

Turkish Competition Law Practice at a glance

2021

Turkish Competition Law Practice in 2020 with numbers

26

concluded investigations

40

preliminary investigations

217

Phase-1 merger control decisions

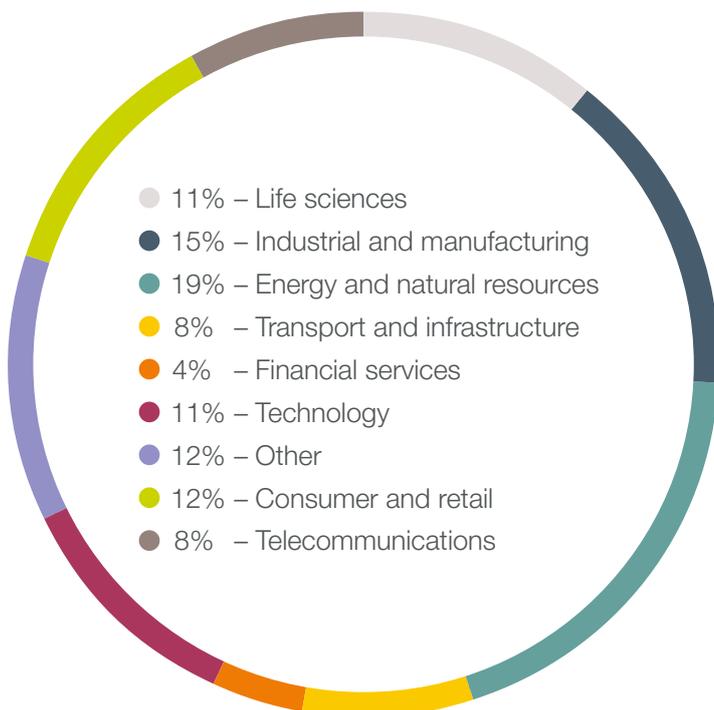
3

Phase-2 merger control decisions

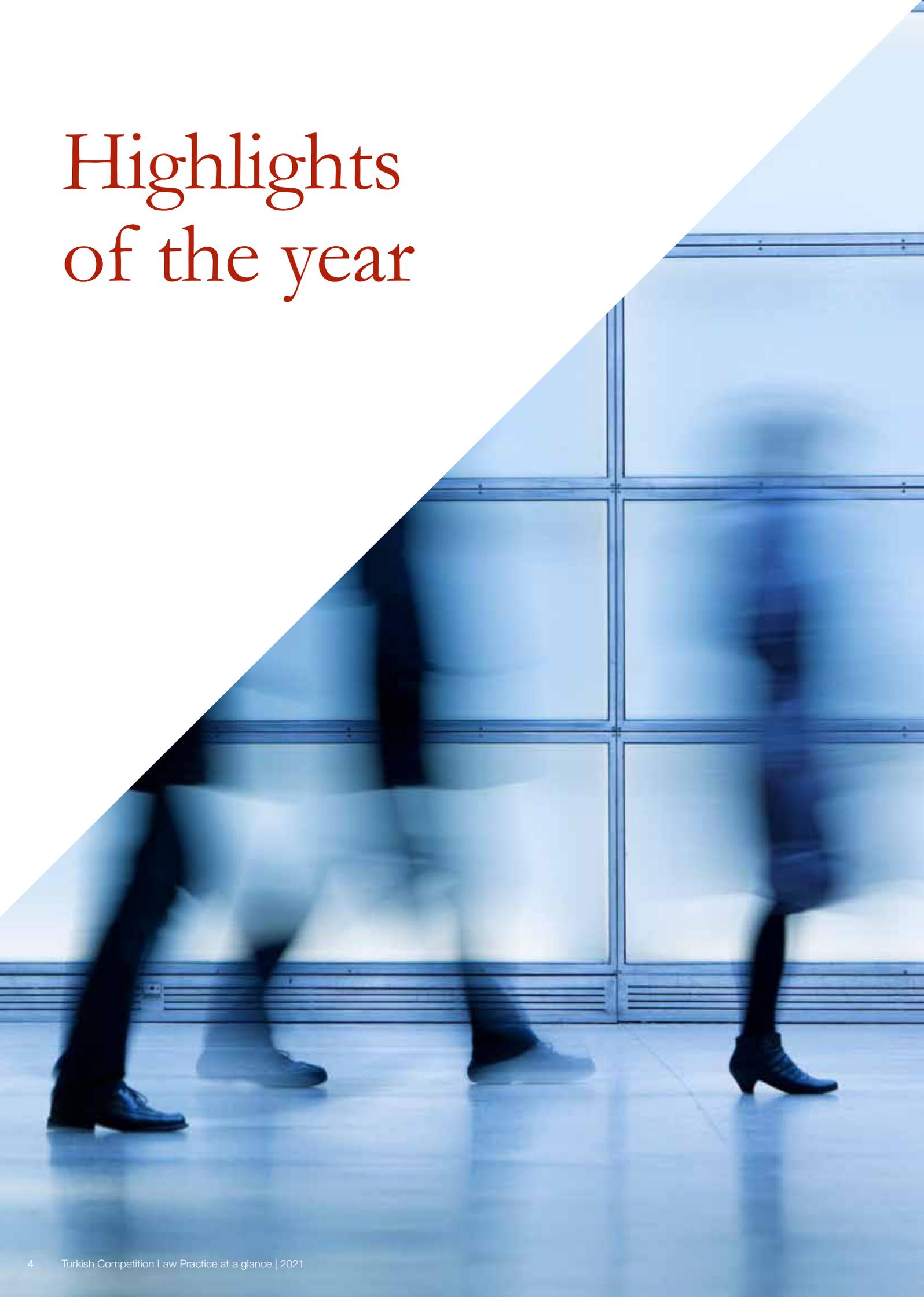
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new investigations

