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# Competition Insight

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# General

## The TCA's Strategic Plan for 2014-2018

The Turkish Competition Authority (the "TCA") launched its Strategic Plan for the years 2014-2018. The plan sets strategic goals in five key areas: (i) Developing policies, (ii) Competition advocacy, (iii) Regulation, (iv) Supervision and (v) Management. Those strategic goals are summarized in the table below.

Key areas	Strategic goals
Developing policies	<ul style="list-style-type: none"><li>• Determining the markets which have a high risk of competition infringement</li><li>• Setting a prioritization mechanism</li></ul>
Competition advocacy	<ul style="list-style-type: none"><li>• Contributing to the development of a national competition policy and sharing it with the government and the public opinion</li><li>• Minimizing the risk of competition infringement of public authorities</li><li>• Collaborating with universities</li><li>• Publicizing the main principles of competition law and the effects of the Board's decisions on the relevant markets</li></ul>
Regulation	<ul style="list-style-type: none"><li>• Determining areas that require secondary legislation and publicizing effective legislations</li><li>• Reviewing the legislation regularly</li></ul>
Supervision	<ul style="list-style-type: none"><li>• Creating a supervisory mechanism with regard to the operations and processes</li><li>• Decreasing the period of decision writing and increasing the quality of the decisions</li><li>• Cooperating closely with the foreign national competition authorities</li></ul>
Management	<ul style="list-style-type: none"><li>• Developing the organization and enhancing its operations</li><li>• Changing the perception of public opinion toward the Authority</li><li>• Measuring and evaluating the performance of employees</li></ul>

The efforts of the TCA towards achieving the abovementioned strategic goals are laid out below. Accordingly, the TCA has been actively working with different stakeholders of the competition regime in order to increase the awareness, interaction and understanding of competition policies.

## The 2015 competition letter

The TCA has been publishing the competition letter annually since 2009 with the aim of reaching out to various stakeholders of the competition law.<sup>1</sup> The letters published until 2015 addressed the importance of various stakeholders for the operation and maintenance of efficient and fair competition in the Turkish market. These stakeholders include the public in general, small-medium sized enterprises, public executives as well as professional organizations and non-governmental organizations.

This year, the TCA focused on the role of the media in the development of the competition culture and addressed the 2015 Competition Letter (Letter) to members of media institutions. In the letter, the President of the TCA remarked that “modern society is a media society” and explained that the media played two significant roles in the development of the competition law field; as a stakeholder and as a strategic partner.

Acknowledging the developments in the competition field in Turkey mainly in markets such as clothing, food, education, health, telecommunications, aviation services and transportation, the Letter emphasized the ongoing importance of the institutionalization of competition and the creation of a competitive culture. The support of the media, which serves as a medium for communication and an influential platform reflecting the recommendation and criticism of the



public administration, consumers and the undertakings, has been described as a necessity for the creation of an integrative approach towards the institutionalization of competition and establishment of a competitive culture.

Moreover, the strategic importance of the media as the partner in the development of a competition culture has been summarized in six points. Firstly, it has been explained that the delivery and comprehension of competition law related matters such as different approaches to matters and different practices played a significant role in the creation of a competitive environment and stimulation of a social development and progress in every field of life. Secondly, the publications of any types of competition law related matters were regarded as enhancing the creative and critical thinking in society and said to aid the establishment of a competition friendly business culture and ethics. Thirdly, the media has been regarded to be an important tool for raising awareness of the public, and the consumers who may suffer from increased prices in daily life due to competition infringements. Furthermore, the media has been said to raise the awareness

of the employees and representatives of the undertakings who are often not aware that they have been involved in a competition violation. Accordingly, the media has been defined as a deterrent mechanism for competition infringements, and it has been mentioned that the inclusion and discussion of competition violations and their consequences would provide legitimacy and power to the efforts put against competition infringements. Finally, the importance of media for detecting competition infringements has been underlined to be key both for initiation of ex officio examinations and investigations and for stimulation of leniency applications.

In light of the abovementioned determinations, the TCA has called out for the attention and support of the media representatives as they are regarded to play a very significant role for communication and translation of the competition law related and market related discussions that take place inside the walls of the TCA to the society in lay terms.

## The 2015 competition report

The Act on the Protection of Competition No: 4054 (the “Act”) lays down the duties and power of the Competition Authority’s Presidency. As per Article 30 of the Act, the Presidency rests with the duty and power to opine about decisions to be taken as to the competition policy and the relevant legislation. Thus, the 2015 Competition Report has been drafted in order to review the legislation in Turkey and assess the overall

1 “TCA Competition Letter” 2015. [http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Pages/2015 Rekabet Mektubu Eng.pdf](http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Pages/2015%20Rekabet%20Mektubu%20Eng.pdf)

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## President of the TCA remarked that “modern society is a media society”

compatibility of the effective legislation with the competition rules applicable in Turkey.<sup>2</sup>

It is marked that the 2015 Competition Report is a continuation of the Competition Report published in 2013 which dealt with public interventions in general. Accordingly, the 2015 Competition Report titled “Screening the Legislation in Turkey from a Competition Policy Perspective” takes a step forward by analyzing legislations – the source of public interventions. Thus, the report has been drafted with the aim to reduce superfluous

intervention towards business life and to increase transparency of relevant legislation in order to achieve a rather more efficient, innovative and competitive economy. Similar experiences in Greece and Australia have been provided as an example for attempts to embed the competition policy outlook to revise the legislation and to provide further insight on the significance of preparing legislation according to the rules governing competition in the Turkish market.

In the Report, it has been evaluated that the legislations set to aid regional infrastructure, achieve region-wide equality or prevent market failure may hinder competition in markets in an overreaching manner and create handicaps for achieving ideal performance in economy. Accordingly, certain provisions in 48 Acts, 2 Decrees, 2 Codes, 108 Regulations and 55 Communiques have been

found to embody terms which may potentially have restricting effects on competition in markets in an overreaching manner. Out of these provisions, it has been recorded that the main commercial areas where the restrictions exist consist of control over prices and outputs, control over entry and exit and control over discretion in advantages. Accordingly, the legislation governing energy resources such as electricity, petroleum and LPG have been reported to embody most of these restrictions.

These conclusions have been reached after conducting an in-depth analysis of the legislation in Turkey. Initially, the recent legislation governing the product and service markets and operations has been determined. Accordingly, 848 Acts, 79 Decrees, 141 Codes 6575 Regulations and 2755 Communiques have been screened. The relevant legislation has been simultaneously categorized based on the sectors overseen by the different competition departments. Moving on, the competition restricting terms laid out in the screened legislation has been analyzed based on certain pre-prepared questions. The Competition Assessment Toolkit of the OECD and the Competition Assessment Guide of the TCA have been used for listing the questions. Moreover, the key findings from this questioning process have been subject to an in-depth balancing analysis. The Regulatory Impact Analysis has been used in order to assess the costs and benefits of the relevant rules which are regarded as hindering competition in the Turkish



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2 “TCA Competition Report.” 2015. <http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Güncel/raporlar/raporperspektif.pdf>

market. As a way of finalization, the list of provisions which may be regarded as having restricting effects in the Turkish market have been provided with brief explanations.

With the Report, the TCA has aimed to highlight the importance of embedding competitive perspective and policy whilst enacting new laws and regulations or amending the already existing provisions.

### The 2014 competition report

The 2014 Competition Report seeks to address another important stakeholder of competition law: SMEs.<sup>3</sup> SMEs—which are often referred to as the backbone of the developing economies—are regarded to be very significant for the increase of welfare, improvement of the economy and achievement of added economic and social values in Turkey. This is because they are regarded to be rather more flexible and adaptable to changes in the market, and they are often observed to contribute to innovation and product development in the economy.

