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Executive Summary

1. Overall examination of the Turkish Competition Authority's (TCA) activities shows that in 2018 a total of 355 cases were finalized. Among these cases, 88 cases concerning competition infringements were finalized following preliminary examinations, preliminary inquiries and investigations conducted under the provisions of Articles 4 and 6 of the Act No 4054 on the Protection of Competition (the Competition Act), 44 cases were negative clearance/exemption decisions based on Article 5 and 8 of the Competition Act, and 223 cases were merger/acquisition/privatization/joint venture decisions based on Article 7 of the Competition Act.

2. The total number of final decisions in 2018 was the highest of the last four years. The corresponding number of final decisions for 2015, 2016 and 2017 were 282, 325 and 296 respectively. The increase in the number of final decisions in 2018 is observed in all enforcement areas, predominantly in merger/acquisition/privatization/joint ventures, where the corresponding numbers for 2015, 2016 and 2017 were 158, 209 and 184 respectively. The number of finalized decisions for infringements of competition¹ in 2015, 2016 and 2017 were 89, 83 and 80 respectively. And, the number of exemption/negative clearance final decisions is down to 32 in 2017, from 33 in 2016 and 35 in 2015.

3. The investigations regarding infringements of competition rules concern information and communication technologies (5), transportation, vehicles and related services (4), energy (3), pharmaceuticals, health and medical equipment (2) and petroleum and petrochemistry (2) sectors. A significant part of the exemption/negative clearance decisions finalized in 2018 stemmed from applications related to finance (11), transportation, vehicles and related services (8), information and communication technologies (6) pharmaceuticals, and health services and medical equipments (5) sectors. These 4 sectors accounted for almost 68% of all the clearance/exemption decisions.

4. Concerning the sectorial distribution of final decisions on merger/acquisition/privatization notifications; food, agriculture; transportation, vehicles and related services; chemical products, energy, and information and communication technologies sectors were prominent ones in terms of total number of notifications. In 2018, no transaction was blocked however four transactions were cleared conditionally.

5. 2018 was a very active year for investigations. In 2018, TCA initiated 24 investigations and concluded 23 investigations. As of end of 2018, 29 investigations were going on, promising an evenşy active year of 2019. The total amount of administrative fines for these infringements of competition cases amounted to 350 million Turkish liras approxiamately.

6. As for enhancing competition legislation, TCA continued its intense work in 2018. An amendment to Guidelines on Vertical Agreements was adopted and put into effect in 2018 in order to provide better guidance on emerging issues such as online sales and most favoured customer (MFC) clauses. Also Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control and Guidelines on Undertaking Concerned, Turnover and Ancilliary Restraints in Mergers and Acquisitions were amended. The work on the "*Draft Law Amending the Act on the Protection of Competition as well as some Laws and Statutory Decrees*" which aims at implementing regulations parallel to the EU

¹ Infringements of competition cases are anti-competitive agreements prohibited by Article 4 of the Competition Act and abuse of dominance cases prohibited by Article 6.

and developed country practices, increasing legal certainty for undertakings, decreasing red-tape, and directing TCA's resources to more severe competition infringements is also still going on.

7. In 2018, within the framework of competition advocacy activities, the TCA have conducted a sector inquiry on "*Hazelnut Market*" and held a seminar to share its findings and published the inquiry report on its website. These contributions served to reveal the competitive conditions and problems in the aforementioned sector and to develop proactive methods to deal with these problems, and we believe that they were very important both for TCA and the undertakings operating in the relevant sector. The sector inquiries on the electricity, fair organization, retail and music sectors were carried on 2018. The inquiry on fair organization is concluded in 2019, others are also expected to be concluded this year as well. In addition, within the scope of competition advocacy activities, communication with the stakeholders have been maintained without interruption. TCA organized 18 symposiums, conferences, panels and meetings in 2018, including Symposium on "New Practices for Increasing Efficiency in terms of Turkish Competition Law" and "Big Data, Online Platforms and Competition Law Seminar".

8. In 2018, TCA also continued its activities in the international arena. This is because, in a globalizing world, it is important for competition authorities to constantly communicate to ensure that competition law practices are established and continuously developed. Within this framework, TCA attended many international meetings, including those organized by the Organization for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), the International Competition Network (ICN) and European Competition Network (ECN), in which we found the opportunity to share the activities of TCA with other participants.

9. Lastly, it must be emphasized that TCA is very aware of the importance of human resources in order to achieve the goals it has set for itself. It is only as a result of the work of the human resource that the tasks assigned to the Authority may be carried out in an efficient and productive manner. Therefore TCA attaches great importance to the training of its personnel. Consequently, in 2018 as in the previous years, professional staff were provided with opportunities to complete their master's degrees and to participate in various meetings abroad. As part of its continuous efforts to increase its staff's capacity, TCA has sponsored some of its case handlers' graduate degrees at the prominent universities such as Indiana University at Bloomington and Queen Mary University of London. More over, one case handler was on secondment to the OECD. In addition, in-service training programs organized in 2018 contributed to the professional and cultural development of the professional staff and other personnel.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of the new legislations

10. The TCA did not adopt new legislation in 2018.

1.2. Summary of the changes made to the existing legislations

1.2.1. Amendments to the Guidelines on Vertical Agreements

11. In March 2018, *Guidelines on Vertical Agreements* was updated after two years of research, consultation and drafting process.² Amendments focused on two issues: online sales and most favoured customer clauses (MFCs).

12. Firstly, the amendments addressed online sales. Internet sales provides many benefits for customers and suppliers. While online sales enable customers to compare prices and access to many different suppliers and products, suppliers can markets their products and services in a wider geographical markets with lower costs via internet. Accelerating increase of internet sales called for further guidance on that issue from Turkish competition law perspective. In the amendment process, the TCA aimed at striking a balance between preservation of benefits provided by the internet sales to the customer and the re-seller and protection of suppliers' commercial interests while rethinking competition rules in the context of internet sales. Previously, the only guidance provided by the Guidelines was that online sales were described as a passive sale method. Updated Guidelines sheds more light on online sales by stating following points:

- Providing different language options on a webpage or contacting consumers upon their request are considered as passive sale.
- Vertical agreements which include restrictions such as defining a quota for online sales, requiring re-sellers to price the product higher on the internet channel than physical channel, restricting access to a (exclusive) distributors webpage from the location outside of its allocated market, or requiring the distributor to not deal with customers outside of its allocated market are excluded from block exemption
- Sales through promotions and similar methods (i.e. advertisements targeting customers in a certain location, sending unrequested e-mails) are considered as active sales.
- Suppliers can set some standards regarding use of internet as a sale channel (i.e. quality standards for the webpages, service requirements) however these standards should not aim at excluding pure players.

13. Secondly, MFCs are addressed in the updated Guidelines. MFCs have been subject to enforcement efforts of many authorities already and they are becoming more significant as online sales develop. In this context the Guidelines stated following points regarding the MFCs.

- MFCs can have positive and negative impact on competition so it may benefit from group exemptions. If criteria for group exemption are not met, individual exemption can be granted.
- In case of an individual exemption analysis, following factors will be taken into consideration: position of the undertaking imposing MFCs in the market, position of its competitors in the market, motives for including MFCs in the contracts, characteristics of the MFCs, peculiarities of the market.

