

New Communiqué on Commitments Procedure

March 2021

Background

The commitment mechanism has been introduced to the Turkish competition law with the amendments to the Law No. 4054 on the Protection of Competition in June 2020. Not long after, the Turkish Competition Authority (the **TCA**) applied the commitment mechanism in the HAVAŞ investigation for the first time in November 2020. Following this, the TCA published a draft communiqué on Commitments for Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (the **Draft Communiqué**) that was previously covered in our [newsletter](#). Finally, the Communiqué on Commitments for Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (the **Communiqué**) was published in the Official Gazette on 16 March 2021, and entered into force.

What Does Communiqué Entail?

The procedure envisaged by the Communiqué is almost identical to the Draft Communiqué, with only a few minor additions. Accordingly, the commitment procedure will be carried out as follows:

1. Request for commitment

- Undertakings may initiate the commitment procedure by making a written request during preliminary investigations and investigations.
- The commitment request must be made within three months following the receipt of the investigation notification. Ongoing investigations for which the three months period has already elapsed are exempted from this rule.

2. Initial assessment

- The TCA evaluates the commitment request and decides to proceed with the commitment negotiations or not. This evaluation includes an assessment on whether the relevant agreement, decision or practice constitutes a clear and hardcore violation and such violations cannot benefit from the commitment mechanism. The Communiqué defines clear and hardcore violations as agreements, decisions or practices which aim at, cause or may cause direct or indirect prevention, distortion or restriction of competition that include:
 - Price fixing, sharing of customers, suppliers, regions or trade channels between competitors, restriction of supply or quotas, collusion in tenders, sharing competitively sensitive information such as future prices, supply or sale amounts;
 - Determining a fixed or minimum price for the buyer between undertakings operating at different levels in the production or distribution chain.

3. Commitment negotiations

- Negotiations may be conducted verbally or in writing.
- Anti-competitive issues and relevant documents will be disclosed to the undertakings concerned, except confidential information of third parties.
- If the anti-competitive issues at hand are not clear and further research is necessary, the TCA may postpone the decision regarding the commitment request.

4. Submission of commitments

- The commitment must be submitted, along with a copy of the commitment where trade secrets and confidential information are redacted, within the period set by the TCA. TCA determines the submission period based on the status of the ongoing investigation and the scope of the commitment.
- The commitment must be clearly stated and cannot include alternative commitments. The commitment must include the following:
 - Anti-competitive concern aimed to be solved with the commitments;
 - Scope of the commitment;
 - The date which the commitments will begin to apply;
 - The duration of the commitments and how they will be applied;
 - The periods to be observed in the implementation of the commitments;
 - In which cases these periods can be extended;
 - The effect of the commitment on the market;
 - How the commitments would solve the anti-competitive concern;
 - How compliance with the commitments can be monitored;
 - Other matters deemed necessary; and
 - If there is a structural commitment (which includes the transfer of activities, shares or assets) details regarding the transfer
- The TCA may also decide to obtain the opinions of third parties, by sending a copy of the commitment where trade secrets and confidential information are redacted or sharing it on its website.

5. Assessment of the commitment

- The TCA assesses whether the commitment will resolve the relevant anti-competitive issue. If the TCA finds the commitment appropriate, it will make the commitment binding on the relevant party and decide not to open an investigation or terminate the existing investigation. The TCA may also decide to consult third parties regarding the commitment.
- If the TCA does not approve the commitment, the undertakings have a once-only option to change the commitment and submit it again.

6. Monitoring compliance

- Different methods may be used to monitor compliance, such as: (i) regular reporting by the parties, (ii) appointment of third persons for monitoring, or (iii) cooperation with professional associations or relevant public institutions.

- Once the commitment is successfully implemented, the undertakings notify the TCA and the TCA adopts a decision confirming that the commitments have been completed.

Conclusion

The introduction of the commitment mechanism to Turkish competition law had been a significant development in 2020. With the adoption of the Communiqué, the TCA has set out the steps and procedure of the commitment mechanism. However, future precedents will obviously shed more light on the TCA's enforcement policy regarding this issue.

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