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Balancing Prudential Regulation and Competition Considerations in Banking – Note by Türkiye

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Türkiye

The Interplay Between Competition Law and Regulation in the Turkish Banking Sector

1. The banking sector in Türkiye includes economic activities in which multiple regulatory authorities, in addition to the Turkish Competition Authority under Law No. 4054 on the Protection of Competition (Law No. 4054), have the authority to intervene through various means in accordance with special legal provisions. Examples of these institutions include the Central Bank of the Republic of Türkiye (CBRT), the Banking Regulation and Supervision Agency (BRSA), the Capital Markets Board (CMB), and the Ministry of Treasury and Finance (Treasury).

2. As is well known, the state's commitment to preventing monopolization and cartelization in Türkiye derives its source from Article 167 of the Constitution of the Republic of Türkiye. An examination of the provisions of Law No. 4054, which regulates the duties and powers of the Turkish Competition Authority, reveals that its aims include preventing cartelization and monopolization, increasing consumer benefits, contributing to proper functioning of the market mechanism and ensuring a healthy investment environment by reducing barriers to entry.

3. It should be noted that the rules concerning the protection of competition within the framework of Law No. 4054 are general, contain abstract prohibitions and apply to all sectors of the economy, encompassing all goods, services and employment markets. In this context, the fact that any market is subject to the regulation of a regulatory and supervisory authority does not exclude the activities or undertakings in that market from the scope of application of Law No. 4054[1].

4. The difference between the expected benefit of competition law enforcement and the intended outcome of regulatory authorities in the sector may lead to tensions due to differently designed instruments, but it may also lead to the achievement of mutually compatible results. The fact that competition law and sectoral regulations complement each

[1] In this regard, Article 19 of the Banking Law No. 5411 in Türkiye constitutes an example of a direct exception in terms of competition law application. The provision titled "Merger, disintegration and change of shares" states that "*Board permission shall be required for a bank operating in Türkiye to merge with one or several other banks or financial institutions, or to transfer all its assets and liabilities and other rights and obligations to another bank operating in Türkiye, or to take over all the assets and liabilities and other rights and obligations of another bank, or to disintegrate, or to change shares. In the event that the relevant bodies of banks do not take a decision and commence procedures within three months after the date of permission, the permission shall be null and void. In mergers, disintegrations and transfers of banks to be carried out pursuant to the provisions of this Law, the provisions of Turkish Commercial Code No. 6762 and, on the condition that the sectorial share of the total assets of the banks subject to merger or integration does not exceed twenty percent, the provisions of Articles 7, 10 and 11 of the Law No. 4054 on the Protection of Competition, shall not be applied. Following the finalization of merger or transfer procedures, all assets and liabilities as well as other rights and obligations of the transferred institution shall be transferred to the overtaking bank, the legal person position of the transferred institution shall be annulled and its register shall be deleted from the Commercial Register*." In accordance with Article 19 of the Banking Law No. 5411, in cases where the total assets of the banks subject to transfer or merger do not exceed twenty percent of the sector, Article 7 of Law No. 4054, titled "Merger and Acquisition", does not apply to the relevant concentration transaction.

other in practice and produce non-contradictory results is not only considered positive for the banking sector in general, but also ensures the necessary predictability for each undertaking in the sector.

5. The implications of the interplay between competition law and regulation in Türkiye regarding the banking sector can be observed in the Turkish Competition Board (Board) decisions, particularly in the context of Article 4 of Law No. 4054, which prohibits anti-competitive agreements, and Article 7, which controls mergers and acquisitions. In this context, the Board's decisions and assessments are briefly presented in the relevant sections of this article, and information on the content and objectives of sectoral regulations is presented below.

6. Prudential regulations in the sector in Türkiye have been tightened, particularly following the 2007-2008 global financial crisis. These regulations primarily aim to protect financial stability by preventing excessive consumer indebtedness and uncontrolled growth in credit volume. However, these regulations can sometimes create effects that indirectly limit innovative undertakings and their activities in the market.

