



Turkish Competition Authority

**REKABET  
KURUMU**

**ANNUAL REPORT  
2020**



# ANNUAL REPORT 2020

## TURKISH COMPETITION AUTHORITY

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Yayın No: 367

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Ankara, March 2021

### Design and Print

Tek Ses Ofset Matbaacılık Yayıncılık Org. San. ve Tic. Ltd. Şti.  
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# COMPETITION BOARD





### Members of the Competition Board (Left to Right)

Board Member : Hasan Hüseyin ÜNLÜ

Deputy Chairman : Arslan NARİN

Chairman : Birol KÜLE

Board Member : Şükran KODALAK

Board Member : Ahmet ALGAN

Board Member : Ayşe ERGEZEN

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**Birol KÜLE**  
Chairman of the Competition Board

## FOREWORD BY THE CHAIRMAN

Last year we experienced a challenging period, where fight against Covid-19 crisis, which turned into a global health crisis in a short time after it first appeared, as you all know, became the first priority of all societies and which was compared with the depression era and World War II due to the uncertainty and recession in economic activities.

Without doubt, an important part of this challenging period was increasing institutional efforts to protect the

confidence in markets and the relation between competition, dynamism and welfare. In this framework, Turkish Competition Authority has been following all markets closely, evaluated complaints submitted by consumers and other market players quickly, intervened to failures in time, and used legal measures and competition advocacy tools in order to ensure healthy functioning of markets. The best aspect of social challenges is that it is a good teacher. During this period, Turkish Competition Authority has worked at its highest performance, with its entire personnel without considering the working hours, in all fields and improved markets as well as competition law. The Authority has also increased its capacity to manage the possible challenges and risks with minimum harm.

The sectors that the Authority has mainly focused are organized retail, e-trade, food, house cleaning products and personal hygiene products such as medical and protective masks, hand disinfectants that were highly demanded during the outbreak. On the other hand, the Authority did not suspend its activities and continued to take decisions regarding preliminary inquiries, mergers/acquisitions and exemption applications without disruptions. The most important development with respect to efficient competition enforcement last year was primary and secondary regulation reforms. Also, the Authority continued its sector inquiries, being aware of the fact that efficient markets cannot be achieved only through legal sanctions. The Authority shared “the Preliminary Report regarding FMCG Retail Sector Inquiry” to contribute to the ongoing retail trade legislation work. Besides the final report of the said sector inquiry, we are going to share with the public e-trade, digitalization and fresh vegetable and food sector inquiries in the first half of this year in order to contribute to social welfare with well-functioning markets.

After mentioning a general picture of last year, when we take a closer look to our activities, the Act no 7246 making comprehensive amendments to the Act no 4054 on the Protection of Competition to adapt the competition law to economic and technological developments and harmonize with the European Union enforcement was published in the Official Gazette dated 24 June 2020 and numbered 31165 and entered into force. The most important legal tools and mechanisms brought to the competition law regime in our country are commitment, settlement and de minimis procedures. Secondary legislation efforts related to those procedures which aim to allocate the resources to the fields where

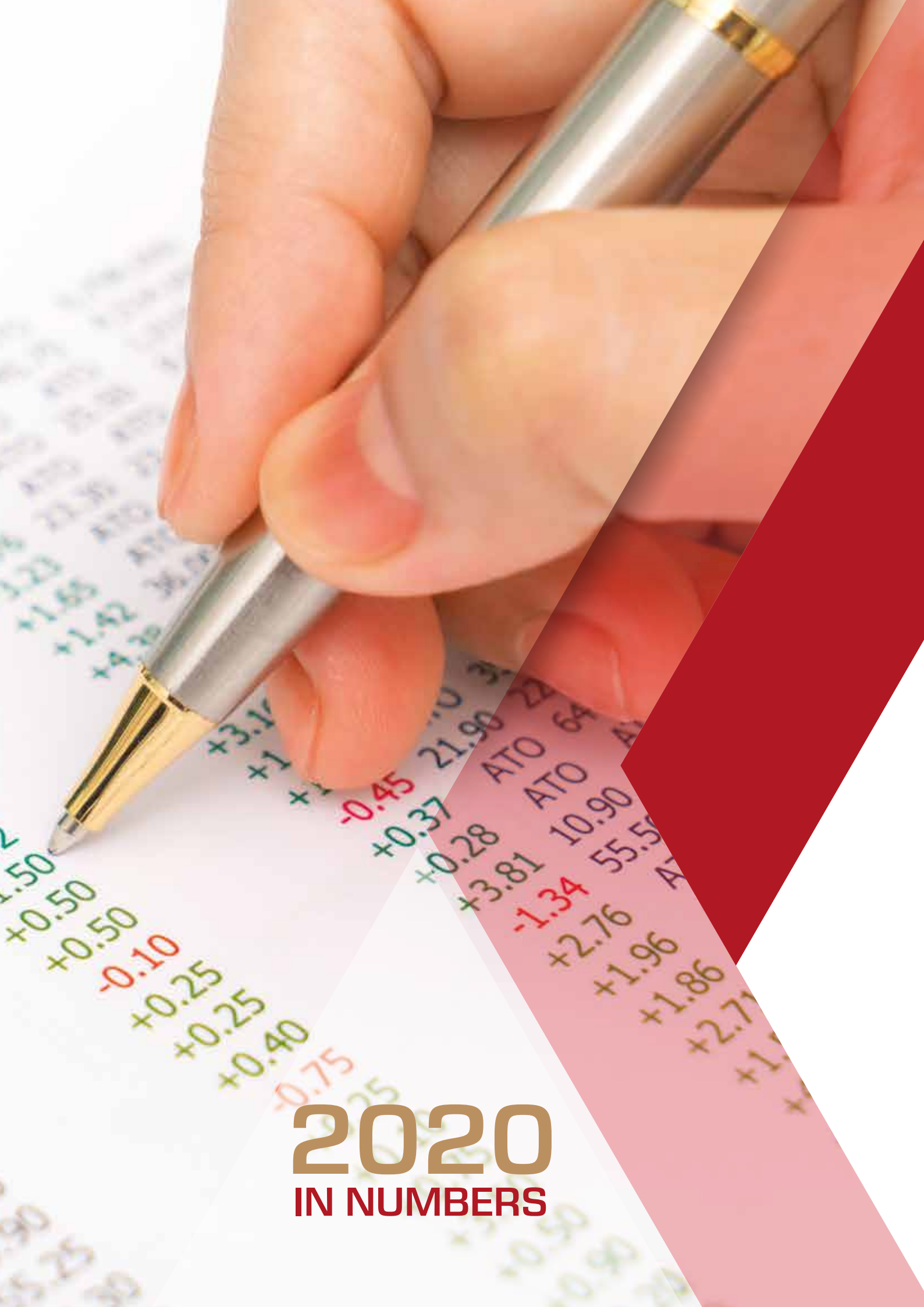
it is possible to get the highest return and to eliminate possible violations and market failures as quickly as possible in the most efficient way, are ongoing with a participatory approach. Another important component of our legal reform was the amendment made in order to test competition law risks in mergers/acquisitions with predictability and completely. An approach to test whether unilateral and/or coordinating effects might distort competition before becoming dominant in the relevant markets was brought to our regime. The regulation for powers regarding digital evidence, a critical issue for detecting and correction of possible violations, was completed last year.