² [https://www.rekabet.gov.tr/Dosya/guidelines/guidelines-on-vertical-agreements-\(2018\)ing-20180420105658388.pdf](https://www.rekabet.gov.tr/Dosya/guidelines/guidelines-on-vertical-agreements-(2018)ing-20180420105658388.pdf)

- MFCs are deemed less favourable from competition law perspective if the undertaking benefiting from MFCs enjoys certain level of market power. Similarly, if the market is concentrated, MFCs are retroactive or wide-spread in the market, then this practice may pose the risk of harming competition.

1.2.2. Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control and Guidelines on Undertaking Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions

14. As it was reported in Annual Report on Competition Policy Developments in Turkey 2017, the Communiqué (no. 2017/1) Amending the Communiqué (no. 2010/4) on Mergers and Acquisitions Calling for the Authorization of the Competition Authority was adopted with the Competition Board decision dated 19.1.2017 and numbered 17-03/36-RM(2), and it was put into force following its publication in the Official Gazette dated 24.02.2017 and numbered 29989. Guidelines on review of mergers and acquisitions were updated accordingly in 2018.

15. Firstly, amendments to the *Guidelines on Undertaking Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions* states that the provision in Article 7.2 of the Communiqué no. 2010/4, which stated that the Board would renew the notification thresholds concerning which merger and acquisition transactions were subject to authorization every two years, was repealed. Amendments also introduced that transactions between the same persons or parties or in the same relevant market by the same undertaking in the period of 3 years are considered as a single transactions with respect to calculation of turnovers of the parties.

16. Secondly, above mentioned amendment regarding the turnover calculation was also reflected in the *Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control*. Moreover it was clarified that in case of taking control of an undertaking through security purchases from different sellers via serial transactions in the stock market, the transaction should be notified to the Board as soon as possible, and transactions can only be notified to the Board after its realisation under certain conditions.

2. Enforcement of competition law and policies

2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions.

2.1.1. Summary of significant cases- Examples from the decisions on anti-competitive agreements

Adıyaman Auto Gas Dealers Investigation [decision date: 29.03.2018, decision number: 18-09/180-85]

The decision was related to the investigation initiated in response to the claim that auto gas dealers operating in the city center of Adıyaman province agreed to increase prices. 17 undertakings were parties to the investigation.

- **Relevant Market** (product; geographic): “*retail auto gas*”; province of Adıyaman
- **Findings:** According to the evidence collected, the investigation showed that the officials of auto gas stations held a meeting at the premises of Adıyaman Chamber

of Trade and Industry, where the participants complained about competition and price differences, took a decision to solve this “problem”. The decision set a maximum 4% discount over the recommended price and created a commission to monitor whether gas stations comply with the decision.

During the meeting at the Chamber of Trade and Industry, AYEL, BEYAZYILDIZ, DEMİRCİOĞLU, DENYİL, DOST, KARATAŞ, KARINCA, MUSTAFA YÜCEL, ÖZDEMİREL, ÖZDERECİ, ŞAHİN, TOHUMCU, ÜNAL and YETİŞ made an agreement restricting competition in auto gas retail sale market. The agreement fixed prices as well as minimum discount rates for the relevant parties and fell under article 4(2)(a). Price increases began at the end of 2014 and lasted for about one month.

- **Conclusion:** It was concluded that gas stations operating in auto gas retail sale market in Adıyaman violated article 4 of the Act no. 4054 by means of price fixing; therefore, the undertakings in question would be imposed administrative fines according to article 16(3) of the Act no. 4054 and the relevant Regulation. While the agreement was defined as a cartel, it was concluded that the infringement lasted less than one year and the practices that are the subject of the infringement had a very small share in annual gross income, which was regarded as a mitigating factor and the basic fine was reduced by 50%.

Sony Investigation [decision date: 18-44/703-345, decision number: 22.11.2018]

This decision was taken upon an investigation which looked into retail price maintenance practice of Sony Eurasia Pazarlama A.Ş. (Sony).

- Relevant Market (product; geographic): “*consumer electronics*”; Turkey
- **Findings:** The evidence collected through on-the-spot inspections and information requests showed that SONY monitored its distributors’ prices, especially their sales through online market places. SONY sent out e-mails urging its distributors to not to sell products below certain price level on online sales channels. Distributors were warned that prices below a certain price would be detected, suppliers would be identified and financial promotion support provided by SONY to these distributors will be reevaluated. It was found out that SONY requested “correction” of prices of certain product from specific distributors. It must be also noted that distributors also complained about price “deterioration” and asked for SONY’s intervention. SONY’s retail price maintenance practices involve televisions, smart phones and gaming consoles.

Regular internal reports about distributors’ prices on online channels prepared by SONY and other correspondence demonstrated that prices stayed below recommended prices against this effort. This is also confirmed by the analysis of the TCA as well. TCA also looked into promotion support provided by SONY to its distributors to see if this financial support was used as a tool to maintain retail prices. It was found out that promotion support continued as it is between 2015-2017. In the decision it is also mentioned that SONY’s sales volume through distributors decreased in the recent years and some SONY centers were closed permanently. Limited effect of SONY’s practices is considered as a mitigating factor in fine assessment.

Art. 4 (a) of the Act No. 4054 states that “fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any terms of

purchase or sale” is illegal and prohibited. In the context of this case, SONY’s practice is considered as a violation of the mentioned article and this practice cannot be exempted under Art. 5.

- **Conclusion:** It was decided that SONY violated Article 4 (a) of the act no 4054 through RPM practices. An administrative fine was imposed on the undertaking concerned, in accordance with Article 16 of the Act no 4054.

Henkel Investigation [decision date: 19.09.2018, decision number: 18-33/556-274]

This decision was taken upon an investigation which looked into retail price maintenance practice of Türk Henkel Kimya Sanayi ve Ticaret A.Ş. (Henkel).

- **Relevant Market (product; geographic):** “beauty and personal care products”, “laundry and home care products”; Turkey
- **Findings:** The decision states that the sale and distribution of HENKEL products were realized through “large volume retailers with direct sales” (LVR) and distributors, with LVRs known as key accounts, who purchased goods in exchange for an invoice made out by HENKEL and delivered from HENKEL’s warehouse to their own and/or to their stores. In the LVR channel, the agreements HENKEL signed with LVRs were not standard but instead were prepared and signed specific to each consumer. The agreements in question did not include any provisions on resale price maintenance, but HENKEL recommended certain conditions to all of its consumers including shelf price, shelf location, and which products should be listed at which stores, for what periods and on which days. The information acquired during the investigation process revealed that the agreed purchase price was updated at the beginning of the year and under special circumstances (e.g. in case of special consumption tax increases for the antiperspirant category or when petrol based price increases in raw materials led to increases in costs).

In the distributor channel where HENKEL products are sold and distributed, it is observed that HENKEL worked with different distributors for the “beauty and personal care” and “laundry and homecare” product groups. The agreements between HENKEL and its distributors did not include any provisions on resale price maintenance and the agreements were not exclusive distribution contracts. Distributors deal with stock accounts and logistical support, while the undertaking’s own sales personnel followed up with the stores which purchased HENKEL products.