7. Indeed, macroprudential policies implemented in Türkiye, such as the "asset ratio", "securities maintenance obligation" and "credit growth limits" while intended to ensure the overall stability of the financial system, have resulted in homogenization from competition law perspective. These measures have directed the asset composition on banks' balance sheets in line with specific targets, supporting financial fluidity in the short term while causing banks to adopt strategies in the same direction in the long term. This situation has led to risks such as the weakening of non-price competitive elements in the relevant market, the decrease in the motivation of undertakings to develop innovative products and the narrowing of strategic diversity across the sector. Similarly, while maturity limitations on consumer loans and restrictions on the number of instalments in credit card transactions are considered effective in preventing excessive debt, they can also be said to have reduced the product diversification and pricing flexibility of lending institutions, including banks and finance companies.

8. In general terms, the primary concern of competition law in regulating the financial sector is establishing a competitive market structure where all market participants can operate under equal conditions, while regulatory authorities generally prioritize maintaining financial stability. In this context, there is an ongoing tension between encouraging innovation and maintaining stability in regulating the sector.

9. In this context, the business models of financial technology (fintech) companies, which create alternative financial channels in the market and play different roles than banks, are considered insufficiently addressed within the banking-focused prudential regulation framework. In this context, existing rules in the sector are designed to address financial institutions considered "*too big to fail*" whose bankruptcy could lead to macroeconomic problems due to the knock-on effects on the national economy. Applying these rules, which were established with the banking sector's incumbent undertakings in mind, to the activities of fintech companies, which currently have a limited scope of activity and pose only a limited risk to the financial system, could negatively impact innovation and diversity in the market. Therefore, applying a prudential regulatory framework specifically designed for banks to new businesses that do not operate as banks could disrupt the intended balance between competition and regulation and indirectly restrict market entry due to the legislation.

10. In Türkiye, it is observed that the prudential approaches caused by the 2008 crisis have become increasingly flexible in light of the current situation, that a balance that also considers the continuity of competition in the relevant market has begun to be established

in the policy-making process, and that the regulatory process has become more compatible with the dynamics of competition law in the last decade. In this context, new license types have been introduced in relevant regulations to facilitate the operation of non-bank undertakings in the market. To ensure their continued presence in the market, these new undertakings are subject to less stringent obligations than those imposed on banks. It can be argued that these developments constitute asymmetric regulation in the relevant market, establishing a regulatory burden proportional to the risk involved for undertakings in the Turkish financial sector.

11. On the other hand, exempting new financial undertakings from existing regulations creates a different risk area. This increases the likelihood of both undermining financial stability and shaping competition asymmetrically against incumbent undertakings. In this regard, although prudential regulations in Türkiye aim to ensure the stability of the financial system, in practice they may have effects that limit product and service diversity and innovation in the relevant market and weaken the targeted balance between competition and regulation. To mitigate this tension between preserving financial stability and maintaining competition, it is crucial to develop regulatory framework with a risk-based and proportionate approach.

12. Financial regulations enacted in Türkiye in recent years aim not only to adapt to existing technologies but also to create a flexible and inclusive framework that allows for future innovative solutions. This approach enables regulatory authorities to develop policies that encourage innovation and foster competition while maintaining their responsibilities to protect financial stability.

13. In this regard, regulations regarding digital identity verification and remote customer acquisition processes in Türkiye have enabled financial institutions to perform identification securely in the electronic environment. This has made customer acquisition possible without the need for physical branches, reduced transaction costs and facilitated market access for new-generation financial institutions. These regulations have a risk-based character in that they foresee different security measures depending on the level of risk posed by the activities.

14. On the other hand, granting direct access to the Electronic Funds Transfer (EFT) and the Instant and Continuous Transfer of Funds (FAST) systems operated by the CBRT to fintech institutions is an example of a proportionate and impartial regulatory approach. In this regard, this regulation allows fintech institutions, along with banks, to access the CBRT's payment systems under non-discriminatory conditions, reducing these institutions' dependence on established financial actors and contributing to a more balanced competitive structure in the sector. In addition, it is considered that the completion of the licensing processes required for electronic money institutions and payment institutions to operate in the relevant market increases the number of players in the market and encourages competition. Therefore, when these regulations are evaluated as a whole, it can be said that Türkiye has adopted a balanced policy that encourages innovation in financial services, strengthens competition and protects financial stability.

