
18 May 2020**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Turkey****-- 2019 --****10-12 June 2020**

This report is submitted by Turkey to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

JT03461834

Table of contents

Turkey	3
Executive Summary	3
1. Changes to competition laws and policies, proposed or adopted	4
1.1. Summary of the new legislations	4
1.2. Summary of the changes made to the existing legislations	4
2. Enforcement of competition law and policies	5
2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions	5
2.2. Mergers and Acquisitions	15
2.3. Opinions.....	16
3. Resources of the TCA.....	17
3.1. Resources overall	17
3.2. Human resources (person-years) applied to: Enforcement against anticompetitive practices, Merger review and enforcement; Advocacy efforts.	17
3.3. Period covered by the above information:	17
Statistical Information for the Year 2019	18

Turkey

Executive Summary

Overall examination of the Turkish Competition Authority's (TCA) activities shows that in 2019 a total of 312 cases were finalized. Among these cases, 69 cases concerning competition infringements were finalized following preliminary examinations, preliminary inquiries and investigations conducted under the provisions of Articles 4 and 6 of the Act No 4054 on the Protection of Competition (the Competition Act), 35 cases were negative clearance/exemption decisions based on Article 5 and 8 of the Competition Act, and 208 cases were merger/acquisition/privatization/joint venture decisions based on Article 7 of the Competition Act.

The total number of final decisions in 2019 was slightly lower than 2018 numbers, however it is still on the higher side in the last five years. The corresponding number of final decisions for 2016, 2017 and 2018 were 325, 296 and 355 respectively. Traditionally the number of finalized decisions regarding merger/acquisition/privatization/joint ventures is the greatest portion of the total number of finalized decisions. The corresponding numbers for 2016, 2017 and 2018 in this enforcement area were 209, 184 and 223 respectively. The number of finalized decisions for infringements of competition in 2016, 2017 and 2018 were 83, 80 and 88 respectively. And, the number of exemption/negative clearance final decisions was 44 in 2018, 32 in 2017 and 33 in 2016.

The investigations regarding infringements of competition rules concern food (3), transportation, vehicles and related services (3), pharmaceuticals, health and medical equipment (3), information and communication technologies (2) and occupational, scientific and technic activities (2) sectors. A significant part of the exemption/negative clearance decisions finalized in 2019 stemmed from applications related to pharmaceuticals, and health services and medical equipments (6), finance (4), transportation, vehicles and related services (4), energy (4) and insurance (3) sectors. These 5 sectors accounted for almost 60% of all the clearance/exemption decisions.

Concerning the sectorial distribution of final decisions on merger/acquisition/privatization notifications; transportation, vehicles and related services; food, agriculture; chemical products, energy, and information and communication technologies sectors were prominent ones in terms of total number of notifications. In 2018, no transaction was blocked however two transactions were cleared conditionally.

2019 was a very active year for investigations. In 2019, TCA initiated 29 investigations and concluded 15 investigations. As of end of 2019, 44 investigations were going on, promising an even more active year of 2020. The total amount of administrative fines for these infringements of competition cases amounted to 237.6 million Turkish liras approximately.

In 2019, within the framework of competition advocacy activities, the TCA have conducted a sector inquiry on "Fair Organization Market" and held a seminar to share its findings and published the inquiry report on its website. These contributions served to reveal the competitive conditions and problems in the aforementioned sector and to develop proactive methods to deal with these problems, and we believe that they were very important both for TCA and the undertakings operating in the relevant sector. The sector inquiries on the

electricity and retail sectors were carried on 2019. In addition, within the scope of competition advocacy activities, communication with the stakeholders have been maintained without interruption. TCA organized 5 symposiums, conferences, panels and meetings in 2018, including symposium on “Competition and Regulation on E-Commerce” and first edition of Istanbul Competition Forum (ICF).

In 2019, TCA also continued its activities in the international arena. This is because, in a globalizing world, it is important for competition authorities to constantly communicate to ensure that competition law practices are established and continuously developed. In this context, TCA attended many international meetings, including those organized by the Organization for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), the International Competition Network (ICN) and European Competition Network (ECN), in which we found the opportunity to share the activities of TCA with other participants. In addition to them, TCA initiated ICF with participation of the UNCTAD. ICF is an international event which provides an opportunity to its participants to get in touch with their counterparts from other jurisdictions, share their ideas and experiences and learn from each other.

Lastly, it must be emphasized that TCA is very aware of the importance of human resources in order to achieve the goals it has set for itself. It is only as a result of the work of the human resource that the tasks assigned to the Authority may be carried out in an efficient and productive manner. Therefore TCA attaches great importance to the training of its personnel. Consequently, in 2019 as in the previous years, professional staff were provided with opportunities to complete their master’s degrees and to participate in various meetings abroad. As part of its continuous efforts to increase its staff’s capacity, TCA has continued to sponsor some of its case handlers’ graduate degrees at the prominent universities such as Indiana University at Bloomington and Queen Mary University of London. In addition, in-service training programs organized in 2019 contributed to the professional and cultural development of the professional staff and other personnel.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of the new legislations

1. The TCA did not adopt new legislation in 2019.

1.2. Summary of the changes made to the existing legislations

2. The TCA did not make any significant amendment to its existing legislation in 2019 other than an amendment regarding the minimum levels of administrative fines, which is made every year regularly.