HENKEL planned marketing activities (periodic activities) with both LVRs and distributors, including discounts, promotions, lotteries, gift sets and inserts. Such activities were generally funded by HENKEL itself. Periodic activities were carried out in accordance with the budget plans drawn out on a customer-by-customer basis and the budgets concerned were offered within the framework of the activities so that HENKEL’s customers would be incentivized to pass-on to their own customers as discounts. In addition, HENKEL prepared an internal report for all products it offered for sale, called Star Store (SS). These monthly reports provided information on each product sold by HENKEL at the relevant point of sale, conducting an analysis based on various criteria such as whether the product was present on the shelves, whether its price was at or over the action price, whether it was placed beside a particular product on the shelf, whether the product had a separate stand.

The relevant report specified a specific action price for each product and reported on whether the product was sold at or over this price. The information and the documents in the file show that, in practice, HENKEL closely followed the prices of the products it sold, taking various steps to ensure an increase in prices where it determined that the sales prices of a particular buyer was below HENKEL's action price.

Accordingly, a HENKEL employee used a computer program to compare the prices included in the SS report with the actual sales prices of the buyer, and if the prices were different, sent an e-mail to the field staff responsible for the buyer concerned asking what actions should be taken to correct the situation.

In light of all of the examinations and evaluations conducted, it was concluded that beyond monitoring market prices of their products and recommending resale prices, HENKEL directly intervened with the retail sales prices which should have been determined by the buyers in line with their own commercial considerations, thereby preventing the setting of resale prices within the framework of free competition conditions.

The decision states that setting one of the most important factors in competition, namely the price, via resale price maintenance, generally constitutes a restriction of competition by object, which makes it impossible for HENKEL's practices in question to be granted exemption under Article 5 of the Act no 4054. This is because resale price maintenance would not lead to improvements in the distribution of HENKEL products or in the goods and services offered by the buyers, with consumers wishing to purchase HENKEL brand products facing much higher prices due to the restriction of intrabrand competition as a result. Eliminating intra-brand competition could have significant negative effects on consumer welfare. Consequently, the conditions of Article 5.1(a) and (b) were not met in the case in question.

- **Conclusion:** It was decided that HENKEL violated Article 4.1(a) of the act no 4054 through RPM practices. An administrative fine was imposed on the undertaking concerned, in accordance with Article 16 of the Act no 4054.

2.1.2. Summary of significant cases- Examples from the decisions on abuse of dominance

Investigation conducted in the Electricity Market in the Mediterranean Region [decision date: 20.02.2018, decision number: 18-06/101-52]

Investigation to determine whether Akdeniz Elektrik Dağıtım A.Ş. (AKDENİZ EDAŞ), CK Akdeniz Elektrik Perakende Satış A.Ş. (CK AKDENİZ) and AK DEN Enerji Dağıtım ve Perakende Satış Hizmetleri A.Ş. (AKDEN) violated article 6 of the Act no. 4054.

- **Relevant Market (product; geographic):** “electricity distribution”, “retail electricity sales to consumers under eligible consumer limits”, “retail electricity sales to industrial consumers tied to the system at the distribution level”, “electricity retail sales to business consumers” and “retail electricity sales to residential consumers”; Mediterranean region of Turkey
- **Findings:** The investigation revealed that AKDENİZ EDAŞ held a dominant position in Akdeniz (Mediterranean) electricity distribution region and CK

AKDENİZ held a dominant position in the relevant markets for “retail electricity sales to consumers under eligible consumer limits”, “retail electricity sales to industrial consumers tied to the system at the distribution level”, “electricity retail sales to business consumers” and “retail electricity sales to residential consumers” in the distribution regions.

Moreover, AKDENİZ EDAŞ shared competition sensitive information such as consumers’ consumption and contact information only with CK AKDENİZ, creating an advantage for CK AKDENİZ to the detriment of other suppliers and thus abused its dominant position by means of restricting competition in the markets for eligible consumers.

Within the framework of distribution activities, AKDENİZ EDAŞ’s meter readers signed agreements with eligible consumers on behalf of CK AKDENİZ, personnel working at various positions at CK AKDENİZ served for both firms, AKDENİZ EDAŞ sent SMSs and published agreements on behalf of CK AKDENİZ. As a result, AKDENİZ EDAŞ provided competitive advantages to CK AKDENİZ, restricted competition in the market for electricity retail sales in Akdeniz electricity distribution region and abused its dominant position in the relevant market.

The relations established between CK AKDENİZ, AKDENİZ EDAŞ and AKDENİZ via an agreement and other protocols created competitive advantages for CK AKDENİZ. Moreover, CK AKDENİZ had access to competitive sensitive information kept by AKDENİZ EDAŞ, which provided anti-competitive advantages to CK AKDENİZ. Consequently, the undertakings concerned abused their dominant positions by means of restricting competition in the market for providing electricity.

By means of practices related to loading at high amounts or not loading at all with respect to consumers which switched their suppliers, AKDENİZ EDAŞ abused its dominant position in Akdeniz electricity distribution region to restrict competition in the downstream market for electricity retail sale for the benefit of CK AKDENİZ, with which it is in a vertically integrated structure.

The gap between CK AKDENİZ’s maximum agreement capacity and excessive increase in its eligible consumer portfolio indicates that customers are added to eligible consumer portfolio without any agreement and notice.

CK AKDENİZ foreclosed the market by means of taking PSS and bilateral agreements from consumers consciously and systematically.

CK AKDENİZ abused its dominant position by forcing consumers to sign bilateral agreements through closing payment channels and notifying illegal use.

CK AKDENİZ also abused its dominant position by signing bilateral agreements with consumers under eligible consumer limit, in other words consumers who do not have right to choose their supplier, or adding them directly in its eligible consumer portfolio.

CK AKDENİZ foreclosed relevant markets by means of eliminating eligible consumer mobilization process and breaking down the consumer choice mechanism and thus abused its dominant position in the relevant market, which involves consumers buying electricity on regulated tariffs, to prevent competition in eligible consumer market.

Moreover, CK AKDENİZ intentionally left the date section blank in IA-02 forms while making bilateral agreements with customers and complicated switching to other suppliers. Consequently, CK AKDENİZ abused its dominant position in the relevant markets concerning eligible consumers to prevent switching to other suppliers.

With respect to CK AKDENİZ's notification about power cut to indebted customers, AKDENİZ EDAŞ created competitive advantages in CK AKDENİZ's favor. AKDENİZ EDAŞ and CK AKDENİZ abused their dominant positions in relevant markets in a way that provides CK AKDENİZ financial advantages in eligible consumer markets by manipulating competition for

the benefit of CK AKDENİZ.

In summer and winter periods, which are defined as chronic crisis for electricity sector, CK AKDENİZ used its powers as an official supply company and abused its dominant position in the market for supplying electricity to eligible consumers and to consumers under eligible consumer limits. Also, CK AKDENİZ restricted competition in the market for electricity retail sales to industrial consumers by shifting some of its customers between K1-K2 portfolios.

There were regulations which extend the commitments in agreements signed by CK AKDENİZ with institutional customers and those regulations created effects preventing eligible consumer from switching suppliers and foreclosing relevant markets.