Recognizing the growing role and importance of small-medium sized enterprises (SMEs) in the Turkish market, the TCA's 2014 Competition Report concentrates on the importance of these undertakings for the institutionalization of a fair and just competition culture.

Accordingly, the Report provides a brief overview of the SME market in Turkey, setting out that the commercial

activities of SMEs play an important role for the Turkish economy and illustrating that the majority of the SMEs in Turkey operate in commercial wholesale or retail markets, manufacturing markets and the accommodation and food industry.

The 2014 Competition Report analyses the SMEs position in practice of the competition law regime because the SMEs are often observed becoming either the victim of competition law infringements or violators of competition law without much awareness. The Report analyzes these observations mainly by surveying many SMEs on matters such as comprehension of competition law and understanding of practices of the TCA as well as competition issues faced by the SMEs.

The Report is considered to be successful as it is drafted based on interactions with the SMEs described as one of the significant stakeholders in the competition field and thus, it concentrates on practical issues with the effort to provide practical awareness-raising solutions.

### Standby phase of the Turkish Competition Board

At the beginning of April, the TCA announced that the terms of the three Board members, including the Chairman of the Board, have reached an end. Simultaneously, a member of the Board, Mr. Reşit Gürpınar (as the most senior board member), was assigned as the proxy for the

Chairman of the Board. Currently, the Board is made up of only four members.

According to Article 22 and Article 51 of the Act, the Board is composed of a total of seven members and the meeting quorum for reaching a final decision, such as approval of an M&A or conclusion of an investigation, is five members. The Board cannot review any case for nearly two months as it cannot fulfil the meeting quorum requirement.

This unexpected situation has created serious concerns for firms who impatiently look for the clearance decisions of the Board to close the transactions. Accordingly, two different opinions have stemmed for M&A transactions which require an immediate closing.

According to the dominant opinion, Article 10 of the Act which follows: "where the Board does not respond to or take any action for the application as to a merger or acquisition within due time, merger or acquisition agreements shall take effect and become legally valid after 30 days as of the date of the notification." shall be interpreted in a manner that encapsulates the current "standby phase." Thus, the parties to the M&A transactions are believed to rest with the right to close the transactions in expiration of the 30 day period which starts as of the date of the notification. Currently, many parties submit notices to the

3 "TCA Competition Report." 2014. [http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Annual Report/Annual\\_Report\\_On\\_Competition\\_Policy\\_Developments\\_In\\_Turkey\\_2014\\_Tan.pdf](http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Annual%20Report/Annual_Report_On_Competition_Policy_Developments_In_Turkey_2014_Tan.pdf)



TCA explaining that the transaction should be regarded to be authorized since the 30 day period has expired.

On the contrary, another argument follows that Article 10 of the Act shall be rendered inapplicable in the current situation as the Article makes a reference to ordinary situations where the Board is able to fulfil the meeting quorum and has the ability to take decisions; however chooses not to do so. Yet, the standby phase is considered to be an extraordinary situation where the Board cannot meet due to the meeting quorum requirement let alone being able to choose to make decisions.

It is anticipated that this uncertain period shall continue for a while. The Council of Ministers is in charge of the appointment of Board members; however the general election was made last week, and for the first time in 13 years the political parties are expected to form a coalition.

### **Building relationships: A protocol was signed between the TCA and EMRA**

In order to establish, improve and protect the robust and competitive framework in the energy markets, the TCA and Energy Market Regulatory Authority ("EMRA") have concluded a "Protocol of Cooperation" on January 2015.<sup>4</sup> Even though effects of the recently concluded Protocol have not become evident yet, the goal of the Protocol is clear. The Protocol seeks to ensure the bilateral cooperation, information sharing, sharing of opinions and coordination between the Authorities. Accordingly, the Protocol has three building blocks:

#### **1. Developing Information-Sharing:**

As laid out in Article 4 of the Protocol, the parties shall inform each other about the facts that they face during their internal processes related to the competition in the energy markets. In addition, each

party shall provide proper access to the Board Decisions database if demanded.

Each party shall share the reports, documents, thesis, statistics and other relevant documents related to energy markets on demand.

Each party shall ask for the opinion of the counterparty before coming into force about the secondary legislation affecting competition in the energy markets.

- 2. Enhancing Cooperation:** As laid out in Article 5 of the Protocol, each party shall cooperate and inform each other about the activities and/or projects that are planned or being carried out in relation to the relevant legislation.

Accordingly, the aim is to strengthen cooperation through internships, training programs and seminars.

- 3. Establishing a Committee for Better Coordination:**

As provided in Article 6 of the Protocol, a Coordination Committee has been established from members from the TCA and EMRA. This Committee is responsible for implementing the coordination and information-sharing activities and meeting at least once a year.

<sup>4</sup> "Competition Authority - Cooperation Protocol Signed between Energy Market Regulatory Authority and Turkish Competition Authority.". <http://www.rekabet.gov.tr/en-US/News/Cooperation-Protocol-signed-between-Energy-Market-Regulatory-Authority-and-Turkish-Competition-Authority->

The Committee shall establish working groups on specific topics. The Committee shall also work on the potential jurisdictional conflicts that may arise during the activities of the Authorities and report its conclusions to the Authorities.

It can be observed that the Protocol envisages cooperation and coordination in a broader sense yet fails to address an actual conflict between the provisions of the TCA and EMRA. It is anticipated that additional provisions may be included in the Protocol, or the scope of the already existing provisions may be expanded in order to identify and address potential jurisdictional conflicts.

### Strengthening relationships: the scope of the cooperation protocol between the TCA and ICTA extended

Both the TCA and Information and Communications Technology Authority (“ICTA”) have duties and responsibilities for the establishment, development and protection of competition in electronic communication markets within the framework of their relevant legislations.<sup>5</sup>

To increase efficiency in cooperation and coordination on electronic communication sector- specific matters, the Cooperation Protocol was signed and put into effect in November 2011. The main aim of the Cooperation Protocol is to determine the common procedure



and principles to evaluate the matters and to adopt a joint attitude for interpreting the relevant legislation and terms. Since 2011, while the TCA asks for the opinion of the ICTA on M&A transactions, preliminary inquiries or investigations conducted in the electronic communication sector, the ICTA also requests the TCA's consideration for all matters that may affect the competitive conditions in the electronic communication sector. It should be remarked that the opinions and considerations of the Authorities do not have a binding character, yet both the TCA and the ICTA show great efforts to adopt the common attitude.

In 2015, the ICTA also became authorized in the regulation of postal services along with the electronic communication sector. Thus, the

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The TCA has an important role in assessing the impacts of regulations on competition.

Cooperation Protocol was extended in order to cover the postal services. Accordingly, the main amendments were related to the chapters of “Information Exchange,” “Taking Opinion” and “Coordination and Cooperation.”

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5 “Competition Authority - The Scope of the Cooperation Protocol between the Competition Authority and Information and Communications Technology Authority Extended.” Competition Authority - The Scope of the Cooperation Protocol between the Competition Authority and Information and Communications Technology Authority



# Competition policy

## Guidance on the assessment of competition

As it is known, regulatory impact assessment (“RIA”) is a systematic analysis which assesses the possible impacts of regulations in detail. Accordingly, within the scope of RIA, the TCA has an important role in assessing the impacts of regulations on competition.