Sectoral overview of the investigations



Highlights of the year



Significant changes in the competition legislation

2020 was indeed a very busy year for competition law legislators with significant amendments to the law and several secondary legislations. The newly introduced changes not only aligns Turkish competition legislation with those of the EU but also provides more clarity as to the TCA's already existing practice.

Significant changes were introduced to the law on the protection of competition

Amendments to the Law on the Protection of Competition entered into force on 24 June 2020, aiming to combat with competition law problems experienced in practice. Changes includes: (i) self-assessment in individual

exemptions, (ii) SIEC test in merger reviews, (iii) structural remedies to eliminate anti-competitive practices, (iv) settlement and commitment procedures, (v) on-site investigation procedures, and (vi) "de minimis" principle.

Draft communiqué on the commitment procedure

Pursuant to the relevant changes in the Law on the Protection of Competition, the TCA published the Draft Communiqué on the Commitments for Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and

Abuse of Dominant Position. The draft communiqué provides detailed steps for the commitment procedure. On 6 November 2020, the TCA announced that the first commitment procedure has been applied in the HAVAŞ investigation.

Draft communiqué on de minimis rule

The de minimis principle was incorporated into Turkish competition law pursuant to the changes made to the Law on the Protection of Competition in June 2020. On 23 October 2020, the TCA announced the Draft Communiqué on Agreements, Concerted Practices, and Actions and Decisions of Associations of Undertakings Which Do Not

Appreciably Restrict Competition. The communiqué aims to allow TCA to prioritize more severe violations by setting out the criteria for practices that are not deemed to significantly restrict competition and therefore may be exempt from investigation.

Guideline on digital data review during on-site inspections

The amendments introduced to the Law on the Protection of Competition in June 2020 allowed the TCA to inspect electronically stored data and take copies during on-site inspections. To provide further details, the TCA published the Guideline on Digital Data Review During On-Site Inspections

on 8 October 2020. The Guideline provides rules on on-site inspections of digital information systems, copies of data and examination at the TCA premises, and responsibilities of undertakings.

The TCA's response to COVID-19

As being one of the most proactive watchdogs of Turkey, now long after the first COVID-19 case was confirmed the TCA announced that customers' welfare is their top priority and they will keep the undertakings and especially those of in food market under close scrutiny. COVID-19 also led to some changes in the way the authority operates and conduct its proceedings.

Close scrutiny on food sector

Within two weeks after the first confirmed COVID-19 case, the TCA has warned the undertakings in food sector to not to engage in anticompetitive conducts and especially the excessive pricing. This warning was followed up by a statement of the Turkish Competition Board, Birol Küle where he reiterated that the TCA had a strict stance against exploitative prices during the pandemic and would not refrain from imposing significant administrative fines. Subsequently, the investigation commenced on 7 May 2020 against 29 undertakings consisting of supermarket chains and major suppliers and the sector inquiry in FMCG sector showed that the food sector will continue to be one of the main topics in 2021.

