636-276 in 2017, the TCA determined that having a CCP would not change the fact that the concerned undertaking violated Law No. 4054 on Protection of Competition (the Competition Law), and that taking part in an infringement despite the existence of a CCP merely demonstrates that the undertaking disregarded the implemented CCP. The TCA further stated that the aim of CCPs is to prevent violations, and that there is no provision in the legislation with regard to the influence of an existing CCP on the amount of the fine to be imposed. On the other hand, the TCA also attached importance to the 'zero-tolerance policy' adopted by one of the investigated banks with regard to the violation of competition rules and, within this context, the leniency application submitted to the TCA on competition law violations as well as the full active cooperation with the TCA during the investigation procedure as a part of the compliance policy of the bank concerned. Those policies enabled the bank concerned to detect potential violations and to notify them to the TCA within the scope of the Turkish leniency programme. Owing to the zero-tolerance policy and the full cooperation within the leniency application, the bank enjoyed full immunity from the fine imposed. That said, this violation has not been regarded as a hardcore cartel.

From a business perspective, the implementation of a CCP is a frequent practice to raise employees' awareness and minimise any risks associated with an infringement of the Competition Law. In particular, multinationals and companies managed in line with the principles of corporate governance mostly adapt their policies to the competition rules of the countries where they are active and ensure the continuation of the established compliance culture with tools such as training, workshops and e-learning.

Government compliance programmes

2 Is there a government-approved standard for compliance programmes in your jurisdiction?

In 2011, the TCA announced the standards for compliance programmes on its website through the document titled 'Competition Law Compliance Programme'. The document aims to provide undertakings with clarification to a certain extent on the issues and concepts of competition compliance, such as the purpose and scope of CCPs, checklists for compliance with competition legislation, the content of CCPs, corporate guides, training, regular assessment and monitoring of CCPs, as well as supportive practices. The document assists and provides insight to all undertakings in the process of developing their own CCPs. It has largely been inspired by EU competition law and provides advice to local businesses with structured requirements to ensure that their CCP is sound and workable. Guidelines, employee responsibility, a confidential hotline, sanctioning or rewarding mechanisms, and regular reporting are among the 'must-have' features listed in the document.

Applicability of compliance programmes

3 Is the compliance guidance generally applicable or do best practice and obligations depend on company size and the sector of the economy it operates in?

A 'one-size-fits-all' approach is not favoured in ensuring effective compliance guidance. The issues that may be deemed sensitive from a competition law perspective may vary on the basis of factors such as the characteristics and structure of relevant markets, the number of undertakings active in those markets, the market shares of the undertakings, legal or technical entry barriers, the regulations on relevant markets, the approaches adopted in the TCA's former cases with regard to practices in those markets, and the undertakings' specificities. In other words, since the behaviour of a company raising competition law concerns differs, each compliance guidance must be tailored by taking the aforementioned elements into consideration and, thus, be custom-made for each undertaking.

The content of each CCP shall also entail certain basic elements or issues that are generally applicable and can be exemplified as follows:

- the importance and sensitivity of competition law compliance;
- basic principles and procedures under the Competition Law and the TCA's authority;
- ongoing assessment of awareness levels through regular competition law training, internal monitoring and reporting procedures;
- a checklist; and
- incentive and disciplinary practices.

4 | If the company has a competition compliance programme in place, does it have any effect on sanctions?

The Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (the Regulation on Fines) provides a non-exhaustive list of aggravating and mitigating factors in the assessment of the fine amount. The implementation of a CCP is not listed among them. Moreover, as referred to in the *Industrial Gas* and *Banking* decisions, the TCA stated that the mere presence of a CCP does not constitute a mitigating factor in the determination of the amount of the administrative monetary fines. Therefore, having a CCP will not de jure affect fines to be imposed by the TCA; however, a CCP may have a positive influence before the TCA in the course of its evaluations regarding the infringement allegation.

IMPLEMENTING A COMPETITION COMPLIANCE PROGRAMME

Commitment to competition compliance

5 | How does a company demonstrate its commitment to competition compliance?

A company may demonstrate its commitment to competition compliance through the meaningful and effective implementation of a competition compliance programme (CCP) that at least contains the following actions:

- establishment of regular dawn raid simulations and training sessions for current and future employees;
- drawing up of a general checklist for all employees or departments according to their position and workflow;
- review and assessment of past and current practices in light of competition rules;
- appointment of an in-house compliance officer or an external consultant responsible for the implementation of the CCP and allocation of the tasks;
- receipt of written commitments from employees with regard to the fulfilment of their responsibilities in line with competition law;
- adoption and implementation of disciplinary actions for employees' breaches of competition law or the CCP; and
- execution of an incentive system (such as a helpline or hotline) that encourages employees to inform the relevant person in charge, and rewards employees who contribute to the detection in advance and prevent a potential violation.

Furthermore, to increase their compliance levels, companies may prefer to design a technological infrastructure enabling them to detect communications beforehand that raise competition law concerns. The infrastructure may require a list of keywords that must be designed and updated in line with the structure of the relevant market.

In particular, the devotion of the management team to competition compliance is significant to show to team members their complete support for the CCP and compliance culture.

Risk identification

6 | What are the key features of a compliance programme regarding risk identification?

The CCP helps in identifying risks (legal, financial and reputational) by outlining simple and clear 'dos and don'ts' lists for employees and management. Risk identification entails at least the following essential features:

- conducting market research, paying special attention to the recent decisions of the Turkish Competition Authority (TCA);
- familiarisation with the structure of the markets in which the company operates and the competition law concerns in those markets; and
- keeping track of past and current competition law investigations in Turkey and abroad.

Risk assessment

7 | What are the key features of a compliance programme regarding risk assessment?

Risk assessment would typically start with a kick-off meeting with companies' management regarding the identification of risky areas that may be associated with companies' practices. The following actions are also of significance:

- the enhancement of communications with employees on the risks related to anticompetitive practices;
- a review of companies' agreements or practices (eg, exclusivities, pricing policies, non-compete obligations, duration and potential impact on the market);
- an assessment of companies' activities, along with their affiliates' practices and current and future business channels from the perspective of both the product and the territorial scope;
- categorisation of the identified risks in accordance with the priority level (low, medium or high); and
- preparation and presentation of a report with a focus on main findings and risk mitigation strategies.