In this context, the TCA recently published its Guidance on Assessment of Competition with regard to the criteria used in the assessment. Moreover it is noted in the relevant Guidance that, assessments performed by the TCA will mainly be based on the checklists available in OECD’s Competition Assessment Toolkit. At this point, the following three assessments should be presented when assessing the necessity of a further competition assessment:

- The effects of regulation on the number and position of the undertakings
- The effects of regulation on the ability of undertakings to compete
- The effects of regulation on the incentive of undertakings to compete

Moreover in the relevant Guidance, there are some examples of regulations which may constitute a problem in respect of these topics, and the TCA’s evaluations on the regulations are also presented. However, there is no explanation

concerning the conditions in which these regulations contribute to social welfare. In addition, it is certain that, -without an external intervention-, markets cannot maximize the social welfare where structural and permanent failures exist due to natural monopoly, information asymmetry and externalities. Therefore although these interventions lead to results mentioned in the Guidance, they have also a potential to increase efficiency in the market and to increase consumer welfare.

For these reasons, when assessing the effects of regulations on competitive process in the markets, the TCA should not make an assumption that “regardless of the market structure, competition will always lead to social welfare maximization.” Instead of this, subsequent to an analysis of the structural characteristics of the affected market, an assessment of whether restrictions caused by regulation are economically justifiable would be more appropriate. At this point it should be clarified that although the relevant Guidance does not explicitly refer to this method of analysis, some evaluations in the relevant Guidance implies that the TCA implicitly regards this method of analysis.

## Guidelines on the assessment of exclusionary abusive conduct by dominant undertakings

The TCA published its “Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant

Undertakings” in 2015. At this point, the relevant Guidelines are not only intended to be guiding for dominant undertakings in a market, but also for the customers, suppliers and competitors of the dominant undertakings.

European Commission (the “Commission”) published the Discussion Paper on the Application of Article 82 of the Treaty to Exclusionary Abuses in 2005. Following this, in 2008, the Commission adopted and published the “Guidance on the Commission’s Enforcement Priorities in Applying Article 82 of the Treaty to Exclusionary Abuses by Dominant Undertakings” (the “EU Guidance”).

In line with this global trend, the Guidelines have the feature of the first secondary legislation, which focuses on abuse of dominance prohibited by Article 6 of the Act in Turkish competition law. At this stage the Guidelines show structural and contextual similarities with the EU Guidance. Moreover, the Guidelines consist of 5 chapters: 1. Introduction, 2. Dominant Position, 3. Abuse, 4. Justification, 5. Forms of Abuse.

In the first chapter, there are general statements concerning Article 6 of the Act. Undertakings in a dominant position are regarded to be free to increase their dominance in a competitive manner by way of their own dynamics. However, the Act prohibits practices of dominant undertakings which have the potential

effect of reducing consumer welfare through taking advantages of their market power. Therefore conducts of dominant undertakings are not allowed if they restrict competition.

Moreover, it should be noted that the relevant Guidelines only include explanations concerning abusive conducts of undertakings that hold a single dominant position, and the scope of the relevant Guidelines are limited to exclusionary abuses.

In the second chapter, there are detailed explanations on the concept of dominant position. At this point, in order to decide an infringement, the undertaking must hold a dominant position, and the related conduct must have abusive characteristics. Therefore, in absence of one of these factors, the Board holds the authority to refrain from analyzing other factors.

In addition, the main factors taken into consideration in dominance assessment are listed as (i) the positions of the undertaking examined and its competitors in the market, (ii) barriers to entry and expansion in the market and (iii) the bargaining power of buyers.

With regard to abuse, the basis of the evaluation concerning exclusionary conduct is the examination of whether there is an actual or potential foreclosure caused by the conduct of the dominant undertaking. Moreover, in examining the presence of anti-competitive foreclosure, the Board in general takes the following points into account: (i) The position of the dominant undertaking, (ii) the conditions in the relevant market,

(iii) the position of the dominant undertaking's competitors, (iv) the position of the customers or suppliers, (v) the scope and duration of the conduct examined, (vi) possible evidence of actual foreclosure, (vii) direct or indirect evidence of exclusionary strategy.

In relation to justification, it is pointed out that, in the application of Article 6 of the Act, the Board takes into consideration any argument propounded by a dominant undertaking. Moreover the Board classifies the claims of justification as objective necessity and efficiency.

When assessing the objective necessity justification, the Board primarily evaluates whether the conduct protects a benefit that has a legitimate basis and whether the conduct is indispensable for achieving this benefit.

On the other hand in order to assess the efficiency justification by the undertaking, the Board stipulates that all four conditions following are obtained:

- The efficiencies should be emerged or likely to be emerged in consequence of the conduct
- The conduct should be indispensable for gaining those efficiencies
- The possible efficiencies gained by the conduct should preponderate possible negative impacts on competition and consumer welfare in the affected markets



- The conduct should not weaken effective competition through removing the sources of actual or potential competition

Finally with regard to the fifth chapter, major forms of abuse are listed as, (i) refusal to supply, (ii) predatory pricing, (iii) price/margin squeeze, (iv) exclusivity/single branding agreements, (v) rebate systems and (vi) tying.

In conclusion, the relevant Guidelines is the first secondary legislation which focuses on abuse of dominance and accordingly it is believed to bring innovations to Turkish competition law to a certain extent. For instance, in the relevant Guidelines, a considerable emphasis is made on consumer welfare. With the enactment of the relevant Guidelines, consumer welfare has become the focal point of the concept of abuse. Moreover, there are many efficiency-based assessments in the relevant Guidelines. As understood from the relevant Guidelines, the TCA has the tendency to extend economic analyses in determination of abuse of dominant position. Another worth-stressing point of the relevant Guidelines is that, anti-competitive foreclosure has become very

important when assessing an exclusionary conduct.

Considering these characteristics of the relevant Guidelines, it should be noted that the relevant Guidelines are very functional in the assessment of anti-competitive effects of unilateral conducts. The Guidelines is likely to help maintain a qualitative standard in the TCA's assessments within the scope of Article 6. Moreover, detailed analyses concerning specific forms of abuse are very important and these analyses will be useful for categorizing the conducts of dominant undertakings.

### Electricity wholesale market and retail market sector inquiry report

The TCA concluded its sector inquiry of the wholesale and retail electricity market and it was published in January 2015. The report assesses the liberalization process which commenced in 2001 with the enactment of the Electricity Market Law and later moved another stage with the enactment of the new Electricity Market Law.<sup>6</sup>

The report addresses four important issues within the framework of competition advocacy: (i) Assessment of the liberalization process, (ii) Competitive structure of the wholesale market, (iii) competitive structure of the retail market, (iv) Institutional structure during the liberalization process.

#### Assessment of the liberalization process

After reviewing the points that require consideration in the liberalization process of the electricity markets, the report seeks to put a perspective to set up a competitive environment in the electricity sector. It emphasizes some points which consist of observations and assessments on the liberalization process.

#### Competitive structure of the wholesale market

Here, the report focuses on the well-functioning of the wholesale market. It mentions the importance of market participation for its effect on prices and other economic variables. The report also addresses the subjects of market power, vertical integration and vertical relationships, market monitoring, transparency and demand-side participation, which are thought to gain importance in the liberalization process of the Turkish electricity market.

#### Competitive structure of the retail market

In this section, the report focuses on the points that should be taken into account to ensure the desired level of competition in the retail market. It emphasizes the final goal of the new Electricity Market Law which indicates the creation of a competitive electricity retail market in which all consumers can exercise their right to choose their suppliers. In order to analyze the competition

at the retail level, the report examines the conduct and practices of the incumbent distribution and supply companies. It gives a significant importance to the legal unbundling issue.