2. Enforcement of competition law and policies

2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of significant cases- Examples from the decisions on anti-competitive agreements

Bfit Preliminary Inquiry [decision date: 07.02.2019, decision number: 19-06/64-27]

3. The decision was taken as a result of the preliminary inquiry made in response to the following claims: In the Franchising Contract signed by Bfit Sağlık ve Spor Yatırım ve Tic. A.Ş. (Bfit) and the complainant, there is a non-compete obligation on the franchisee for one year as of the expiry of the contract; this obligation is beyond its purpose and restricts franchisee's freedom of trade; it does not have reasonable grounds; it covers even the personnel working with the franchisee.

- Relevant Market (product; geographic): “fitness center services market”; not defined.
- Findings: The main content of the file is the country wide and extensive non-compete obligation in the franchise agreement between Bfit and its franchisees after the term of the contract, the non-compete obligations imposed during and after the term of the agreement also covers the employees; as well as no-poaching obligations.

4. The Board decided that the contracts are under the scope of article 4 of the Act and has to be subject to exemption analysis due to the following reasons:

- non-compete obligations are imposed on franchisee's personnel/employees for both during the term of the contract and one or two years after the contract
- in some of the agreements, the duration of the non-compete obligation is two years,
- the scope of non-compete obligations imposed on the franchisee after the term of the agreements are not limited clearly to contract goods and services; they can be interpreted to cover services that “indirectly compete” or “have the capacity to compete” and a sport service that is not offered by Bfit
- the non-compete obligation imposed for the period after the term of the agreement is not limited to the facility or land where the franchisee operates.

5. At this point, dealing with the provisions regarding employees under the scope of article 4 is notable. It is decided that the obligation cannot benefit from individual exemption because it covers a period after the termination of the agreement and it is not clearly stated that the approval of the franchiser is requested for a positive reference in relation to an employee's manners in their previous workplace.

6. On the other hand, it is observed that the provision did not prevent employees from passing from one franchisee to another or from employee transfer from competing firms to Bfit. It is decided that it is not necessary to initiate an investigation because Bfit's market share is low and there are many competitors in the market. In light of the evaluations made, it was concluded that the agreements should be amended.

7. Conclusion: The decision taken as a result of the preliminary inquiry states that it is not necessary to initiate an investigation but the following amendments should be made:

- agreements should be redrafted so that they will not include any non-compete obligations on franchisee's employees/personnel,
- the non-compete obligation on the franchisee should be redrafted so that it is limited to only "goods and services that compete with contract goods and services",
- the non-compete obligation on the franchisee should be redrafted so that it is limited to only the facility or land where the franchisee operates,
- the provision that employees cannot be recruited without written approval of the franchiser should be limited to the term of the agreement and the reason of the written approval should be stated,
- the term of the non-compete obligation on the franchisee should be lowered from two years to one year,
- the provision that may cause resale price maintenance should be amended.

Poultry Investigation [decision date: 19-12/155-70, decision number: 13.03.2019]

8. The decision is related to the investigation whether an association of undertakings and 19 undertakings active in chicken meat production violated article 4 of the Act no 4054.

- Relevant Market (product; geographic): "chicken meat"; Turkey
- Findings: Comprehensive on-site inspections were made within the scope of the investigation. According to the decision, the documents obtained showed that undertakings communicated regarding various issues. It is understood from the documents that the price of whole chicken was discussed during Poultry Meat Producers and Breeders Association (BESD-BİR) meetings, competitors talked about price; from time to time, competitors shared price lists mainly through dealers and customers.

9. In the decision, price movements were also analyzed. Within this framework, the parties' average prices of whole chicken were analyzed for the period between 2015 and 2017 (the first seven months). Considering the documents showing the communication on pricing decisions, it was decided that undertakings were engaged in a concerted practice to determine and control the price level.

10. It is also found that competitors owned production plans on a weekly basis, belonging to each undertaking. However, whether this information was gathered through an information channel between competitors was not known, thus this point was not taken as a basis for detecting the violation.

11. Besides, the parties were found to have talked about foreign supply under the title of export during a meeting under the body of BESD-BİR. The investigation analyzed parties' domestic and foreign supply amounts between 2015 and 2017 (first 7 months). It is concluded that supply in Turkey was not controlled through increasing export because there were not serious changes in export amounts and capacity usage rates were high. There were not sufficient information or findings showing a concerted practice/agreement to restrict domestic supply.

12. Conclusion: It was decided that (BESD-BİR) and nine undertakings violated article 9 of the Act no 4054 thus they shall be imposed administrative fines. Moreover, administrative fines were imposed on one of the undertakings for failure to submit the information requested within the scope of the investigation and on another undertaking for submitting incorrect and misleading information.

Ro-ro Transportation Investigation [decision date: 18.04.2019, decision number: 19-16/229-101]

13. The decision was taken after the investigation into the claim that undertakings dealing with ro-ro transport on Ambarlı-Bandırma and Ambarlı-Topçular lines violated article 4 of the Act no 4054 by means of colluding to fix the prices charged from transporters.

