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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Türkiye

-- 2022 --

This report is submitted by Türkiye to the Competition Committee FOR INFORMATION.

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Türkiye

Executive Summary

1. Overall examination of the Turkish Competition Authority's (TCA) activities shows that a total of 342 file was finalized in the relevant year. Among these, 78 of them were about competition infringements, 19 were about exemption/negative clearance applications, and 245 were about merger/acquisition/joint venture/privatization transactions.
2. This distribution can be compared to that of 2021, revealing an increase in the number of competition infringement cases from 74 to 78, and merger/acquisition/joint venture/exemption files from 309 to 342, with a decrease in the number of negative clearance/exemption files from 22 to 19. In that sense, there is an increase in the number of files concerning competition infringements among the total distribution of files finalized in 2022.
3. In 2022, the number of files finalized as a result of preliminary inquiry and investigations conducted under the provisions of Article 4 (on anticompetitive agreements) and Article 6 (on abuse of dominance) of the Act No 4054 on the Protection of Competition (the Competition Act) was 78. Food industry, information technologies and platform services, agriculture and agricultural products have been the sectors with the highest number of investigations.
4. Of the 78 files finalized concerning claims of Article 4 and/or 6 infringements, 17 were examined *ex officio* by the Competition Board (around 22% of the finalized competition infringement cases). Of the competition infringement cases examined *ex officio*, 16 concerned Article 4 of the Competition Act violations. Examining the share of *ex officio* competition infringement cases in 2022 shows that the Board has maintained its proactive approach, similar to the previous year.
5. Examining the competition infringement cases concluded in 2022 it is seen that 58 of them concerned anticompetitive agreements, 14 concerned abuse of dominance, and 6 concerned the claims of both. Of a total of 64 files infringements of anticompetitive agreements, 38 concerned horizontal agreements while 25 concerned vertical agreements. One file concerned both vertical and horizontal agreements.
6. An overview of the outcomes of the 78 files concerning competition infringements shows that five out of 54 cases were concluded with commitments and 34 of them were concluded with settlement decisions. Administrative fines were imposed to 15 different sectors.
7. Comparing the total of 19 exemption/negative clearance applications finalized in 2022 with the 22 applications made in 2021 reveals that there was a decrease of 16% in the number of negative clearance/exemption cases finalized. Only four of the applications assessed in 2022 were concluded with a negative clearance decision. Banking, capital markets, finance and insurance services; healthcare services; food industry as well as chemistry and mining sectors constructed the 74% of these exemption/ negative clearance cases.
8. In 2022, 245 merger and acquisition applications were finalized, which shows a decrease of around 26% compared to 2021. Of the aforementioned 245 applications, around 65% concerned acquisitions, and around 31% concerned the establishment of joint ventures. In addition, two mergers and seven privatization transactions were finalized in

2022. A look at the sectoral distribution of applications reveals that chemistry and mining, information technologies and platform services, healthcare services, and banking, capital markets, finance and insurance services sectors saw the largest number of M&A transactions, with these four sectors having a share of around 44% in total applications. 209 transactions were authorized without conditions, and two were authorized subject to conditions. 34 transactions were found to be out-of-scope or below the threshold.

9. As of the end of 2022, the ongoing sector inquiries are on “fuel,” “online advertising,” “pharmaceuticals,” “container transportation via liners and container port services market,” “fast moving consumer goods retailing,” and “automotive” markets. Within the framework of competition advocacy activities, the TCA also rendered a total of 18 opinions to various public agencies and organizations in 2022, six of which concerned legislation and 12 of which concerned other matters.

10. “The 2022 Mergers and Acquisitions Overview Report” and “The Impact Analysis Report” aiming to determine the effect of the Competition Authority activities on consumer welfare during 2021 and 2022 can be listed within the scope of the economic analysis and research activities of the TCA. According to the Impact Analysis Report (based on the OECD assumptions), the consumer benefit from the TCA’s activities in 2021-2022 is estimated to be, on average, TL 26.55 billion (USD 1.6 billion) and according to the OECD methodology TL 67.32 billion (USD 4.06 billion). In light of the calculations, the benefit provided to the economy is 82.06 times the average annual budget expenses of the TCA in the relevant period, and it is around 208.07 times the budgetary expenses according to the calculation based on the OECD methodology.

