

Turkey Amends the Law on the Protection of Competition

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The Law Amending the Law on the Protection of Competition ("**Amendment Law**") including various innovations regarding exemption regimes, the examination of merger and acquisition transactions, structural measures and examination power, *de minimis* rule, commitment and reconciliation institutions within the scope of the Law on Protection of Competition numbered 4054 ("**Law**") was published in the Official Gazette dated 24 June 2020 and numbered 31165 and entered into force the same day.

- The amendment made on the Article 5 of the Law clarified that undertakings or associations of undertakings can self-evaluate whether they meet the conditions set in the exemption provisions. The amendment also sets forth that they can apply to the Competition Authority ("**Authority**") if they have a hesitation regarding the application of exemption provisions.
- Amendment Law introduced the "test of remarkably decreasing active competition" to be implemented in the examination of the merger and acquisition transactions. Accordingly, upon the Authority's examination, Competition Board ("**Board**") can prohibit the transactions that may create a dominant position or strengthen the existing dominant position, as well as the ones that can significantly reduce competition.
- With the aim of tackling competition violations more effectively, the Amendment Law stipulates that in case the behavioral measures set in the Board decisions do not yield results, the Board can apply structural measures in the form of transferring shares or assets against the undertakings or associations of undertakings which are in violation of competition law. If it is determined by Board's final decision that the behavioral measures do not yield results, it is envisaged that at least 6 months will be given to the related undertakings or undertakings to comply with the structural measures.
- The amendment made in article 15 of the Law regulating the documents to be obtained from the undertakings or associations of undertakings, expands the Authority's examination power. The amendment states that during on-site inspections the Authority can also examine the data held in the physical and electronic media and information systems.
- In order to use public resources more efficiently, the Amendment Law states that the Board may choose not to investigate agreements, concerted actions and decisions, and actions of associations of undertakings that do not significantly restrict competition in the market, except in cases of severe and open violations among competitors. Thus, along with the Amendment Law, the *de minimis* rule has been accepted.
- Commitment and reconciliation mechanisms have been introduced with an amendment made in Article 43 of the Law. In this regard, undertakings or associations of undertakings may provide commitments to eliminate competition problems, except in cases of "*clear and severe violations such as price determination among competitors, region or customer sharing, or restriction of supply*". In this way, the Board may decide not to launch an investigation or to terminate the investigation if it is of the opinion that the commitment made may resolve the competition problems. Moreover, with the amendment introduced in the same article of the Law in order to shorten the investigation processes and reduce costs, reconciliation has been introduced. After

the start of an investigation, the Board may initiate the procedure for reconciliation at the request of the concerned parties or *ex officio*. The Board may reconcile with undertakings or associations of undertakings until service of the investigation report in case related undertakings or associations of undertakings are accepting the existence and scope of the violation. In this regard, the Board will set a certain time period for the investigated parties to submit a reconciliation letter in which they agree to the existence and scope of the violation. If the parties to the investigation reconciliation within this time period, the Board will be able to deduct up to 25% in the administrative fines it will impose. Other procedures and principles regarding the reconciliation will be determined by a regulation to be issued by the Board.

- Lastly, the Amendment Law made administrative amendments with regards to the Board staff.

Please see this [link](#) for the full text of the Amendment Law published in the Official Gazette dated 24 June 2020 and numbered 31165 and entered in the force the same day. (Only available in Turkish.)

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