Investigations against undertakings in the protective mask sector

In addition to the investigation against the food sector, the TCA also initiated an investigation against undertakings active in protective mask as part of the efforts to monitor anti-competitive activities in sectors affected by the COVID-19 pandemic. The oral hearing of the investigation was held online on 22 December 2020 and the TCB announced that did not find any violation of law on 30 December 2020.

Hybrid method for oral hearings

As part of the measures taken against the pandemic on 23 June 2020, the TCA postponed nine oral hearings which were planned to take place between 24 June 2020 and 18 August 2020. The TCA then decided to provide an online hearing option to the undertakings and their representatives. While several online hearings are successfully held in 2020, in case the parties wishes to attend the hearing in person, the TCA also allows for a hybrid method where the parties can attend either virtually or physically.

Digital platforms are on the TCS's radar

Following the route of its counterparts, the TCA rendered highly debated decisions concerning sector giants and initiated sector inquiries/studies. The TCA definitely made it clear in 2020 that it will pay more and more attention on the digital platforms in the upcoming years.

Sector inquiry on e-marketplace platforms

The TCA launched a sector inquiry on e-marketplace platforms on 16 July 2020. In its announcement, TCA stated that e-marketplaces are inclined to show exclusionary and exploitative conducts through pricing, platform services and supply patterns. The sector inquiry aims to understand anti-competitive effects of e-marketplaces and to be finalized by the end of 2021.

New investigations against digital players

With the new investigations initiated against Sahibinden.com and NadirKitap (at the beginning of 2021), the TCA once again reiterated that the digital markets are on top of its agenda. In both of these investigations the TCA will question whether Sahibinden and Nadirkitap abused their dominant positions.

Digitalisation and competition law report

On 30 January 2020, the TCA announced the commencement of the studies on "Digitalisation and Competition Report," that will allow the TCA to monitor current developments in the digital economy and shape its policies in this area. It was highlighted that the focus of this study will be on business models with consumer friendly innovations. The report is expected to be released by the end of March 2021.

Istanbul competition forum 2020 discussed digital markets

Istanbul Competition Forum (ICF) was held online due to COVID-19 conditions. The ICF's main topic for this year was "Competition Issues in Digital Markets." In the opening statements, digitalisation was expressed to be one of the most important factors affecting international economy and trade, and emphasis was placed on the need for regulation by competition authorities.

Google adwords decision

The TCA announced its decision dated 12 November 2020 regarding the investigation against Google and ruled that Google had abused its dominance position in the search engine market. The TCA stated that Google prevented organic results by placing intensive text advertisements at the top of the search results, thereby complicating activities in the content services market. The TCA not only imposed an administrative fine against Google but also required it to submit yearly reports on compliance programs.

Key cases of 2020

Google adwords decision¹

On 12 November 2020, the TCA has published its short-form decision by concluding that Google abused its dominant position in the search engine market by updates and using Adwords advertisements. In its decision, the TCA clarified that Google is in dominant position in the search engine market and violates Article 6 of the Law No. 4054 through complicating activities of other undertakings in the content services market by placing large amount of text advertisements to the top of Google search results. As a result, the TCA imposed an administrative fine of TRY196 million and held Google responsible to submit yearly periodic reports on compliance programs.

Financial institutions decision²

The TCA has initiated a preliminary investigation against several financial institutions on 17 January 2020. Within this scope, the TCA requested information from these financial institutions on chat room correspondences of employees, of these financial institutions and traders employed by their parent companies located in the U.S. and the UK. While the majority of the financial institutions have responded to the TCA's request, some of them refrained from providing the requested information claiming that the UK and U.S. based traders' chat room conversations are not possessed by Turkish entities and these conversations do not affect markets in Turkey. The TCA evaluated the objections and fined administrative fines on these financial institutions.