When we look at Competition Board Decisions briefly, 319 files were concluded totally. The breakdown of the files according to their subjects is as follows: 65 competition violation files, 34 exemption/negative clearance applications, and 220 merger/acquisition/joint venture/privatization files. Compared to 2019, the number of competition violations fell from 69 to 65, the number of negative clearance/exemption files decreased from 35 to 34 whereas the number of merger/acquisition/joint venture/privatization files rose from 208 to 220.

The most investigated sectors in 2020 are chemistry and mining; machinery industry; logistics, storage and mail, health care services and IT and platform services. The share of those five main sectors in investigation files concluded by the Competition Board in 2020 is about 59%.

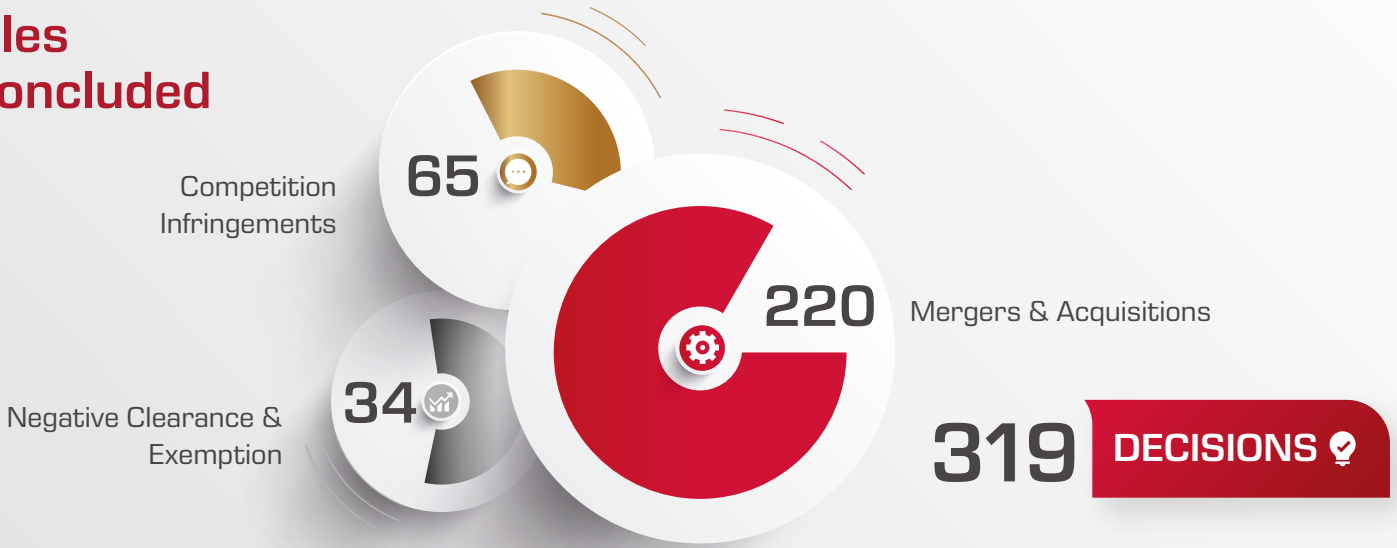
Within the scope of the files concluded in 2020, totally, 1.964.045.143 TL administrative fines were imposed to undertakings due to competition infringements according to paragraph three of article 16 of the Act. Out of those fines, 1.656.837.739 TL were imposed due to violation of article 4 of the Act and 307.207.404 TL were imposed due to violation of article 6 of the Act. Moreover, in 2020, 61.468.770 TL administrative fines were imposed due to giving false or misleading information upon information request and/or during on-site inspection, according to article 16(1)(c) of the Act and 2.550.980 TL administrative fines were imposed due to hindrance of on-site inspection, according to article 16(1)(d) of the Act; totally 64.019.750 TL administrative fines were imposed.