- Relevant Market (product; geographic): not defined.
- Findings: The investigation is about five undertakings and an association of undertakings dealing with ro-ro transport on Ambarlı-Bandırma and Ambarlı-Topçular lines.

14. Direct communication regarding future prices between undertakings active on ro-ro lines between Ambarlı-Bandırma was found. The evidence showed that the communication lasted from April 2009 to August 2017. Price movements of four competitors between 2010 and 2018 were analyzed. It is concluded based on the price movements that the agreement about price was put into practice.

15. Regarding Ambarlı-Topçular ro-ro line, two competitors communicated about price in 2017 and prices increased after the communication.

16. One of the parties, Kale, made a leniency application. Administrative fines to be imposed on Kale were reduce because the evidence it provided showed that the violation started before the dates on documents found during on-site inspection, included complementary information and documents regarding information exchange on prices and Kale submitted detailed information about the parties and functioning of the infringement.

17. Conclusion: As a result, it was decided that three undertakings, including the leniency applicant, on Ambarlı-Bandırma ro-ro transport line and two undertakings on Ambarlı-Topçular ro-ro transport line violated article 4 of the Act no 4054 by means of determining line prices together; thus, they shall be imposed administrative fines. The fines to be imposed on the leniency applicant was reduced by half. On the other hand, the association of undertakings did not violate competition rules.

Maysan Mando Investigation [decision date: 20.06.2019, decision number: 19-22/353-159]

18. The decision dated 18.02.2016 and numbered 16-05/107-48 ruled that Maysan Mando Otomotiv Parçaları San. ve Tic. A.Ş. (Maysan Mandp) violated article 4 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of refusing to supply goods to the complainant and trying to exclude the complainant from the market together with the complainant's competitors. The decision was overruled. Afterwards the Competition Board reevaluated the file. The Board also considered resale price maintenance claims.

- Relevant Market (product; geographic): “damper production and sales”, “damper distribution and sales”, “otomotive spare parts sales”; Turkey.
- Findings: First, the Board dealt with the Dealership Agreement (the Agreement) signed by Maysan Mando with its dealers within the framework of articles 4 and 5 of the Act no 4054. It was observed that according to the Agreement, the dealers were obliged not to produce and distribute competing products and were subject to annual purchase quotas. Therefore, the Agreement restricted dealers’ activities in the damper market and falls under article 4 of the Act no 4054. The decision evaluated the Agreements under the scope of the Block Exemption Communiqué no 2017/3 on the Vertical Agreements in Motor Vehicles Sector (the Communiqué no 2017/3) because the relationship between Maysan Mando and its dealers is vertical and related to purchase, sale and resale of motor vehicles’ spare parts. According to the evaluations, Maysan Mando’s Dealership Agreement of indefinite period cannot benefit from exemption as per the Communiqué no 2017/3 since it does not fulfill the conditions concerning notice of termination; besides, non-compete obligations exceed five years. Those are among the general conditions for benefiting from the Communiqué no 2017/3. The Board decided that the Agreement cannot benefit from individual exemption on the grounds that non-compete obligations may hinder multi-branding in the market for damper production or distribution; thus, the Agreement does not fulfill article 5(1)(c) and (d) of the Act. Accordingly, the Board concluded that article 8 “The Term and Renewal of 3 the Agreement” and article 3.14 “Commercial Rules” of Maysan Mando’s Dealership Agreement and article 5.8 “Annual Quota” of the “Commercial Conditions” attached to the Agreement should be brought in compliance with the provisions of the Communiqué no 2017/3.

19. Concerning resale price maintenance claims, it is understood from the documents obtained during on-site inspection that between 2014 and 2018, the undertaking followed dealers’ prices, profit rates and campaigns to prevent price competition among dealers and engaged in activities towards resale price maintenance. Thus, the Board concluded that the activities in question, which are within the scope of article 4, cannot benefit from block exemption under the Communiqué no 2017/3 and individual exemption under article 5 of the Act. Consequently, the undertaking, which is found to have violated article 4 of the Act, was imposed administrative fines.

20. Lastly, the decision dealt with refusal to supply claims according to article 6 of the Act no 4054. To this end, the Board considered whether Maysan Mando abused its dominant position in line with its case law that provided that it is clearly shown that one of dominant position or abuse factors are not found, others shall not be claimed. The Board analyzed whether the undertaking’s dampers are indispensable with respect to spare parts market and with respect to damper distribution market, considering refusal to supply doctrine. The Board concluded that the complainant also sell competing products that are at the same market with Maysan Mando’s dampers; in other words, substitutes Maysan Mando’s dampers with competing dampers. As a result, indispensability clause in refusal to supply fact is not fulfilled in this file.

21. Conclusion: It was decided that the undertaking violated article 4 of the Act no 4054 by means of vertical agreements and retail price maintenance; thus, it shall be imposed an administrative fine.

