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**Global Forum on Competition**

**REMEDIES AND COMMITMENTS IN ABUSE CASES – Contribution from Türkiye**

**- Session IV -**

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This contribution is submitted by Turkey under Session IV of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/sctr](https://oe.cd/sctr).

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## *Remedies and Commitments in Abuse Cases*

### **- Contribution from Türkiye -**

#### **Introduction of the Commitment Procedure to the Turkish Competition Law Regime**

1. In 2020, a new mechanism aiming at terminating investigations has been adopted in the Turkish competition law regime. Therefore, the commitment mechanism has been introduced to Article 43 of the Act no. 4054 on the Protection of Competition (Act no. 4054) by an amendment consisting of two new paragraphs. In 2021, a Communiqué on commitment procedures has been issued in order to explain the main principles of the new mechanism.
2. The new paragraphs of Article 43 of the Act no. 4054 lay down that parties under investigation may offer commitments during the preliminary inquiry or investigation processes in order to eliminate the competition problems that may arise in the markets. The scope of the commitment procedure is limited to certain types of anti-competitive agreements specified under Article 4 of the Act no. 4054 and Article 6, which prohibits abuse of dominant position.
3. If the Competition Board (the Board) decides that the proposed commitments can resolve the competition problems, it may render the commitments binding for the relevant party and decide not to initiate an investigation or to terminate an ongoing investigation.

#### **1. Scope**

4. In the Turkish competition law system, commitments shall be accepted to eliminate the competition problems arising under the scope of Article 4 or 6 of Act no. 4054. Within this context, parties to two categories of anticompetitive agreements cannot benefit from the commitment procedure:
  - Agreements among competitors that involve price fixing, sharing customers, suppliers, territories or trade channels, restriction of supply or imposing quotas, bid rigging, sharing competitively sensitive information such as price, production or sales volumes planned for the future between competitors (hardcore horizontal restrictions)
  - Agreements concluded in a relationship between undertakings operating at different levels of the production or distribution chain, aimed at setting fixed or minimum prices for the buyers (vertical resale price maintenance).
5. Any violation of Article 6 of the Act no. 4054 can be subject to the application of the commitment procedure. Unlike hardcore horizontal competition restrictions, no exemption to the application of the commitment mechanism has been foreseen for abuse of dominant position practices.

## 2. Nature of acceptable commitments

6. Parties to an investigation can submit behavioral or/and structural commitments. Behavioral commitments are defined in the communiqué as “commitments for regulating market behavior of the party concerned without changing the structure of the market”. With respect to the structural commitments, the communiqué states that commitments leading to a change in the market structure and imposing obligations on the party concerned such as transferring certain activities or partnership shares or assets are classified as structural commitments.

7. A commitment is found to be acceptable by the Board when it complies with Article 9 of the Communiqué. Within the meaning of this provision, behavioral or structural commitments must be proportionate to the competition concerns, and they must be able to eliminate them. Furthermore, they must be quickly realizable and efficiently applicable.

8. Hence, general statements by the parties that they will comply with the Act no. 4054 shall not constitute a commitment within the meaning of the Communiqué. On the other hand, commitments regarding conduct of third parties cannot be offered and/or accepted by the Board.

9. When accepting commitments, the Board does not observe any violation of competition law. It confirms that commitments offered by parties are likely to eliminate competition problems caused by investigated parties’ practices.

## 3. Monitoring

10. A specific article has been set forth in the Communiqué as to the implementation and monitoring of accepted commitments.

11. Article 15 provides that compliance by the parties with the commitments can be monitored by the Board by different means:

- The Board can demand parties to regularly prepare and submit reports on the points referred by the Board in its decision.
- The Board can assign a third party to supervise the party’s behaviors performed within the scope of accepted commitments.
- The Board can order the relevant party to cooperate with professional associations or relevant public authorities and institutions.

12. The Board can launch an *ex officio* examination procedure at any time with regard to commitments’ monitoring.

13. When the parties entirely perform the commitments, they shall submit an attestation document to the Authority. Thereupon, the Board shall take a decision establishing that the parties have fulfilled the commitments.

## 4. Examples of The Board Decisions

14. The nature and scope of acceptable commitments presented by the parties may differ according to the specific circumstances of the cases at stake.

15. In the Coca-Cola case<sup>1</sup>, The Board observed that Coca-Cola was abusing its dominant position by means of exclusionary practices. Its practices were assessed under Article 4 from the point of view of vertical restrictions. The offered behavioral commitments by the party were examined by the Board in-depth, and they were accepted pursuant to Article 9 of the Communiqué. In this respect, Coca-Cola committed to

- sign different distribution contracts with its buyers for each different category of drinks that it supplied (coca-based carbonated drinks, other carbonated drinks and non-carbonated drinks),
- remove exclusivity clauses in the distribution contracts,
- amend the periods of the distribution contracts in such a way that they would not cause any exclusivity effects on the buyers,
- open to competitors 25% of its freezer capacity at the disposal of its buyers.

16. Coca-Cola engaged to make necessary arrangements to fulfill the accepted commitments within 2 months after the notification of the Board's motivated decision. However, as to the modifications to be made in the distribution contracts, Coca-Cola would enjoy a 1-year period beginning from the said date.

17. Another decision<sup>2</sup> rendered by the Board is related to behavioral commitments offered by an online food order platform: Yemeksepeti. The Board assessed narrow MFC clauses enforced by Yemeksepeti to its member merchants and observed that they could lead to restriction of competition. Yemeksepeti committed to ending its anticompetitive conduct such as minimum cart amount and mandatory joker practices. Yemeksepeti would benefit from 9 months' time-period to fully accomplish the commitments.

18. Another commitment decision<sup>3</sup> taken by the Board is related to storage fees applied by certain operators at the airports. In this case, investigated parties offered some behavioral commitments with respect to ending the said fees. The Board accepted the commitments and terminated the ongoing investigation.

19. Another commitment procedure, marking the very first example of structural commitments, was carried out in respect of "OSEM" and the Union of Insurance Companies<sup>4</sup> (The Union). OSEM was an undertaking established by the Union. It was providing services as to certification of spare parts and repair services and it was operating an insurance damage management system called "Osem Portal" as well. While OSEM and the Union were under investigation as per Article 4 of Act no. 4054, they proposed commitments. After a tour of revisions, the Board found the commitments sufficient and likely to eliminate the competition concerns observed in the markets. Among others, as a structural commitment, the investigated parties engaged to transfer the shares conferring to the Union controlling rights over OSEM to a third party. One year was granted to the parties in order to perform this commitment and accomplish *de facto* and *de jure* the transaction. Within this period, 100% of shares of OSEM were transferred to Türkiye Sigorta A.Ş., an insurance company controlled by Turkish Wealth Fund.

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<sup>1</sup> Dec. No. 21-41/610-297

<sup>2</sup> Dec. No. 21-05/64-28

<sup>3</sup> Dec. No. 20-53/746-334

<sup>4</sup> Dec. No. 21-01/8-6

## 5. Future of Commitments in Turkish Competition Law

20. Competition law environments welcome the commitment mechanism and it has been widely addressed by undertakings under investigation before the Turkish Competition Authority (the TCA). Along with the fact that this new mechanism provides a serious procedural economy to the involved parties as well as to the labor force of the TCA, it helps to protect the relevant parties from being under an administrative investigation during normal periods of investigation, which may last as long as one and a half years. Therefore, it can be said that the commitments mechanism will continue to be one of the most efficient means of eliminating competition problems observed in the markets.