I would like to assure all our shareholders - especially the consumers - that we are making our utmost efforts to ensure that markets are functioning without sacrificing social welfare not only in ordinary times but also in times when we face risks and difficulties in all areas of our lives and I would like to emphasize that we will shed light upon the future with our activities in 2021 and walk towards positive global developments strongly.



# 2020 IN NUMBERS

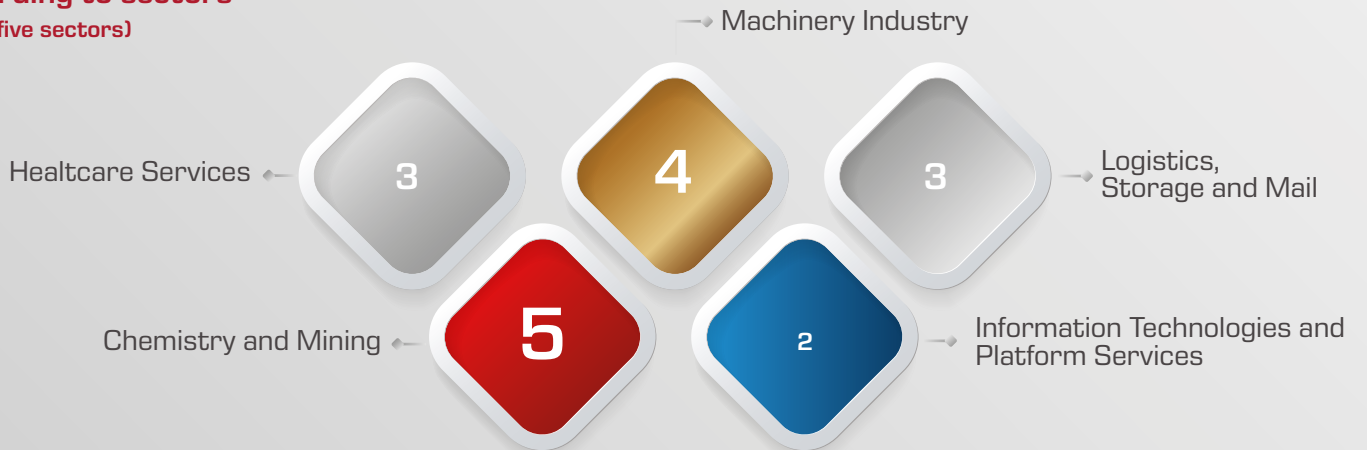
## Files Concluded



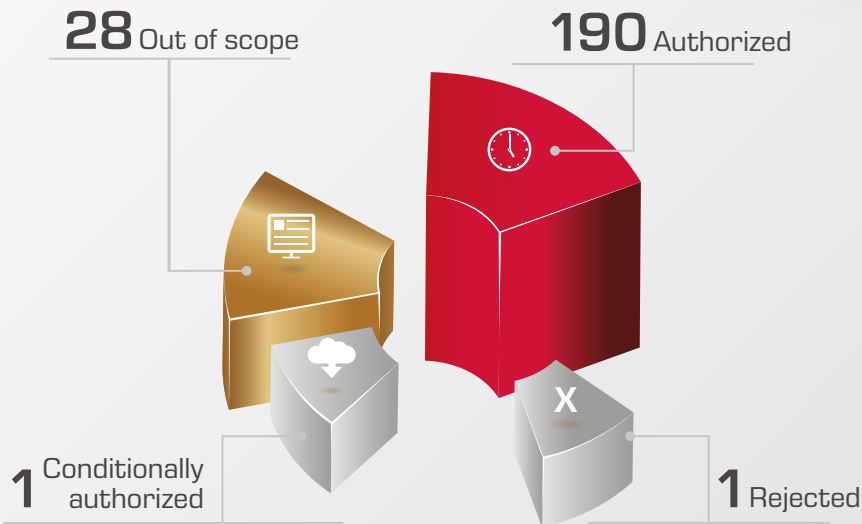
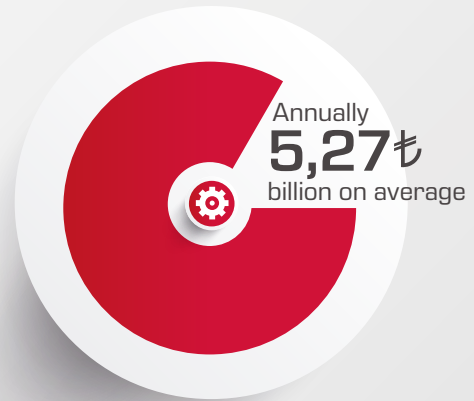
## Investigations