2.1.2. Summary of significant cases- Examples from the decisions on abuse of dominance

Medsantek Investigation [decision date: 28.03.2019, decision number: 19-13/182-80]

22. Medsantek Laboratuvar Malzemeleri San. ve Tic. Ltd. Şti. (Medsantek) and Genomed Sağlık Hizmetleri A.Ş. (Genomed) are authorized distributors of ThermoScientific's DNA sequence analysis devices in Turkey. The decision was taken after the investigation whether Medsantek and Genomed violated the Act no 4054 by means of abusing their dominant position in the market for said devices' sales, service and maintenance in the market for kits used in those devices.

23. The investigation was initiated as a result of the complaint by Intron. In its complaint, Intron claimed that it tried to participate in service procurement tenders in return for devices and kits it bought from Thermo's authorized distributors; it could not get authorization certificates required by public hospitals in tender specifications, which have to be get from authorized distributors, from Genomed and Medsantek, thus it was excluded from kit market.

- Relevant Market (product; geographic): "sanger sequence analysis devices produced by Thermo", "new generation sequencing devices produced by Thermo"; Turkey;
- Findings: The abovementioned claims were analyzed under the scope of article 6 of the Act no 4054. The product, which the complainant claimed that it could not take authorization certificate from Genomed and Medsantek in public procurement, is related to a device that the said authorized distributors sell to both hospitals and dealers active in kit market. Inability to take the authorization certificate related to the said device is an obstacle in front of Intron's activities regarding kit sales in Thermo's Fisher brand sanger and new generation sequencing markets.

24. First, a dominant position analysis was made. In this framework, the number of DNA sequence devices sold by Genomed and Medsantek, income from providing kits and consumables as well as from the relevant maintenance services between 2014 and 2017 were analyzed. As a result, it is observed that Medsantek is a much bigger player than Genomed. With respect to the functioning of the market, it is observed that undertakings which do not have certificates showing that they are authorized to sell Thermo brand DNA sequencing analysis devices cannot compete effectively in public procurements in kit market even if they own the said devices. Thus, request for an authorization certificate for the device is an important entry barrier to the kit market. Only distributors may grant authorization certificates in Turkey. In line with this, Genomed or Medsantek becomes dominant with respect to the device it has sold at the process of granting authorization certificates after they have sold Thermo brand sanger or new generation sequencing device to one of their dealers in the kit market or an independent undertaking. Documents obtained during on-site inspection supported this finding.

25. The abuse of dominant position analysis dealt with Genomed's and Medsantek's behavior separately. It is found that the complainant did not request authorization certificate from Genomed. There were not any documents found during on-site inspection showing that Genomed refused authorization certificates. In light of this information, it is concluded that Genomed did not abuse its dominant position in the market for DNA sequencing analysis market in the markets for kits used in those markets.

26. With respect to Medsantek's behavior, the documents obtained during on-site inspection showed that the complainant's requests were refused. Depending on those documents, the parties' answers to the questions and the relevant legislation, it is understood that Medsantek did not grant authorization certificate to a device even if it sold it, in case a dealer or a third party wanted to participate in a tender, where Medsantek also participated and this conduct did not have a legal basis. It is also observed that Medsantek tried to discipline the complainant because it used third party consumables.

27. The decision stated the following findings:

- Medsantek's behavior constitutes an important entry barrier,
- Medsantek's behavior also creates a switching barrier for the undertakings investing in those devices because device costs are high,
- A device that cannot be sold in kit market is a sunk cost for firms,
- Dependence to Thermo is high, especially regarding sanger devices.

28. Considering the information, documents and findings stated above, although Intron's inability to take an authorization certificate is an individual case, Medsantek's refusal to grant authorization certificate to third parties in tenders it participates complicates competitors' activities and creates anticompetitive foreclosure effects.

29. There are not any documents, within the scope of the file, showing that Genomed and Medsantek were engaged in an agreement violating article 4 of the Act no 4054 or boycotting their competitors in the downstream market due to collusion. Moreover, documents obtained during on-site inspection shows that the said undertakings compete with respect to price. Therefore, there are not any conducts contrary to article 4 of the Act.

30. Conclusion: It was decided that Medsantek holds a dominant position in sanger sequence analysis device market with respect to devices it sells at the stage of granting authorization certificates, abused this dominant position within the scope of article 6 of the Act no 4054 by means of not granting authorization certificates regarding the device to its competitors in the kit market, therefore administrative fines shall be imposed to Medsantek. It was decided that Genomed did not violate competition problems.

İsttelkom Investigation [decision date: 11.04.2019, decision number: 19-15/214-94]

31. The investigation regarding the decision was conducted to find whether İsttelkom İstanbul Elektronik Haberleşme ve Altyapı Hizmetleri San. ve Tic. A.Ş. (İsttelkom) complicated its competitors' activities through Facility Sharing Protocol. Independent Telecommunication Operators Association (TELKODER) claimed that İstanbul Metropolitan Municipality (İBB) did not grant the rights of way for various reasons and directed operators to its subsidiary İsttelkom after 2012. The rights of way are necessary to establish and operate the infrastructure which is an essential facility to offer internet and value added electronic communication services.