#### Institutional structure during the liberalization process

The report finally examines the differences in the duties, powers and approaches of the institutions involved in the liberalization of the electricity market. It mentions the role of the TCA, in terms of identification of anti-competitive behaviors. The report also stresses the importance of cooperation between EMRA and the TCA and highlights the need to set up a mechanism of collaboration and information exchange between the two institutions.

### The TCA initiated the cement sector inquiry

The cement market has been one of the markets that has been frequently scrutinized by the TCA. Despite the significant amount of fines imposed by the TCA to the players in the cement market in the past, the number of investigations concerning cement markets has been continuing to increase. Former investigations and examinations indicate that there are some structural problems in the market. The investigations in the past have included conducts of predatory pricing and customer /region allocation.<sup>7</sup>

6 "TCA Electricity Sector Report." <http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/News/Report/elektrikingg.pdf>

7 "Competition Authority - Cement Sector Inquiry Initiated." <http://www.rekabet.gov.tr/en-US/News/Cement-Sector-Inquiry-Initiated>

Accordingly, due to the characteristics of this market, the TCA has initiated a cement sector inquiry in 2015 in order to identify the roots of competitive problems in the market.

Sector inquiries are functionally very important as they present a detailed analysis of examined markets. In the past, the TCA has put forth inquiries concerning motor vehicles, pharmaceuticals, natural gas, electricity sectors and as a consequence the awareness of the relevant market players has developed considerably. Accordingly, the cement sector inquiry launched during 2015 is anticipated to mitigate anti-competitive anxieties in the market in the future.

### Footsteps of the new block exemption communique concerning the motor vehicle sector

Following the decision of the Commission to adopt the revised competition rules for the motor vehicle sector, inclusive of the sale, distribution and repair industries, the TCA gathered speed of working on the Motor Vehicle Sector Inquiry Report, which was completed in a relatively long period that exceeded two years during the second quarter of 2014. The findings and outcomes of the Sector Inquiry Report brought into question whether there is a substantial need for significant amendments in the Block Exemption Communique Concerning the Motor Vehicle Sector and inquired into specific amendments that shall be adopted.

The dramatic findings and outcomes of the Sector Inquiry Report are listed below:

#### 1. Findings with regard to sales market:

The growth of the motor vehicle industry is constantly rising. Multi-branding becomes widespread; yet the profit margin of the suppliers in the sales market is considerably lower than the aftersales market.

#### 2. Findings with regard to maintenance and repair market:

The number of authorized services increased significantly. The average turnover of the authorized services is higher than independent services. In general, the customers who have vehicles for three years or below choose to have the maintenance and repair services from the authorized services; whilst the customers who have vehicles for five years or above choose to use the independent services. Furthermore, the customers generally prefer authorized services if they can benefit from the warranty period.

#### 3. Findings with regard to the spare parts market:

In general, the market shows an upward trend in growth. The automobile suppliers are the most important customers for the spare part producers. The original spare parts are distributed in the market through an authorized distribution network and most importantly, the usage of the equivalent spare parts is still limited.

Subsequently, the TCA organized a workshop "The New Era in the Motor Vehicle Sector: What Sort of a Block Exemption Communique?" right after publishing the Sector Inquiry Report and invited a large segment of society made up of sector players, lawyers and academicians in order to share their opinions. The Workshop was very effective indeed; all problematic provisions of the relevant Communique were discussed along with the alternative suggestions for betterment. In the sequel, the TCA made an announcement in its official website sharing the existing outcomes of the working group responsible for conducting the project. Furthermore, the TCA opened up the outcomes reached by the working group for public opinion.

Soon after the revision of the written public opinions, the TCA organized a meeting in its premises in October 2015, in which many participants from the private sector were invited to attend. This time round, the working group disclosed the written opinions gathered and indicated their further evaluations.

Below, the most important outcomes derived from the discussions of the working group are presented. It is anticipated that these outcomes are highly likely to be reflected to the new Draft Communique.

#### Market Share Thresholds:

According to the relevant Communique, there are two different market share thresholds depending on the selected distribution system

for the sale market: 30% for the exclusive distribution system, 40% for the quantitative selective distribution system; whereas there exists no threshold for the qualitative selective distribution system. With regard to the after-sale market, the market share threshold is determined to be 30% for exclusive and quantitative selective distribution systems. If the motor vehicle suppliers' market share exceeds this threshold, it is obligatory to implement qualitative selective distribution system to benefit from the block exemption.

The public opinion indicates that there is no need to define three different market share thresholds for the sales market; it would be more business-friendly to determine one single threshold for those distribution systems. Furthermore, in practice, there is no significant difference between the thresholds of 30 percent and 40 percent since to date none of the motor vehicle suppliers have reached – and would not be

reasonably expected to reach – these market shares in Turkey. Thus, these different market share thresholds are only confusing for the sector players and need to be reduced to one. Accordingly, we predict that the working group shall determine this as 30 percent.

Most suppliers choose to implement qualitative selective distribution system as it is generally accepted that all motor vehicle suppliers have market power in the after-sales market. So, the suggestion of the working group to adopt only the qualitative selective distribution system is well-welcomed.

#### General Conditions of Exemption:

Same as the previous Commission Regulation 1400/2002 of the EU, the agreement between the motor vehicle supplier and distributor/authorized service shall contain specific provisions to benefit from the exemption. In general, these conditions are made up of the distributor's/authorized service's

right to the transfer of their rights and obligations, time limitations for termination of the agreement and right to refer disputes to an independent expert or an arbitrator.

The public opinion suggests that these general conditions are not purely related to competition law but are effective in implementing the protection of distributors/authorized services against the motor vehicle suppliers. Thus, refraining from granting these conditions do not constitute a competition infringement. Furthermore, these conditions, from time to time, may be in conflict with the relative private law rules. The working group adopts the same argument, and we predict that there will not be such general condition of exemptions in the new Draft Communiqué.

#### Multi-Branding Obligation:

Pursuant to the Communiqué, any direct or indirect non-compete obligation is a hard-core restriction



which excludes agreements from the scope of block exemption.

The most critical point of the discussion lies on availability of the multi-branding obligation. The findings of the Commission indicate that the distribution of cars shows great similarity to any other market, thus there is no need to apply sector-specific provisions. The same argument would also be promising for the motor vehicle suppliers, as numerous distributors/authorized services are de facto working on a single-branding structure.

In the beginning of the research, the working group strongly defended the maintenance of the multi-branding obligation for it facilitated market entries, reduced the research cost of consumers and an increase in the number of multi-branded authorized dealers was observed.

Although these general findings are quite accurate, a simple question bothers us: If there is no legal obstacle for being multi-branded then why is this rule rendered inapplicable in practice for years? It is because there is fierce intra-brand competition in the motor vehicle sector and authorized dealers are not willing to make a second or third investment.

The multi-branding obligation, which is almost inapplicable in practice, has also remarkable negative effects on the premium systems. The motor vehicle suppliers need to structure their premium systems not to cause

a direct or indirect single branding; however this obscures the suppliers' opportunity to provide more support to the authorized dealers, spare more investment and bonuses, triggering aggressive competition.

These objections were raised at the discussion with the working group and enabled them to re-evaluate the issue. Hence, it is anticipated that there will be no multi-branding obligation in the Draft Communiqué.

#### Warranty Conditions:

The Communiqué only sets forth that the motor vehicle suppliers may oblige its authorized services to use original spare parts for the maintenance and repair services within the scope of the warranty for the defined warranty period. The motor vehicle suppliers may not oblige consumers to apply to the authorized services for the periodic maintenance which falls outside the scope of the warranty during the warranty period.

Contrary to the Communiqué, consumer protection provisions provide that the suppliers should refer consumers to the authorized services for the periodic maintenance during the warranty period. The working group believes that such obligation should be deemed as a hard-core restriction and exclude agreements from the scope of group exemption.

