

A New Watchdog is Introduced: Unfair Price Assessment Board

29 April 2020

In order to tackle the adverse effects of the COVID-19 outbreak and revitalize the stagnant economy, governments across the world continue to adopt additional measures. Accordingly, the Turkish legislator enacted an omnibus bill, namely, the Law No. 7244 on Reducing the Effects of the Novel Coronavirus Outbreak on Economic and Social Life and Amendments to Certain Laws (the **Law No. 7244**). By virtue of an amendment to the Law No. 6585 on Regulation of Retail Trade (the **Retail Trade Law**), the Law No. 7244 introduces a new watchdog: the Unfair Price Assessment Board (the **Board**). Noting that procedures and principles regarding the Board's operations are in need to be further regulated in detail via secondary legislation, this newsletter aims to provide a general perspective on the effects of the relevant legislation on Turkish legal system.

Powers of the Board

Article 14 of the Law No. 7244 stipulates that producers, suppliers and retailers shall not (i) excessively increase prices, (ii) engage in any activity that will restrict consumers' access to products and distort competition. Within this scope, the Board is equipped with a range of powers such as monitoring the markets, carrying out inspections and examinations, imposing administrative fines and adopting any other precautions when necessary. Administrative fines to be imposed in case of a failure to comply are as follows:

- if the rule that prohibit excessive pricing is violated, the Board shall impose an administrative fine between TRY 10,000 and TRY 100,000 and,
- if it is determined that any of the market participants engaged in actions that cause scarcity in market, distorted the market balance and free competition or prevented consumers from accessing goods, the Board shall impose an administrative fine between TRY 50,000 and TRY 500,000.

Comparison with the Competition Law and the State of Emergency Law

There are similar provisions in the Law No. 4054 on the Protection of Competition (the **Competition Law**) and in the Law No. 2935 on the State of Emergency (the **State of Emergency Law**) enabling government to regulate and supervise market conditions in certain circumstances.

The State of Emergency Law enables government to take necessary actions with a broad discretionary power to regulate and supervise the relevant markets in case of (i) an outbreak, (ii) or a severe economic crisis. However, the declaration of state of emergency, which is the pre-condition for applying the provisions of the State of Emergency Law, is a serious situation with major economic and social consequences. Therefore, it is obviously not the governments' first choice when they want to regulate markets.

The Competition Law, on the other hand, prohibits anti-competitive agreements or concerted practices between two or more undertakings, and an abuse of dominant position by a single undertaking or a group of undertakings. Comparing to the legal mechanism set forth in the Law No. 7244, these articles require additional conditions to impose legal sanctions. The Board is entitled to impose legal sanctions even though an undertaking is not in a dominant position in the market or has not entered into an anti-competitive agreement or concerted practice which may lead to excessive pricing, simultaneous price increase or supply cutting. Therefore, the Law No. 7244 paves the way for government and public authorities to toughen their stance against producers, suppliers and retailers and play a more protective role by standing closer to consumers' side.

Cooperation with the Turkish Competition Authority

For the avoidance of any overlap between the activities of the Turkish Competition Authority's (the **TCA**) and the Board, consistent with past practice, we expect that the parties will sign a cooperation protocol. In previous years, the TCA have opted to build strong relationships and cooperation mechanisms with other public authorities, such as the Energy Market Regulatory Authority, the Information and Communication Technologies Authority, the Public Procurement Authority, the Banking Regulation and Supervision Agency. The Protocols signed with aforesaid public authorities have been serving the common purpose; ensuring bilateral cooperation, information sharing, sharing of opinions and coordination between authorities' activities. Pursuant to the Protocols, parties mainly undertake to (i) inform each other about the facts that they face during internal processes with regards to the competition in relevant markets; (ii) cooperate and inform each other about the activities and/or projects that are planned or being carried out in relation to the relevant legislation; (iii) establish a committee or a body responsible with maintaining coordination between authorities. It is worthy of note that the opinions and considerations of the authorities do not have a binding character, yet both the TCA and other authorities show notable efforts to maintain a common attitude towards the anti-competitive developments in the relevant markets.

Considering a number of aspects remaining uncertain in terms of the implementation of the Law No. 7244, secondary legislation regulating the relevant principles and procedures is expected to be adopted shortly. We will closely monitor any potential developments and legislative changes on this matter in the upcoming period.

Contacts



Hakkı Gedik

Turkey – Istanbul
Tel +90 212 371 29 53
Mobile +90 549 480 15 35
hakki.gedik@gedikeraksoy.com



Umut Gürgey

Turkey – Istanbul
Tel +90 212 371 29 66
Mobile +90 549 480 15 37
umut.gurgey@gedikeraksoy.com



Emre Önal

Turkey – Istanbul
Tel +90 212 371 29 65
Mobile +90 549 480 15 33
emre.onal@gedikeraksoy.com