

## Turkish Competition Authority Published Draft Communiqué on *De Minimis* Rule

6 November 2020

### Background

As elaborated in our newsletter concerning the [Recent Changes Introduced to the Law No. 4054](#), with the amendment made to Article 41 on 24 June 2020, the *de minimis* principle was incorporated in Turkish competition law. Following this step, the Turkish Competition Authority announced the Draft Communiqué on Agreements, Concerted Practices, and Actions and Decisions of Associations of Undertakings Which Do Not Appreciably Restrict Competition (the **Draft Communiqué**) on 23 October 2020. The Draft Communiqué sets out the criteria for agreements, concerted practices, and decisions of association of undertakings that are deemed not to restrict market competition significantly and therefore may be exempt from investigation.

### What does the Draft Communiqué entail?

#### De Minimis criteria

As per the Draft Communiqué, the following are deemed not to restrict competition appreciably:

- Agreements between competitors where the aggregate market share of the parties to the agreement does not exceed 10% in any one of the markets affected by the agreement;
- Agreements between non-competitors where the aggregate market share of the parties to the agreement does not exceed 15% in any one of the markets affected by the agreement;
- Decisions of association of undertakings where the aggregate market share of the members does not exceed 10% in any one of the markets affected by the decision.

#### Other rules

- Clear and hardcore violations cannot benefit from the *de minimis* exemption. Clear and hardcore violations are defined as price fixing, region or customer allocation and limitation of supply among competitors.
- If it is not possible to classify the parties to the agreement as competitors or non-competitors, then the 10% threshold will be applied.
- If the parallel networks created by similar vertical restrictions cover more than 50% of the relevant market, then the threshold will be 5% for all agreements and decisions.
- Agreements and decisions will be deemed not to restrict competition appreciably if the market shares of the parties to the agreement or members of the association of undertakings do not exceed the abovementioned thresholds by more than 2% in two consecutive calendar years during the agreement or decision period.

## Application of the Draft Communiqué

The fact that total market shares exceed the thresholds set out under the Draft Communiqué does not necessarily mean the relevant agreement or decision is restricting competition appreciably. Likewise, the Competition Board can investigate agreements or decisions even when total market shares do not exceed the relevant thresholds. If market shares could not be identified at the beginning of the investigation but turn out to be below the thresholds in the Draft Communiqué later on, the Competition Board can terminate the investigation.

Upon its entry into effect, the Draft Communiqué will be applied to ongoing investigations and preliminary investigations as well.

## Comparison with EU law

The De Minimis Notice of the European Commission (the **EU De Minimis Notice**) sets out the rules for application of the *de minimis* principle under EU competition law. By and large, the Draft Communiqué follows those rules of the EU De Minimis Notice. The *de minimis* thresholds of 10%, 15%, and 5% are the same in both legislations, as well as the 2% excess in two consecutive years criteria. On the other hand, while the EU De Minimis Notice requires parallel networks to cover at least 30% of the relevant market, the same threshold is determined as 50% under the Draft Communiqué.

## Conclusion

The Draft Communiqué is published in TCA's website ([in Turkish](#)) and open to public comments until 23 November 2020. Once it enters into effect, the Draft Communiqué will allow the Competition Authority to implement the *de minimis* principle and prioritize more severe violations of the competition law.

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