CK AKDENİZ and AKDENİZ EDAŞ used the other party to the investigation, AKDENİZ, as a tool to carry out their practices; thus, it is not necessary to assess AKDENİZ for violation.

- **Conclusion:** It was concluded that this vertically integrated undertaking violated Article 6 of the Competition Act by disadvantaging other independent retail electricity retailers through practices such as sharing competition-sensitive information regarding consumption and contact information of eligible consumers, deploying AKDENİZ EDAŞ's meter reading employees to sign agreements on behalf of CK AKDENİZ, and others detailed above. Thereof an administrative fine was imposed on AKDENİZ EDAŞ and CK AKDENİZ under Article 16 of the Competition Act.

SAHİBİNDEN Investigation [decision date: 01.10.2018, decision number: 18-36/584-285]

This investigation was conducted upon numerous complaints regarding SAHİBİNDEN's pricing practices to determine whether price surges constitute an abuse of dominant power through excessive pricing.

- **Relevant Market (product; geographic):** "online platform services for real estate sales and rentals", "online platform services for vehicle sales"; Turkey
- **Findings:** SAHİBİNDEN is an online platform where user can publish adverts under various categories such as real-estate, vehicles, vehicle spare parts, second-hand goods, handy work requests and pet adoption. This platform facilitates match making between buyers and sellers. While membership is free if charge for buyers, sellers must pay certain fees to publish adverts depending on their identity (individual members, corporate members).

In the decision one of the critical steps of the analysis was relevant market definition since it presented well known challenges in relation to multi-sided platforms with cross network effects. For sellers (real-estate agents and car dealers), it is understood that off-line advertisement did not substitute online advertisement due to seller's business flows and buyers' preference for online adverts as they do not face any costs.

It was found that SAHİBİNDEN was in a dominant position in both relevant market. Between 2015-2017, SAHİBİNDEN was able to raise its prices with much higher rates than its competitors. Against price surges, individual visit statistics of SAHİBİNDEN's website and number of corporate members increased significantly in the same period of time. SAHİBİNDEN preserved its market leader position from 2014 to 2017. The analysis showed that SAHİBİNDEN's position was even stronger in online platform services market for vehicle sales since it faced weaker competition. It must be also noted that structural peculiarities of the markets such as entry barriers due to network effects and SAHİBİNDEN's first mover advantage were also other factors that bolstered the conclusion of dominance in the relevant market.

In order to assess whether SAHİBİNDEN's charges are excessive or not, profit margins of SAHİBİNDEN and its competitors in both relevant markets, SAHİBİNDEN's price trends and market share responses to SAHİBİNDEN's charge surges were analysed. It was shown that SAHİBİNDEN'S prices were slightly higher than its competitors in 2014 however they rose significantly and got much higher than its competitors since then. Against sharp rise in its prices, SAHİBİNDEN succeeded to increase its sales and to grow its market share. It was also demonstrated that SAHİBİNDEN's return on equity and profitability on net sales are unexpectedly high.

- **Conclusion:** In the light of these assessments, it was concluded that SAHİBİNDEN abused its dominant position and thus violated Article 6 of the Competition Act in online platform services for real estate sales and rentals and online platform services for vehicle sales markets through excessive pricing. Thereof an administrative fine was imposed on SAHİBİNDEN under Article 16 of the Competition Act.

TTNET Multi-Play Bundle Investigation [decision date: 27.08.2018, decision number: 18-29/497-238]

The relevant investigation was conducted in relation to the claim that TTNET A.Ş. (TTNET), which purportedly holds dominant position in the retail fixed broadband internet services market, bundled Tivibu, its product in the payper-view television broadcasting services market, with its products in the retail internet market at below-cost prices offered by the New Year with Tivibu Campaign, and that this was in violation of Article 6 of the Act no 4054.

- **Relevant Market (product; geographic):** “fixed broadband internet access services”, “pay tv broadcasting services”; Turkey
- **Findings:** The New Year with Tivibu Campaign under investigation, which includes broadband internet access services and the Tivibu service, is simply the New Year Campaign which offers various internet packages, bundled with the Tivibu Everywhere Campaign that offers the Entry package, Cinema Package and

Super Package alternatives. The decision states that the competition law analysis concerning the relevant practice required that two different independent but related markets be evaluated together, which was part of a natural outcome of the convergence process recently observed in the telecommunications sector. Convergence removed the independency of services offered via different networks in the telecommunications sector and, as a result, multi-play bundles began to find widespread use. In terms of competition law, the most important aspect of the converge process is whether the packages offered by the undertaking holding dominant position in one of the multi-play markets are economically repeatable by equally efficient rival players. Any practice which removes the economic repeatability or supply of the multi-play packages offered by equally efficient rivals would introduce the risk of strengthening the dominant position and/or transferring it to other markets in violation of the competition rules.

In light of this conceptual framework, the decision first observes that TTNET held dominant position in the fixed broadband internet access services market. Afterwards, the New Year Campaign implemented by TTNET was examined to see whether it had the nature of a bundled sale under competition law, which was followed by an analysis of the cost and revenue items of the campaign with respect to economic repeatability, in consideration of the market structure in Turkey for the wholesale and retail internet services market in particular. Lastly, an assessment of the competitive effect of the campaign on the relevant markets was included.

The decision states that the New Year with Tivibu Campaign could be addressed under either price squeeze or within the framework of joint pricing practices such as tying or bundling. The campaign in question was an example of the method referred to as a soft bundle in the TTNET correspondence gathered during the on-the-spot inspection. Therefore an analysis was conducted in order to answer the question of whether it was joint pricing/bundling under competition law. As a result of the analysis, it was concluded that the style of presentation, actual practices related to the campaign and the close relationship between the services offered under the campaign clearly demonstrated that the campaign was built to offer retail internet and pay-per-view television services together. The design of the campaign made it clear that the ultimate goal was to offer discounts related to pay-per-view television services together with retail internet services. The Super Package product, which was sold at a higher price in other campaigns, was offered cheaper for the campaign under examination, which met the condition of discounting the bundled products. Therefore, the campaign in question had the characteristics of bundling under competition law.

The second stage of the assessment was to examine the revenue and cost items for the particularly prominent offers of TTNET's New Year With Tivibu Campaign, i.e. 50 GB ADSL up to 8 mbps with modem and 35 GB Fibernet up to 24 mbps with modem bundles, in order to determine whether they were economically repeatable. Afterwards, an analysis was conducted in line with the case-law of the Board on the subject, to see if the campaign recovered its average avoidable costs. An examination of the revenue and cost items of the relevant internet bundles found that, the 35 GB Fibernet up to 24 mbps with modem bundle of the New Year with Tivibu Campaign led to below-cost pricing. The finding in question was assessed in light of the equally efficient firm test as well, and it was determined that the size of the loss in the pay-per-view television field would drop the prices of the internet packages under their cost, which would clearly eliminate economic repeatability

for other competitors who purchase retail fixed broadband internet at the wholesale level from Türk Telekomünikasyon A.Ş. (TÜRK TELEKOM), an undertaking that is part of the same group as TTNET itself.