### Breakdown of the investigations according to sectors (First five sectors)



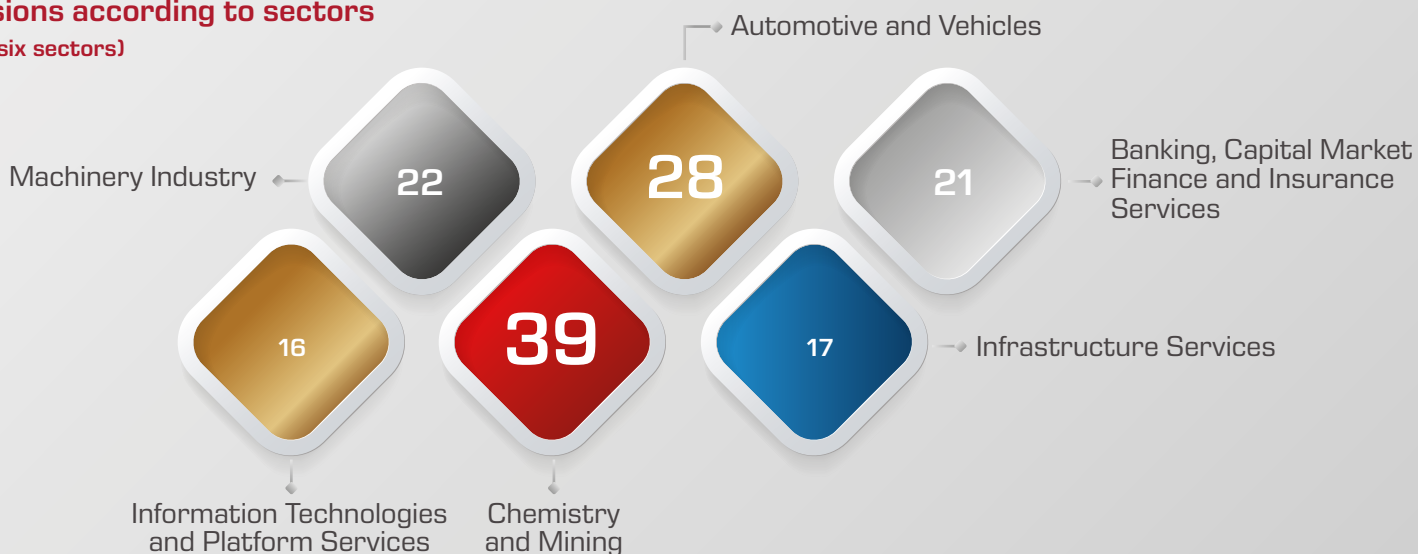
Estimated Contribution of the Decisions in 2019-2020  
**To Consumer Welfare**



**Mergers & Acquisitions**

**220** NOTIFIED TRANSACTIONS

**Breakdown of merger and acquisition decisions according to sectors**  
(First six sectors)







# GENERAL INFORMATION

### 1. GENERAL INFORMATION

Article 167 of the Constitution of the Republic of Turkey 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”, “prevent the formation, in practice or by agreement, of monopolies and cartels in the markets.” Depending on this Constitutional basis, the Act no 4054 on the Protection of Competition (the Act no 4054) was put into effect on 13.12.1994 to serve firstly the growth of consumer welfare and public welfare by establishing, protecting and improving a competitive market order based on economic efficiency. The Competition Authority (the Authority) started to work on 05.11.1997 after completing its organization within the framework of the Act.

It is necessary to review the competition law legislation constantly taking into account the dynamism of economic life, knowledge and experience gained in enforcement process as well as the developments in the world and especially in the European Union (EU). Within this framework, amendments have been made to the Act No 4054 in 2003, 2004, 2005, 2006, 2008, 2011, 2012, 2018 and 2020 in 26 years since it was put into effect. In addition, the Competition Board (the Board) has issued many secondary regulations related to the implementation of the Act and amended existing secondary regulations.

### 1.1. Mission and Vision

The mission of the Authority is to prevent monopolization and cartelization, to increase consumer welfare, to contribute to the well functioning of the market mechanism, to contribute to the improvement of international competition power and to ensure that investment environment functions in a sound way by decreasing entry barriers.

In line with this mission, the Competition Authority has the following purposes:

- Monitoring, regulating and supervising markets to prevent agreements restricting competition, abuse of dominant position as well as mergers and acquisitions that will significantly decrease competition,
- Promoting competition culture and making necessary disposals to ensure that public decisions and actions are made according to competitive understanding,
- Making researches related to competition law, competition economy and competition policy, developing policies and contributing to macroeconomic policies with respect to competition law.

The Authority is responsible for carrying out activities related to regulation, supervision, competition advocacy and policy making in order to accomplish those purposes.

The future vision of the Authority is to be an institution which supports sustainable growth and development, takes innovation, diversity, productivity and quality to the highest level, promotes widespread competition culture, establishes a well functioning competitive environment, makes intellectual, economic and administrative contributions in this scope and is effective in international platforms.

## 1.2. The Importance of the Competition Authority for the Economy of the Country

Competition has a strategic and central position with respect to the effective functioning of market economy. Competition authorities play an important role in mitigating negative effects created by unexpected supply and demand shocks such as Covid-19 outbreak. Competition helps stable distribution of fundamental goods within the country. While shocks driven by an outbreak, unfavorable weather conditions or conflicts break the supply chain, the risk of being subject to interruptions or price shocks is lower in competitive economies. As seen in the

health sector during the pandemic, thanks to the role of competition in promoting innovation and product variety, consumers have been affected less from supply and demand shocks. During Covid-19 period, financial policies implemented by the governments to increase total demand have produced more efficient results in economies with competitive markets. Competition authorities' advocacy role plays an important role in minimizing the negative effects of bail out packages on market structure.