11. As in the previous years, the TCA attached great importance to improving international relations in 2022. In this context, representatives participated in various multilateral meetings, international conferences and international training seminars, including those organized by the European Union, OECD, UNCTAD and the ICN.

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

12. The TCA did not make any significant amendment to its existing legislation in 2022.

13. The update concerning the minimum limits of the fines to be imposed in 2022 was put into force with the “Communiqué no 2022/1 Increasing the Lower Limit of the Administrative Fines Specified in Article 16.1 of the Act no 4054 on the Protection of Competition, to Be Valid until 31.12.2022”.

14. Amendments were made to some secondary legislation in 2022. Regulations that were amended are listed below:

- Communiqué no: 2022/2 Amending the Communiqué no 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board,
- Communiqué no 2022/3 Amending the Communiqué no 2013/2 on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid, and
- Regulation Amending the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of right Position.

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

- *Port Akdeniz Investigation Decision (dated 03.03.2022 and numbered 22-11/169-68)*

15. In this case, it was examined whether Ortadoğu Antalya Liman İşletmeleri A.Ş. (PORT AKDENİZ), Medlog Lojistik Gemicilik Turizm A.Ş. (MEDLOG) and MSC Gemi Acenteliği A.Ş. (MSC) violated article 4 of the Act no 4054 by means of market allocation and whether PORT AKDENİZ violated Article 6 of the Act no 4054 by means of excluding firms offering container stuffing services out of the market with its unilateral conduct.

16. The relevant markets were defined as "container stuffing services market", "container lashing services market", "VGM measurement services market" and "load storage services market" whereas the relevant geographic market was "West Mediterranean region".

17. As a result of the analysis and observations made, since no information or document was found showing that the said undertakings violated article 4 of the Act no 4054, it was concluded that MSC, MEDLOG and Port Akdeniz did not violate Article 4 of the Act no 4054. In the assessment made in relation to the Article 6 of the Act no 4054, analyses were made about the positions of PORT AKDENİZ and its competitors in the market, barriers to entry and expansion and buyer power in order to determine whether PORT AKDENİZ was dominant.

18. It was found that PORT AKDENİZ had significant market power and was dominant in container stuffing market. Afterwards, price-cost analysis, correlation analysis and market foreclosure analysis were made on PORT AKDENİZ's rebates in the relevant market. It was concluded that PORT AKDENİZ implemented de facto exclusivity by means of its rebates in container stuffing market and thus abused its dominant position in container stuffing market.

- *Nadirkitap Investigation Decision (dated 07.04.2022 and numbered 22-16/273-122)*

19. In this case, the claim that Nadirkitap Bilişim ve Reklamcılık AŞ (NADIRKITAP), which carries out intermediary services via its website in the market for online sales of second hand books, abused its dominant position by complicating the activities of competing undertakings by means of not providing them with the data of seller members who want to market their products through competing intermediary service providers was examined.

20. Within the framework of the investigation, the relevant market was defined as "the platform services acting as an intermediary for the sale of second hand books" and the relevant geographic market was defined as "Türkiye". Considering undertakings' market shares calculated on the basis of the number and amount of sales, the number of sellers they had contracts with, buyer power, network effects and barriers to entry in the market were considered together with digital platform economies' characteristics; it was concluded that NADIRKITAP was dominant in the relevant market.

21. As a result of the investigation, it was decided that NADIRKITAP abused its dominant position by means of preventing access to and portability of the data which, seller members uploaded to www.nadirkitap.com without a justifiable reason and therefore the undertaking shall be imposed administrative fines. Moreover, in order to ensure that the violation in question be terminated and effective competition be established in the market, NADIRKITAP was imposed obligations to provide the book inventory correctly, clearly, securely and completely in a free and convenient format to seller members in case they requested so.

• *Mineral Water Investigation Decision (dated 14.04.2022 and numbered 22-17/283-128; dated 18.05.2022 and numbered 22-23/379-158)*

22. In this case it was examined whether Beypazarı İçecek Pazarlama Dağıtım Ambalaj Turizm Petrol İnşaat Sanayi ve Ticaret A.Ş. (BEYPAZARI) and Kınık Maden Suları A.Ş. (KINIK) violated Article 4 of the Act No 4054 in the market for natural mineral water.

