

# **COMPETITION LAW**

FOR CONSUMERS

"Competition for all"

Department of External Relations, Training and
Competition Advocacy
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## INTRODUCTION

The process of competition increases the effectiveness in markets and contributes to economic development by encouraging efficiency and technical development in production. The Competition Law plays an important role in increasing social welfare by providing a healthy competition environment. The Competition Authority has been acting with the consciousness of this important responsibility that it has undertaken since its establishment by means of both the examinations it has conducted and its activities with the aim of developing competition culture in the society.

One of the important duties the Competition Authority focuses on is promoting Competition Law and increasing competition awareness in the society, which is expressed as Competition Advocacy. The authority aims at informing the business world, academic environment and consumers about Competition Law and its practices through various instruments

such as internship, education, panels and many publications it shares with the public opinion and also targets developing a social awareness about the benefits of competition.

The competition booklet we have prepared to inform our consumers about Competition Law and its practices is also a product of our Competition Advocacy activities. In preparing this publication, I'd like to acknowledge the efforts of Coordinator M. Ömür PAŞAOĞLU and Competition Expert Serap TOPALÖMER and Assistant Competition Expert Cihan BİLAÇLI, who have prepared the main text by classifying the information received from the departments and providing the necessary contributions to the Advisor of the Authority Suna Barış ÖZER who has contributed with her reviews and evaluations by revising the text and to Chief Competition Expert Neşe Nur ONUKLU who has made the final revision and reflected the current developments, last but not the least I would like to thank to all of my colleagues from the departments for their support.

We present this work to the public with the hope that it will contribute to the development of competition culture and therefore social welfare, and will be useful for all those concerned.

Prof. Dr. Ömer TORLAK

President of the Competition Authority

Competition can be defined as the race started by sellers in order to increase their sales of goods and services, thus to increase their profits by gaining more customers in a market. As an essential element of a market system that works effectively, competition also contributes to social justice and economic development.

## ■ Why Competition?

Low Price, High Quality: Firms must lower their prices and increase their product quality in order to survive in a competitive environment. All consumers benefit from price reductions and quality increase resulting from competition.

**Freedom of Choice:** A competitive environment means product range. Consumers have a chance to choose a product of a desired price or quality among many alternatives.

**Technological Development:** Firms have to develop their available products or produce new products in order to increase their market shares in a competitive environment. The existence of many products that make our lives easy is a result of this race between the firms.

**Development in Social Welfare:** Competition ensures that firms produce and invest in a way that will meet the demands and expectations of the consumer, and therefore economic sources are utilized in the best way possible. This contributes to the development of social welfare.

**Increasing Competition Power:** A well-functioning competitive environment at home contributes to the competition power in foreign markets. The existence of an economy that is growing with exportation and open to foreign markets is possible with the firms that are ready for an international competition.

**Freedom of Enterprise:** Competitive markets make it easy for new firms and technologies to enter the market. Competition is the most important assurance of the freedom of enterprise.

**Favorable Environment for SMEs:** In an economy dominated by monopolies and cartels, it very is difficult for small and medium-sized enterprises to carry out their activities and survive.

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COMPETITION IS IN EVERY PART OF OUR LIVES...

## ■ The Competition Authority

Article 167 of the Turkish Constitution places a duty and responsibility on the state to take "measures to ensure and promote the sound, orderly functioning of the money, credit, capital, goods and services markets" and to prevent "the formation, in practice or by agreement, of monopolies and cartels in the markets".

In accordance with this duty, the Act no 4054 on the Protection of Competition (Competition Act) entered into force on December 13, 1994 in order to form a legal infrastructure to control the markets. The Competition Authority, which is in charge of enforcing the Competition Law, started to operate on November 5, 1997. The chief office of the Authority is in Ankara.

The decision making body of the Authority is the Competition Board. The Board consists of one Chairman and one Deputy Chairman, 7 members in total. The decisions of the Board can be appealed before Ankara Administrative Courts and court decisions can be appealed before the Council of State.

The Competition Authority has evaluated many applications to date and concluded 236 investigations in total from the beginning of its activities in 1997 to 2015.

The amount of fines imposed as a result of those investigations on firms that committed competition infringements is approximately 2,5 billion Turkish liras totally.