The last stage of the assessment examined whether the New Year with Tivibu Campaign, offered at below-cost prices, caused a *de facto* foreclosure effect in light of the position of the dominant undertaking in the market in light of the conditions of the relevant market, the positions of the competitors, the positions of the customers or suppliers, the scope and duration of the practice, potential evidence of de facto market foreclosure, and the direct and indirect evidence of the exclusive strategy.

After noting the importance of competitors' capacity to develop strategies in response to TTNET's campaign for evaluating the potential market effect of the practice, the decision emphasized that offering pay-per-view television services to the subscriber in addition to broadband internet services had become an essential fact of today's market, and provided examples from campaigns bundling broadband internet and pay-per-view television services together, launched by Türksat Uydu Haberleşme Kablo TV ve İşletme A.Ş., Doğan TV Digital Platform İşletmeciliği A.Ş. and Turkcell İletişim Hizmetleri A.Ş.

- **Conclusion:** The effect-based analysis included in the decision concluded that the New Year with Tivibu Campaign would not result in exclusionary effects during the period it was implemented, and that, consequently, TTNET was not in violation of Article 6 of the Act no 4054.

However, it was decided that an opinion should be submitted to the Information and Communication Technologies Authority, in order to ensure economic and technical repeatability of multi-play services and to present a structural solution for the competitive problems in the sector.

Google Investigation [decision date: 19.09.2018, decision number: 18-33/555-273]

The investigation was conducted in order to determine whether GOOGLE abused its dominant position by its practices related to the provision of its mobile operating system, its mobile applications and services, and by the agreements signed between GOOGLE and device manufacturers.

- **Relevant Market (product; geographic):** “online search services”, “provision of online search services through mobile devices”, “mobile online advertisement services”, “mobile internet browser”, “licensable mobile operating systems” and “each function of each application that takes place in an Google Mobile System”; Turkey
- **Findings:** The case mainly addressed the claims that the Mobile Application Distribution Agreement (MADA), signed between GOOGLE and device manufacturers for the provision of the mobile operating system, required the manufacturer to pre-install Google Search and Google search widget as well as a mandatory application package (Google Mobile System), that it enforced exclusivity in terms of Google search, and that it complicated the operations of competitors through ambiguous provisions preventing the unbundling of Android.

The decision first examined the provisions of the MADA agreements under the tying provisions of the competition law. In order to determine whether this was an instance of tying violation under Article 6 of the Act no 4054, a six-stage test was applied to see if the following factors were present: (i) if there were two separate products, (ii) if the two products were bundled together, (iii) if the undertaking was dominant in the tying product market, (iv) if there was actual or potential foreclosure effects in the tied product market, (v) if there was consumer harm, and (vi) if the practice had justifiable grounds.

It was concluded that the first factor was present in the file under consideration with the establishment that the TAIS product offered in the licensable mobile operating systems market and the mobile search services and mobile internet browsers were separate products and services.

The second factor requiring the bundling of two separate products was also found to be present, due to the obligation placed on those manufacturers who wished to use TAIS forcing them to pre-install the Google search widget and to make Google search the default in the devices for all access points to mobile search services.

The third factor deals with whether GOOGLE held dominant position in the “licensable mobile operating system” market, defined as the tying product market. It was concluded that GOOGLE held dominant position in the market with TAIS, under the light of the following considerations: a significant portion of mobile devices manufactured in the Turkish market have the Android operating system with nearly all of them using TAIS; mobile operating systems with application stores which might be seen as an alternative to the Google Play store, an essential component of TAIS in Android devices, are nearly never used or their use is very restricted within the market dynamics; it is not commercially viable for device manufacturers to switch their production to a third party application store which is not as advanced as the Google Play store and to an operating system which does not support the Google applications well-known to consumers.

With relation to the fourth factor concerning the existence of actual or potential foreclosure effects in the tied product market, the decision analysed whether the practice to install Google search as a default complicated the activities of the competitors. As a result, it was found that the relevant practice had two main effects on the competitors, the first of which made it impossible for search services to be assigned to devices on their own as default, and the second of which was that the practice in question decreased the device manufacturers’ incentives to install alternative search widgets to the home screen, which is where most of the end user interaction happens.

This situation could lead to foreclosure effects in the device manufacturers’ channel, which is an important channel for access to end users for alternative undertakings in the mobile provision of internet search services, through the MADA provisions due to the following factors: The fact that Google used direct manufacturer channels (device manufacturers and browser developers) instead of methods such as advertisement channels in the distribution of mobile search services eliminated the substitutability of other channels. Also, making mobile search services default in pre-installed applications fundamentally directed end user choice to use Google mobile search services, and the MADA agreements’ provisions concerning making these services default or exclusive significantly impeded the access of its competitors to these markets. As a result of the

assessments above, it was concluded that tying practices of GOOGLE led to transfer of its power of TAIS in the licensable mobile operating systems market, where it has almost no alternative, to the mobile provision of internet search services market, producing an actual and potential foreclosure effect for its rivals.

The following assessments were made in relation to the fifth factor, consumer harm criteria, of the tying analysis: Google's tying practices led to Google search services becoming the most widely used search engine in mobile devices just like they are for desktop computers. In such a market where rivals cannot be efficient, end users were forced to use GOOGLE's advertisement algorithms and they have to share all their personal data with GOOGLE, both in terms of general search and in terms of mobile. In return, they are forced to receive as much ads as GOOGLE wants. Due to the walls built in the market for the provision of mobile internet search services, competing players are forced out by the tying provisions of the MADA agreements, without even being valued by the consumers. In addition, those resources of competitors which might be used to offer devices to the consumer at cheaper prices or with better hardware are blocked as a result of GOOGLE's practices. Lastly, the decreasing competition in the market can lead to a fall in investment incentives for GOOGLE and potential rivals. Consequently, it was concluded that GOOGLE's practices under investigation met the condition of causing consumer harm. In terms of justifiable grounds, it was shown in detail that the practices under investigation were not necessary for the efficiency gains claimed by GOOGLE.

Finally, it is analysed that there is not legitimate justification of GOOGLE's actions other than impeding competition in the relevant markets.

- **Conclusion:** It was ruled that GOOGLE violated Article 6 of the Act no 4054 by the provisions in the agreements GOOGLE signed with device manufacturers ensuring exclusive installation of Google search in those devices, which also strengthened and maintained the anticompetitive effect caused by the relevant tying practice. An administrative fine was imposed on GOOGLE.

Moreover, obligations were placed on GOOGLE to eliminate those agreement provisions presented as a prerequisite for licensing, in order to terminate the infringement and establish effective competition in the market. The obligations concerning other Google practices included in the MADAs were found to be noninfringing under the Act no 4054. However, it was decided that a letter of opinion should be sent to ensure that a provision is added to all agreements explicitly allowing the pre-installation of competing applications on the devices together with GOOGLE's in order to provide clarity to all device manufacturers parties to the agreement and to prevent any future competitive concerns.

2.1.3. Summary of significant cases- Example from the decisions on exemption and negative clearance

The Wholesale Fiber Bitstream Access Service and Support Services Exemption [decision date: 08.08.2018, decision number: 18-27/438-208]

The exemption decision addresses the request for the grant of an exemption to the agreement (AGREEMENT) between Vodafone Net İletişim Hizmetleri A.Ş. (VODAFONE) and Superonline İletişim Hizmetleri A.Ş. concerning the provision of

wholesale fiber bitstream access services and support services by each undertaking to the other over its own network.