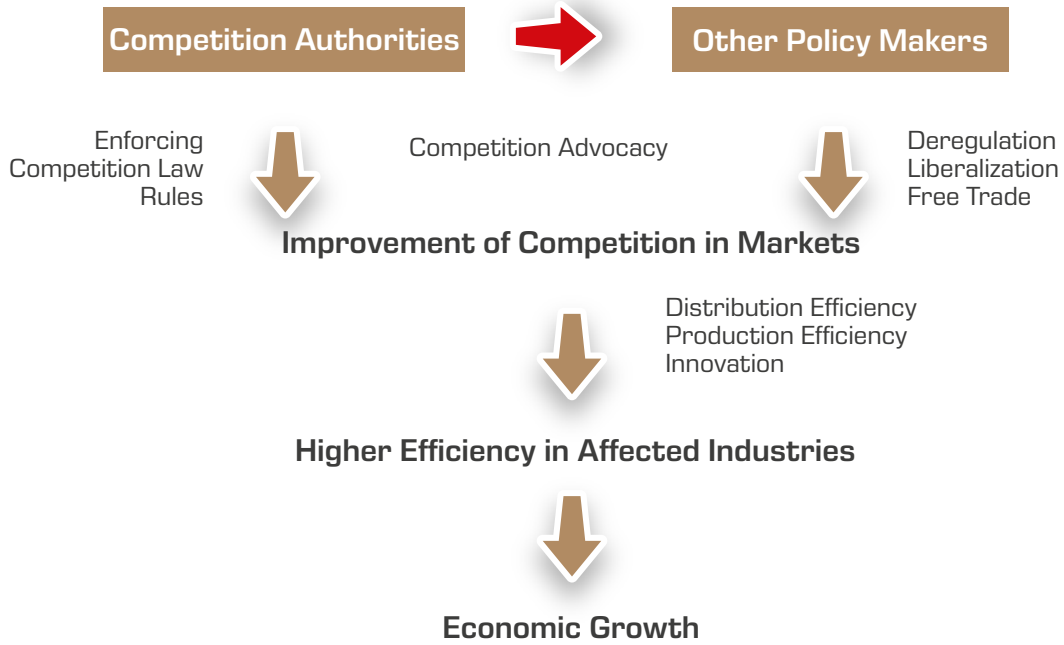
### Economic Growth

Competition authorities contribute to the development of competition in markets by means of their fundamental duty that is enforcing competition law rules and besides by eliminating barriers in front of liberal market and economic freedom through competition advocacy. In this way, those authorities prevent cartelization and monopolization and ensure that markets work for consumer welfare. The priority of the firms in markets under the guarantee of competition law is to meet consumer demand more efficiently at lower prices and with higher quality. In such environment, R&D, innovation and innovative products are important parameters of the race between

firms. As a result, market efficiency will be higher. In turn, higher efficiency contributes to increasing national competitive power, economic growth and thus public welfare. Competition authorities have an important role by means of complementing other economic policies with their function of supervising markets. Indeed, it is important that cartels and monopolies should not dominate markets so that the decisions taken by the government related to finance or monetary policies can create effective results and ensure that national economy grows in a healthy way. Figure 1 summarizes the contribution of competition authorities to economic growth.<sup>1</sup>

<sup>1</sup> OECD (2014), "Factsheet on How Competition Policy Effects Micro-economic Outcomes", p. 2.

**Figure 1: The Contribution of Competition Authorities to Economic Growth**



**Indirect Contribution to Price Stability**

Competition authorities contribute to price stability indirectly by means of improving competition in markets. Those contributions may be categorized into two: First, protecting the competition in markets helps preventing price destabilization by ensuring lower price levels in medium and long term. Preventing cartels and similar structures as well as dominant undertakings hindering competition in the market and controlling mergers and acquisitions that will lead to monopolies can be considered as the

contributions in this context. Second category is the effects whose results can be observed in a short time by means of implementing the competition law rules directly. For instance detecting and terminating illegal behavior such as increasing prices artificially via agreements between competitors, preventing new entries to the market and preventing lower prices through resale price maintenance are indirect contributions by competition authorities with respect to price stability.



### Increase in Foreign Investment

One of the factors that investors take into account is the existence of a competition authority which applies competition law rules effectively because this assures investors that public institutions in the

relevant country provide all undertakings in the market with equal opportunities and do not favor local undertakings. Thus, this makes indirect contributions to foreign investment.



### Indirect Contribution to Fair Income Distribution

It is accepted that anticompetitive practices have negative effects on income distribution and markets where competition rules are not functioning efficiently may cause inequalities in welfare distribution. While anticompetitive practices affect many people, those who carry out those practices and gain benefits from a cartel

or a monopoly are a small group. Moreover, higher prices and lower quality products caused by anticompetitive practices affect low-income section of the society the most. Thus, preventing anticompetitive practices contributes indirectly to fairer income distribution especially through hindering unfair welfare transfers.



### Increase in International Competitive Power

As a result of economic and technological developments in the last century, production facilities have improved, communication and transportation tools have advanced and become cheaper; consequently, trade activities have gone beyond national borders. Therefore, undertakings compete with not only undertakings within the borders of a country but also those who carry out activities in international markets. In line with this, international competitiveness

has gained importance for undertakings and countries. It is vital to have an efficient and well-functioning competitive market to promote international competitiveness. Competitive markets motivate undertakings to work more efficiently and productively thus increase undertakings' potential to compete with international rivals and contribute to the country's international competitive power.

### 1.3. Work Principles

The Authority takes into account certain its institutional purposes determined by fundamental values while fulfilling its principal the Act and pays attention to reflect those functions and duties granted according to directly to its work and transactions.



## 1.4. Duties, Powers and Responsibilities

The aim of the Act no 4054 is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end. It is possible to categorize the provisions laid down in the Act for reaching this aim under three main topics:

- Provisions related to agreements, concerted practices and decisions preventing, distorting or restricting competition between undertakings operating in or effecting the markets for goods and services within the borders of the Republic of Turkey,
- Provisions related to abuse of dominance by undertakings dominant in markets,
- Provisions related to any legal transactions or conduct constituting a merger or an acquisition to create dominant position or strengthen an existing dominant position which would result in significant lessening of competition.

The abovementioned provisions constitute the basic framework of the Act no 4054. The Act applies to both public and private enterprises without any discrimination. Besides, there is not a distinction according to sectors in the Act. Thus, anticompetitive conduct by all undertakings and associations of undertakings in any market for goods and services fall under the scope of the Act.

According to article 20 of the Act, the Authority was founded in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment, to observe the implementation of the Act, and to fulfill the duties assigned to it by the Act. Within this framework, the main duty of the Authority is to prevent threats to competitive process in markets for goods and services by using its powers granted by the Act.