# ■ When to Apply to the Competition Authority

Competitors have agreed with each other and increased the prices." "The dominant company in the market complicates my activities." "The companies advertise in a wrong and deceptive manner." "My competitor denigrates my firm and products." "Dumping is used in import products."

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The Competition Authority The Competition Authority The Ministry of Customs and Trade -Board of Advertisement or Ordinary Courts Commercial Courts The Ministry of Economy

# ■ What does the Competition Act Regulate?

There are three principal prohibitions in the Competition Act:

- Agreements, Concerted Practices and Decisions restricting Competition
- Abuse of Dominant Position
- Mergers and Acquisitions Creating a Dominant Position or Strengthening the Dominant Position



# ■ What does the Competition Authority do?

### About competition infringements;

- Evaluates the complaints and information with confidentiality.
- Carries out the necessary *examinations* about the complaints and information.
- Initiates an *investigation* about the companies if there are serious findings about an infringement.
- If a competition infringement is determined at the end of the investigation, the Authority will impose *administrative fines* on the companies.

### About mergers and acquisitions;

- It examines the processes of mergers and acquisitions of the companies with turnovers that are over specific thresholds.
- As a result of the examination, it authorizes the transaction in question or prohibits transactions that significantly restrict competitive conditions. In some cases, the Authority may authorize the transaction concerned under certain conditions.
- It evaluates and controls privatizations in terms of competition. It suggests the necessary measures for the establishment and protection of competition in markets.

# Agreements And Practices Limiting Competition

Some agreements concluded between firms may restrict competition. These agreements can be made between competitors (such as two producers of the same product) and between the companies at different levels of production and distribution chain (such as the main provider-dealers). The agreements restricting competition are considered in accordance with article 4 of the Act. It is prohibited by the Act for firms to agree and carry out the following activities:

- Price-fixing (increasing and fixing the prices, determining the minimum price, removing discounts, determining the rates of discounts and profit margin, determining standard price formulas etc.)
- *Bid rigging* (sharing tenders, determining the winner, boycotting tenders, determining offers to be given in a tender, etc.)
- Market/territory/customer allocation
- Determining the amount of production/sales
- Complicating competing firms' activities/excluding them out of the market/preventing new entries

### Some agreements may be permitted even if they restrict competition!

Within the scope of the Competition Act, an agreement is analyzed to see whether it has or it is possible in the future that it may have an object or effect of distorting, preventing or restricting competition. Even in the existence of such risks, in some cases different types of agreements between competitors such as R&D, cooperation, specialization, joint production or purchasing agreements may be authorized **under certain conditions**.

This exceptional authorization is called **exemption** and it is granted to the agreements fulfilling the requirements mentioned below.

#### Provided that;

- Economic or technological development is ensured
- Consumers may benefit from this
- Competition is not eliminated significantly or restricted duly as a result of the agreement concluded between the companies; the agreement in question may be exempted from the prohibitive provisions of the Act.

Moreover, if the companies have doubts that the agreement they have made contains anti-competitive provisions, they may apply to the Competition Authority and request an examination. If anti-competitive provisions are not found as a result of the examination, the agreement is granted **negative clearance certificate**.





#### Sample Decision: Ice Cream Decision

(The Decision dated 15.5.2008, no. 08-33/421-147)

As a result of an investigation, the Board found out that the exclusivity terms in the agreements signed by the dominant company or its distributors with points of sale and their practices causing de facto exclusivity in the industrial ice cream market prevented efficient competition in the relevant markets. In other words, it is stated that pressure or promotions by the company on the points of sale to sell only its products has eventually restricted competition as such practices blocked the entry of competing ice cream brands.

In order to establish efficient competition, the decision imposes a set of prohibitions that the company and/or its distributors should comply with in their relations with the final points of sales. According to this, the company and/or its distributors are prohibited from

- Making agreements with brand-specific points of sales that include a non-compete obligation,
- Providing any advantages to points of sale on condition that they do not sell competing products or practices that result in de facto exclusivity such as free products, discounts or quotas,
- Imposing a condition on points of sale that they should buy an amount at a rate of the sales made previous year or providing advantages depending on such conditions.

# One of Hardcore Competition

## Infringements: Cartels

Cartel is the common concept that points out agreements and/or concerted practices between competitors restricting competition such as price fixing, market allocation, restriction of supply or imposing quotas.