It is believed that the working groups' opinion does not have merit as it has the effect to contradict with the sector-specific competition rules and consumer protection provisions. On

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Public opinion indicates that there is no need to define three different market share thresholds for the sales market.

the one hand, pursuant to consumer protection laws, the suppliers are obliged to refer the consumers to the authorized services for the periodic maintenance during the warranty period; however, on the other hand the competition rules deem it as a hard-core restriction.

Simply, the authorized dealers would be more effective if they were allowed to re-collect their investments during the warranty period, which generally does not exceed three years and thus may be considered to be a relatively short period. Furthermore, the obligation is only for the regular maintenance services which are not covered by the warranty. However, such prohibition shall be a valid argument for an extended warranty, which objectively surpasses the competitive power of independent dealers.

# Major cases

## The TCA rendered its decision concerning the Super League broadcasting rights

Digiturk, the dominant satellite based pay TV platform operator in Turkey, and the Turkish Football Federation ("TFF") had been trying to close a deal for a long time regarding the transfer of exclusive broadcasting rights of Turkish Super League matches to Digiturk.<sup>8</sup>

In 2012, TFF and Digiturk signed a contract in order for Digiturk to hold the exclusive broadcasting rights for a period of three years. Right after, the parties applied to the TCA for an individual exemption. The TCA held that the contract was disproportionately restricting competition in the pay TV market and refused to grant an individual exemption. It had stated that the anti-competitive effects could be reduced if Digiturk would provide sub-licenses to other platforms and if the duration of the contract is shortened.

After that decision, Digiturk and TFF signed another similar contract, which foresaw a time extension of two years. Parties did not apply for an exemption for the second contract but the TCA opened an investigation. As a result of the investigation, the TCA decided that the agreement could benefit from an individual exemption based upon the condition that Digiturk provides sublicenses for the live TV broadcasting rights

of Super League matches to its competitors. The decision of the TCA was annulled by the Council of State ("CoS") on procedural grounds. The CoS held that the TCA's not conducting an oral hearing was a violation of the Act.

After the annulment of the first decision, the TCA conducted an oral hearing and on 04.11.2014, it rendered a similar decision. The second decision was almost exactly the same with the first one but it clarified certain issues that were somehow vague in the first decision. Once again, the TCA granted a conditional exemption to the agreement between Digiturk and TFF, holding that the agreement would be valid if and only if Digiturk sublicenses the live TV broadcasting rights of Super League matches to its competitors.

The final decision of the TCA expressly held that the sublicensing agreement shall be submitted to the Board before the start of the 2015-2016 Super League season. Although the season started on 14.08.2015, Digiturk has still not sublicensed any of the live broadcasting rights as of 21.08.2015.

It seems to be clear that the exemption conditions were not satisfied and that the agreement between Digiturk and TFF is now officially illegal. Yet, the decision of the TCA required that the sublicensing agreement was to

reflect reasonable market conditions. Digiturk may still claim that it did make reasonable sublicensing offers and thus satisfied the requirements of the decision. The Board will have to decide whether Digiturk's offers were actually in accordance with the reasonable market condition and whether it is legally possible for Digiturk to satisfy the requirements just by making a reasonable "offer" even if the sublicensing is not realized.

It should be noted that the Board is now faced with a very complicated situation. If the Board decides that the agreement does benefit from the exemption, the competition in the Pay TV market might be severely restricted. On the other hand, holding that the agreement does not benefit from the individual exemption would mean that no platform in Turkey is eligible to broadcast the Super League matches. Given the importance of the Super League in Turkey, preventing its broadcast might create serious controversies.

## The TCA conditionally authorized the acquisition of Dosu Maya by Lesaffre Group

The most remarkable M&A transaction of 2014 was the acquisition of Dosu Maya, one of Turkey's main yeast manufacturers governed by the Lesaffre Group, the leading French group in the production of yeast and yeast extracts with a presence on all five continents. The TCA

<sup>8</sup> "Competition Authority - A Decision Was Taken Again about the Investigation concerning Turkish Football Federation and Krea İçerik Hizmetleri Ve Prodüksiyon A.Ş.". <http://www.rekabet.gov.tr/en-US/News/A-decision-was-taken-again-about-the-investigation-concerning-Turkish-Football-Federation-and-Krea-Icerik-Hizmetleri-ve-Produksiyon-AS>

gave a conditional clearance to the acquisition of full control of Dosu Maya from Yıldız Holding which is, with its brands such as Ülker, McVities, Godiva, Turtles and Jacob's, Turkey's largest food and beverage group.

The transaction was under the final examination (also referred to as Phase II) of the TCA. During this phase, Lesaffre Group, submitted several commitment packages and detailed economic analysis reviewing post-clearance effects of the transaction. Following a nearly yearlong process, the TCA gave clearance to the decision subject to commitments submitted.<sup>9</sup>

## Recently concluded investigations

The list of recently concluded investigations in Turkey is as follows:

- **MH Perakendecilik:** The TCA conducted a final examination process concerning the acquisition of the majority shares of MH Perakendecilik which is under control of Moonlight Capital S.A., by Anadolu Endüstri Holding A.Ş. in order to examine whether the transaction concerned would lead to the relevant undertaking

acquiring dominant position, thereby significantly lessening the competition in the market, in violation of article 7 of the Act. At the end of the final examination process, it was decided that the transaction in question will not lead to the acquisition of a dominant position in the relevant market except for the beer market. The commitments proposed by the undertakings with respect to the beer market were approved by the TCA and the transaction was authorized. In case the commitments are not carried out within the approved time period, the authorization granted will be nullified.

- **Tirsan and Tiryakiler:** The TCA conducted an investigation in order to determine whether the economic entity comprised of Tirsan Kardan A.Ş. and Tiryakiler A.Ş. abused its dominant position by foreclosing the market to competing undertakings. The investigation was initiated as a result of the preliminary inquiry commenced based on the claims that the relevant economic entity put pressure on the suppliers to disadvantage competing undertakings, that some suppliers

refused to provide goods to competing undertakings due to this pressure, and that the economic entity concerned was abusing its dominant position in the market for the sale of drive shafts and related parts. At the end of the investigation, it was decided that the investigated practices of the economic entity, which was comprised of Tirsan Kardan A.Ş. and Tiryakiler A.Ş., did not constitute an infringement under article 6 of the Act; thus it was not necessary to impose administrative fines on the relevant undertaking.<sup>10</sup>

- **Beta Marina:** The TCA conducted a final examination process concerning the acquisition of the entirety of the shares of Beta Marina A.Ş. and Pendik A.Ş. by Setur A.Ş. in order to examine whether the transaction concerned would lead to the relevant undertaking acquiring a dominant position, thereby significantly lessening competition in the market, in violation of article?? of the Act. At the end of the final examination process, it was decided that the transaction in question should be rejected since it would lead to Koç

9 "Competition Authority - The Application Regarding the Acquisition of the Full Control of Dosu Maya Mayacilik A.Ş. by Lesaffre Et Compaigne (Özmaya) Put under Final Examination." <http://www.rekabet.gov.tr/en-US/News/The-Application-Regarding-the-Acquisition-of-the-Full-Control-of-Dosu-Maya-Mayacilik-AS-by-Lesaffre-et-Compaigne-Ozmaya-Put-under-Final-Examination>

10 "Competition Authority - Investigation on Tirsan Kardan Sanayi Ve Ticaret A.Ş. and Tiryakiler Yedek Parça Sanayi Ve Ticaret A.Ş. Concluded." <http://www.rekabet.gov.tr/en-US/News/Investigation-on-Tirsan-Kardan-Sanayi-ve-Ticaret-AS-and-Tiryakiler-Yedek-Parca-Sanayi-ve-Ticaret-AS-Concluded>

