

First Commitment Case in Turkish Competition Practice

*As previously covered under our newsletter on [New Amendments to the Turkish Competition Law](#), revised Law No. 4054 on the Protection of Competition (**Turkish Competition Law**) introduced the commitment and settlement procedures to be applied in Turkish Competition Authority's (TCA) investigations. Not long after this amendment, TCA announced that the commitment mechanism has been successfully applied in an investigation for the first time. This newsletter aims to first, summarise the commitment procedure and its first-ever application as well as the application of commitment procedure in European Commission, which may influence the Turkish practice.*

Commitment Procedure under the Turkish Competition Law

As per the revised article 43 of the Turkish Competition Law, undertakings subject to a preliminary investigation or a full-fledged investigation are allowed to submit commitments to the TCA. Depending on the Turkish Competition Board's (TCB) assessment, if such commitments are found satisfactory, preliminary investigation and full-fledged investigation procedures will be terminated.

However, the TCB is entitled to re-initiate the investigations in case:

- i. any of the facts that were a basis of the decision significantly changes,
- ii. the undertaking concerned does not comply with its commitments or
- iii. it becomes evident that the decision (i.e. not initiating or terminating an existing investigation) was based on fallacious information.

Moreover, this mechanism will not be applicable to hard-core restrictions on competition, such as price-fixing, market sharing, or supply restriction.

First Application of the Commitment Mechanism in Turkey: HAVAŞ Investigation

On 6 November 2020, the TCA announced that the commitment mechanism had been applied in the investigation initiated against Havaalanları Yer Hizmetleri A.Ş. (**HAVAŞ**) in relation to its alleged abuse of dominant position in temporary bonded warehouse services.

It was reported that with its decision dated 5 November 2020 and numbered 20-35/460-M, the TCB deemed the commitments submitted by HAVAŞ sufficient to eliminate its concerns as to the HAVAŞ's anti-competitive conduct. We will have more insight on the TCA's commitment practice once the *HAVAŞ decision* is published

on the TCA's website, but there is no doubt that this decision plays an important role in Turkish Competition Law's alignment with the EU practice.

Commitment Procedure in European Competition Law Practice

Although commitment mechanism is newly introduced to Turkish law, with the enactment of Council Regulation No 1/2003 dated 16 December 2002, the European Commission developed an established commitment practice. European undertakings often resort to commitment procedure not only because they can avoid a fine imposed by the European Commission but also because they will not be considered as a repeat infringer should it engage in the same conduct and reduce the risk of follow-on damages.

However, the commitment mechanism does not apply to cases where the European Commission considers that the nature of the infringement calls for the imposition of a fine. As such, undertakings involved in secret cartels cannot benefit from this procedure.

Commitment procedure under the EU practice can be divided into 8 steps:

i. Initial Contact with the European Commission and State of Play Meeting:

The European Commission encourages undertakings to voice their intention for a commitment procedure as early as possible. However, commitments can be still accepted after the Statement of Objection is issued.

Following the undertaking's intention to offer commitments, a state of play meeting takes place between the undertaking concerned, the Legal Service and Hearing Officer teams (if applicable) and Directorate-General for Competition. In this meeting, Directorate-General for Competition summarises the main concerns of the European Commission and provides the undertaking in question with the timeframe for the commitment procedure, if decided to be applied.

ii. Informal Commitments Offer

Following the State of Play meeting, if the undertaking decides to proceed with the commitment procedure, it submits an unofficial letter outlining the framework of the commitments. The case team assesses these informal commitments offer and if considers them sufficient to address its concerns, the case team will propose to draft a preliminary assessment.

iii. Preliminary Assessment

Unless the Statement of Objection was already issued, the European Commission should provide the undertaking with a preliminary assessment document that contains a summary of the main facts as well as an assessment of the competition concerns identified. This document aims to assist the undertaking in its commitment drafting process and is further approved by the commissioner.

Parties are allowed to submit a written response to the preliminary assessment that will be taken into account in the final commitment decision.

iv. Submission of Commitment Text

Undertaking subject to investigation is requested to submit a commitment proposal that can be market tested within a month following the preliminary assessment. European Commission may suggest the

undertaking to amend the commitment proposal before it is submitted to a market test. However, as the commitment procedure is on volunteer basis, in the end, it is up to the undertaking to adopt such suggestions or not.

v. Market Test

In case the case team considers the offered commitments are sufficient to address its concerns, it will submit such offers to Competition Commissioner for her/his approval for the market test. The market test refers to a brief summary of the case and the commitment proposal that will be published online. This allows third parties a chance to submit their observations regarding the envisaged commitments. The input provided by the third parties are disclosed to the undertaking concerned on a no-name basis and may necessitate a modification in the commitment offer. Depending on the significance of the modifications, a new market test may be required.

vi. Adoption of the Decision

Following the completion of the internal approval procedures, the decision regarding the commitment procedure is adopted and the case will be closed as soon as the decision is notified to the parties.

vii. Implementation of the Commitments

Indeed, the last step towards a successful commitment procedure is the implementation part. Depending on the type of the commitments, the European Commission may determine different kinds of monitoring requirements such as appointment of a trustee for the divesture remedies.

Conclusion

Although the principles and procedures for the commitment mechanism is yet to be established by a way of a Communiqué, *HAVAŞ decision* will definitely shed some light on the TCA's approach to commitment procedure and be considered as a reference for the future cases.

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