An appointed compliance officer or established compliance department should monitor and oversee the process concerned.

A company's method of handling findings that are deemed sensitive from a competition law perspective is one of the key features since it indicates a company's devotion to its risk assessment efforts. The CCP documents published by the TCA encourage businesses to end infringing practices and notify the competent authorities.

Risk mitigation

8 | What are the key features of a compliance programme regarding risk mitigation?

Risk mitigation typically involves monitoring, reporting and training, namely:

- dawn raid simulations, which entail both a review of communications and a brief educational session to employees about how the TCA's dawn raids could easily be dealt with;
- general competition law training, which includes, among other things, sector-specific examples on how competition rules may be faced in daily practice;
- a CCP report, which consists of a strengths, weaknesses, opportunities, and threats

- analysis; and
- a helpline or hotline through which employees may request advice from a competition law perspective and inform the person in charge about a potential violation.

In this regard, employees' written commitments to carry out their activities in compliance with the CCP may also be useful in increasing their awareness.

Furthermore, regular assessment of the compliance level by competition law consultants and updating of the CCP (eg, on the basis of amendments to the applicable laws and developments in the TCA's approach) are essential. The participation of the company's competition law consultants in the company's executive meetings or meetings of the association of which the company concerned is a member, or those consultants' evaluations on the agenda of those meetings, will also be beneficial in minimising any risks associated with competition rules.

If the management becomes aware of a potential infringement of the competition rules, it should immediately end the violating practice, comprehensively assess the case and inform the TCA if necessary (a leniency application or full active cooperation with the TCA may be considered for eliminating or minimising the risk of facing a fine).

Compliance programme review

9 | What are the key features of a compliance programme regarding review?

A review encompasses features such as:

- assessing the level of competition law awareness of employees (eg, through monitoring employees' activities with or without a prior notice); and
- amending the CCP rules and procedures in line with developments in the competition law.

Regular dawn raid simulations (particularly if conducted without notice) by competition law consultants are essential in ensuring employees' compliance with competition rules and in assessing the established compliance culture.

DEALING WITH COMPETITORS

Arrangements to avoid

10 | What types of arrangements should the company avoid entering into with its competitors?

Arrangements between competitors are more likely to attract the attention of the Turkish Competition Authority (TCA) regardless of their object or effect. The Competition Law prohibits agreements that restrict competition either by object or by effect. In this context, agreements are defined very broadly regardless of the form or whether the parties explicitly or tacitly agree. The most common examples of anticompetitive agreements are cartels involving setting prices, restricting output, allocating markets or customers and bid rigging.

Additionally, the direct or indirect exchange of competition-sensitive information (such as sales conditions, pricing policies, customers, production levels and capacity) is also considered to be in the scope of the aforementioned prohibition since it reduces or removes uncertainty regarding the current or future behaviour of competitors.

Therefore, any communication or business with a competitor shall carefully be carried with the assistance of competition law consultants of the undertaking concerned.

Suggested precautions

11 | What precautions can be taken to manage competition law risk when the company enters into an arrangement with a competitor?

The following precautions may be taken:

- informing the internal compliance officer in charge or external competition law experts;
- reviewing and assessing the concerned arrangement from a competition law perspective;
- avoiding exchanges of sensitive information and attending any meeting with competitors (especially without a pre-examination of the agenda) during this process;
- preparing meeting notes and clearly identifying the issues that have been discussed with competitors;
- assessing the level of the risk associated with the concerned arrangement; and
- applying to the TCA for negative clearance or an exemption.

CARTELS

Cartel behaviour

12 | What form must behaviour take to constitute a cartel?

Cartels are normally defined as agreements restricting competition or concerted practices between competitors for fixing prices; allocating customers, providers, territories or trade channels; restricting the amount of supply or imposing quotas; and bid rigging (as listed under the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position and the Regulation on Active Cooperation for Detecting Cartels (the Leniency Regulation)). Additionally, the exchange of competition-sensitive information among rivals, such as prices, output or sale amounts, is generally considered as cartel conduct since they are aimed at fixing prices or quantities, or both (according to the Guidelines on Horizontal Cooperation Agreements by the Turkish Competition Authority (TCA)). On the other hand, there are precedents whereby the exchange of such information was not deemed to be cartel conduct and was categorised under other infringements.

In practice, cartels are very unlikely to be formed in writing. Any act or concerted action between competitors preventing or restricting competition, including any (even an unsuccessful) attempt to run a cartel shall be regarded as a cartel if there is sufficient evidence of a solid intention to commit it. The issue of whether the anticompetitive agreement has (fully or partially) been implemented may only be relevant in determining the gravity of the fines to be imposed on the parties rather than whether article 4 of the Competition Law (equivalent to article 101(1) of the Treaty on the Functioning of the European Union) has been violated.

Avoiding sanctions

13 | Under what circumstances can cartels be exempted from sanctions?

Cartels may be exempted from sanctions following the leniency application if certain conditions under the Leniency Regulation are satisfied. In those cases, the lenient party may benefit either from full immunity or from a reduction in fines.

A leniency application is possible until the investigation report by the TCA is served. The first undertaking to submit its application along with the evidence disclosing a cartel, until the investigation report is served, may benefit from full immunity unless the applicant coerced other undertakings to participate in the cartel. All subsequent applicants for leniency may only benefit from a reduction in fines. In this context, active

cooperation with the TCA should last until its final decision and, thus, is indispensable.

Accordingly, the leniency applicant shall:

- immediately end its involvement in the cartel (except when the assigned unit on the ground requests otherwise, for example, if detecting the cartel would be complicated);
- submit information and evidence in respect of the cartel, including:
  - all types of books, documents, information and other resources that may be used to substantiate the meetings concerning the cartel, including invoices, notes, organisers, meeting minutes, internal–external letters, travel records, reports, working texts, tables, electronic records, computer printouts, credit card statements and detailed phone records; and
  - products affected by the cartel, duration of the cartel, names of the undertakings participating in the cartel, dates, locations and the participants of cartel meetings;
- keep its application confidential;
- actively cooperate with the TCA throughout the entire procedure and in line with the TCA's instructions; and
- not conceal or destroy information or evidence related to the alleged cartel.