- **Relevant Market (product; geographic):** “wholesale fixed fiber broadband internet services”, “retail fixed broadband internet access services”; Turkey
- **Findings:** The decision stated that each of the parties to the agreement had its own fiber infrastructure and both parties provided fixed broadband internet services to final consumers, therefore VODAFONE and SUPERONLINE were each other’s competitors both in wholesale fixed broadband services and in retail fixed broadband services. Consequently, the AGREEMENT under examination had some horizontal effects in terms of competition law. In addition to this, the AGREEMENT was about sharing infrastructure with the nature of essential facility in terms of the parties’ operation in the retail market, which meant it also harbored certain vertical effects. Based on the observations above, the analysis of the AGREEMENT, ruled to fall under the scope of Article 4 of the Act no 4054, addressed the horizontal and vertical effects concerned in unison, and examined whether the AGREEMENT related to the wholesale services would have an anti-competitive effect on the provision and prices of retail services, as well as whether the activities of the parties in the infrastructure business would pose a risk of coordination.

Within the framework of the analysis conducted, the suitability of the Agreement for exemption under the Block Exemption Communiqué on Vertical Agreements, no 2002/2 (Communiqué no 2002/2) was examined, however it was concluded that the current agreement on fiber infrastructure sharing could not benefit from the protection of the Communiqué no 2002/2 in question, since the parties were both each other’s competitors and buyers.

Afterwards, an assessment was conducted concerning the AGREEMENT to determine whether it met the individual exemption criteria listed in Article 5 of the Act no 4054. It was found that within the framework of the agreement concerned, the proposed cooperation between VODAFONE and SUPERONLINE could allow the undertakings to achieve a level of network penetration which would be difficult to ensure by individual investment, thereby decreasing investment costs for establishing more than one infrastructure in the same region and providing savings. Based on these observations, it was determined that the AGREEMENT examined led to efficiency gains, which is the first condition of exemption.

In addition, since the parties would use each other’s infrastructure where they do not have a fiber infrastructure themselves, the notified cooperation could extend the reach of broadband internet services provided over fiber infrastructure, allowing consumers to access faster and higher quality internet service. Consequently, the AGREEMENT also fulfilled the second condition of the exemption, which specifies that consumers must benefit from the efficiency gains brought about by the agreement.

The AGREEMENT, which was found to have horizontal and vertical effects on infrastructure competition in the wholesale fixed fiber broadband access market, was also examined in terms of the third exemption condition requiring that competition should not be eliminated in a significant portion of the relevant market. It was determined that the agreement between SUPERONLINE and VODAFONE fulfilled this condition of Article 5/1(c) of the Act no 4054, in light of the position

of the parties and their rivals in the market, the market structure, and the AGREEMENT's potential contribution to the improvement of infrastructure alternatives in the field of infrastructure operation, where the market is not sufficiently developed.

Lastly, the decision examined the necessity of the competition restrictions included in the agreement within the context of market allocation and coordination concerns between the competing parties to the agreement, in order to determine whether the last exemption condition was fulfilled. The assessment of the AGREEMENT provisions in this context showed that the cooperation between the parties would be limited to the wholesale market and would not extend to the retail market. Therefore the proposed cooperation did not have the characteristics of an anti-competitive cooperation or market allocation, and the agreement did not restrict the parties from procuring the services of other infrastructure operators.

Nevertheless, it was found that the provision of the Article Appendix 8/1.8-II included in the AGREEMENT which provides for the establishment of a joint infrastructure company by VODAFONE and SUPERONLINE could not yet be evaluated under the Act no 4054. As a result, it was concluded that, with the exception of the aforementioned article, the AGREEMENT comprising the subject matter of the file also fulfilled the fourth criteria of exemption.

In consideration of the high barriers to entry in the retail broadband markets, the fact that the parties to the AGREEMENT hold the second and third positions in the market following the market leader TÜRK TELEKOM, the fact that the fiber infrastructure is currently in the process of improvement and the argument that a review of the future developments in the market could be beneficial, individual exemption was granted for a period of three years.

- **Conclusion:** It was decided that the notified AGREEMENT fulfilled all of the conditions listed in Article 5 of the Act no 4054, and could be granted individual exemption for three years, with the exception of Article Appendix 8/1.8-II.

The Interbank Card Center Exemption [decision date: 12.06.2018, decision number: 18-19/337-167]

The decision was related to the request of the Interbank Card Center (BKM) for the grant of individual exemption to card data storage services according to article 5 of the Act no. 4054.

- **Relevant Market (product; geographic):** “card data storage services” ; Turkey
- **Findings:** It is possible to offer card data storage services, which are a part of the competition between banks and are closely related to card payment services, by each bank itself or by external service providers to customers. If this service is provided by BKM, an association of undertakings, it may affect competition in the market. Within this framework, the service in question fell under the scope of article 4 of the Act no. 4054 and was subject to exemption analysis as per article 5 of the Act no. 4054.

There are not any efficiency gains which are peculiar to BKM's offering this service and which cannot otherwise be obtained. In this sense, efficiency gains are not provided as per article 5 of the Act no. 4054.

In addition to this observation, it was concluded that there are not any consumer benefits, so the condition listed under subparagraph (b) is not fulfilled.

For offering card data storage services under BKM, banking infrastructure will be used; however, other payment institutions offering the same services cannot create a similar integration. As a result, competition will be distorted in a significant part of the market. If banks offer this service under BKM's body, this will decrease the incentives for offering those services independently, which will negatively affect active competition and variety in the market. Therefore, the notified service did not fulfill the condition under article 5(1)(c) of the Act no. 4054.

BKM would restrict competition more than necessary by offering card data storage services. Card data storage service would affect directly and distort competition between both BKM and payment institutions and banks and payment institutions. Moreover it would affect BKM's and its partner banks' competitive potential. In this sense, banks would complicate payment institutions' activities through BKM. Likewise, regarding that some of BKM partner banks are already offering this service and potentially all banks could offer it; BKM's offering this service created competition concerns. If banks did not offer this service directly and put BKM as a player in the market, it would be risky. Therefore, it means that the condition in article 5(1)(d) would not be met.

- **Conclusion:** Taking into account all of the evaluations above, BKM's card storage service would not meet exemption conditions under the scope of article 5 of the Act no. 4054; thus, it is not possible to grant exemption to the said practice.

2.2. Mergers and Acquisitions

2.2.1. Summary of significant cases- Example from the decisions on merger/acquisitions

Dosu Maya Mayacılık A.Ş. - Lesaffre et Compagnie Acquisition, Final (Phase-II) Exemption [decision date: 31.05.2018, decision number: 18-17/316-156]

The Phase II investigation in question is conducted within the framework of the re-evaluation of the file upon the annulment of the Board decision dated 15.12.2014 and numbered 14-52/903-411 concerning the acquisition of full control over Dosu Maya Mayacılık A.Ş. (DOSU MAYA), previously under the control of Yıldız Holding A.Ş. (ÜLKER GRUBU) by Lesaffre et Compagnie (LESAFRRE), by the 8th Administrative Court of Ankara with its decision dated 19.01.2017 and numbered 2015/2488 E. 2017/172 K.