11 "Competition Authority - Final Examination Concerning the Acquisition of the Entirety of the Shares of Beta Marina Liman Ve Çekek İşletmesi A.Ş. and Pendik Turizm Marina Yat Ve Çekek İşletmesi A.Ş. by Setur Servis Turistik A.Ş. Concluded." <http://www.rekabet.gov.tr/en-US/News/-Final-Examination-Concerning-the-Acquisition-of-the-Entirety-of-the-Shares-of-Beta-Marina-Liman-ve-Cekek-Isletmesi-AS-and-Pendik-Turizm-Marina-Yat-ve-Cekek-Isletmesi-AS-by-Setur-Servis-Turistik-AS-Concluded>





Holding A.Ş. acquiring a dominant position in the relevant market defined in relation to the İstanbul City Port Marina and therefore would significantly lessen competition in the market.<sup>11</sup>

- **Coca Cola Satış Dağıtım:** The TCA conducted an investigation in order to determine whether Coca Cola Satış Dağıtım violated Articles 4 and 6 of the Act by adopting exclusivity practices. The investigation was initiated as a result of the preliminary inquiry commenced based on the claims that Coca Cola made exclusive agreements with certain points in various cities in Turkey, especially in İstanbul, Ankara, İzmir, Bursa and Antalya. At the end of the investigation, it was concluded

that no information and findings were obtained showing that Coca Cola carried out organized and systematic practices preventing its competitors from entering points of sale. Therefore, it was decided that Coca Cola did not violate articles 4 and 6 of the Competition Act; thus it was not necessary to impose administrative fines on the said undertaking.<sup>12</sup>

- **Turkish Airlines (“THY”):** The TCA conducted an investigation in order to determine whether THY violated Article 6 of the Act by means of exclusionary conduct against its competitor on international and domestic airline passenger transportation routes from İstanbul. The investigation

started after the Ankara 11th Administrative Court annulled the Board decision. Upon this decision, the complainant filed a suit before the Ankara 11th Administrative Court. The Court decided to annul the said Board decision. Within the scope of the investigation initiated by the Competition Board, as a requirement of the said Court decision, whether flights at Sabiha Gökçen Airport and Atatürk Airport were substitutes was analyzed within the framework of the market definition; an evaluation was made about whether THY was an dominant undertaking operating in the markets for domestic and international routes from İstanbul where the activities of THY and Pegasus (the competitor of THY) overlap and whether THY abused its dominant position by means of pricing on the routes where THY was found dominant depending on the detailed cost, income and efficiency analyses. Moreover, the investigation examined whether THY carried out practices other than pricing in order to exclude its competitors from the market. At the end of the investigation, it was decided unanimously that it was not possible to consider the activities of THY as a subject matter of claim within the scope of Article 6 of the Act; thus, no administrative fines were imposed.<sup>13</sup>

<sup>12</sup> “Competition Authority - Investigation concerning Coca Cola Satış Dağıtım A.Ş. Concluded.” March 5, 2015. <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Coca-Cola-Satis-Dagitim-AS-Concluded>

<sup>13</sup> “Competition Authority - Investigation concerning Turkish Airlines Concluded.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Turkish-Airlines-Concluded>

- **Turkcell İletişim:** The TCA conducted an investigation in order to determine whether Turkcell İletişim violated Articles 4 and 6 of the Competition Act. The investigation initiated after the 13th Chamber of the CoS annulled the Board decision. The decision of the 13th Chamber of the CoS made an assessment related to the authoritative borders of the competence of regulatory authorities and the TCA. At the end of the investigation, it was decided that Turkcell held a dominant position in the GSM services market during 2006 and 2010; however, it did not violate the Act with the exclusive facility arrangements it included in the rental contracts related to the installment of base stations/towers, to which it was a party directly or indirectly in the period between 2006 and the end of the 6th month of 2013. Therefore, it was decided that it was not necessary to impose administrative fines to Turkcell İletişim.<sup>14</sup>
- **Renault Trucks:** The TCA conducted an investigation to determine whether Renault Trucks, which is a truck producer

company, violated Article 4 of the Act. Investigation initiated upon the claims that Renault Trucks' "Authorized Service Standards" did not comply with the Block Exemption Communique Concerning Motor Vehicles, and Renault Trucks practiced discrimination between authorized services and private services to determine whether the said undertaking violated Article 4 of the Act. At the end of the investigation, it was decided by a majority of votes that Renault Trucks did not violate Article 4 of the Act by means of authorized service standards and discriminatory practices against private services.<sup>15</sup>

- **Technelogos Yazılım and Üç Elma Sigorta:** The TCA initiated an investigation in order to determine whether Article 6 of the Act was violated by Tekhnelogos Yazılım by abusing the advantage it held at the level of online submission of natural gas domestic installation projects to the benefit of its subsidiary Üç Elma Sigorta and by obstructing the inclusion of policies drawn by alternative insurance companies in this process. At the end of the

investigation, administrative fines were imposed on Tekhnelogos Yazılım and on Üç Elma Sigorta, which has the same partnership structure with the former undertaking, on the grounds that they violated Article 6 of the Act by obstructing the operations of their competitors.<sup>16</sup>

- **Termopet Akaryakıt:** The TCA conducted an investigation in order to determine whether Termopet violated the Act. It was alleged that Termopet failed to terminate a vertical agreement it concluded in relation to the distribution and sales of fuel within the time period specified in the decision previously taken by the Competition Board. At the end of the investigation, it was decided that Termopet did not violate the Act.<sup>17</sup>
- **Mey İçki:** The TCA conducted an investigation in order to determine whether Mey İçki violated Articles 4 and 6 of the Act. At the end of the investigation, it was decided that Mey İçki held a dominant position on the raki market and violated Article 6 of the Act by means of abusing its dominant position

14 "Competition Authority - Investigation concerning Turkcell İletişim Hizmetleri A.Ş. Concluded.". <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Turkcell-iletisim-Hizmetleri-AS-concluded->

15 "Competition Authority - Investigation concerning Renault Trucks Türkiye Ticaret A.Ş. Concluded.". <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Renault-Trucks-Turkiye-Ticaret-AS-Concluded>

16 "Competition Authority - Investigation concerning Technelogos Yazılım Müh. Müş. Ve Bilişim Hizm. San. Ve Tic. Ltd. Şti. and Üç Elma Sigorta Aracılık Hizmetleri Ltd. Şti. Concluded.". <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Tekhnelogos-Yazilim-Muh-Mus-ve-Bilisim-Hizm-San-ve-Tic-Ltd-Sti-and-Uc-Elma-Sigorta-Aracilik-Hizmetleri-Ltd-Sti-Concluded>

17 "Competition Authority - Investigation on Termopet Akaryakıt Nakliyat Ve Ticaret Ltd. Şti. Concluded." <http://www.rekabet.gov.tr/en-US/News/Investigation-on-Termopet-Akaryakit-Nakliyat-ve-Ticaret-Ltd-Sti-Concluded>



through activities which had as their object or effect complicating its competitors' activities in the raki market, and thus administrative fines were imposed on Mey İçki.<sup>18</sup>

- **Çimsa Çimento and Adana Çimento:** The TCA conducted an investigation in order to determine whether Çimsa Çimento and Adana Çimento violated Article 4 of the Act by means of fixing the price of cement. The investigation was initiated as a result of the preliminary inquiry conducted upon a complaint. At the end of the investigation, it was decided that Çimsa Çimento and Adana Çimento did not violate