- Relevant Market (product; geographic): "electronic communication infrastructure installment market", "wholesale or retail electronic communication services market"; İstanbul province
- Findings: The decision concluded that İsttelkom holds a dominant position depending on the following reasons:

- İsttelkom benefits from privileges and advantages in electronic communication infrastructure instalment market (the relevant market) because it is a subsidiary of İBB.
- The said privileges grant İsttelkom the power to impose on operators Facility Sharing Protocol's anti-competitive provisions,
- in 2017 and 2018, İsttelkom became market leader in İstanbul infrastructure market which was installed in 2016,
- İsttelkom has a vertically integrated structure,
- There are serious economic and legal entry barriers to infrastructure instalment market.

32. The decision included the following findings:

- Operators have to sign Facility Sharing Protocol with İsttelkom to install infrastructure because they cannot take rights of way,
- This protocol includes competitively disadvantageous provisions for operators,
- Operators bear the costs for infrastructure installment, but the ownership belongs to İsttelkom,
- The operators which bear the costs for installment cannot allow the use of, rent or transfer partially or entirely the facilities to third parties, but İsttelkom has those rights.

33. The file investigates the actual and potential effects of İBB's not granting rights of way and obligation on operators that are directed to İsttelkom to sign Facility Sharing Protocols, which is disadvantageous. Considering İsttelkom's and its competitors passive infrastructure length in 2016, 2017 and 2018 (first half), operators that İBB granted licenses in that period and their infrastructure length, infrastructure length and increasing rates in electronic communication sector, the conduct in question complicated competition and prevented entry and expansion in the market. The strength of İsttelkom's dominant position and the conditions of the relevant market are aggravating factors.

34. Moreover, the documents obtained during on-site inspection showed İsttelkom's intention to complicate its competitors' activities and exclude them out of the market. This intention was used as an indirect proof. Moreover, İsttelkom's conduct did not base on rule of reason.

35. Conclusion: It was decided that İsttelkom violated article 6 of the Act no 4054 by means of abusing its dominant position in electronic communication infrastructure installment in İstanbul due to Facility Sharing Protocol it signed with operators. Thus, İsttelkom shall be imposed administrative fines. Moreover, in order to ensure that the violation is terminated and efficient competition is established in the market, İsttelkom should remove from Facility Sharing Protocol provisions that (a) the ownership of the infrastructure, whose costs are born by the operators belong to İsttelkom, (b) operators cannot allow the use of, rent or transfer partially or entirely to third parties the infrastructure whose costs they bear, directly or indirectly indicating this or creates this effect.

2.1.3. Summary of significant cases- Example from the decisions on exemption and negative clearance

- Facility Consolidation Cooperation Agreement – Individual Exemption [decision date: 11.04.2019, decision number: 19-15/203-90]

36. The exemption decision addresses a request for exemption regarding “TT Mobil-Vodafone-Turkcell Facility Consolidation Cooperation Agreement” signed among Vodafone Telekomünikasyon AŞ (Vodafone), TT Mobil İletişim Hizmetleri AŞ (TT Mobil) and Turkcell İletişim Hizmetleri AŞ (Turkcell).

- Relevant Market (product; geographic): not defined; Turkey
- Findings: The agreement includes the following provisions briefly,
- The parties shall share passive mobile infrastructure elements that are used in the provision of mobile electronic communication services,
- The basic objective of the agreement is to create a collaborative environment so that the parties could fulfill the obligations in the relevant legislation, to increase cost efficiency and to use the resources more efficiently,
- active mobile infrastructure and fixed infrastructure shall be excluded,
- “Consolidation Planning Committee”, whose opinion shall not be binding, shall be established with the participation of two representatives from each party.

37. The aim of the said committee is to list the facilities that might be subject to consolidation, to keep that list updated, to identify the points where facility consolidation might be made. The agreement on passive network allocation that regulates the principles of cooperation between competitors is under the scope of article 4 of the Act no 4054 because of competitive concerns that the agreement in question might create coordination with respect to operating infrastructure.

38. Current regulations encourage network allocation. The analysis for individual exemption shows that network allocation will be more efficient as a result of the agreement notified; thus, the agreement fulfills the conditions listed in article 5(1)(a) and (b) of the Act no 4054. The agreement fulfills the conditions in Article 5(1)(c) of the same Act since the transaction has limited effects on the market and will not significantly restrict competition in the market in spite of high entry barriers. The agreement also fulfills the conditions in subparagraph (d) within the framework of other explanations made and the fact that the parties have right to install facilities on their own or with other operators.

39. Taking into account increasing mobile broadband trends and the requirement of a wider infrastructure due to the need for higher capacity for 4,5G and 5G technologies, etc., the agreement has been granted individual exemption.

40. Conclusion: It was decided that the notified agreement fulfilled all of the conditions listed in Article 5 of the Act no 4054, and could be granted individual exemption for five years.

BKM Express - Withdrawal of exemption [decision date: 30.05.2019, decision number: 19-20/291-126]

41. The decision is related to the request for individual exemption regarding digital wallet application named “BKM Express” under the body of Interbank Card Center (BKM) within the scope of article 5 of the Act no 4054.