Exchanging information

14 | Can the company exchange information with its competitors?

Exchanges of competition-sensitive information among rivals may be deemed anticompetitive under certain circumstances (they may also be considered to be cartels if they have an object to fix prices or quantities). Commercial information – such as prices, quantities, customers, costs, turnovers, sales, purchases, capacities, product characteristics, marketing plans, risks, investments, technologies and research and development programmes – are considered to be competition-sensitive. Exchanges of aggregated data (when it is sufficiently difficult to identify individual data of a particular undertaking) or historical data (as opposed to current or future data) are much less likely to lead to a competition concern.

An undertaking may exchange information with its competitors if the exchange leads to efficiency gains that are passed on to consumers and outweigh the restrictive effects on competition. The framework for information exchange among competitors is also shaped by the many precedents of the TCA in different industries and forms. These detailed precedents are the outcome of negative clearance and exemption applications to the TCA (which have mostly been submitted by industry associations).

LENIENCY

Cartel leniency programmes

15 | Is a leniency programme available to companies or individuals who participate in a cartel in your jurisdiction?

A leniency programme is available to both companies and individuals. Until the *Banking* decision, the leniency programme was in place exclusively to reveal the existence of cartels; therefore, if the Turkish Competition Authority (TCA) discovered that the practices indicated in the leniency application in fact relate to other types of infringement, the leniency applicant only benefited from the possibility of obtaining a reduced fine if it actively cooperated with the authority (eg, in the *Hyundai Dealers* decision No. 13-70/952-403 of 2013, the TCA held that the leniency applicant may not benefit from full immunity as the infringement concerned was not a cartel but an information exchange, and deemed the leniency application as a form of active cooperation, thereby reducing the fine). In the *Banking* decision, the TCA granted full immunity to the leniency applicant based on its active cooperation, despite the fact that the practices concerned did not amount to a cartel. The TCA relied directly on the provisions of the Competition Law concerning active cooperation rather than those of the Regulation on Active Cooperation for Detecting Cartels (the Leniency Regulation) as the former does not distinguish between different types of violation, whereas the latter stipulates that full immunity may only be granted in the case of a cartel finding.

Although the Leniency Regulation and the Guidelines on the Explanation of the Regulation on Active Cooperation for Detecting Cartels (the Guidelines on Active Cooperation) refer to cartels, article 16 of the Competition Law stipulates the following:

> *To those undertakings or associations of undertakings or their managers and employees making an active cooperation with the Authority for the purposes of revealing violations of the Act,penalties mentioned in paragraphs three and four may not be imposed or reductions may be made in penalties to be imposed pursuant to such paragraphs, taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly.*

Lastly, the name of the applicant must be kept confidential until the end of the investigation unless requested otherwise by the unit assigned to the investigation.

16 | Can the company apply for leniency for itself and its individual officers and employees?

As stated under the Guidelines on Active Cooperation, in the case of an application by undertakings, all managers and employees of the applicant undertaking who admit to the existence of the infringement and enter into active cooperation may benefit from the Regulation; therefore, it is not necessary for the undertakings to submit a list of the managers and employees who can benefit from immunity or reduction. Accordingly, there are no barriers for previous managers and employees benefiting from the applications filed by undertakings.

17 | Can the company reserve a place in line before a formal leniency application is ready?

A marker system is available in Turkey. In general, following a face-to-face meeting, the undertaking or its representative signs an affidavit with the case handlers that indicates the timing of the marker. Placing a marker does not result in any additional obligations or duties on the undertaking concerned; however, as a rule of thumb, the undertaking is expected to proceed and submit the available evidence in relation to the suspected practices or cartel.

Whistle-blowing

18 | If the company blows the whistle on other cartels, can it get any benefit?

In accordance with article 7(2) of Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, an undertaking may apply for 'leniency plus' during an ongoing investigation. If an undertaking discloses a new infringement through the leniency programme (in accordance with the Leniency Regulation) during an ongoing investigation, it may again benefit by obtaining full immunity for the new infringement (provided the conditions in the Leniency Regulation are satisfied) and a fine reduction of a quarter for the ongoing investigation.

DEALING WITH COMMERCIAL PARTNERS (SUPPLIERS AND CUSTOMERS)

Vertical agreements

19 What types of vertical arrangements between the company and its suppliers or customers are subject to competition enforcement?

The vertical relations between undertakings operating at different levels of the market are subject to the main rule that prohibits any agreement, decision or practice preventing, distorting or restricting competition in the relevant markets. In this regard, certain practices are deemed hardcore restrictions, whereas other restrictive practices may be evaluated under individual or block exemption rules. As for individual or block exemption, a thorough analysis of various factors (eg, market structure, efficiency gains, economic rationale, level of competition and duration of agreements) should be performed, particularly if the company's market share accounts for a high percentage of the total market or the economic entity has vertically integrated operations.

Accordingly, vertical restrictions cover, but are not limited to, the following practices:

- fixing the minimum resale prices of customers;
- intervening in the sales conditions of customers;
- prohibiting active or passive sales by customers;
- preventing online sales by customers;
- imposing non-competition obligations on customers; and
- setting most favoured customer (MFC) clauses.

20 Would the regulatory authority consider the above vertical arrangements per se illegal? If not, how do they analyse and decide on these arrangements?

Not all vertical arrangements are per se illegal. The Turkish Competition Authority (TCA) makes a distinction between arrangements that restrict competition by object and by effect. For example, resale price maintenance (RPM) and passive sales could be categorised under restrictions by object. If the TCA establishes the existence of an object to restrict competition, the TCA is not obliged to analyse the effect of those arrangements to find a violation; however, the effect may have a role in determining the gravity of the infringements and sanctions (see the Guidelines on General Principles of Exemption).

The practice shows that although the TCA may follow a different (per se) approach on a case-by-case basis, it generally tends to subject RPM practices to a rule of reason analysis, especially as a result of its preliminary investigations, and assesses the effects of those practices by considering the market structure, competition level and effect on consumers (*Çilek* decision No. 14-29/597-263 dated 20 August 2014; *Dogati* decision No. 14-42/764-340 dated 22 November 2014; *Yataş* decision No. 17-30/487-211 dated 27 September 2017; *Duru* decision No. 18-07/112-59 dated 8 March 2018; *Bfit* decision No. 19-06/64-27 dated 7 February 2019; and *Minikoli* decision No. 19-11/129-56 dated 7 March 2019).