- **Relevant Market** (product; geographic): “fresh yeast”, “dry yeast”; Turkey;
- **Findings:** The transaction under examination would have limited effect in the bread additives and dry yeast markets where there was horizontal overlap between the operations of the parties, precluding any competitive concerns in these markets under Article 7 of the Act no 4054. However, concerning another market affected by the transaction, i.e. the fresh yeast market, a detailed analysis was conducted to see whether a dominant position would arise following the transaction, particularly in light of the rise in concentration the acquisition would cause, the risk of price increases, and the current coordination-facilitating structure of the market.

The analysis first examined the market shares of the four undertakings operating in the fresh yeast market for the year 2013 in order to calculate the concentration. In that context, it was observed that the joint undertaking comprised of LESEFFRE's Turkish subsidiary Öz Maya Sanayi A.Ş. (ÖZ MAYA) and DOSU MAYA would reach a market share that is above that of the current market leader Pak Gıda Üretim ve Pazarlama A.Ş. (PAKMAYA) and win the first place.

In terms of capacity, the merged undertaking would have around half of the established capacity in the market. The decision also included an HHI index-based measurement of the concentration level, which indicated a highly-concentrated market structure where anti-competitive effects could arise. Thus, the fresh yeast market where four active undertakings including PAK MAYA, DOSU MAYA, ÖZ MAYA and Mauri Maya San. A.Ş. (MAURİ MAYA) were active before the transaction and which had the characteristics of an oligopolistic market would evolve into a much narrower oligopolistic market comprised of three players after the acquisition.

However, neither PAK MAYA, which was the market leader before the acquisition, nor the merged undertaking comprised of ÖZ MAYA and DOSU MAYA, which would become the market leader following the acquisition, would have the necessary market power to determine economic parameters such as price, supply and production independently of their rivals within the aforementioned oligopolistic market structure. Consequently, it was concluded that, similar to the situation before the transaction, there would be no undertaking in the relevant market holding single dominant position after the acquisition either.

In the decision, the concentration analysis is followed by the assessment of coordination effects. In this context, since fresh yeast is a product that is demanded frequently but in low quantities, and since there is significant communication in the market between manufacturers-distributors and distributors-bakeries, the market was found to be highly transparent. If DOSU MAYA was acquired by ÖZ MAYA, the fresh yeast market where price monitoring through distributors has become customary would witness even easier communication between competitors and would become even more open to coordination. The fact that there have been past investigations in the market in question concerning Article 4 violations support this inference.

However, the commitments undertaken by LESAFFERE aimed at ensuring that distributors act independently of manufacturers were found to be in line with the goal of eliminating any competitive concerns stemming from the merger. The commitments in question are expanded versions of the commitments introduced with the Board decision dated 15.12.2014 and numbered 14-52/903-411.

- **Conclusion:** It was decided that the notified transaction would create a dominant position or strengthen an existing dominant position under Article 7 of the Act no 4054, thus significantly decreasing competition in the relevant market, and therefore the transaction should be authorized subject to the aforementioned commitments.

Acquisition of Mardaş Marmara Deniz İşletmeciliği A.Ş. (MARDAŞ) by Arkas Holding (ARKAS) Final (Phase II) Examination [decision date: 08.05.2018, decision number: 18-14/267-129]

The decision is related to the acquisition of MARDAŞ, which operates in Ambarlı Port, by Limar Liman ve Gemi İşletmeleri A.Ş., controlled by ARKAS which carries out several activities in maritime business.

- **Relevant Markets (product; geographic): (horizontal)** “port operation services regarding container handling for hinterland traffic”, “port operation services regarding container handling for transit traffic” “temporary storage (with customs)”, “guidance and towage services” ve “Ambarlı Port peripheral services” **(vertical)** “container line carrier services” ve “shipping agency services”; Ambarlı Port with respect to Ambarlı Port peripheral services
- **Findings:** Although both economic analysis and information obtained indicated that the geographical market could be defined in a broader sense in which case MARDAŞ’s market share would be smaller, there is a risk of coordination taking into account the positions of Marport Liman İşletmeleri Tic. ve San. A.Ş. (MARPORT) and Asyaport Liman A.Ş. (ASYAPORT) in Marmara Region and North West Marmara sub-region and the fact that they are operating container lines. In addition, ASYAPORT has railway connection. Thus, it was concluded that the transaction might result in joint dominant position and coordinating effects.

Arkas Group submitted commitments that MARPORT and MARDAŞ will completely be divested in operational terms and legal terms, their functioning will be differentiated, mechanisms for sharing commercially sensitive information that is closed to competitors will not be created and MARDAŞ will not exchange information with MARPORT. It is not possible to use MARPORT’s information because of Turkish Code of Commerce and agreements between MSC Gemi Acenteliği Anonim Şirketi (MSC) and ARKAS.

There are five different undertakings in customs bonded temporary storage services market. Neither LİMAR nor ARKAS offer that service. KUMPORT has a big share among firms that make transshipment activities to Hursan Lojistik ve Dış Ticaret A.Ş. (HURSAN) and Almo Lojistik Geçici Depolama Hizm. Ltd. Şti.’ye (ALMO). Although it is possible to say that ARKAS operates in this market via MARPORT, MARPORT is a joint venture operating as an independent entity and the other party of the joint venture MSC does not carry out activities in the same geographic market. Considering the abovementioned facts, temporary storage services by ARKAS and the joint venture do not create risks of coordination and it is not possible to create or strengthen a dominant position with respect to this service.

With respect to guidance, towage and Ambarlı Port peripheral services, competition concerns are not expected.

Within the framework of the notified transaction, competition concerns arise because

- ARTER, which is under the body of Arkas Group and which will operate in the area of container terminal operation and Arkas Group’s container shipping line services are vertically related,

- Although market shares of ARKAS and MARDAS are below 25% threshold, depending on market structure and competitive concerns revealed at the final investigation stage suggest that input might be restricted especially for undertakings offering container shipping line operation services due to current partnership structures in the market,
- If undertakings face with discrimination while buying services from a port operated by their competitors ARKAS LINE, alternative ports will be operated by Arkas Group and its partners (except KUMPORT). On the other hand, Arkas Group suggested remedies against those concerns. In this sense, considering Arkas Group's market share and commitments given, the merged entity will not be able to restrict its current competitors operating in the downstream market for container shipping line operating or new entrants from accessing to container handling services.

In the market for container handling services, it will not be possible to restrict customers taking into account buyer power and the fact that current operators will continue to operate in case of operational mergers. Within this framework, it was concluded that the transaction would not create foreclosure effects with respect to customers taking into account relatively low market share of ARKAS Group in container transport market and intense competition.

With respect to vertical effects, anti-competitive coordination risks are also evaluated. It was concluded that commitments submitted by Arkas Group concerning the realization of relevant organizations would stop information flow within Arkas Group so its competitors will not be able to reach price, technology and other important non-price information. In addition, the principles for implementing commitments were clear.