23. During the investigation, the Board accepted active cooperation applications made by both investigation parties. As a result of the assessments made within the scope of the “Regulation on Active Cooperation for Detecting Cartels”, it was decided to make reductions in the fines to be imposed. In addition, both investigation parties also applied for settlement while the investigation was ongoing. The settlement process was performed with the Board’s acceptance of the settlement requests and at the end of the process, the investigation was terminated with settlement in terms of both parties.

24. Accordingly, it was decided that the undertakings in question violated article 4 of the Act no 4054 by means of price fixing through information exchange with a competitor about current and future prices, price changing dates and price rises and thus by means of forming a cartel. The undertakings were imposed administrative fines.

25. This decision is important since it is the first decision where active cooperation and settlement procedures were applied together.

• *Hayırlı El Investigation Decision (dated 21.07.2022 and numbered 22-33/523-210)*

26. In this case it was examined whether Hayırlı El Kozmetik Pazarlama AŞ (HAYIRLI EL) determined the resale prices of the products sold by its resellers and violated the Article 4 of the Competition Act.

27. While the investigation was ongoing, HAYIRLI EL applied for settlement. According to the final decision taken as a result of the settlement procedure, it was decided that HAYIRLI EL’s conduct for determining sales prices of its resellers violated the Article 4 of the Competition Act and 25% reduction was made in the administrative fines to be imposed to the undertaking as a result of the settlement procedure.

• *Martı ve Mobilite A.Ş. Commitment Decision (dated 21.07.2022 and no 22-33/527-214)*

28. In this case it was examined whether Martı İleri Teknoloji A.Ş. (MARTI) abused its dominant position in electric scooter market by foreclosure through excluding its competitors with below cost pricing and other methods.

29. According to the analyses made on the basis of total number of scooters, total driving minutes and total revenues in Ankara, İstanbul and İzmir as well as overall Türkiye, it was observed that MARTI had a high market share especially at the beginning with first mover advantage and maintained its market leadership in terms of driving minutes in the three cities. As a result of the comparison of Martı’s average cost and average price in

Ankara between October 2019 and April 2022, in İstanbul between March 2019 and April 2022 and in İzmir between September 2019 and April 2022, it was seen that the undertaking's average price was sometimes below the average cost.

30. During the investigation process, Martı offered a commitment package related to the competitive concerns of the case. Within the framework the Commitment Package;

- As of April 30, 2022, in İstanbul and İzmir, where Martı's share is 50% and over in respect of e-scooter driving minutes, undertaking's monthly average revenues for the last 12 months per e-scooter drive in the relevant city will be over monthly average avoidable (variable) costs per drive during the same period concerning the relevant city.
- The lifetime of e-scooter will be taken as 36 months and e-scooters will be developed accordingly. For the calculation of average avoidable costs, operational expenses on a city-base, including e-scooter depreciation expenses, will be taken as a basis; however, fixed costs such as general management expenses and R&D will not be considered.
- The commitment will be applied for six months as of October 1, 2022.
- The analysis showing that the commitment is fulfilled will be submitted to the Authority in written form within 30 days after the six-month commitment period has expired.

31. It was decided that the commitment package was able to eliminate the competition problems identified during the investigation phase, therefore, the commitments package was made binding to the undertaking.

2.2. Mergers and Acquisitions

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

- *Acquisition of Vesper Kimya (dated 24.02.2022 and numbered 22-10/155-63)*

32. The subject of this case was the acquisition of Arısan Kimya Sanayi ve Ticaret A.Ş. and Transol Arısan Kimya Sanayi ve Depolama Ltd. Şti. by Vinmar Group through Vesper Kimyevi Maddeler A.Ş. (VESER KIMYA). VESER KIMYA is a distributor of special chemicals, which sells and markets raw materials to firms operating in different sectors such as cosmetics, detergent, textile, food and medicine. VINMAR GROUP is a US-based undertaking operating in the sales and distribution of polymer and petrochemicals. The firms to be acquired operate in cosmetics and personal care, food, medicine, home and industrial cleaning (antiseptics), mineral oil and industrial chemicals.

33. It was concluded that the transaction in question would not result in significant lessening of efficient competition although there are horizontal and potential vertical overlaps in the chemicals used in sectors such as cosmetics, industrial cleaning, food and medicine.

34. Non-compete and no-poach obligations that had the nature of ancillary restrictions were also examined under the scope of the decision. The parties stated the following within the framework of the transaction:

- Special chemicals/chemical raw materials require significant know-how because of their highly complex structure requiring expertise,

- There are long-term commercial relationships with buyers
- Customer dependency is relatively high in special chemicals sector,
- Buyers of special chemicals are industrial customers,
- In order to obtain the benefits expected from the total transaction value and investments fully, non-compete obligation as an ancillary restriction shall be imposed for four years.