15. Although the Turkish Competition Authority is not a direct sectoral regulatory authority in the banking sector, it plays an active role in ensuring the balance between prudential regulations and competition rules and contributes to policy-making through consultation processes conducted with regulatory authorities.

16. In this context, the Turkish Competition Authority's Report on Sector Inquiry into Financial Technologies in Payment Services[2] (Payment Services Sector Report) dated 2021, which examined the transformation of the financial sector from competition law perspective, made various assessments in the payment services and fintech sectors and presented a series of recommendations for regulatory authorities to consider. The report emphasized that regulatory interventions should be designed in a more comprehensive, rapid and predictable manner, and that the rules to be established should serve not only the preservation of financial stability but also the continuity of competition and innovation. It also stated that regulations that encourage market entry and prevent the exclusion of new players from essential infrastructures will play a key role in establishing an effective financial ecosystem. Furthermore, it stated that adopting a model that provides differentiated and gradual obligations for undertakings of different scales and qualifications in the market -in other words, based on an asymmetric regulatory approach-is crucial for the sustainability of financial innovation and market dynamism.

17. In addition, the Payment Services Sector Report assessed that regulatory rules should be flexible enough to allow for new technologies rather than focusing solely on existing technologies, and stated that the implementation of "*regulatory sandbox*" offers significant opportunities in establishing the regulatory framework. It has been concluded that with these implementations, undertakings, consumers and regulatory authorities will gain experience with new products and services, and thus it will be possible to determine the most appropriate regulatory framework for different fintech products and services.

18. Finally, the Payment Services Sector Report stated that establishing close cooperation mechanisms between the Turkish Competition Authority and authorities such as the CBRT, the BRSA, the CMB, and the Treasury is vital for establishing a holistic and consistent policy for fintech companies.

19. The regulatory framework in the financial services sector in Türkiye is essentially based on an institution-based approach. In this context, different regulatory institutions and legislation are envisaged for each of the sub-sectors such as banking, capital markets, insurance and payment systems. This institution-based model, which allows for the consideration of each institution's unique risk profile, initially provided a functional balance, but over time it led to the emergence of regulatory asymmetries among different undertakings carrying out similar activities.

20. With the acceleration of digitalization and the development of fintech, these asymmetries have become more visible. As the diversity of undertakings operating in the market has increased, the boundaries between different types of institutions have become increasingly blurred. This has led to the current institution-based regulatory approach being inadequate to adapt to new developments. Consequently, the need for the regulatory approach to evolve from an institution-centric approach to a more flexible structure focused on the nature of the activity has become paramount.

21. In this context, Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) is one of the most concrete examples of Türkiye's transition to an activity-based regulatory approach, prioritizing the nature of the activity conducted rather than the institution's legal status. This regulation allows both banks and other non-bank payment service providers to offer similar

[2] Turkish Competition Authority, *Report on Sector Inquiry into Financial Technologies in Payment Services* (2021), available at: https://www.rekabet.gov.tr/en/Guncel/report-on-sector-inquiry-into-financial--87b2b5479b9fec11a2200050568595ba, last accessed 24.10.2025.

payment services subject to similar principles, thus reflecting the "*same activity, same risk, same regulation*" principle, adopted in international literature, in practice at the local level.

22. From competition law perspective, institution-based and activity-based regulatory models are considered to have different consequences on market structure and competitive conditions. While the institution-based regulatory model aims to protect the overall stability of the financial system, it can indirectly hinder market entry for new and innovative undertakings, particularly fintech companies. Applying the same high capital adequacy, operational risk, and auditing requirements designed for traditional banking activities to fintech institutions operating on a more limited scale can create disproportionate costs and barriers to market entry. This hinders the viability of innovative financial undertakings and can limit market innovation.