Vertical agreements between Baymak and its dealers³

The TCA had fined Baymak TRY26m for violating Article 4 of the Law No 4054 on vertical agreements. The TCA's assessment revolves around the agreements between Baymak and its authorised dealers that contain non-competition clause and established for an indefinite period of time. Within this framework, it is concluded that the duration of agreements which contain obligation of non-competition for an indefinite period, exceeds five years and so, dealers of Baymak are not able to benefit from the block exemption.

Administrative fine on four fuel oil companies⁴

On 12 March 2020, the TCA imposed an administrative fine of TRY1.5 billion on BP Petrolleri A.Ş., OPET Petrolcülük A.Ş., Petrol Ofisi A.Ş. and Shell & Turcas Petrol A.Ş., which are considered as major oil companies in Turkey. The TCA has launched an investigation against them for interfering in the sales prices of their dealers and preventing the competition in the market under Article 4 of Law No. 4054. Please note that the TCA cleared that Güzel Enerji Akaryakıt Anonim Şirketi did not violate competition law as there are no evidence showing Total's intervention over the resale prices of dealers.

¹ Turkish Competition Board's decision numbered 20-49/675-295 and dated 12 November 2020.

² Turkish Competition Board's decision numbered 17-39/636-276 and dated 28 November 2020.

³ Turkish Competition Board's decision numbered 20-16/232-113 and dated 26 March 2020.

⁴ Turkish Competition Board's decision numbered 20-14/192-98 and dated 12 March 2020.

Decision on cargo transportation companies⁵

On 16 January 2020, the investigation launched against 36 cargo companies for customer allocation has been completed. The basis of the TCA's investigation was vertical relationship between the mentioned companies and resellers which are smaller or local postal/cargo transportation companies. While the TCA found that 32 companies subject to the investigation did not make any violations, an administrative fine of TRY61m in total have imposed on four postal/cargo transportation companies, namely: DHL Worldwide Express Taşımacılık ve Ticaret A.Ş., TNT International Express Taşımacılık Ticaret Ltd. Şti., UPS Hızlı Kargo Taşımacılığı A.Ş. and Yurtiçi Kargo Servisi A.Ş.

Excessive pricing in container handling market⁶

Antalya Chamber of Commerce and Industry and West Mediterranean Exporters' Union claimed that Ortadoğu Antalya Liman İşletmeleri A.Ş. prevents trade by applying excessive pricing in container handling market, in 2018. Following these claims, the TCA initiated investigations in 2019 and finalised its decision on 5 November 2020. In its decision, Ortadoğu Liman İşletmeleri A.Ş. found in dominant position in container handling market and an administrative fine of TRY12m imposed due to the violation of Article 6 of the Law No. 4054.

Yozgat ready mixed concrete decision⁷

Considering the TCA's abstinence-based approach to defining a cartel in its decisions, this decision, which contains a detailed definition of a cartel, will be guiding the determinations of cartels in the future. The TCA, in its decision, questioned whether some ready mixed concrete producers operating in Yozgat have violated Article 4 of the Law No. 4054 by establishing a cartel. After assessing all of the evidences, it is clarified that these companies had arranged meetings, issued decisions on manufacturing and sale of ready mixed concrete and were acting together towards a specific common goal under a cartel agreement. As a result, administrative fines imposed on the relevant companies.

German automotive companies decision⁸

The preliminary investigations initiated against five car manufacturers BMW AG, Daimler AG, Ford Motor Company and Dr. Ing., h.c. F. Porsche Aktiengesellschaft regarding the claims on the violation of Article 4 of the Law No. 4054. This decision stipulates that companies which are parties to an acquisition transaction must notify the TCA and obtain approval if turnover thresholds determined under Article 7 of the Communiqué on Mergers and Acquisitions Subject to the Approval of the Competition Board are exceeded. Separately, as a rule, joint ventures are considered as acquisitions, and in case of a failure of notification, the TCA imposes fine only on the acquiring party. However, in this case, each of the parties are accepted as an acquiring party and became subject to the penalty determined by the decision.

⁵ Turkish Competition Board's decision numbered 20-04/47-25 and dated 16 January 2020.

⁶ Turkish Competition Board's decision numbered 20-48/666-291 and dated 5 November 2020.

⁷ Turkish Competition Board's decision numbered 20-15/215-107 and dated 19 March 2020.

⁸ Turkish Competition Board's decision numbered 20-36/483-211 and dated 28 July 2020.



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