Cartels generally result in price increases in the market and are one of the competition infringements that have the most negative effects on consumer welfare.

Companies may decide to increase their profits together by ceasing to compete through a secret or an explicit agreement. The most common example for this is the cartels created by agreements that provide for price and quantity fixing and market allocation between firms. The reduction in production quantity or fixing prices at high levels as a result of the agreement will harm consumers. Guaranteeing the prices under an agreement, firms quit competing to improve product quality, variety or distribution facilities and harm consumers.

Price agreements may not always be in the form of fixing high prices at the first stage. Firms may agree to decrease the prices in the long run to punish those deviating from the cartel or prevent a new entry. However, this will also result in higher prices to the detriment of consumers in the short run because some of the competitors exit from or new competitors cannot enter to the market. **The consumers** are the ones who suffer from the restriction of output and price fixing at higher levels. Guaranteeing the prices with an agreement, firms may harm consumers by not making any efforts to improve product quality, variety, other sales conditions or distribution.

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### Sample Decision: East and Southeast Anatolia Cement Decision

(The decision dated 06.04.2012, no. 12-17/499-140)

In 2010, an investigation was initiated about ten cement producers operating in the East and Southeast Anatolia.

As a result of the examinations made, it was understood that the firms agreed on increasing cement prices and eventually cement prices rose in the following days.

The Board concluded in its final decision that the firms violated the Act and imposed about 50 million TL administrative fines.



### Sample Decision: Bid Rigging in the Milk Tender

(The Decision dated 26.05.2006, no. 06-36/464-126)

The Competition Authority detected that the bidders that have participated in the tender opened for supplying and distributing milk to primary schools organized by the Prime Ministry Fund for the Encouragement of Social Cooperation and Solidarity rigged bids and shared the total tender amount and price equally.

#### Information exchange between competitors may violate the Act!

Information exchange means that competitors share the commercial information which may affect their competition strategies with each other. Of course, it does not mean that every kind of information exchange violates the Act. However, communication between competitors, especially about strategic subjects, sometimes facilitates anti-competitive agreements. If this communication includes important commercial information such as price, cost, production volume, it may lead to competition infringements. Firms may exchange information directly or through organizations where they unite such as **chambers**, **associations or unions**. The fact that the communication between competitors is made indirectly does not change its status as an infringement.



### Sample Decision: Banks Decision

(The Decision dated 08.03.2013, no. 13-13/198-100)



An investigation was initiated in order to determine whether 12 banks operating in Turkey violated Article 4 of the Act no. 4054 by means of agreements and/or concerted practices on deposits, loans and credit card services.

Evidence of the communication showing that 12 banks under investigation agreed about deposits, loans and credit card services was obtained. As a result of the evaluation of that evidence, it was found that the banks under investigation carried out anticompetitive conduct by means of fixing interest rates and fees applied to banking services. Consequently, it was decided that administrative fines shall be imposed on 12 banks which were found to have violated Article 4 of the Act no 4054 in deposits, loans and credit card services.

## ■ Abuse of Dominant Position

A firm may be in a stronger position compared to its competitors in some markets. Even only a single firm may be operating in certain markets. Firms in such position generally have such a huge market power that they do not take into account the conduct of their competitors and customers. In other words, the firm has a dominant position. This market power may stem from resources that every business wishes to have, such as technological superiority, productivity, products of good quality, knowledge and skills of human resources. Therefore, being in a dominant position is not prohibited within the scope of competition law.

As the activities of such firms may produce serious results on competitive conditions on the market, conduct by those firms to eliminate competition should be prevented.

Being in a dominant position is not prohibited within the scope of competition law. What is prohibited by the competition law is abuse of dominant position.

# ■ How does a Firm Abuse its Dominant Position?

A dominant company may abuse its dominant position by means of:

- Applying different price and sales conditions to the customers holding the same position,
- Forcing its customer to buy another good or service with a good sold,
- Following a pricing policy under or too much above the costs,
- Restricting the supply of goods to its customers or competitors without reasonable grounds,
- Following a pricing policy that complicates competitors' activities,
- Using its financial or technological superiority in a market to complicate its competitors' activities in other markets (such as not selling a product on which it has a dominant position to produce/ supply, to a competitor firm that is obliged to use the product.