23. In contrast, the activity-based regulatory approach stands out as a model conducive to deepening competition and fostering financial innovation. As noted in the Payment Services Sector Report, defining differentiated obligations for financial institutions based on the type and scope of services they offer can create a more proportionate and risk-based regulatory framework for new businesses. This can encourage market entry and reduce barriers to innovative business models.

24. However, since adopting a purely activity-based system could pose certain risks to financial stability, a more balanced approach is considered to preserve the aspects of Türkiye's current institution-based structure that guarantee financial security while developing a hybrid regulatory model that integrates activity-based flexibility. Therefore, the ideal regulatory architecture for the future of the financial system in Türkiye is envisaged to be designed in an integrated structure that balances institution-based stability and activity-based competitive dynamics.

25. As is known, the financial services sector can be described as a special area of balance in terms of both preserving economic stability and ensuring competition. Undertakings operating in this field are subject to a high level of regulation due to their areas of activity and are also in close interaction with public authorities. This creates a more complex framework for competition law enforcement compared to other sectors. Increasing trends in concentration, partnership and vertical integration, especially in the banking sector, bring up new discussions not only in terms of market efficiency but also in terms of preserving competition[3].

26. The increasing interaction between undertakings in the Turkish financial services sector, banking and payment systems in recent years is among the issues closely monitored by the Board. In particular, the collaborations established by fintech companies with banks or between banks themselves, as well as the legislative regulations of regulatory authorities affecting these undertakings, have created new areas of evaluation in the payment services market. The Board's recent decisions demonstrate that the competitive impact of both vertical integration and associations in the financial services sector is being systematically addressed.

27. As an example of this approach, the Board decision regarding the *Param-Kartek* acquisition assessed that the merger of two undertakings operating in the fintech ecosystem with a vertical relationship between them could raise new vertical anti-competitive concerns regarding data access and infrastructure dependency. In terms of data-based concerns, the possibility that PARAM would gain an advantage by accessing customer data

[3] DAL, C. (2020), *Disruptive Innovation in the Finance Sector and Financial Technologies from Competition Law Perspective*, Thesis of Expertise at the Turkish Competition Authority, (available in Turkish), p.3.

and transaction information of rival payment institutions through KARTEK after the acquisition was specifically emphasized[4].

28. In the relevant decision, PARAM argued that the majority of the acquired undertaking's (PAYCORE) customers were provided with their own internal resources for infrastructure services. Therefore, it would be economically unwise for the acquired undertaking to cease providing services after the merger, and that this would inevitably lead to the risk of bankruptcy for the acquired undertaking. It also stated that the merged undertaking had limited market power in the payment services market, making it unlikely to achieve any economic gain through input restriction. PARAM emphasized that the financial services sector is under the supervision of other regulatory authorities, and therefore, data security breaches are subject to severe sanctions, such as license revocation or penalties. In this context, it argued that the legal prohibition of sharing competitively sensitive data held by the acquired undertaking with PARAM or using it in a manner that would distort competition was prohibited.

29. In this context, the Board acknowledged the existence of comprehensive data security legislation in the financial services sector; however, it stated that these regulations alone would not be sufficient to eliminate data-based risks that may arise under competition law. Therefore, it deemed it necessary to obtain additional commitments from PARAM; it envisioned additional safeguards such as restricting access to data, ensuring that only KARTEK employees have access to data, ensuring that data transfers are subject to independent audit, and preventing PARAM and KARTEK from having members on the boards of directors at the same time.

30. The Board decision regarding *Bonus* examined the potential competition law implications of co-branded financial products and platform-based collaborations in the banking sector[5]. The Board determined that the collaboration mechanism established between banks under the Bonus program contained provisions that restricted member businesses' ability to choose service providers. Specifically, provisions such as prohibiting negotiations with businesses already in a Bonus relationship with another bank and imposing a one-month waiting period after termination were considered to have a market-sharing effect and restrict competition. The Board also concluded that campaign restrictions, card turnover time limits, and certain other obligations excessively intensified interbank collaboration; therefore, it mandated the removal or reduction of these provisions from contracts.