- Relevant Market (product; geographic): not defined ; Turkey
- Findings: BKM Express is an e-wallet application. BKM Express was granted exemption for an indefinite time with the decision dated 23.09.2016 and numbered 16-31/525-236. It was decided in 2018 that BKM would make an application again whether BKM Express still fulfilled exemption conditions within the framework of the provision “Withdrawal of Exemption and Negative Clearance Decisions” under the scope of article 13 of the Act.

42. As a result of the analysis made in response to the application, it is observed that new functions such as contactless payment, donation through various channels, the ability of users to request money from each other were added. The analysis examines whether the latest version of BKM Express fulfills the conditions for exemption listed in article 5(1) of the Act no 4054.

43. The decision lists the benefits of digital wallet application as follows:

- Reducing security concerns
- Increasing payment success rate
- Contributes to the development of card payment ecosystem as it increases consumer habits towards card payment,
- The increase of card payment rate in total payments provides advantages such as decreasing forgery, preventing money laundering, decreasing tax evasion and increasing liquid flow in the market.

44. On the other hand, there are no efficiencies peculiar to the provision of this service by BKM or efficiencies that cannot be obtained unless BKM offers this service. It is possible to obtain the same efficiencies in case banks offer similar integration services to other third parties. A technical and economic development peculiar to BKM’s service could only be possible if banks offer the service to only BKM but not to other payment institutions. This directly affects competition not only between BKM and third parties but also between banks and third parties. Moreover, some of BKM’s member banks are already offering and others have the potential to offer this service, which reveals the potential, even direct, competitive relationship between BKM and banks. The decision emphasizes that BKM’s basic function is exchange and relevant transactions. If BKM directs its power and income from exchange and relevant transactions to other areas, this may result in serious competition infringements unless exemption conditions are fulfilled. According to the decision, the condition on “ensuring economic or technical development” is not satisfied.

45. With respect to “consumer benefit condition”, there are not any findings showing efficiency gains as the first condition of exemption, thus it is not possible to claim consumer benefit as a result of this practice. Indeed, BKM’s efficiency gains are provided at the expense of preventing third parties from market entry or complicating their activities in the market.

46. It is concluded in the decision that the following facts may result in elimination of competition in a significant part of the market:

- BKM Express' financing model,
- BKM Express cover integration expenses itself,
- Its advertisement and campaign budget is high,
- The risk that BKM can access to commercial information of other undertakings offering digital wallet services,
- BKM has the duty of arbitration committee in expenditure objections to competitors.

47. Thus, the condition of “not eliminating competition in a significant part of the relevant market” is not satisfied, either.

48. The application cannot fulfill the first two conditions of exemption. Likewise, it is concluded that it is not possible that the application could satisfy the last condition of exemption “not limiting competition more than what is compulsory for achieving the goals”

49. Conclusion: Within this framework, it was decided that the exemption granted to BKM Express in 2016, shall be withdrawn and BKM Express shall be terminated within 60 days as of the notification of the decision. Later, the period determined for the termination of BKM Express is extended until 30 June 2020 with the decision dated 07.11.2019 and numbered 19-38/563-232.

Roche – Refusal to Grant Exemption [decision date: 12.12.2019, decision number: 19-44/732-312]

50. This decision relates to an application for exemption. The application is about Roche's conduct, where Roche limits the number of warehouses (currently more than 30) to not less than five but not more than 10 in the distribution of human medicine to channels apart from tenders (pharmacies and private hospitals) and does not work with warehouses apart from those specified.

- Relevant Market (product; geographic): not defined ; Turkey
- Findings: Considered as a whole, the draft agreement does not provide for anticompetitive practices such as exclusivity or resale price maintenance. However if Roche limits the number of warehouses (currently more than 30) to not less than five but not more than 10 in the distribution of human medicine to channels apart from tenders (pharmacies and private hospitals), especially small and medium-sized pharmaceutical warehouses' activities will be complicated. In case those warehouses leave the market and/or there are not any new entries, the concentration level in the market will rise. Thus, the practice which might result in a vertical relation that could restrict competition in the market is under the scope of article 4 of the Act no 4053. Thus, limiting the number of warehouses not less than five but no more than ten cannot be granted negative clearance certificate. Moreover, limiting the number of warehouses to work between five and ten cannot be granted individual exemption as it does not fulfill the condition listed in article 5(1) (c) of the Act.

51. Conclusion: It is concluded that an individual exemption cannot be granted to Roche's proposed practice.

2.2. Mergers and Acquisitions

2.2.1. Summary of significant cases- Example from the decisions on merger/acquisitions

Acquisition of Whirlpool Corporation's Embarco business by Nidec Corporation [decision date: 18.04.2019, decision number: 19-16/231-103]

52. The decision is related to acquisition of Whirlpool Corporation's compressor production business Embarco by Nidec Corporation. The decision is taken after final examination.

- Relevant Market (product; geographic): (horizontal) "sale of household type reciprocating hermetic cooling compressors, "sale of reciprocating hermetic light commercial cooling compressors", (vertical) "sales of condenser units"; Turkey.
- Findings: The decision analyzes household type cooling compressors market and light commercial cooling compressors market, where there are horizontal overlaps in addition to vertically relevant product markets (light commercial compressor sales and condenser unit sales).