It should be noted that such conduct is forbidder within the scope of the Act and is subject to administrative fines.



### Sample Decision: GSM Decision

(The Decision dated 23.12.2009, no 09-60/1490-379)

The decision addressed the claims that although the company which is dominant in GSM services market declared that it ended the exclusivity relationships with the companies with which it organized campaigns in the field of mobile marketing services, it continued this relationship in the campaigns where its own bonus airtime minutes were given for free.

As a result of the examinations made, the Board found that the Company held a dominant position in the relevant product markets: "mobile marketing services market" and "GSM services market".

The Competition Board decided that the Company created de facto exclusivity by means of:

- Refusing the participation of other operators to the campaigns in which bonus airtime minutes are given,
- Preventing competing operators from giving GSM benefits, mainly bonus airtime minutes, in the campaigns in which units/ minutes are given,
- Not providing discounts for channels and scales to buyer firms in case of not working exclusively in the campaigns in which the Company give bonus airtime minutes,
- Providing discounts in return for using the Company's logo in advertising visuals

These practices shall be considered as an abuse of dominant position in accordance with Article 6 of the Act no. 4054 and an administrative fine shall be imposed on the Company.



## Mergers and Acquisitions

Companies may choose to merge with or acquire other companies in order to strengthen their position in the markets or their financial structures. This practice is quite common today and it allows companies to achieve a healthy structure, lower their costs, and improve the quality of products or services they offer, and research and develop new technologies. However, even though mergers or acquisitions may strengthen the companies, it is not possible to say that all of them would lead to pro-consumer outcomes. Some marriages between firms may lead to emergence of powerful companies which may potentially harm competition significantly. The company which attains market power as a result of the merger or acquisition would have an opportunity to raise its prices and set the prices in the marketplace. Besides, the company may lose its incentives to innovate since it no longer feels a threat from its competitors. As a result of these and similar situations, certain mergers and acquisitions could have a negative effect on consumer welfare. Consequently, the control of mergers and acquisitions is important and necessary for the protection of the competitive conditions in the markets.

Merger or an acquisition by a company that creates a dominant position or strengthens an existing dominant position and restricts competition significantly is prohibited.

It should be noted that if mergers and acquisitions subject to authorization are not notified to the Board, the Board shall impose administrative fines on the parties and may prohibit the transaction if it deems necessary.

## Privatizations

In the most general sense, privatizations may be described as those policies and practices of the government in which companies under the direct or indirect control of the public are transferred to the private sector.

Competition Act covers all companies, without regard to whether they are owned publicly or privately. As a natural consequence of this fact, transfer of public companies to the private sector is examined and monitored by the Competition Authority, just like other mergers and acquisitions.

Competition legislation concerning the privatization and acquisition transactions implemented by the Privatization Administration or other public institutions involve a two-stage assessment process. The first of these is the pre-notification process. The Competition Board examines the consequences of such a privatization on the relevant market and the post-privatization status of any legal and actual privileges held by the company to be privatized. The Board presents to the relevant public administration its suggestions for ensuring a more competitive structure in the market concerned. The tender specifications for the privatization in question are prepared in light of the opinion of the Competition Board. The second stage is the authorization stage. Following the conclusion of the tender process, Competition Board examines each file on the bidders separately and grants authorization if the situation is acceptable in terms of the competitive market structure.



### Sample Decision: Saltworks Privatization

(The Decision dated 15.05.2003, no 03-32/396-M)

In response to the pre-notification submitted by the Privatization Administration concerning the privatization of the saltworks owned by the Salt Enterprises of TEKEL as a whole, the Competition Board expressed the opinion that the three saltworks in question should be sold to separate companies.

The relevant decision took into consideration the fact that a large part of the raw salt demand of Turkey was fulfilled by 3 lake saltworks situated by the Tuz. Lake and pointed out that transferring the ownership of all of these saltworks to a single company would significantly impede competition in the raw salt market. In line with this opinion, the privatization was implemented not as a block but separately and lake saltworks were acquired by 3 separate firms. Thus, a public monopoly was not transformed into a private monopoly, which was a significant contribution to the formation of a competitive market.





