

Turkish Competition Authority Published Draft Communiqué on the Commitment Procedure

Not very long ago the Turkish Competition Authority (TCA) announced the [New Amendments to the Turkish Competition Law](#), which among others, introduced the commitment and settlement procedures to be applied in the investigations. As covered under a recent [newsletter](#), the Competition Board successfully applied its very first commitment mechanism under the new law. Following this, the TCA published the [Draft Communiqué on Commitments for Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position \(Draft Communiqué\)](#). In this newsletter, we will summarise the procedure envisaged by the Draft Communiqué.

What Does Draft Communiqué Entail?

The Draft Communiqué published on the TCA's website on 27 November 2020 provides relatively detailed information on commitment procedures. As per the Draft Communiqué, for a commitment procedure to be successfully completed, the following steps should be followed:

1. Request for Commitment:

When: During the preliminary investigation, or, in case of a full-fledged investigation, within 3 months following the receipt of the investigation notification.

Exception: For the investigations initiated before the Draft Communiqué enters into force, commitment applications can be lodged until the deadline for the last written defence.

How: Commitment requests must be submitted to the TCA in a written form.

2. Commitment Negotiations

When: Commitment negotiations with the TCA starts as soon as the request is submitted.

However, in case the anti-competitive concerns subject to the relevant investigation could not be elaborated sufficiently, and more detailed research is needed, the initiation of commitment negotiations may be postponed by the decision of the Turkish Competition Board (TCB). In case of a preliminary investigation, the TCB may decide that commitment negotiations are postponed to investigation phase.

What: Except for the confidential information of the third parties, anti-competitive concerns and underlying documents will be disclosed to the undertaking concerned.

How: Negotiations can be conducted verbally or in written form. Verbal negotiations must be recorded with a meeting report agreed by both parties.

3. Submission of the Commitments

When: Within a period of time to be determined by the TCA depending on the stage of the investigation and the scope of the commitments.

What: Commitments should be articulated in a clear way and must not include alternatives. Commitment letter shall 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; and
- Other matters deemed necessary.

If structural remedies are envisaged, details on the divesture process should also be included in the commitment letter.

How: If the implementation of the commitments requires an agreement with the complainant or third parties, documents showing that an agreement with such parties should be also submitted to the TCA together with the commitment letter.

A statement indicating that the commitments will eliminate the anti-competitive concerns and that the undertaking agrees to fulfill the commitment with the conditions specified in the commitment letter must be included at the end of the commitment letter and must be signed by the authorised representatives of the undertaking.

4. Assessment of the Commitments

How: The TCB assess whether (i) the anti-competitive concerns constitute clear and hardcore violation; and (ii) commitments can address the anti-competitive concerns. The TCB may also decide to request the third parties' opinion on the issue at hand.

What: Following the above-mentioned assessments, the TCB's may decide not to initiate an investigation or terminate an existing one.

The TCB may also allow the undertaking to revise the commitments for once within the scope of the evaluations of the TCB and the period determined by it or to terminate the commitment process.

5. Revision of the Commitments

What: The TCB may approve or decline the revised commitments submitted by the undertakings and terminate the commitment process.

6. Termination of the Commitment Process

What: the TCB may make the commitment binding on the undertakings at any stage of the commitment process and decide not to open an investigation or to terminate the investigation if it considers that anti-competitive concerns can be resolved through the submitted commitments submitted. The TCB's decision of the commitment must include the following:

- Undertakings submitting the commitments
- Anti-competitive concerns
- Content of the commitments
- The date which the commitments will begin to apply;
- The duration of the commitments and how they will be applied;
- How the commitments will solve the anti-competitive concern;
- How compliance with the commitments will be monitored;
- In which cases the commitments will be invalid; and
- Sanction to be applied in case of non-compliance with the commitments

The TCB's decision does not include any findings on whether the agreement, decision or practice concerned is a violation.

7. Monitoring the Compliance with the Commitment

How: Compliance with the commitments can be monitored by way of submission of regular reports, appointing third parties for auditing purposes, or cooperating with professional associations or relevant institutions and organizations. The TCB's authority to investigate the compliance is reserved.

Once the commitments are successfully implemented, the undertakings confirm the compliance with the TCA. Upon this confirmation the TCB adopts a decision confirming the implementation of the commitments.

Conclusion

Adoption of commitment procedure constitutes a very significant development in the Turkish competition legislation's alignment with the European practice. Following the input received by the stakeholders, the Draft Communiqué is expected to be more detailed and clear. Nevertheless, the TCA's approach towards the commitment procedure will be clarified once its first commitment decision is published.

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