

## Quarterly Competition Law Bulletin - 2024 Second Quarter

July 2024

Amendments on Law No. 4054 on the Protection of Competition (the "Competition Law") entered into force on 29 May 2024 with Law No. 7511 on the Amendment to the Turkish Commercial Code and Certain Other Laws (the "Amendment Law"). Accordingly, the investigation procedure of the Turkish Competition Authority (the "TCA") has changed.

Prior to the Amendment Law, TCA's case handlers prepared three different documents in the investigation stage in response to the investigated parties' written defenses, namely, the investigation notice, the investigation report and the additional written opinion. The investigated parties submitted their first, second and third written defenses in response to these documents.

However, the Amendment Law (i) removed the investigated parties' obligation to submit a first written defense upon receipt of the investigation notice, (ii) limited the case handlers' obligation to prepare an additional written opinion only to cases where their assessment in the investigation report changes, and (iii) removed the possibility to extend the legal period to issue an additional written opinion (for the case handlers) and to request time extension to submit the third written defense (for the investigated parties). Accordingly, the Amendment Law aims to shorten the investigation process. Birol Küle, the President of the TCA, also emphasized that the Amendment Law aims to increase efficiency during the investigation stages.<sup>1</sup>

During the second quarter, the TCA officials participated to the "Symposium on Competition in the Labor Market" hosted by Boğaziçi University on 7 May 2024, which concerned the competition law practices in the labor market, a topic closely scrutinized by the TCA during the last few years. At the Symposium, the guest speakers from the TCA emphasized the TCA's ongoing efforts to prepare a guideline governing the competition infringements in the labor market and discussed the Competition Board's (the "Board") recent decisions on labor markets.

The Board's decisions in the second quarter of 2024 also indicate that the Board will continue to investigate the labor market. For example, during this period, the Board determined that five French high schools in Istanbul entered into anti-competitive agreements regarding the student enrollment fees and the Turkish teachers' salaries. Accordingly, the Board imposed an administrative fine amounting to approximately TRY 21.3 million on these French high schools. The Board also recently imposed administrative fines of TRY 184.4 million and TRY 33.3 million respectively on competitors Abdi İbrahim İlaç Sanayi ve Ticaret Anonim Şirketi and GlaxoSmithKline İlaçları Sanayi ve Ticaret Anonim Şirketi, for entering into a gentlemen's agreement not to hire each other's employees.

Other important developments in the field of competition law and the Board's significant decisions rendered in this quarter are summarized below.

### 1. Investigation Against Apple

On 12 April 2023, the TCA had announced that it initiated a sector inquiry to analyze the mobile ecosystems' anti-competitive effects

and establish effective policies.<sup>2</sup> In its sector inquiry, the TCA reviewed the contracts between Apple Inc., Apple Teknoloji ve Satış Limited Şirketi (together as "Apple") and application developers, as well as Apple's App Review Guidelines. Accordingly, on 6 June 2024,

<sup>1</sup> Please visit the following press release available in Turkish to access the relevant announcement: <https://www.trthaber.com/haber/ekonomi/rekabet-sorusturmalarina-sure-ayari-geldi-864330.html>

<sup>2</sup> Please visit the following link to access the announcement regarding the sector inquiry: <https://www.rekabet.gov.tr/en/Guncel/sector-inquiry-concerning-mobile-ecosyst-72e1a61afed9ed118eb1005056850339>

the Board announced that it launched an investigation to determine whether Apple abused its dominant position by not offering alternative payment systems in the App Store and imposing anti-steering provisions on mobile application developers.<sup>3</sup>

The investigation will examine whether Apple (i) restricts consumers' access to lower priced alternatives by limiting information on alternative payment channels, (ii) eliminates application developers' freedom to use alternative payment channels by obliging them to use its own payment system in the App Store, and (iii) prevents other payment systems from entering the Apple ecosystem.

Apple's investigated practices were recently scrutinized in many other countries, particularly in the European Union. Accordingly, on 24 June 2024, the European Commission notified Apple of its preliminary view that it breached the Digital Markets Act (DMA) on the grounds that the App Store's current system prevents app developers from freely steering their users (consumers) to alternative channels in terms of price offers and content. The Board's investigation remarks that gatekeepers' practices that may infringe the DMA, may also be examined in Türkiye under the Competition Law.

## 2. Daily Fine on Google for Failure to Fulfill Obligations

In April 2021, the Board decided that the economic entity consisting of Google Reklamcılık ve Pazarlama Limited Şirketi, Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc. (together as "Google") abused its dominant position by (i) favoring its own local search and accommodation price comparison services (Local Unit and Google Hotel Ads-GHA) over its competitors' in its general search results page and (ii) excluding competing local search websites from Google's display areas.<sup>4</sup> Consequently, the Board imposed an administrative fine of approximately TRY 296 million on Google and stipulated several obligations on Google to ensure that competing local search and accommodation price comparison services are not disadvantaged in Google's general search results page.

Following its review of Google's proposed remedies regarding its new designs for local search services, on 21 March 2024, the Board decided to implement the relevant measures and monitor their implementation for three months. However, on 16 May 2024, the Board announced that Google did not implement the new designs regarding local search services for hotel search queries, and thus Google did not fulfill its obligations submitted to the TCA.<sup>5</sup> Therefore, the Board decided to impose a daily administrative fine of 0.05% over Google's turnover, starting from 15 April 2024 until the fulfillment of the relevant obligations.