Another duty, competitive advocacy, is very important in terms of recovering market failures stemming from regulations, actions or transactions especially by other public institutions. Regarding competition advocacy duty, the Act no 4054 gives the power and duty to the 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, to monitor legislations, practices, policies and measures of other countries, concerning agreements and decisions limiting competition. A significant part of the Board's work is to make the competition policy, consisted of competition law legislation and other relevant legislation, and to implement it soundly throughout the country.

Competition advocacy is not limited to the points listed clearly in the Act no 4054. This notion is considered in a broader perspective by taking into account the fundamental philosophy underlying the Act. In this sense another function of the Authority is to spread competition culture

to different layers of the society, mainly to other public institutions since it is not possible to fulfill the vision on a healthy ground if other public institutions are not conscious about the benefits of creating a competitive market structure.

### 1.5. Information about the Authority

The Authority has public legal personality, administrative and financial autonomy and is independent in fulfilling its duties. **No organ, authority, institution and person may give commands and orders to influence the final decision of the Authority.** The organization of the Authority consists of the Competition Board, the Presidency and Service Units.

The Board is composed of a total of seven members assigned by the President, one being the Chairman and the other being the Deputy Chairman.

The Presidency consists of the Chairman, the Deputy Chairman and Vice Presidents of the Authority.

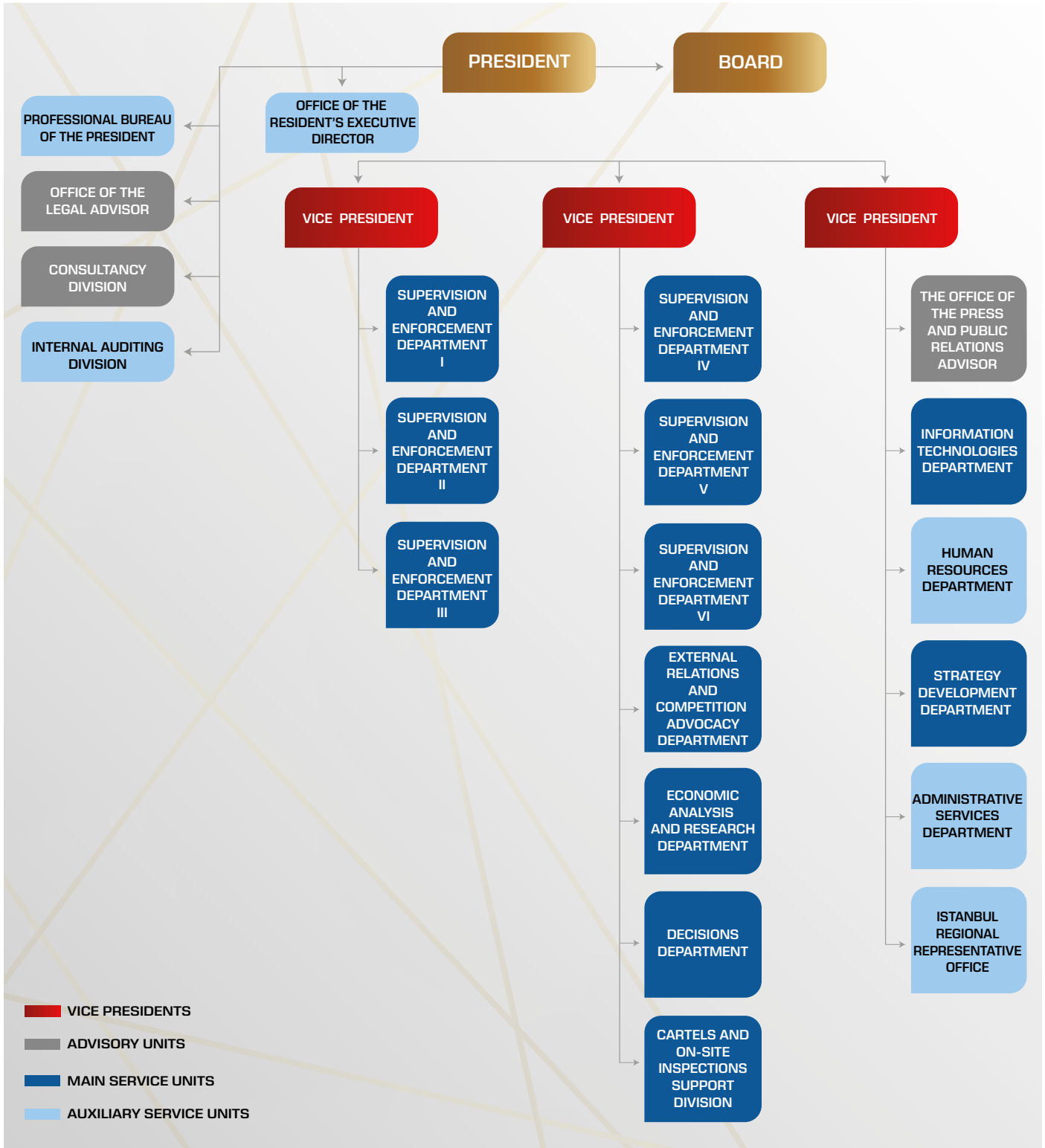
The Chairman of the Board is the highest supervisor of the Authority and is responsible for general management and representation. This responsibility covers duties and powers related to the arrangement, supervision, evaluation in a general framework and, if necessary, announcement to public of the Authority's work.

Service units consist of main service units which are organized as departments, consultancy units and auxiliary service units.