Arrangements that may be restrictive by effect should be assessed in consideration of actual and potential effects on competition parameters in the market; therefore, in addition to actual anticompetitive effects, restrictive effects expected to occur with a reasonable probability will be evaluated by the TCA and may be considered sufficient to find those arrangements anticompetitive.

If the TCA uncovers anticompetitive conditions in vertical arrangements, arrangements not including any restriction that is deemed per se illegal may be evaluated within the scope of the block exemption and individual exemption rules. In this regard, one of the main points is the market share of the company setting a restriction in its vertical arrangements (according to the TCA's Guidelines on Vertical Agreements, the market share threshold is 40 per cent). Even if a company may not benefit from the block exemption rules, it may still be allowed if the conditions listed in article 5 of the Competition Law (equivalent to article 101(3) of the Treaty on the Functioning of the European Union) are satisfied.

21 Under what circumstances can vertical arrangements be exempted from sanctions?

Vertical arrangements may be exempted from sanctions if they fall within the scope of one of the relevant block exemption communiqués, namely those on vertical agreements, research and development agreements, vertical agreements and concerted practices in the motor vehicles sector, the insurance sector and technology transfer agreements. Alternatively, an individual assessment of the exemption under article 5 of the Competition Law shall be conducted. In terms of the individual exemption, the arrangement must:

- ensure new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services, and consumers must also benefit the consumer from them;
- not eliminate competition in a significant part of the relevant market; and
- not limit competition more than what is compulsory for achieving the goals set out in first and second points.

If there is uncertainty on which of the exemptions could be granted, it is highly recommended to approach the TCA to avoid any risk of being fined.

In decision No. 17-01/12-4 taken in 2017, the TCA fined Booking.com approximately 2.5 million lira for violating the Competition Law for its 'best price guarantee' and most favoured nation (MFN) practices. It was found that agreements (particularly the MFN clauses) concluded between Booking.com and accommodation facilities were outside the scope of the Block Exemption Communiqué on Vertical Agreements owing to the market share threshold. An individual exemption could not be granted either since the practices did not meet the exemption conditions set out by article 5 of the Competition Law.

HOW TO BEHAVE AS A MARKET DOMINANT PLAYER

Determining dominant market position

22 Which factors does your jurisdiction apply to determine if the company holds a dominant market position?

The following factors are applied by the Turkish Competition Authority (TCA) to determine if a company holds a dominant position:

- the market position of the undertaking concerned and its competitors. The established practice of the TCA is to consider undertakings with less than 40 per cent of the market share as less likely to be dominant;
- barriers to entry and expansion in the relevant market;
- legal and administrative barriers;
- economic barriers;
- barriers stemming from the characteristics of the undertaking in question (eg, possession of key inputs and access to special information);
- conduct in the market (eg, large-scale investments, which existing or potential competitors would have to match); and
- buyer power.

Abuse of dominance

23 | If the company holds a dominant market position, what forms of behaviour constitute abuse of market dominance? Describe any recent cases.

The following behaviour may constitute abuse of market dominance:

- excessive or predatory pricing and complicating competitors' activities via pricing policy;
- price or margin squeezing;
- tying;
- rebates;
- exclusivity or single branding arrangements;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby discriminating;
- limiting production, markets or technical development to the prejudice of consumers;
- restricting or cutting off the supply of goods to customers or competitors without reasonable grounds;
- preventing other undertakings from entering into the market and complicating their activities in the market by using financial, technological or IP superiority in a market; and
- most favoured customer (MFC) practices.

This list is not exhaustive. The basis of the TCA's evaluation in this respect in particualar is whether the behaviour of the dominant undertaking leads to actual or potential anticompetitive foreclosure.

The TCA's decision No. 16-20/347-156 taken in 2016 in relation to the popular Turkish online food-ordering platform Yemeksepeti stated that the undertaking abused its dominant position because of its MFC clauses, which prevented competitors from providing better or different conditions (prices, discounts, promotions, menus, payment options and delivery regions), as well as by preventing advertisements of competing platforms by offering promotions to restaurants in return for refusing to work with competing platforms. The undertaking was fined 427,977 lira and was ordered to remove MFC clauses from the agreements.

The TCA's decision No. 17-07/84-34 taken in 2017 in relation to the rakı (a traditional alcoholic drink) producer Mey İçki is another example of abuse of dominance. Providing financial benefits in relation to the shelf positioning and product layout of the rakı category within the traditional channel sales points and loyalty rebates, in addition to other practices, were deemed as exclusionary. The company was fined 155,782,969 lira, corresponding to 4.2 per cent of Mey İçki's turnover (the fourth largest fine imposed on a company in Turkey). The decision lists in detail a number of actions that the dominant company needs to undertake or refrain from.

The TCA determined another abuse of dominance in decision No. 17-08/99-42 in 2017 in relation to the branded sunglasses wholesaler Luxottica. Luxottica was fined 1,672,647 lira for abuse of dominance through practices foreclosing the market to its competitors.

The TCA published its decision No. 18-06/101-52 in February 2018 in relation to the electricity sector and imposed a total fine of 38 million lira on the following undertakings for abuse of dominance: Akdeniz Elektrik Dağıtım AŞ, an electricity distribution company in the Mediterranean region; and Akdeniz Elektrik Perakende Satış AŞ, an incumbent retail electricity sales company that is under the same control structure as the distribution company.

In its decision No. 18-36/584-285 of 1 October 2018, the TCA fined Sahibinden.com (an online platform service provider) 10,680,425.98 lira for abuse of dominance via excessive pricing in the markets for online platform services for real estate sales and rentals and online platform services for vehicle sales. However, this decision was annulled by the Sixth Chamber of Ankara Administrative Court on the basis that the TCA should conduct a thorough analysis of the substitutability, the market structure, the level of competition in the digital markets and welfare standards as well as the cost price. The Court further referred to the Council of State with regard to the standard of proof and emphasised that any violation should be based on proof that is explicit and beyond any doubt.