35. As a result of the assessment by the Board, it was decided that the transaction shall be authorized on the condition that the term of non-compete and no-poach obligations shall be arranged to be valid for 3 years after the transaction, taking into account market characteristics, customer dependency and the nature of know-how.

3. The role of competition authorities in the formulation and implementation of other policies

36. TCA provided various opinions to public institutions and organizations. Essentially, these opinions serve to examine a planned legislation or a planned practice by the relevant agency or organization from a competitive perspective and, to the extent possible, to ensure that a competitive perspective is included in the relevant legislation text or practice.

37. In this context, in 2022 the TCA rendered a total of 18 opinions to various public agencies and organizations, six of which concerned legislation and 12 of which concerned other matters.

4. Resources of the TCA

4.1. Resources overall

4.1.1. Annual budget (in TRY and USD)

38. 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.

39. 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.

40. The spending budget of the TCA in year 2022 was 404.664.381 TL, approximately 24.449.247 USD .

41. In 2021, the spending budget of the TCA was 137.500.000 TRY, approximately 15.466.817 USD .

42. The competition-related budget of the TCA in year 2022 was 56.830.863 TL, approximately 3.433.640 USD.

43. In 2021, The competition-related budget of the TCA was 46.016.000 TL, approximately 5.176.153 USD.

44. 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.

4.1.2. Number of employees (as of 31 December 2022)

- Non-administrative competition staff: 287
 - Economist: 43
 - Lawyer: 83
 - Other: 161
- Support staff: 152
- All staff combined: 481

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

45. TCA was not structured as to assign staff with respect to competition enforcement activities. Rather, the staff is divided into six 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. NAC Staff is also employed at the Department of External Relations and Competition Advocacy; Economic Analysis and Research Department, the Department of Rulings and Legal Decisions, Cartels and On-Site Inspections Support Division, Information Technologies Department, Strategy Development Department and the Office of the Legal Adviser.

4.3. Period covered by the above information: 2022

5. Summaries of or references to new reports and studies on competition policy issues

Impact Analysis Report

46. The TCA started to publish impact analysis reports in 2017, and these reports are still being updated and released to the public at regular intervals. In fact, this study was most recently renewed with an aim to estimate the impact of the decisions taken by the Competition Board in 2021-2022 on consumer welfare. In the Impact analysis report, prepared in consideration of the OECD recommendations as well as the similar studies by various competition authorities around the world, the benefit of the Authority activities to consumers for the relevant period was estimated to be at an average of 26.55 billion TL (1.6 billion USD) annually under a conservative approach, and at 67.32 billion TL (4.06 billion USD) according to the OECD methodology, all with December 2022 prices. In light of the calculations above, the benefit provided to the economy is 82.06 times the average annual budgetary expenses of the Authority in the relevant period according to the

conservative calculation, and it is around 208.07 times the budgetary expenses according to the calculation based on the OECD methodology.

2022 Mergers and Acquisitions Overview Report

47. The 2022 Mergers and Acquisitions Overview Report addresses the merger/acquisition and privatization transactions examined and concluded in 2022 among those notified to the Competition Authority, and aims to summarize the developments with relation to mergers and acquisitions in the relevant year. The Report is intended as one of the significant data sets in terms of the investment climate in Türkiye. The report in question makes the following main observations concerning mergers and acquisitions.

48. In 2022, a total of 245 merger, acquisition and privatization transactions were notified to the Competition Authority. In 82 of these transactions, the target companies were founded in accordance with Turkish laws. The notified transaction value was around 72.2 billion TL for mergers and acquisitions where the target company was based in Türkiye. When privatizations are included, the total transaction value adds up to 86.2 billion TL.

49. The total transaction value of the mergers and acquisitions where all of the parties are companies based in Türkiye was around 25 billion TL. Foreign investors made investments in Turkish companies in 36 separate transactions. In 2022, investors based in the Netherlands and United Arab Emirates were at the top of the rankings in transactions involving target companies based in Türkiye, with five transactions each. Total projected foreign investment involving mergers and privatizations where the Turkish companies were being transferred was 43 billion TL. In 2022, the highest number of transactions as well as the highest value transaction in Türkiye in mergers and acquisitions were both in the field of “production, transmission and distribution of electricity”.