The headquarters of the Authority is in Ankara and there is a regional representative office in Istanbul. The property, owned by the Authority, located in the address "Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent/Çankaya ANKARA" is used as the headquarters. Istanbul Regional Representative Office's address is "Prime İstanbul Yenibosna Merkez Mah. 1. Asena Sk. No:15 E Blok Kat: 12 Bahçelievler/İSTANBUL"



**Figure 2: Organization Chart**







**PURPOSES AND PRIORITIES**

2. PURPOSES AND PRIORITIES

2.1. Purposes and Objectives

The main purpose of the Act no 4054 is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end.

In order to reach those aims set by the Act, the Authority carries out regulative and

supervisory activities under the scope of competition law enforcement; competition advocacy activities and policy making activities.

Moreover, the Authority conducts activities within the framework of institutional capacity.

The Authority determined the purposes related to those activities and objectives to reach those purposes in the Strategic Plan for 2019-2023, which was published in 2019. Table 1 shows those purposes and objectives according to each field of activity.

Table 1: Purposes and Objectives	
<b>Competition Law Enforcement</b>	
Purpose 1	To ensure that competition law is applied effectively
Objective 1.1	To take initiatives to amend the Act for necessary legal powers and to develop the secondary legislation
Objective 1.2	To develop new approaches to conclude supervision and enforcement processes more quickly and efficiently
Objective 1.3	To make methods of collecting evidence, especially on-site inspections, more efficient
<b>Competition Advocacy</b>	
Purpose 2	To ensure that the Authority and competition law are known and internalized at individual, institutional and sectoral levels and this awareness is reflected in shareholders' behavior
Objective 2.1	To help institutions which determine or affect economic policies develop a competitive perspective
Objective 2.2	Increase the Authority's recognition level among shareholders
<b>Policy Making</b>	
Purpose 3	To detect markets with failures and/or high potential for competition infringements and to develop competition law policies with respect to those markets
Objective 3.1	To develop more proactive approaches for enforcement
Objective 3.2	To focus on increasing consumer welfare
Purpose 4	To be an active competition authority in the international arena
Objective 4.1	To develop international relationships in the area of competition policy
Purpose 5	To produce and spread knowledge about competition law and economy and transfer this knowledge into benefits
Objective 5.1	To make academic and semi-academic studies related to competition law and economy
<b>Institutional Capacity</b>	
Purpose 6	To manage efficiently and improve the productivity of human resources
Objective 6.1	To increase the quality and quantity of training programs for the personnel
Objective 6.2	To ensure efficient communication and coordination among the personnel
Purpose 7	To increase institutional performance
Objective 7.1	To improve the competency of the professional personnel
Objective 7.2	To increase capacity with respect to technological development
Objective 7.3	To systematize and use more effectively professional knowledge

## 2.2. Fundamental Policies and Priorities

The Authority completed its 23rd year in 2020. During this period, the Authority have made important contributions to the development of competition law and policy enforcement in Turkey.

In the Strategic Plan for 2019-2023, the Authority determines certain policies and priorities to make our competition law and policy more effective, dynamic and efficient.

The priorities of the Authority for the future can be summarized as follows:

- Making the necessary regulations to the secondary legislation in line with the amendments made in the Act no 4054<sup>2</sup>

- Developing evidence collecting mechanisms in order to fight against competition infringements more effectively,

- Monitoring closely the markets that have been changing with digitalization in order to ensure efficient competition law and policy enforcement with respect to those markets,

- Carrying out activities in order to improve competition awareness in public institutions and authorities and competition culture in all segments of the society,

- Developing international relationships in the area of competition policy,

- Increasing institutional capacity and performance.



<sup>2</sup> "The Act no 7246 on the Amendments to the Act no 4054 on the Protection of Competition", which entered into force after it was published in the Official Gazette dated 24.06.2020 and numbered 31165.





# **ANNUAL ACTIVITIES**

### 3. ANNUAL ACTIVITIES

#### 3.1. Competition Infringements

Article 4 of the Act prohibits agreements and concerted practices between undertakings, and decisions of associations of undertakings which have as their object or effect or likely effect the restriction of competition. With respect to the implementation of this article, it is not necessary that agreements or decisions are put into practice. Transactions that do not create effects on the market can also be considered under the scope of article 4 in terms of their objects and likely effects.

This article concerns practices that have more than one party. Decisions of associations of undertakings reflect the willpowers and interests of their members, so they are regarded to be made by more than one undertaking and evaluated according to the same article. Beside agreements and decisions, concerted practices are under the scope of article 4. Concerted practices can be defined as direct or indirect relations that enable coordination or practical cooperation between undertakings which replaces undertakings' independent conduct. If the concerted practice presumption laid down in third paragraph of that article applies, the burden of proof that such conduct does not exist is on the undertakings.

It is possible to group anticompetitive agreements under two categories: horizontal and vertical. While horizontal agreements are made by undertakings operating at the same level of the market, vertical agreements include those made by undertakings at different levels of the market such as a provider and a distributor.