The TCA recently delivered two abuse of dominance decisions that are both related to the economic integrity comprising Google LLC, Google International LLC and Google Reklamcılık ve Pazarlama Ltd Şti (Google). In its *Android* decision No. 18-33/555-273 in September 2018, the TCA imposed an administrative fine amounting to 93,083,422.30 lira on the basis that Google abused its dominant position by tying Android with its search and WebView services as well as concluding agreements (revenue share agreements) with device manufacturers to incentivise the exclusive usage of the those services. Google was also required to comply with a set of obligations to end Google's anticompetitive conducts within six months. Subsequently, Google made two submissions (a general draft of the measures to be taken to eliminate the infringing conducts and a compliance package); however, the TCA concluded in its decision No. 19-38/577-245 on 7 November 2019 that Google's compliance package was not sufficient for the fulfilment of its obligations and for being fully compliant with the competition rules. Accordingly, the TCA decided to impose a daily fine of 0.05 per cent of its turnover generated in Turkey, starting from the end of the six-month period. Google was obliged to pay daily fines until it meets all the obligations fully. In this context, Google submitted a revised compliance package (on 25 December 2019 and 6 January 2020), which has been deemed sufficient to meet the obligations referred to in the *Android* decision No. 18-33/555-273. That said, the TCA has not refrained from imposing a daily fine for the period between 7 November 2019 and 6 January 2020 (60 days) in its decision No. 20-03/30-13 of 9 January 2020.

Lastly, in its decision No. 20-10/119-69 in February 2020, the TCA decided to impose an administrative fine amounting to 98.354.027,39 lira on Google since Google abused its dominant position in the general search services market and comparison shopping market by (1) placing its competitors' shopping comparison services in a disadvantaged position, (2) complicating the activities of its competitors, and (3) distorting competition in the shopping comparison services market. In addition to the administrative fine imposed on Google, the TCA also required Google to end the infringing activities by complying with the measures addressed in its reasoned decision within a three-month period and to submit annually a report for a five-year period following the implementation of the first compliance measure.

24 | Under what circumstances can abusing market dominance be exempted from sanctions or excluded from enforcement?

Abusing market dominance may be exempted from sanctions if there are sufficient grounds to justify the behaviour. The reasons put forward must include an explanation of the objective necessity of the conduct in question and the efficiency gains it entails.

Under the 'objective necessity' category, the abusive conduct should protect a legitimate benefit, and the conduct should be indispensable for achieving that benefit. Additionally, the conduct must have resulted from external factors, namely health and safety requirements set by public authorities. The restriction must not exceed what is necessary for the protection of that benefit.

As for the 'efficiency' category, the dominant company must prove that the abusive conduct meets the following four conditions:

- certain efficiencies are or will be made possible as a result of the conduct;
- the conduct is indispensable for the realisation of those efficiencies;
- the efficiencies outweigh any possible negative effects on competition or consumer welfare; and

- the conduct should not eliminate effective competition (see the Guidelines on the Assessment of Exclusionary Abusive Conduct Dominant Undertakings).

COMPETITION COMPLIANCE IN MERGERS AND ACQUISITIONS

Competition authority approval

25 | Does the company need to obtain approval from the competition authority for mergers and acquisitions? Is it mandatory or voluntary to obtain approval before completion?

Concentrations between undertakings that lead to a lasting change of control must be notified to the Competition Board if they exceed certain turnover thresholds. Control, which could be acquired on a de jure or de facto basis, is defined as the possibility of exercising decisive influence on an undertaking through rights, agreements or any other means. The control could be taken solely or jointly.

If one of the following turnover thresholds is exceeded in a transaction involving a permanent change of control, the transaction must be notified to the Turkish Competition Authority (TCA):

- the total Turkish turnover of the transaction parties exceeds 100 million lira, and the Turkish turnover of at least two of the parties separately exceeds 30 million lira; or
- the Turkish turnover of the assets or businesses being acquired in acquisition transactions and of at least one of the parties in merger transactions exceeds 30 million lira, and the worldwide turnover of the other party exceeds 500 million lira.

The average buying exchange rate of the Central Bank of Turkey for the financial year in which the turnover is generated is taken into consideration in the calculation of the turnover.

For the purpose of calculating turnovers, transactions executed between the same persons, parties or undertakings or by the same undertaking in the same relevant product market (creeping acquisitions) are considered to constitute a single transaction if they are realised within three years.

Article 8 of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Authorisation of the Competition Board establishes that the calculation of turnovers must be based on net sales, whereas article 9 prescribes specific rules regarding the calculation of financial institutions' turnovers, including, among others, banks and insurance, factoring and financial leasing companies.

The parties to the concentration or their representatives can file the notification jointly or separately. If separately, the notifying party must inform the other party.

26 | How long does it normally take to obtain approval?

The procedure before the TCA may have two phases.

Phase I consists of a preliminary review that lasts one to two months. The Competition Board of the TCA decides either to approve or to further investigate the transaction concerned at the end of Phase I. Following the notification, the board conducts a preliminary examination within 15 days, after which it decides either to clear the transaction or to further examine its possible effects by initiating a Phase II investigation. Within the 15-day period, the TCA may request information from the transaction parties or third parties. The 15-day period restarts following the receipt of the requested information.

If the board does not notify its decision or does not take any action with regard to the notified transaction within 30 days of the notification date, it is considered to have implicitly approved the transaction. In practice, clearance of Phase I transactions generally takes one month.

A Phase II investigation is initiated if the transaction notified is considered to carry the risk of creating a dominant position or strengthening an existing one, and significantly impeding effective competition. The Phase II notice is sent to the parties within 15 days following such a decision. The parties submit their first written defence within 30 days of receiving the Phase II notice. The TCA must issue the Phase II report within six months (extendable for another six months) after the initiation of the Phase II investigation. In practice, the TCA generally issues the Phase II report within the first six months. Parties have 30 days (extendable for another 30 days) for submitting the second written defence, and the TCA issues its additional opinion within 15 days of receiving the second written defence. The parties may respond to the additional opinion within 30 days, and this closes the investigation stage. Unless an oral hearing is held, the board renders its decision within 30 days (extendable for another 30 days) of the conclusion of the investigation stage. The board generally decides whether a Phase II transaction shall be cleared or not within a year of the transaction being notified. In this regard, the best timing for filing a notification depends on the specific circumstances and conditions of the transaction.