53. In the market for household type cooling compressors, when market shares are considered with respect to sales volume and sales value in 2016, 2017 and 2018, Nidec's market share together with Embarco was below 20% in 2017 and 2018. Thus, the transaction would not create competitive concerns within the scope of article 7 of the Act no 4054.

54. Market shares are analyzed in the market for light commercial compressors with respect to sales volume and value for the same period. In this market, the total of Nidec's and Embarco's market shares reached a higher level. However, Nidec submitted a letter to the Competition Authority stating that:

- It is expected that EU commission will clear the transaction on the basis of binding commitments,
- The commitments create global effects, do not have any anticompetitive effects; thus, they will remove the overlaps both globally and in Turkey,
- The commitments submitted to the EU Commission covers divestiture of Nidec's all light commercial compressors and household type compressor business,
- Apart from the employees and firms that are especially left out of scope, relevant assets, contracts, customer registries, intellectual properties, know-how, personnel and legal entities stated (referred to as the business unit to be divested) together with other interests shall be divested,
- Thus, the overlaps will be completely removed, the sale of the business unit to be divested will relieve all concerns that the transaction will significantly restrict competition in the relevant segments.

55. It is concluded in the decision that all competitive concerns will be relieved as horizontal and/or vertical overlaps will have been removed in household type compressors market, light commercial compressors market and condenser units market after the structural divestiture.

56. Conclusion: It was decided that the notified transaction would not create a dominant position or strengthen an existing dominant position under Article 7 of the Act no 4054 under aforementioned commitments. Therefore, the transaction is cleared conditionally.

Acquisition of İGA Havalimanı Akaryakıt Hizmetleri A.Ş. (İGA) by Türk Hava Yolları A.O. (THY), Total Oil Türkiye A.Ş. (Total) ve Zirve Holding A.Ş. (Zirve) [decision date: 19.12.2019, decision number: 19-45/769-331]

57. This decision relates to acquisition of shares of İGA Havalimanı Akaryakıt Hizmetleri A.Ş. (İGA) through capital increase by Türk Hava Yolları A.O. (THY), Total Oil Türkiye A.Ş. (Total) ve Zirve Holding A.Ş. (Zirve)

- Relevant Markets (product; geographic): “jet fuel supply”, “fuel oil supply”, “liquid bulk cargo port operations”, “dry bulk cargo port operations”, “airline transportation”; İstanbul Airport and Türkiye.
- Findings: The subject of acquisition, İGA, was established to carry out services related to oil sale, supply and refueling. In line with this, its fields of activity are: (i) domestic and international sales, import, export, distribution and transport of aircraft petroleum products, mineral oil and grease and petroleum chemistry products, chemical products and dyes and have those activities done (ii) transport by road and marine vehicles, by pipeline, of aircraft petroleum products, mineral oil and grease and petroleum chemistry products, chemical products and dyes and have those activities done (iii) storage, handling, retail sale and wholesale after being stored in storage facilities or vehicles in and/or outside of airports where those will be sold, of aircraft petroleum products, mineral oil and grease and petroleum chemistry products, chemical products and dyes, within the country or abroad (iv) Establishing and operating oil stations and to this end purchase, sales, retail trade and marketing of all petroleum products (benzine, diesel oil, diesel, biodiesel, LPG, LNG, mineral oil, etc.)

58. Impact of the transaction on the relevant markets is evaluated with respect to İGA’s and its competitors in the relevant markets, barriers to entry and growth in the relevant markets and bargaining power of the customers. In this framework, firstly, market shares of İGA and its competitors, existing supply agreement between İGA and THY and potential effect of vertical relationship between İGA and THY which will be created by the transaction are evaluated. In this respect, THY’s and Total’s market shares in their relevant markets are also taken into consideration.

59. In the decision, both unilateral (customer and input foreclosure) and coordination effects of the transaction are discussed in detail.

60. Conclusion: It was decided that the notified transaction would result in creating a dominant position or strengthening an existing dominant position with respect to article 7 of the Act no 4054. However this would not significantly lessen competition, therefore the transaction is cleared.

2.3. Opinions

61. TCA has provided various opinions concerning implementation or amendments in legislation in 2019, in accordance with Articles 27(g) and 30(f) of the Competition Act. The total number of opinions send to government bodies in 2019 was 27. Out of 27 opinion requests, 15 of them were about draft legislations while others were about other activities of authorities and institutions.

3. Resources of the TCA

3.1. Resources overall

3.1.1. Annual budget (in TRY and USD)

62. Revenues of the TCA are determined by the Competition Act as follows in Article 39. According to this article, revenues of the TCA set up the budget of the TCA, and they are made up of the following items of revenues:

- The subsidy to be allocated in the budget of the Ministry of Trade,
- Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the remaining portion in case of capital increase,
- Publication and other revenues.

63. Revenues belonging to the TCA are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank.

64. The spending budget of the TCA in year 2019 was 115,750,000 TRY, approximately 20 million USD.

65. Moreover, although it is provided for in Article 39 of the Competition Act, there has not been a subsidy in the budget of the Ministry of Trade and the TCA has not taken any aid from the general budget transfer scheme since its establishment in 1997.