# Developing Competition and Competition Culture:COMPETITION ADVOCACY

In order to protect competition, the Competition Authority conducts examinations and investigations, imposes administrative sanctions and imposes fines on those violating competition. However, another important task of the Competition Authority is to help develop competition and spread competition culture at the social level. For that purpose, the Authority conducts various activities which may be grouped under the heading of "competition advocacy". These activities may be summarized within two categories.

Cooperation and Communication with Public Institutions: On request or on its own initiative, the Authority may submit opinions to public institutions or authorities which function as competition assessments and point out public interventions that may negatively affect competition. Such opinions submitted to competent authorities are not limited to legislation work, but may also involve public disposals such as privatizations and public tenders. Protocols signed with various public institutions in order to institutionalize cooperation with public administrations are among other concrete examples of these efforts.

Cooperation and Communication with Civil Society: Organizing seminars, conferences and other training activities aimed at informing the public may be listed among the Authority's efforts of improving competition culture. Most of these activities are held in cooperation with non-governmental organizations and universities. The Competition Authority makes contributions to the development of a competition culture through its publications, as well. The Expert Thesis written by the professional staff on the front line, Annual Competition Reports and Competition Letters, Competition Law Compliance Program Guide, Competition Manual and the Competition Glossary are examples of such publications. The Authority also encourages and publishes in-house or external academic and professional studies aimed at enriching the competition literature. In order to ensure better understanding of the theoretical and practical basis of competition law by all stakeholders,

the **decisions of** the Competition Board and other works assumed by the Authority are shared with the public. The website of the Authority is being developed to ensure that our stakeholders can easily follow Board decisions and the Authority's activities.



## Opinion of the Competition Authority about the Ceiling Price Applied by Airline Companies

In the opinion submitted to the Ministry of Transport, Maritime Affairs and Communication on 2.7.2014, considering some explanations made by the Ministry of Transport, Maritime Affairs and Communication which were seen on the media at the end of 2013, the Board evaluated the issue of applying a ceiling price on domestic flight tickets according to a common decision taken by the representatives of General Directorate of Civil Aviation, Turkish Private Aviation Enterprises Association and airline companies.

It was stated in the opinion submitted by the Authority that the prices of products and services in the free market economy are determined by supply and demand, and although the government intends to protect the consumers by means of ceiling price, this may harm consumers in the long run.

In order for the ceiling price to be effective, it must be determined below the equilibrium price formed in the market. Although the ceiling price, which can be regarded as an intervention to the functioning of the free market, seems to increase the consumer benefit in the short term, it can reduce social welfare to the detriment of the consumers in the long run. It is believed that the ceiling price practice will increase



consumer benefit in the lines where ticket prices are below the ceiling price; however, in the long run, it may bear results such as the restriction of supply, failing to meet the demand and increasing prices of tickets in the lines where the prices are already lower.

Moreover, the Authority pointed out that the ceiling price may result in a loss in the quality of services provided to customers during the flight and airline companies that apply lower prices may have a tendency to increase their prices.

#### Protecting and developing competition is a social duty!

To date, many companies, professional institutions and non-governmental organizations have been the subject of Competition Board examinations and investigations, and severe administrative fines were imposed on those which infringed competition.

Imposing fines and sanctions are an important tool given to the Authority by the Act to protect and improve the competitive structure. However, there is another way which may be easier to adopt for everybody, and that is preventing infringements of competition before they happen and nipping competition problems at the bud.

In the institutionalization process of the competitive system, there are important roles to play by all citizens, public institutions, companies and non-governmental organizations. Consumers who are knowledgeable on competition legislation and practices and sensitive to infringements of competition will contribute to the establishment of a competitive structure just as much as the decisions and practices of the Competition Authority.

## ■ Frequently Asked Questions

## How Can I Inform the Competition Authority of Infringements of Competition?

All individuals and organizations may file their complaints with the Competition Authority with regard to practices which they believe involve infringements of competition. Applications made in the form of information are taken into consideration as well.

The principle is to submit applications to the Authority in writing. Applications may be send by post, or they may be submitted to the Authority in person. Applications may also be filed via other methods such as e-mail, fax and phone. Such applications shall be treated as information.

In order for the application to be processed within a short period, it is helpful that detailed information as well as any documents concerning the subject of complaint be submitted to the Authority. There are no costs incurred as charges or under any other name during any complaints or applications filed with the Competition Authority.