27 | If the company obtains approval, does it mean the authority has confirmed the terms in the documents will be considered compliant with competition law?

The TCA's clearance also covers ancillary restrictions that are proportionate, directly related and necessary for the concentration, and restrictive only for the parties (non-compete, confidentiality and non-solicitation clauses). If, following the clearance, the restraints are found not to be directly related and necessary, the company concerned may face an investigation.

Failure to file

28 | What are the consequences for failure to file, delay in filing and incomplete filing? Have there been any recent cases?

The amount of the administrative fine for failure to file or delay in filing varies depending on whether the transaction is found to create or strengthen a dominant position and significantly impede competition, therefore violating article 7 of the Competition Law. For failure to notify or delay in filing, if the transaction:

- creates or strengthens a dominant position and significantly impedes competition, a fine of up to 10 per cent of the turnover generated by the end of the preceding fiscal year is issued; or
- does not create or strengthen a dominant position and does not significantly impede competition, a fine of 0.1 per cent of the turnover generated by the end of the preceding fiscal year is issued.

Additionally, executives and employees of the undertakings concerned who played a decisive role in the violation of the standstill obligation may also face a fine of up to 5 per cent of the fine imposed on the undertakings.

If a transaction, subject to TCA's authorisation, is not notified and violates article 7 of the Competition Law, the Competition Board of the TCA will order the concerned transaction to be terminated and the situation prior to the transaction to be restored. In this regard, the Competition Board is also empowered to:

- order the return of all the seized assets within a certain time period or, if this is not possible, the assignment and transfer to third parties of the seized assets;
- prohibit the acquiring persons from taking part in the management of the acquired undertakings until the assignment of the seized assets; and
- take any other measure deemed necessary.

The fine is imposed on both parties in mergers and on the acquirer in acquisitions. In transactions in which a joint venture is established, all parties are deemed as acquirers, and fines are imposed accordingly.

Examples of the TCA's decisions with regard to the closing of the transaction before the submission of a notification or failure to do so are as follows:

- *Total/Cepsa* decision No. 06-92/1186-355 in 2006;
- *CVR Inc/Inco Ltd* decision No. 07-11/71-23 in 2007;
- *Tekno İnşaat* decision No. 12-08/224-55 in 2012;
- *DSG European Investment Ltd* decision No.13-50/717-304 in 2013; and
- *Labelon Group/A-Tex Holding* decision No. 16-42/693-311 in 2016.

INVESTIGATION AND SETTLEMENT

Legal representation

29 Under which circumstances would the company and officers or employees need separate legal representation? Do the authorities require separate legal representation during certain types of investigations?

Although not referred to in any competition legislation, an employee may seek external legal support if he or she faces action from his or her employer with the allegation that his or her own initiatives resulted in the breach of competition law. An individual may also seek individual legal advice in cases where his or her employer forced the employee to breach competition rules and put him or her under a responsibility towards competition law. In those cases, an individual may apply for leniency or whistle-blowing under the guidance of the individual legal support.

Dawn raids

30 For what types of infringement would the regulatory authority launch a dawn raid? Are there any specific procedural rules for dawn raids?

The TCA frequently carries out dawn raids regardless of the nature of the alleged infringement. Unannounced on-site inspections are used both at the pre-investigation and investigation stages.

The TCA may search the premises of the undertaking subject to investigation. TCA officials do not need authorisation from a court, but they must obtain authorisation from the TCA's president defining the scope of the investigation. Those decisions indicate that an administrative fine will be imposed if incorrect information is provided. Authorisation from the court is required only if the undertaking concerned refuses to allow the dawn raid.

The TCA's officials may, under article 15 of the Competition Law, enter the undertakings' premises and means of transport; access electronic devices, such as computers, business phones and laptops; examine and take copies of the books and other business records; and ask any representative or employee for explanations about facts or documents. The TCA's officials are entitled to fully examine the computers, including all deleted items.

31 What are the company's rights and obligations during a dawn raid?

The undertaking is obliged to allow the TCA's officials to access the premises and conduct the investigation if a formal decision is made by the TCA. There is no such obligation in the absence of a formal decision, and the undertaking concerned may refuse the inspection without specifying any particular reason. If the undertaking voluntarily decides to allow the investigation, it will not be able to change its decision later. If a formal decision has been made by the TCA, undertakings must allow the inspectors to conduct the dawn raid. If it hinders the raid, the undertaking will be subject to an administrative fine amounting to 0.5 per cent of its turnover of the preceding year.

One of the most significant decisions of the TCA regarding the obstruction of a dawn raid is the *TTNET* decision No. 13-46/601-M taken in 2013, where it was found that an employee deleted certain documents during the dawn raid, which led to the TCA imposing a fine of 15,512,258 lira, corresponding to 0.5 per cent of the TTNET's turnover.

Additionally, the TCA through its *Unilever* decision No. 19-38/584-250 dated 7 November 2019, ruled to impose an administrative fine against Unilever amounting to 0.5 per cent of its turnover in Turkey in 2018 due to the hindrance of the on-site inspection. One of Unilever's employees stated that they needed to consult Unilever Global for permission regarding the examination, and the permission required for the inspection through eDiscovery was obtained at 17:45 (ie, the inspection started with a delay of approximately 7.5 hours).

In its *Siemens* decision No. 19-38/581-247 in November 2019, when the case handlers intended to carry out an inspection within specific dates and using keywords concerning the email accounts of all of Siemens employees during a dawn raid, Siemens employees stated that Siemens Global's permission is required to initiate the inspection. Since the authorisation was not obtained during the on-site inspection, the inspection was not carried out on that day; however, Siemens contacted the TCA six days after the on-site inspection and stated that Siemens is searching for ways to grant access to the TCA for performing the requested inspection and proposed a procedure of on-site inspection. The on-site inspection was eventually conducted on 2 October 2019. The TCA concluded that the benefit expected from the on-site inspection could not be obtained because of the inability to use eDiscovery even though the email accounts of the company employees, which were considered to be related to the file subject claims, were not available. In this respect, the TCA imposed two different administrative fines on Siemens: the first being by 0.5 per cent of Siemens' annual gross revenue that was generated by the end of 2018 financial year, and the second being 0.05 per cent of Siemens' annual gross revenue generated in 2018 for each day between 3 October 2019 (the date following the day of conduct) and 15 October 2019 (the date of enabling the TCA to conduct an on-site inspection) (12 multiplied by 0.05 per cent of the annual gross revenue).