50. Three transactions were taken under final examination in 2022. Only one of the aforementioned transactions was authorized, and the examination process is currently ongoing for the others. In the same year, the Competition Authority decided on the merger and acquisition transactions notified within an average of 15 days after the date of notification.

Table 1. Sector Inquiries Launched/Ongoing in 2022

Sector	Reason for the Inquiry	Planned Date of Completion
Fuel Sector	The fuel sector inquiry is launched in response to the need to identify any existing or potential market failures in the fuel sector and suggest solutions for these problems. The relevant sector inquiry intends to clarify the structure and functioning of all of the stages of the fuel market as well as the competition problems in the market, and to make suggestions for any steps that can be taken with a proactive approach in order to establish effective competition in the market concerned.	2023 First half
Online Advertising Sector	The Online Advertising Sector Inquiry was launched in order to closely monitor the national and international current developments in the online advertising field, which gathered significant momentum in the recent years as a result of rapid improvements in IT technologies and the widespread use of the internet, so as to determine any behavioral and/or structural competition problems in the sector and develop solutions/policy suggestions aimed at dealing with these problems.	March 2023
Pharmaceuticals Sector	The pharmaceuticals sector inquiry aims to scrutinize the structure and functioning of the sector in order to identify the factors affecting competition in the sector, and to suggest solutions for dealing with competition problems in the sector.	June 2023
Container Transportation via Liners and Container Port Services Market	Marine transportation sector can become the subject of competition law due to the relationships between liners, ports and other service providers. Particularly in the recent period, the disarray that emerged in the liner transportation fees and its relation to the problems in the global market brought to the forefront by the COVID-19 pandemic required a detailed examination of the structure and functioning of the sector. Consequently, the sector inquiry aims to provide a better understanding of the dynamics of liner transportation as well as its integrated supplementary market of port services.	October 2023
Fast Moving Consumer Goods (FMCG) Retailing Sector	The sector inquiry into the FMCG retailing sector was launched in order to make a correct competitive analysis of the FMCG retailing market that was shaped through the changes of the recent years and to develop policy suggestions concerning any potential problems that might arise due to the buyer power emerging as a result of the increasing concentration in the sector, and the report preparation stage of the examination has been completed.	2023
Automotive Sector	The motor vehicle sector inquiry was launched with an aim to identify the factors affecting competitive market structure in the automotive sector and the structural problems therein, and to provide suggestions for their solution. The inquiry intends to address the the subjects of digitalization and electric vehicles within the framework of the supply and demand problems in the sector, taxation and pricing policies for the vehicles, distribution channels in the sector, after-sales services and technological developments.	2023

Annex A. Statistical Information for the Year 2022

Table A.1 Files concluded

Year	Anti-competitive Agreements (Art.4) and Abuse of Dominance (Art.6)	Exemption/Negative Clearance	Merger/Acquisition/Joint Venture/Privatization	Total
2020	65	34	220	319
2021	74	22	309	405
2022	78	19	245	342

Table A.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
2020	36	22	7	-	65
2021	40	23	11	-	74
2022	58	14	6	-	78

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

Year	Horizontal	Vertical	Together (H/V)	Total
2020	31	10	2	43
2021	30	19	2	51
2022	38	25	1	64

Table A.4. Number of Merger and Acquisition Decisions

Year	Merger	Acquisition	Joint Venture	Privatization	Total
2020	8	150	62	0	220
2021	5	214	83	7	309
2022	2	160	76	7	245

Table A.5. Results of Merger and Acquisition Notifications

Year	Cleared	Cleared with Conditions	Blocked	Out of scope (not satisfying the thresholds)	Total
2020	190	1	1		28
2021	277	3	-		29
2022	209	2	-		34

Table A.6. Judicial Review¹ Statistics According to Result

Year	Number of Court Judgments	Number of Favorable Judgments	Number of Unfavorable Judgments	Other ²	Unfavorable/Total
2020	155	124	24	7	15%
2021	54	40	8	6	15%
2022	139	111	16	12	11.5%

¹ 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.

² The “Other” heading contains the judgments which were accepted as non-filed, dismissals of petitions, dismissals on the ground of competence, partial acceptance and partial dismissal cases, and the cases where the court did not make a ruling due to abandonment of action or other reasons are collected under the “Other” heading.