3.1.2. Number of employees (as of 31 December 2019)

- Non-administrative competition staff: 161
- All staff combined: 372

3.2. Human resources (person-years) applied to: Enforcement against anticompetitive practices, Merger review and enforcement; Advocacy efforts.

66. TCA was not structured as to assign staff with respect to competition enforcement activities. Rather the staff is divided into five main enforcement departments which are assigned sectoral areas. Any merger filings or antitrust infringement complaints regarding a sector are delivered to the head of the department assigned to that sector. Then the department head distributes cases to competition NAC staff for analysis. There is also NAC Staff employed in External Relations, Training and Competition Advocacy; Information Management, Strategy Development; Decisions and Legal Departments.

3.3. Period covered by the above information:

67. Year of 2019

Statistical Information for the Year 2019

Table 1. Files Concluded

Year	Anti-competitive Agreements (Art.4) and Abuse of Dominance (Art.6)	Exemption/Negative Clearance	Merger/Acquisition/Joint Venture/Privatization	Total
2017	80	32	184	296
2018	88	44	223	355
2019	69	35	208	312

Table 2. Files Concluded Under the Scope of Articles 4 and 6 of the Competition Act

Year	Article 4	Article 6	Mixed (4 and 6)	Mixed (4,6 and 7)	Total
2017	37	29	13	1	80
2018	46	23	19	-	88
2019	30	26	13	-	69

Table 3. Horizontal and Vertical Agreements Examined under the Scope of Article 4 of the Competition Act

Year	Horizontal	Vertical	Together (H/V)	Total
2017	36	15	-	51
2018	36	28	1	65
2019	23	18	2	43

Table 4. Results of the Applications Regarding Exemption and Negative Clearance

	Concluded Negative Clearance Files				Concluded Exemption Files						
	Applications that are granted Negative Clearance	Applications that are granted Negative Clearance with Conditions	Applications that are not Granted Negative Clearance	Cases including Agreements that are granted individual exemption	Cases including Agreements that are not Granted Exemption and Required Corrections	Cases including Agreements that are Under The Scope of Block Exemption	Cases including Agreements that are Granted Individual Exemption with Conditions	Cases including Agreements that are under the scope of Block Exemption after conditions	Cases including Agreements that are not granted exemption	Cases including Agreements from which exemption was withdrawn	Cases including Agreements where individual and block exemption were evaluated together
2017	3	-	-	19	-	3	3	-	2	1	1
2018	9	-	-	18	-	-	3	3	4	-	4
2019	6	-	2	16	-	5	-	-	1	2	3

Table 5. Number of Merger and Acquisition Decisions

Year	Merger	Acquisition	Joint Venture	Privatization	Total
2017	6	141	32	5	184
2018	2	152	56	13	223
2019	1	140	66	1	208

Table 6. Results of Merger and Acquisition Notifications

Year	Cleared	Cleared Under Conditions	Blocked	Out of scope (not satisfying the thresholds)	Total
2017	150		2	1	30
2018	201		4	-	18
2019	185		2	-	21

Table 7. Fines Imposed¹ (TRY)

	Year	Anti-competitive Agreements and Abuse of Dominance	Merger/Acquisition	Exemption/Negative Clearance	Other	Total
Fines related to substance	2017	199,430,270	-	-	-	199,430,270
	2018	349,374,235	-	-	-	349,374,235
	2019	237,674,115	-	-	-	237,674,115
Fines imposed on executives	2017	-	-	-	-	-
	2018	-	-	-	-	-
	2019	-	-	-	-	-
False or misleading information in an application	2017	-	-	-	-	-
	2018	-	320,376	-	320,376	-
	2019	-	-	-	-	-
False or misleading information given during on the spot inspections	2017	33,754	-	-	-	36,754
	2018	-	-	-	-	-
	2019	826,106	-	-	-	826,106
Finalizing a transaction without permission of the Competition Board/Failure to notify within due date	2017	-	-	-	-	-
	2018	-	-	-	-	-
	2019	-	-	-	-	-
Incompliance with the decision of the Competition Board related to Article 9	2017	-	-	-	-	-
	2018	-	-	-	-	-
	2019	-	-	-	-	-
Hindrance of on the spot inspection	2017	3,225,409	-	-	3,225,409	3,225,409
	2018	194,082	-	-	-	194,082
	2019	38,116,077	-	-	-	38,116,077

¹ The table does not reflect new fines in the files annulled by the Council of State, the high administrative court.

Table 8. Judicial Review² Statistics According to Result

Year	Number of Court Judgments	Number of Favorable Judgments	Number of Unfavorable Judgments	Other ³	Unfavorable/Total
2017	131	115	9	7	7%
2018	97	71	14	12	14%
2019	71	61	6	4	8%

² According to Article 55 of the Competition Act “Suits shall be filed against administrative sanctions before the competent administrative courts. All types of suits filed against Board decisions shall be deemed a priority matter”. Prior to 2012 the (only) appeal court for Competition Board’s decisions was Court of State, the amendment in 2012 determines administrative courts in Ankara as the first instance court.