Settlement mechanisms

32 Is there any mechanism to settle, or to make commitments to regulators, during an investigation?

Turkish law does not provide a settlement procedure. The TCA may, at the stage of preliminary investigation, adopt a decision or warning stating that it will initiate a full investigation if the undertakings concerned do not modify or put an end to their agreements or conduct, and the parties should come up with effective commitments to be accepted by the TCA.

Settlements in the form of remedies are available within the scope of merger control. The TCA allows the undertakings concerned to propose remedies related to the transaction aimed at eliminating the competition concerns that may arise. At the same time, the TCA is entitled to impose requirements and obligations to ensure the fulfilment of those remedies.

33 What weight will the authorities place on companies implementing or amending a compliance programme in settlement negotiations?

As the TCA considers competition compliance programmes (CCPs) to be part of the remedies package in merger cases and, more generally

as a positive factor, the TCA may be expected to take into consideration existing programmes in the context of the settlement procedure if the draft Law on the Protection of Competition is passed.

Corporate monitorships

34 | Are corporate monitorships used in your jurisdiction?

No, corporate monitorships are not used in Turkey.

Statements of facts

35 | Are agreed statements of facts in a settlement with the authorities automatically admissible as evidence in actions for private damages, including class actions or representative claims?

This remains to be seen once the settlement mechanism is introduced in Turkey. Currently, the civil courts suspend proceedings in actions for private damages until the TCA renders a decision confirming the competition law infringement. If the TCA finds an infringement, the civil courts must take this as given, and they may not further assess whether the conduct of the defendant is unlawful or not. Private damages claims are tort claims, and the infringement decision of the TCA only proves the unlawfulness of the relevant conduct. The claimant must further prove the negligence of the infringer, its damages and the causal link between the unlawful conduct and its damages. There is no class action envisaged in Turkish law for the purposes of private enforcement in relation to competition law violations (as opposed to cases on consumer protection).

Invoking legal privilege

36 | Can the company or an individual invoke legal privilege or privilege against self-incrimination in an investigation?

The undertaking (both the company and individuals) may claim attorney–client privilege over any aspect of internal antitrust investigations that relates to the right of defence under certain conditions. Legal privilege in Turkey covers documents prepared by or correspondence with an independent external attorney that is directly related to the client's right of defence (eg, a legal opinion on whether the agreement infringes competition law). If this is not the case, or if the purpose of the documents is to conceal or facilitate the violation (eg, discussions on how to apply the anticompetitive practices), the privilege cannot be invoked, and the documents concerned cannot be protected. The attorney–client privilege was confirmed by the TCA in its *Dow* decision No. 15-42/690-259 in 2015, stating that communications with an independent (with no employment relationship with the client) attorney fall within the scope of attorney–client privilege and shall be protected from disclosure. As no statutory or regulatory rule provides for legal privilege, the TCA enjoys discretion in this respect.

In the *Luxottica* decision No. 17-08/88-38 in 2017, the TCA held that the undertakings' responses to the information requests must be evaluated in the context of the privilege against self-incrimination. The TCA stated that the undertakings have a right to answer questions that are directly related to the essence of the investigations in parallel with their defences, and that it may not be claimed that these responses are misleading owing to the privilege against self-incrimination.

In the *AYESAŞ* case, TCA officials had seized a document drafted by AYESAŞ's lawyers concerning its CCP as evidence in an investigation as it was not prepared for the purpose of exercising the right of defence within the scope of the ongoing investigation (TCA decision No. 16-42/686-314 dated 6 December 2016). Although the Administrative Court (Judgment No. E:2017/412 and K: 2017/3045 dated 16 November 2017) had annulled the TCA's decision by holding that the document was covered by attorney–client privilege and that it could not be used as an evidence against AYESAŞ, the Regional Court (Judgment No. E: 2018/658 and K: 2018/1236 dated 10 October 2018) held that the document did not fall within the scope of the right of defence as there was no ongoing competition investigation when that document was drafted. Consequently, the concerned document was not directly linked to AYESAŞ's exercise of its right of defence and could, thus, not benefit from attorney–client privilege.

In its *Huawei* decision No. 19-40/670-288 in November 2019, the in-house legal counsel of Huawei objected to the seizure of some documents during an on-site inspection, carried out by the case handlers of the TCA, that were assessed to be within the protective cloak of legal privilege. In response, the case handlers indicated that they only collected two pieces of email correspondence between the in-house legal counsel and the employees instead of the sequence of correspondences. Moreover, the case handlers also indicated that the independent external attorney was only copied on the relevant emails, and there were no statements made to or from the external independent attorney in those correspondences. The TCA resolved that it could not be considered as a correspondence with an independent external attorney and, thus, was not in scope of the legal privilege.

Confidentiality protection

37 | What confidentiality protection is afforded to the company or individual, or both, involved in competition investigations?

The undertakings involved in competition investigations are entitled to confidentiality protection. To that end, the concerned undertaking must make a written request to the TCA indicating the information and documents for which confidentiality is requested and the reasons justifying the request. In addition, a non-confidential version of those information and documents must be provided together with the request. The TCA has discretion in deciding whether there are legitimate reasons to grant confidentiality. The TCA may, under Communiqué No. 2010/3 on Access to the File, request detailed explanations justifying the request.

Refusal to cooperate

38 | What are the penalties for refusing to cooperate with the authorities in an investigation?

Refusal to cooperate with the TCA may take the form of obstructing, making it difficult to perform the on-site inspection or failing to respond duly to information requests. For obstructing an on-site inspection, the TCA may impose an administrative fine of 0.5 per cent of the undertaking's annual gross revenues of the preceding financial year, whereas in the case of failing to respond duly to information requests or providing false information, the TCA may impose an administrative fine of 0.1 per cent of the undertaking's annual gross revenues of the preceding financial year.

For instance, in its *Poultry* decision No. 19-12/155-70 in March 2019, the TCA resolved to impose a fine corresponding to 0.1 per cent of the following companies' turnover of the previous year:

- Bakpiliç for failure to provide the requested information and documentation as part of the investigation; and
- Tad Piliç for providing false or misleading information.