#### Contact:

Rekabet Kurumu Başkanlığı

Üniversiteler Mah. 1597. Cad. No:9 Bilkent 06800 / ANKARA

Phone: (312) 291 44 44

Fax: (312) 266 79 20

e-mail: rek@rekabet.gov.tr

## What are the elements that must be included in the application petition to initiate an examination in accordance with my complaint?

In order for the application to be processed, the application in writing must include the following points in addition to an examination request:

- In applications filed by natural persons, the name and surname, citizenship number, address and signature of the applicant,
- In applications filed by legal persons, commercial title/business name, address, authorized signatures list, and the signatures of those who have the authority to represent and bind the legal person

• In applications filed via representatives, the original document authorizing the representative or a duly authenticated copy thereof, the address of the representative and the natural or legal person represented, and the signature of the representative

The Authority may initiate proceedings on its own initiative concerning applications which do not meet the requirements listed above but which it deems to be of a serious nature.

In principle, no action should be taken in relation to applications which carry the formal requirements listed above, but which consist purely of abstract statements claiming that an infringement exists, which are not based on concrete information and/or documents, and which are found to have failed to establish its claims in a serious and sufficient manner. Legal action may be taken concerning those who intentionally supply false or misleading information in their applications to the Authority.

## Can I request confidentiality for my complaint/information application?

In the application, the applicant may request to stay anonymous. In such a case, the identity information of the relevant party or any other information which may lead to the disclosure of its identity will not be included in any of the correspondence made.

## I have submitted my complaint to the Competition Authority. What is going to happen now?

Information or complaints entered into the Authority records are assessed by rapporteurs. Those found to be baseless are explicitly rejected by the Competition Board or, if they do not receive a response within 60 days, the complaint is deemed to be rejected implicitly. A preliminary inquiry or investigation is launched for those applications which are found to fall under the Act and deemed to be serious by the Competition Board. Once the Board decides to conduct a preliminary inquiry, rapporteurs are tasked and those in charge prepare and present the preliminary inquiry report to the Board within the period specified in the legislation. The Board evaluates the report within the period specified in the legislation and decides either not to initiate an investigation and reject the application, or to launch an investigation. If it decides to launch an investigation, a 6-month investigation process is initiated. Where necessary, the Board may extend the period of investigation for a term specified in the legislation. At the end of this process during which the investigation report is prepared and the written-oral pleas of the parties are submitted, the Competition Board takes its final decision. The decision is published on the website at www.rekabet.gov.tr first in summary and later as a reasoned decision, and it is also notified to the parties.

### Can I appeal Competition Board decisions before courts?

Board decisions may be challenged before administrative courts. Administrative court decisions can be appealed before the Council of State.

## I suffered damages as a result of a prevention, distortion or restriction of competition. What can I do?

If you think that you were harmed as a result of an infringement of competition, the first thing you should do is to submit an application to the Competition Authority. If, as a result of the examination and investigation conducted, the Competition Board concludes that a competition violation has occurred, you can demand damages from the infringing companies by filing a suit before commercial courts in accordance with articles 57 and 58 of the Competition Act, based on the relevant Board decision.

#### Can a complaint involve unfair competition practices?

No. As known, all abuses of the right to compete through misleading or dishonest practices are characterized as "unfair competition". For instance, disparaging the products or activities of its competitors or others, giving false information concerning their ethical or financial situations, giving false or misleading information concerning its own products and activities, acting as if holding certain awards or certificates in order to affect consumer choice, trying to benefit from the fame of others by creating confusion concerning identifying names and marks such as trademarks, business names, logos and product packaging established in the market by others, acquiring, using or disclosing trade secrets of others without a justification are some of the most frequent unfair competition practices.

In such cases, applying to the Competition Authority will not lead to a solution. Problems related to this area should be addressed to Arbitration Committees for Consumer Problems, to the Ministry of Customs and Trade, and to judicial justice.

## Does the Competition Authority deal with complaints related to advertisements?

Misleading consumers or creating unfair competition by advertisements is not under the scope of the Act No. 4054. Those are fundamentally assessed under the Code of Commerce and the Act No. 4077 on the Protection of Consumers and related legislation. Within this framework, complaints regarding advertisements should be submitted to judicial organs such as courts as well as to Arbitration Committees for Consumers and the Advertisement Board of the Ministry of Customs and Trade.

www.rekabet.gov.tr