- **Conclusion:** It was decided that the the notified transaction would not result in creating a dominant position or strengthening an existing dominant position with respect to article 7 of the Act no 4054 and thus significant lessening of competition, therefore it would be authorized within the framework of the commitments registered dated 14.07.2017 and numbered 5086 and dated 18.12.2017 and numbered 9220.

2.3. Opinions

TCA has provided various opinions concerning implementation or amendments in legislation in 2018, in accordance with Articles 27(g) and 30(f) of the Competition Act³. The total number of opinions send to government bodies in 2018 was 16 Out of 16 opinion requests, 11 of them were about a specific sector and the rest were general opinion requests. Three of the sectoral opinions sent were for information and communication technology sector, three were for otomotive sector. Other opinions were about fair organisations, waste management, finance, hygiene services and retail sectors.

³ Article 27(g) empowers the Competition Board to opine, directly or upon the request of the Ministry of Trade, concerning the amendments to be made to the legislation with regard to the competition law whereas Article 30(f) empowers the Presidency of the TCA to opine about decisions to be taken as to the competition policy, and the relevant legislation.

3. Resources of the TCA

3.1. Resources overall

3.1.1. Annual budget (in TL and USD)

Revenues of the TCA are determined by the Competition Act as follows in Article 39. According to this article, revenues of the TCA set up the budget of the TCA, and they are made up of the following items of revenues:

- The subsidy to be allocated in the budget of the Ministry of Trade,
- Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the remaining portion in case of capital increase,
- Publication and other revenues.

Revenues belonging to the TCA are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank.

The spending budget of the TCA in year 2018 was 96.190.000 million TL, approximately 2 million USD⁴.

Moreover, although it is provided for in Article 39 of the Competition Act, there has not been a subsidy in the budget of the Ministry of Trade and the TCA has not taken any aid from the general budget transfer scheme since its establishment in 1997.

3.1.2. Number of employees (as of 31 December 2018)

- Non-administrative competition staff: 150
- All staff combined: 360

3.2. Human resources (person-years) applied to: Enforcement against anticompetitive practices, Merger review and enforcement; Advocacy efforts.

TCA was not structured as to assign staff with respect to competition enforcement activities. Rather the staff is divided into five main enforcement departments which are assigned sectoral areas. Any merger filings or antitrust infringement complaints regarding a sector are delivered to the head of the department assigned to that sector. Then the department head distributes cases to competition NAC staff for analysis. There is also NAC Staff employed in External Relations, Training and Competition Advocacy; Information Management, Strategy Development; Decisions and Legal Departments.

3.3. Period covered by the above information:

- Year of 2018

⁴ The annual average exchange rate for 2018 was used.

Annex: Statistical Information for the Year 2018

Table 1. Files Concluded

Year	Anti-competitive (Art.4) and Abuse of Dominance (Art.6)	Agreements	Exemption/Negative Clearance	Merger/Acquisition/Joint Venture/Privatization	Total
2016	83		33	209	325
2017	80		32	184	296
2018	88		44	223	355

Table 2. Files Concluded Under the Scope of Articles 4 and 6 of the Competition Act

Year	Article 4	Article 6	Mixed (4 and 6)	Mixed (4,6 and 7)	Total
2016	41	29	13	-	83
2017	37	29	13	1	80
2018	46	23	19	-	88

Table 3. Horizontal and Vertical Agreements Examined under the Scope of Article 4 of the Competition Act

Year	Horizontal	Vertical	Together (H/V)	Total
2016	26	28	-	54
2017	36	15	-	51
2018	36	28	1	65

Table 4. Results of the Applications Regarding Exemption and Negative Clearance

		2016	2017	2018
Concluded Negative Clearance Files	Applications that are granted Negative Clearance	8	3	9
	Applications that are granted Negative Clearance with Conditions	1	-	
	Applications that are not Granted Negative Clearance			
	Cases including Agreements that are granted individual exemption	10	19	18
	Cases including Agreements that are not Granted Exemption and Required Corrections	-	-	-
Concluded Exemption Files	Cases including Agreements that are Under The Scope of Block Exemption	2	3	-
	Cases including Agreements that are Granted Individual Exemption with Conditions	4	3	3
	Cases including Agreements that are under the scope of Block Exemption after conditions	-	-	3
	Cases including Agreements that are not granted exemption	3	2	4
	Cases including Agreements from which exemption was withdrawn	-	1	-
	Cases including Agreements where individual and block exemption were evaluated together	3	1	4

Table 5. Number of Merger and Acquisition Decisions

Year	Merger	Acquisition	Joint Venture	Privatization	Total
2016	7	161	32	9	209
2017	6	141	32	5	184
2018	2	152	56	13	223

Table 6. Results of Merger and Acquisition Notifications

Year	Cleared	Cleared Under Conditions	Blocked	Out of scope (not satisfying the thresholds)
2016	177	-	-	31
2017	150	2	1	30
2018	201	4	-	18

Table 7. Fines Imposed⁵ (TL)

	Year	Anti-competitive Agreements and Abuse of Dominance	Merger/Acquisition	Exemption/Negative Clearance	Other	Total
Fines related to substance	2016	186,435,909	-	-	-	186.435.909
	2017	199,430,270	-	-	-	199.430.270
	2018	349,374,235	-	-	-	349,374,235
Fines imposed on executives	2016	-	-	-	-	-
	2017	-	-	-	-	-
	2018	-	-	-	-	-
False or misleading information in an application	2016	-	-	-	-	-
	2017	-	-	-	-	-
	2018	-	320,376	-	320,376	-
False or misleading information given during on the spot inspections	2016	7,551,954	-	-	-	7.551.954
	2017	-	-	-	36,754	36.754
	2018	-	-	-	-	-
Finalizing a transaction without permission of the Competition Board/Failure to notify within due date	2016	-	31,236	-	-	31.236
	2017	-	-	-	-	-
	2018	-	-	-	-	-
Incompliance with the decision of the	2016	-	-	-	-	-
	2017	-	-	-	-	-

⁵ The table does not reflect new fines in the files annulled by the Council of State, the high administrative court.

Competition Board related to Article 9	2018	-	-	-	-	-
	2016	-	-	-	-	-
Hindrance of on the spot inspection	2017	3,120,137	-	-	3,120,137	3.225.409
	2018	332,634			332,634	

Table 8. Judicial Review⁶ Statistics According to Result

Year	Number of Court Judgments	Number of Favorable Judgments	Number of Unfavorable Judgments	Other ⁷	Unfavorable/Total
2016	89	67	15	7	17%
2017	131	115	9	7	7%
2018	97	71	14	12	14%

⁶ According to Article 55 of the Competition Act “Suits shall be filed against administrative sanctions before the competent administrative courts. All types of suits filed against Board decisions shall be deemed a priority matter”. Prior to 2012 the (only) appeal court for Competition Board’s decisions was Court of State, the amendment in 2012 determines administrative courts in Ankara as the first instance court.

⁷ The “Other” heading contains the judgments which were accepted as non-filed, dismissals of petitions, dismissals on the ground of competence, partial acceptance and partial dismissal cases, and the cases where the court did not make a ruling due to abandonment of action or other reasons are collected under the “Other” heading.