31. The Board evaluated both concentration and regulatory implications in its decision to allow İŞBANK and OYAK to establish joint control over two payment institutions[6]. In its decision, the Board initially noted that the transaction could pose risks of vertical integration and potential foreclosure in the payment services market. However, it authorized the transaction, stating that the multiplayer nature of the relevant market and the infrastructure provision obligation imposed on banks by Turkish banking legislation (Law No. 6493) limited these risks.

32. Similarly, decisions taken at the level of association of undertakings appear to define the boundaries of competition in financial services markets. The Banks Association of Türkiye’s (Association) “Professional Regulation Decision” was prepared to monitor member banks' violations of card payment transactions by member businesses and

[4] The Board decision numbered 24-56/1241-531 and dated 27.12.2024.

[5] The Board decision numbered 24-53/1172-505 and dated 12.12.2024.

[6] The Board decision numbered 24-16/370-140 and dated 04.04.2024.

implement a common enforcement mechanism. However, the Board determined that this decision interfered with an area already regulated under the relevant BRSA legislation[7]. The Board emphasized that the Professional Regulation Decision's provisions, specifically the closure of all POS terminals, termination of contracts, and the prohibition of new agreements with banks for one year for member businesses in violation, risked creating a *de facto* consensus among competing banks to not cooperate with member businesses. It concluded that this mechanism could reduce market efficiency, increase costs for member businesses, and negatively impact consumer welfare. The Board found the Association's rationale for managing market risks insufficient; on the contrary, it was considered that this approach limited competition among banks to acquire member businesses.

33. The Board determined that the relevant sanctions mechanism exceeded legal limits and restricted competition to a degree beyond what was necessary. It also noted that ensuring market surveillance and stability in the financial services sector was already the responsibility of public authorities such as the BRSA and the CBRT; that the Association's overstepping of this framework would have consequences that would reduce market efficiency. Consequently, the Board ruled that the Professional Regulation Decision risked standardizing banks' behavior in a manner incompatible with the aim of protecting competition. The Board allowed a limited negative clearance on the condition that the provisions in question were revised or repealed.

34. To complement the information on the Board decisions provided above, it is considered necessary to discuss the duties and powers of the BRSA in the Turkish banking sector. According to the relevant articles of Banking Law No. 5411, a bank's merger with another bank or financial institution, or its transfer of all assets and liabilities, requires BRSA approval. This regulation positions the BRSA as the primary regulatory and supervisory authority in merger and acquisitions. Furthermore, acquisitions or transfers of shares in banks exceeding a certain percentage are also subject to BRSA approval. Therefore, transactions regarding both shareholder structure and corporate mergers cannot be conducted without BRSA approval.

35. On the other hand, in Türkiye, the operating licenses of payment and electronic money institutions are granted and revoked by the CBRT under Law No. 6493. This demonstrates that the CBRT, in addition to the Turkish Competition Authority, has authority in merger and acquisitions. Granting or withdrawing a license can have decisive consequences on the competitive balance, as it directly affects the market entry conditions and the continuity of activity of the undertakings. Therefore, the CBRT's supervision function is important in terms of competition policy, ensuring market access as well as financial stability. Therefore, competition policy in the financial sector operates in an intertwined manner with regulatory supervision mechanisms.

36. As mentioned above, the Payment Services Sector Report is a market inquiry that systematically examines the structural barriers to competition in financial services and the impact of the regulatory framework. The report analyses market dynamics, particularly in the areas of payment services, digital wallets, open banking and data sharing. In this regard, the Turkish Competition Authority emphasizes that regulations that strengthen competition in the fintech ecosystem should contribute to a sustainable market structure without undermining financial stability.

37. This study, conducted in the Turkish fintech field, focused on strengthening the competitive structure of financial markets and preventing the exclusion of new undertakings. The main concern in the Board's decisions is that barriers to access to existing

[7] The Board decision numbered 22-08/111-44 and dated 10.02.2022.

infrastructures have restrictive effects on competition. In this context, it has been emphasized that the concept of data ownership has become a determining factor in competition analysis during the digitalization process, and that exclusive access to certain data sets can bring undertakings into a dominant position. Proposed prudential measures to increase competition and encourage innovation include providing fintech companies with direct access to essential banking infrastructures (e.g., EFT and FAST systems), ensuring equal data access for incumbent financial undertakings and new-generation fintech companies, developing regulatory testing grounds that provide flexibility in regulations, and adopting an asymmetric regulatory approach to facilitate market entry. Furthermore, the establishment of publicly available data pools to support investor decisions, the sharing of aggregated market data in the fintech field, and the structuring of public support programs based on objective criteria to target innovative initiatives were also proposed.