Article 4 of the Act; therefore, it was not necessary to impose administrative fines.<sup>19</sup>

- **3M San. ve Tic. A.Ş.:** TCA conducted an investigation in order to determine whether 3M violated Articles 4 and 6 of the Act. According to the decision of 13th Chamber of the CoS, 3M's practices did not constitute a violation under the scope of Article 6 of the Act; however, an investigation should be initiated due to findings indicating a violation related to the determination of the resale price, allocation of the customers of a dealer between other dealers as well as putting some dealers in a disadvantageous

position compared to other dealers by applying different discount rates. The investigation initiated evaluated whether 3M determined resale prices, imposed "territory or customer" restrictions to dealers, discriminated against some of the undertakings with equal status, which are among the practices towards restricting intra-brand competition. At the end of the investigation, it was decided by majority of votes that 3M did not violate Article 4 of the Act.<sup>20</sup>

- **Türk Telekomünikasyon A.Ş.:** The TCA conducted an investigation in order to determine whether Türk Telekomünikasyon A.Ş. (Türk Telekom) violated Article 6 of the Act by means of not meeting the demand of Eser Telekomünikasyon related to international leased line service tariff information and discriminating against Eser Telekomünikasyon among the other service providers who would like to provide same service for the same tender. At the end of the investigation, it was decided by the majority of votes that Türk Telekom did not violate Article 6 of the Act.

18 "Competition Authority - Investigation concerning Mey İçki Sanayi Ve Ticaret A.Ş. Concluded." June 12, 2014. <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Mey-Icki-Sanayi-ve-Ticaret-AS-Concluded>

19 "Competition Authority - Investigation concerning Çimsa Çimento Sanayi Ve Ticaret A.Ş. Ve Adana Çimento San. T.A.Ş. Concluded.". <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Cimsa-Cimento-Sanayi-ve-Ticaret-AS-ve-Adana-Cimento-San-TAS-concluded>

20 "Competition Authority - Investigation concerning 3M Sanayi Ve Ticaret A.Ş. Concluded." <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-3M-Sanayi-ve-Ticaret-AS-Concluded>

## Recently opened investigations

The list of recently launched investigations in Turkey is as follows:

- **Aygaz:** The TCA initiated an investigation concerning Aygaz A.Ş. in order to determine whether Aygaz A.Ş. violated article 4 of the Act by maintaining resale prices for its dealers following the decision of the 16th Chamber of the Ankara Administrative Court.<sup>21</sup>
- **Mey İçki:** The TCA initiated an investigation concerning Mey İçki A.Ş. in response to an application claiming that Mey İçki A.Ş. abused its dominant position by engaging in practices aimed at preventing the operations of its competitors.<sup>22</sup>
- **Seven undertakings operating in the consumer electronics field:** Firstly, the TCA initiated an investigation against five undertakings operating in the PC and console gaming sector in response to allegations of resale price maintenance. Then two undertakings were added to the ongoing investigation.<sup>23</sup>
- **İzmir Chamber of Jewelers:** The TCA initiated an investigation concerning İzmir Chamber of Jewelers in order to determine whether the İzmir Chamber of Jewelers violated article 4 of the Act by maintaining sales prices for gold as well as by imposing some sanctions on those tradesmen who did not comply with their prices.<sup>24</sup>
- **Booking.com B.V. and Bookingdotcom:** The TCA initiated an investigation concerning Booking.com B.V. and Bookingdotcom in order to determine whether the undertakings in question violated articles 4 and 6 of the Act through various practices, including their “best price guarantee”.<sup>25</sup>
- **Turkish Pharmacists’ Association:** The TCA initiated an investigation concerning the Turkish Pharmacists’ Association and Turkish Pharmacists’ Association Commercial Enterprise in order to determine whether the undertaking and the association of undertakings concerned violated article 6 of the Act by abusing their dominant positions through their exclusive practices and other conduct in the relevant product market comprised of pharmaceuticals imported from abroad.<sup>26</sup>
- **Mersin Şimşek Group:** The TCA initiated an investigation concerning Mersin Şimşek Group in order to determine whether Mersin Şimşek Group violated article 6 of the Act.<sup>27</sup>
- **Ankara Uluslararası Kongre ve Fuar and GL Event:** The TCA initiated an investigation concerning Ankara Uluslararası

21 “Competition Authority - Investigation Launched Concerning Aygaz A.Ş.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-Launched-Concerning-Aygaz-AS>

22 “Competition Authority - Investigation Launched Mey İçki San. Ve Tic. A.Ş.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-Launched-Mey-Icki-San-ve-Tic-AS>

23 “Competition Authority - Investigation Initiated Concerning 7 Undertakings Operating in the Consumer Electronics Field, While 2 Undertakings Were Added to the Ongoing Investigation Concerning the 5 Undertakings Operating in the Computer and Console Games Field.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-Initiated-Concerning-7-Undertakings-Operating-in-the-Consumer-Electronics-Field-While-2-Undertakings-Were-Added-to-the-Ongoing-Investigation-Concerning-the-5-Undertakings-Operating-in-the-Computer-and-Console-Ga>

24 “Competition Authority - Investigation Initiated on the İzmir Chamber of Jewelers.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-Initiated-on-the-Izmir-Chamber-of-Jewelers>

25 “Competition Authority - Investigation Initiated on Booking.com B.V. and Bookingdotcom Destek Hizmetleri Limited Şirketi.” July 9, 2015. <http://www.rekabet.gov.tr/en-US/News/Investigation-Initiated-on-Bookingcom-BV-and-Bookingdotcom-Destek-Hizmetleri-Limited-Sirketi>

26 “Competition Authority - Investigation Initiated on the Turkish Pharmacists’ Association and the Turkish Pharmacists’ Association Commercial Enterprise.”. <http://www.rekabet.gov.tr/en-US/News/Investigation-Initiated-on-the-Turkish-Pharmacists-Association-and-the-Turkish-Pharmacists-Association-Commercial-Enterprise>

Kongre ve Fuar A.Ş. and GL Event A.Ş. in order to determine whether there was a violation of article 6 of the Act following the decision of the 3rd Administrative Court of Ankara.<sup>28</sup>

- **D-Smart:** The TCA initiated an investigation concerning Doğan TV, satellite based pay TV platform operator in Turkey, Mozaik A.Ş. and Krea A.Ş. (Digitürk) following the annulment decision of the Administrative Court. The TCA will re-evaluate the allegations based on the abuse of dominant position by refusing the access demand to the satellite platform of Sinema TV.<sup>29</sup>
- **4 undertakings operating in the tourism sector:** The TCA initiated an investigation against four undertakings concerning allegations of exclusion of their competitors by means of concerted actions.