Approximately 35 days after its decision, the Board determined that Google implemented the new designs regarding local search services for hotel search queries and terminated the daily fine.<sup>6</sup> As a result, the Board imposed a total fine amounting to TRY 482 million on Google for failure to fulfill its obligation, which is much higher than the original fine imposed for the infringement.

## 3. Rectification of Settlement Decisions: İGSAŞ Decision

In August 2021, the Board had launched an investigation against seven companies operating in the fertilizer sector, including İstanbul Gübre Sanayi Anonim Şirketi ("İGSAŞ"), concerning the allegations that they violated Article 4 of the Competition Law by exchanging competitively sensitive information. During the investigation, İGSAŞ accepted the allegations and requested to initiate the settlement procedure. Consequently, the investigation ended with settlement for İGSAŞ and the Board imposed an administrative fine of TRY 37 million to İGSAŞ after applying a 25% settlement discount ("Settlement Decision").<sup>7</sup>

However, on 3 August 2023, the Board decided that the six other investigated undertakings, that did not make a settlement application, did not violate Article 4 of Competition Law and thus should not be imposed with administrative fines ("Final Decision").<sup>8</sup> Therefore, the Board determined that one undertaking infringed Competition Law by entering into an anti-competitive agreement, while the other investigated parties under the same investigation were not party to an anticompetitive agreement. Accordingly, upon the Final Decision, İGSAŞ requested the rectification of the Settlement Decision and the adoption of a new decision in its favor as per Article 11 of Law No. 2577 on Administrative Procedure ("Law No. 2577").

However, the Board refused İGSAŞ's request to rectify the Settlement Decision and adopt a new decision on the grounds that the administrative fine imposed in the Settlement Decision and the matters included in the settlement statement cannot be subject to legal action as per the applicable settlement regulation.<sup>9</sup> In this regard, without conducting a detailed analysis, the Board rejected İGSAŞ's request simply by stating that İGDAŞ already admitted to the infringement and settlement decisions cannot be made subject to appeal.

It is also significant that even though the case handlers suggested the Board to rectify the Settlement Decision and amend the Final Decision by stating that no administrative fine should be imposed on İGSAŞ, the Board decided that the rectification procedure provided under Article 11 of Law No. 2577 cannot be applied to this case.

## 4. Current Discussions on the Obstruction of On-Site Inspections

The number of decisions on the obstruction of on-site inspections significantly increased in recent years. The Board's established practice suggests that deleting digital documents or correspondence constitute a sufficient ground to adopt an obstruction of on-site inspection decision. However, the dissenting votes in the Board's recent decision<sup>10</sup> regarding Koyuncu Elektronik Bilgi İşlem Sistemleri Sanayi ve Dış Ticaret Anonim Şirketi ("Koyuncu") challenges this approach.

In its decision, the Board concluded that two employees obstructed the on-site inspection by deleting certain e-mails after the on-site

<sup>3</sup> Please visit the following link to access the announcement regarding the investigation: <https://www.rekabet.gov.tr/en/Guncel/investigation-on-apple-9d22e7800324ef1193cb0050568585c9>

<sup>4</sup> The Board's decision dated 8 April 2021 and numbered 21-20/248-105

<sup>5</sup> Please visit the following link to access the relevant announcement: <https://www.rekabet.gov.tr/en/Guncel/daily-fines-imposed-on-google-for-failin-3ef2c4fd8813ef1193c90050568585c9>

<sup>6</sup> Please visit the following link to access the relevant announcement: <https://www.rekabet.gov.tr/en/Guncel/the-periodic-fine-imposed-on-google-in-t-3aa86a822827ef1193cb0050568585c9>

<sup>7</sup> The Board's settlement decision dated 23 December 2021 and dated 21-63/883-432

<sup>8</sup> Please visit the following link to access the relevant announcement: <https://www.rekabet.gov.tr/tr/Guncel/gubre-sektorunde-faaliyet-gosteren-bazi-7f8727a6d132ee118ec50050568585da39>

<sup>9</sup> The Board's decision dated 31 August 2023 and numbered 23-40/763-267

<sup>10</sup> The Board's decision dated 21 August 2023 and numbered 23-45/839-295

inspection started and thus imposed an administrative fine on Koyuncu.

However, three Board members, including the President of the TCA, used dissenting vote and argued that no fine should be imposed on Koyuncu. The dissenting opinion emphasized that small-sized undertakings may panic when faced with an on-site investigation, and that the Board may examine the following matters when it assesses whether an on-site inspections have been obstructed: **(i)** the significance of the potential infringement, **(ii)** the company's size and competition law background, **(iii)** the sequence of events, **(iv)** the deleted data's content and whether it has been recovered, **(v)** the data recovery costs, and **(vi)** the context of the investigation. In this regard, the dissenting vote asserted that during on-site inspections carried out in relatively small-size companies that do not have competition law compliance programs, the case handlers should provide better explanations and cooperate with the employees to eliminate their reflex to delete data.

Although the decision does not deviate from the Board's established practice, the Board members' dissenting votes indicate that certain obstruction of on-site inspections, especially the ones carried out in small-sized companies, can be concluded in favor of the company by considering additional factors.

## CONTACT



Ali Tunçsav

[atuncsav@kolcuoglu.av.tr](mailto:atuncsav@kolcuoglu.av.tr)



Esen Çakır

[ecakir@kolcuoglu.av.tr](mailto:ecakir@kolcuoglu.av.tr)