38. As emphasized in the Payment Services Sector Report, a holistic and compatible structure for competition law and sectoral regulations in the relevant market is only possible with the existence of an effective coordination mechanism among relevant institutions. It is deemed necessary for institutions to take steps towards developing cooperation in order to reduce the tension between competition law and regulation and to ensure predictability for all stakeholders in the market.

39. In its most general and comprehensive terms, the concept of cooperation between institutions is considered to comprise two distinct components: legislation and practice. First, there may be an obligation for cooperation between institutions stemming from the law and in accordance with the will of the legislator, independent of the institutions' initiatives. In this example, cooperation between the competition authority and sectoral regulatory authority derives its source from an explicit provision in the legislation. If the requirement for consultation by the competition authority or regulatory authority is stipulated within the framework of a direct reference in the legislation, the aforementioned consultation phase will need to be completed for the preparation of new legislation or the establishment of an administrative act. In such processes, the competition authority and the relevant regulatory authority have the opportunity to contribute to the preparation of a legal rule or administrative act affecting the sector *ex ante*.

40. Cooperation between the competition authority and regulatory authorities can be developed in practice as a working method while the institutions continue their activities. In this context, if an investigation is underway before the competition authority and a regulatory authority, exchanges of views and meetings regarding the functioning of the sector may be considered. Such communication opportunities can be used to convey anti-competitive issues or, in the event of a commitment mechanism being implemented to address any anti-competitive concerns, to obtain information on whether draft commitments submitted by undertakings are compatible with market conditions or sectoral regulations.

41. It should be noted that, in line with the idea of institutional cooperation, meetings such as conferences and symposiums are attended between the Turkish Competition Authority and sectoral regulators, where joint working areas exist for the relevant market, where exchanges of views are facilitated. A recent example of this is the "*Symposium on Competition in Financial Markets*" which evaluated current developments in the relevant market. Participation in the symposium was primarily from the Turkish Competition Authority, as well as fintech companies and payment institutions whose fields of activity are regulated by Law No. 6493, and also from Bankalararası Kart Merkezi AŞ, a subsidiary of the CBRT.

42. In this context, the establishment of cooperation protocols that facilitate the exchange of knowledge and experience, as well as the sharing of differences in approach,

between the Turkish Competition Authority and sectoral regulators in Türkiye, particularly in the banking sector, may be considered. Similar cooperation protocols can also be established at the international level, and the necessary measures can be taken to ensure a sound exchange of views between the parties, making relevant market data available for sharing, in line with the purpose of the cooperation protocol. In addition to the cooperation opportunities mentioned above, the activities of the Turkish Competition Authority at the international level, where it promotes competition law practice and shares the Board's decisions on bilateral and multilateral platforms, are considered important. As is known, the Turkish Competition Authority's activities are the basis for evaluations regarding the competition policy chapter during Türkiye's accession process to the European Union. In this context, it is stated that when questions arise regarding the implementation of European Union competition rules, the relevant units of the European Commission are contacted. The Turkish Competition Authority currently contributes regularly to multilateral platforms such as the OECD, UNCTAD, and ICN, sharing with the parties the balance it has established regarding competition law practice and the interplay between competition law and regulation.

43. Finally, an examination of competition law in the banking sector in Türkiye reveals that the Board decisions consider numerous competitive parameters directly related to consumer welfare, such as product and service variety, innovation, quality, data privacy and security, without relying solely on price. To achieve these objectives, there is a constant effort to balance competition law and regulation. Currently, in Turkish law, integrated and harmonized policies are achieved through regular communication between the Turkish Competition Authority and sectoral regulators.