- **Yemek Sepeti:** Yemeksepeti, which is the leading online food ordering platform in Turkey, has been alleged to infringe competition law by excluding its competitors through preventing its customers from making an agreement with its competitors. The TCA initiated an investigation concerning Yemek Sepeti based on claims that Yemek Sepeti prevents its customers from working with its competitors and excludes its competitors.<sup>30</sup>
- **Nuh Çimento-Nuh Beton:** The TCA initiated an investigation against Nuh Çimento A.Ş. and Nuh Beton A.Ş. based on the allegations that these entities operating in the cement sector abused their dominant positions by means of price squeezing.<sup>31</sup>
- **Solgar Vitamin:** The TCA initiated an investigation concerning Solgar Vitamin following the

Council of State's decision based on allegations of an abuse of its dominant position due to the discriminatory practices adopted.<sup>32</sup>

- **Seven undertakings operating in the PC and console gaming sector:** Firstly, the TCA initiated an investigation against five undertakings operating in the PC and console gaming sector in response to allegations of resale price maintenance. Then two undertakings were added to the ongoing investigation.
- **DHMi:** The TCA initiated an investigation about DHMİ (General Directorate of State Airports Authority) concerning complaints that DHMİ abused its dominant position by discriminating among tenants with respect to slot allocation in airports.<sup>33</sup>

27 "Competition Authority - Investigation Initiated Concerning Mersin Şimşek Group Turizm İnşaat Petrol Ürünleri Gıda Taşımacılık Kuyumculuk San. Ve Tic. Ltd. Şti.". <http://www.rekabet.gov.tr/en-US/News/Investigation-Initiated-Concerning-Mersin-Simsek-Group-Turizm-Insaat-Petrol-Urunleri-Gida-Tasimacilik-Kuyumculuk-San-ve-Tic-Ltd-Sti>

28 "Competition Authority - Investigation Launched on Ankara Uluslararası Kongre Ve Fuar İşletmeciliği Merkezi A.Ş. and GL Events Fuarçılık A.Ş.". <http://www.rekabet.gov.tr/en-US/News/Investigation-Launched-on-Ankara-Uluslararası-Kongre-ve-Fuar-İşletmeciliği-Merkezi-AS-and-GL-Events-Fuarcılık-AS>

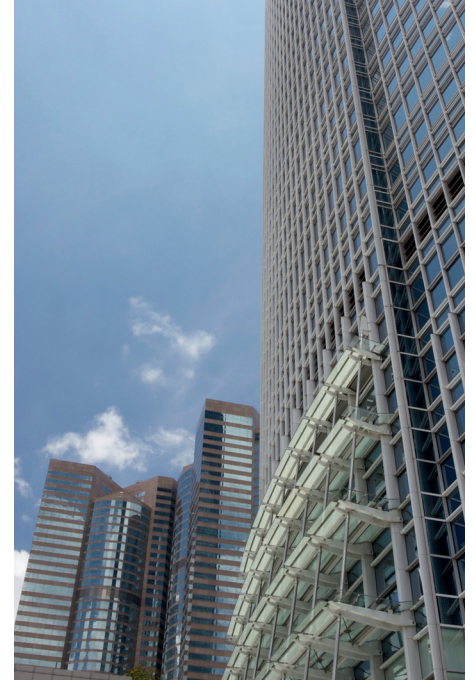
29 "Competition Authority - Investigation Launched on Doğan TV Digital Platform İşletmeciliği A.Ş., Mozaik İletişim Hizmetleri A.Ş. and Krea İçerik Hizmetleri Ve Prodüksiyon A.Ş.". <http://www.rekabet.gov.tr/en-US/News/Investigation-Launched-on-Doğan-TV-Digital-Platform-İşletmeciliği-AS-Mozaik-İletişim-Hizmetleri-AS-and-Krea-İçerik-Hizmetleri-ve-Prodüksiyon-AS> 30 "Competition Authority - Investigation Concerning Yemek Sepeti Elektronik İletişim Tanıtım Pazarlama Gıda San. Ve Tic. A.Ş. Initiated." <http://www.rekabet.gov.tr/en-US/News/Investigation-Concerning-Yemek-Sepeti-Elektronik-İletişim-Tanıtım-Pazarlama-Gıda-San-ve-Tic-AS-Initiated>

31 "Competition Authority - Investigation Concerning Nuh Çimento Sanayi A.Ş. and Nuh Beton A.Ş. Initiated.". <http://www.rekabet.gov.tr/en-US/News/Investigation-Concerning-Nuh-Çimento-Sanayi-AS-and-Nuh-Beton-AS-Initiated>

32 "Competition Authority - Investigation concerning Solgar Vitamin Ve Sağlık Ürünleri Sanayi Ve Ticaret Ltd. Şti. Initiated." <http://www.rekabet.gov.tr/en-US/News/Investigation-concerning-Solgar-Vitamin-ve-Saglik-Urunleri-Sanayi-ve-Ticaret-Ltd-Sti-Initiated>

33 "Competition Authority - Investigation Initiated about General Directorate of State Airports Authority." <http://www.rekabet.gov.tr/en-US/News/Investigation-initiated-about-General-Directorate-of-State-Airports-Authority>

- **Pirelli Tyre Spa:** The application regarding the acquisition of Pirelli Tyre SpA's steel cord business line by NV Bekaert SA was taken under final examination for it was considered to have a competition restricting and reducing effect in the relevant market.<sup>34</sup>
- **Unilever-Advertising Self-Regulatory Board:** The TCA initiated an investigation against Unilever and Advertising Self-Regulatory Board regarding an allegation that Fermet's advertisements were terminated as a result of the decision of Advertising Self-Regulatory Board under the influence of Unilever.<sup>35</sup>
- **Sançim:** The application related to the acquisition, by Çimsa Çimento, of the cement facility in the Bilecik Province owned by Sançim Bilecik Çimento has been taken under final examination as it has been considered to have potential competition restricting and reducing effects in the relevant market.<sup>36</sup>
- **Mobil Türk:** The transaction regarding the acquisition of 25 percent of the property rights of Mobil Türk to THY Opet has been taken under final examination of TCA as it has been considered to have potential competition restricting and reducing effects in the relevant market.<sup>37</sup>



34 "Competition Authority - Application concerning the Acquisition of Pirelli Tyre SpA's Steel Cord Business Line by NV Bekaert SA Was Taken under Final Examination." <http://www.rekabet.gov.tr/en-US/News/Application-concerning-the-acquisition-of-Pirelli-Tyre-SpAs-steel-cord-business-line-by-NV-Bekaert-SA-was-taken-under-final-examination>

35 "Competition Authority - Investigation Initiated concerning Unilever San. Ve Tic. Türk A.Ş. and Advertising Self-Regulatory Board." <http://www.rekabet.gov.tr/en-US/News/Investigation-initiated-concerning-Unilever-San-ve-Tic-Turk-AS-and-Advertising-Self-Regulatory-Board>

36 "Competition Authority - The Application Related to the Acquisition, by Çimsa Çimento San. Ve Tic. A.Ş., of the Cement Facility in the Bilecik Province Owned by Sançim Bilecik Çimento Madencilik Beton San. Tic. A.Ş. Placed under Final Examination." <http://www.rekabet.gov.tr/en-US/News/The-Application-Related-to-the-Acquisition-by-Cimsa-Cimento-San-ve-Tic-AS-of-the-Cement-Facility-in-the-Bilecik-Province-Owned-by-Sancim-Bilecik-Cimento-Madencilik-Beton-San-Tic-AS-Placed-under-Final-Examination>

37 "Competition Authority - The Application Concerning the Partial Acquisition by THY OPET of the Right of Property of the Assets Belonging to Mobil Türk, Which Are the Subject of the Aviation Operation Agreement." <http://www.rekabet.gov.tr/en-US/News/The-Application-Concerning-the-Partial-Acquisition-by-THY-OPET-of-the-right-of-property-of-the-Assets-belonging-to-Mobil-Turk-which-are-the-subject-of-the-Aviation-Operation-Agreement>

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Şahin Ardiyok is a senior partner in the Firm and the Head of Competition and Regulation Team. He advises multinational corporations and Turkish conglomerates, associations and government institutions on competition and antitrust, competition compliance programs, public policy and regulation, intellectual property and technology, litigation and dispute resolution, trade, WTO and customs in the automotive, manufacturing, retail, technology and transportation sectors. Having 15 years of experience on both sides of the competition and regulation enforcement, he has unparalleled skills in competition law and regulatory activities of state institutions.

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