These companies did not violate the Competition Law in essence. Additionally, in its *Mosaş* decision No. 18-20/356-176 in June 2018, the TCA imposed administrative fines of 0.5 per cent for hindering the on-site inspection.

The TCA's annual report for 2019 demonstrates that the fines imposed owing to providing false or misleading information during on-site inspections and hindering or complicating on-site inspections have increased. In effect, while the total amount of fines owing to

the former was approximately 826,000 lira in 2019, the fines imposed owing to the latter amounted to around 42.6 million lira. Furthermore, the number of cases where an undertaking has not duly submitted its responses to the TCA's request for information within the scope of an investigation has also increased. Therefore, it should be stressed that the TCA implements a strict approach with regard to the foregoing conducts of the undertakings.

Infringement notification

39 | Is there a duty to notify the regulator of competition infringements?

No statutory or regulatory rule provides for such a duty. Each natural person, institution or undertaking is entitled to apply to the TCA.

Limitation period

40 | What are the limitation periods for competition infringements?

Eight years.

MISCELLANEOUS

Other practices

41 | Does your competition regime specifically regulate anticompetitive practices that are not typically covered by antitrust rules?

Not applicable.

Future reform

42 | Are there any proposals for competition law reform in your jurisdiction? If yes, what effects will it have on the company's compliance?

The Ministry of Customs and Trade issued in 2013 a draft law amending certain provisions of the Law on the Protection of Competition, which was introduced in parliament in early 2014. Although this draft law was not enacted and became obsolete following the general elections of 2015, its provisions could be indicative of what may be expected from a potential reform.

The draft concerned provides for settlement and commitment procedures. Accordingly, in the case of a settlement, undertakings will accept the violation and waive their right to appeal against the settled issues and then benefit from a fine reduction, whereas in the case of undertakings' commitments, the Turkish Competition Authority (TCA) may accept those commitments, and, thus, it may either not initiate a full investigation or terminate the investigation without any violation determination.

Additionally, the draft replaces the current dominance test with the 'significant impediment of effective competition' test for the purpose of merger assessment.

Innovation and all the developments linked to artificial intelligence and the use of algorithms facilitate collusion between undertakings. In this respect, the TCA emphasises, in its second Strategic Plan 2019–2023 (published on 13 March 2019), the necessity to adapt to technological developments and digitalisation and to revise the scope of its investigative powers, particularly regarding digital forensics and technical infrastructure.

Finally, the TCA, which closely monitors changes in the digital economy and competition in the major digital markets (as other competition authorities do), has been carrying out digital economy report preparations. In its announcement on 30 January 2020, the TCA emphasised digital transformation as well as the difficulties that might result from the development of innovative digital products or services and business models in terms of competition policy and legislation. Considering the dynamics of those, it further points out the sensitive approach that might be adopted with regard to consumer-friendly innovations and business models. Accordingly, the TCA also places great importance on the participation of all stakeholders and their suggestions and views about potential policies.

UPDATE AND TRENDS

Key developments of the past year

43 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

On-site inspections, which constitute an essential part of fact disclosure, are meticulously carried out by the case handlers of the Turkish Competition Authority (TCA). In effect, findings that might be of help in clarifying the inspected subject matter are mostly gathered during those inspections. The TCA, thus, highlights that on-site inspections must be carried out in an expeditious manner to prevent any doubts about potential spoliations of evidence.

Recently, there have been an increasing number of cases where an undertaking has been subjected to an administrative fine on the grounds that the on-site inspection had been hindered or complicated. While no fine was imposed between 2014 and 2016 in this regard, the total fine imposed on those grounds in 2017 and 2018 amounted to more than 3.3 million lira. Despite the fact that the decisions of the TCA from 2019 until now do not refer to the actual amount of such fines, and it would thus be impossible to find out the actual amount of those, it is obvious that the number of cases concerning the hindrance of on-site inspections has been increasing.

In the context of hindering or complicating on-site inspections, article 16 of the Competition Law sets out a fine of 0.5 per cent of the annual gross revenue generated by the end of the financial year preceding the decision and article 17 provides that the Board shall, for each day delayed, impose fines of 0.05 per cent of the annual gross revenue generated by the end of the financial year preceding the decision.

The following evaluations may be made based on the TCA's recent decisions in respect of the fines imposed because of hindering or complicating on-site inspections.

- The TCA's case handlers are empowered to inspect online communications that the employees of an undertaking hold on their mobile phones (WhatsApp, etc). (*Mosaş* decision No. 18-20/356-176 of 21 June 2018 and *Ankara Ortodonti* decision No. 18-09/157-77 of 29 March 2018).
- An administrative fine can be imposed on undertakings within the scope of on-site inspections even if they are not subject to an investigation (*Medyacızade* decision No. 18-03/34-21 of 18 January 2018).
- The presence of personal information on company computers might not prevent the TCA from inspecting those computers. (*Nuhoğlu İnşaat* decision No. 17-42/669-297 of 21 December 2017).
- Even if the TCA decides not to initiate a fully fledged investigation as a result of its evaluations in the preliminary inspection, an undertaking hindering the on-site inspection may face a significant fine (*ÇEKOK Gıda* decision No. 17-20/318-140 of 3 July 2017).
- Cases where an assistant could not inform the relevant persons and, thus, holds a meeting is considered as hindering the on-site inspection, and a delay of 40 minutes may even raise doubts about spoliations of evidence (13th Chamber of the Council of State, decision No. 2011/2660 E, 2016/775 K of 22 March 2016).

- Any delay that is caused because of a requirement to obtain the permission of the global headquarters is not considered as a valid justification for stalling the on-site inspection, and the undertakings involved can face a significant amount of fines (*Unilever* decision No. 19-38/584-250 of 07 November 2019 and *Siemens* decision No. 19-38/581-247 of 7 November 2019).
- The TCA's case handlers may request to examine a private email account of an employee if there are doubts that the account concerned has been used for the purposes of business conversations (*Kaynak Tekniği* decision No. 19-46/793-346 of 26 December 2019).
- 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 (*Groupe SEB* decision No. 20-03/31-14 of 9 January 2020).

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