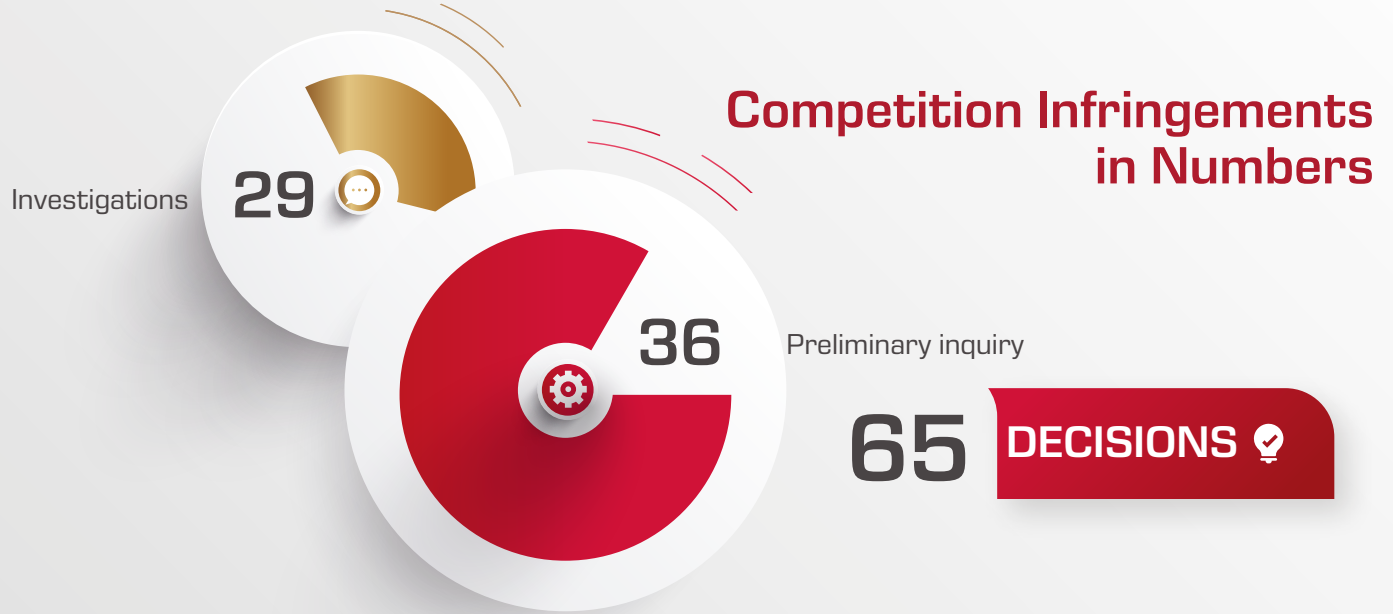
In competition law enforcement, it is generally accepted that anticompetitive inter-brand horizontal agreements have more negative effects on competition than anticompetitive intra-brand vertical agreements.

Article 6 of the Act prohibits the abuse by one or more undertakings of their dominant position. It should be noted that being in a dominant position or becoming dominant is not prohibited by article 6. What is prohibited is the abuse of dominance.

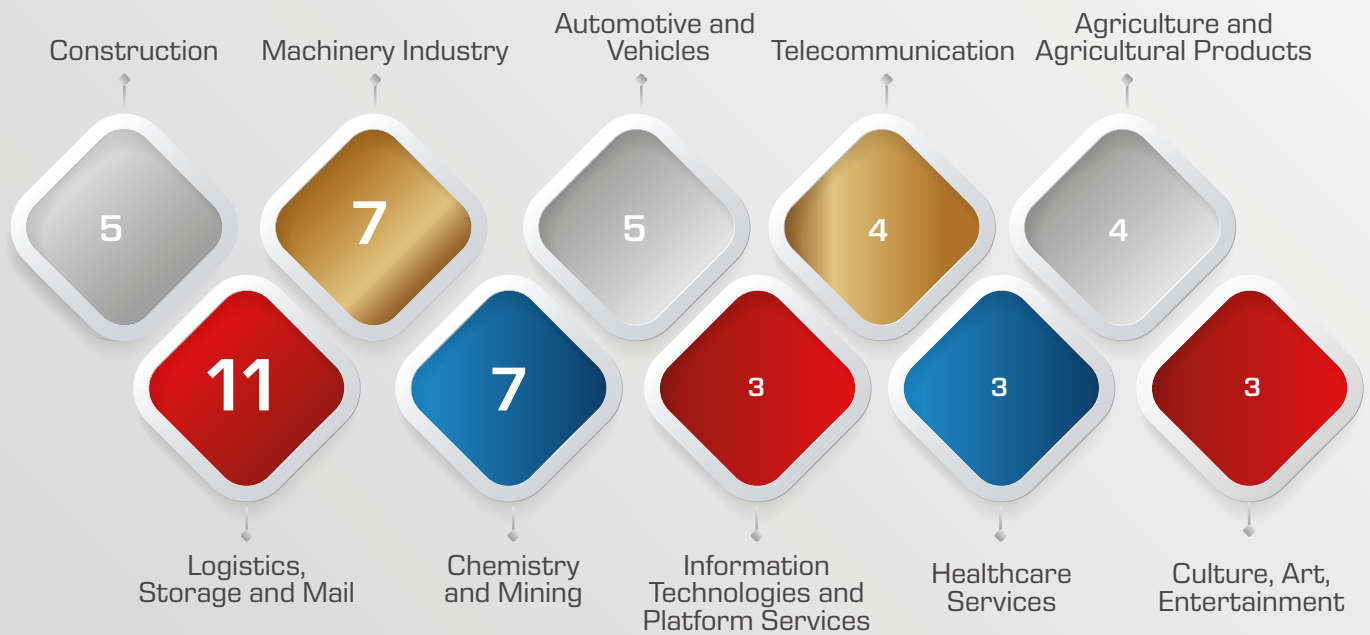
It is important to decide whether an undertaking holds a dominant position with respect to the implementation of this act. At this stage, market share, barriers to entry, vertical integrity, powers of other undertakings in the market and some other factors are taken into account and whether the undertaking acts independently of its competitors and customers is questioned.

The Act lists some examples of practices restrictive of competition in article 4 and abuse of dominance cases in article 6. However, actions that might be covered by the Act are not limited to the examples given in both articles.

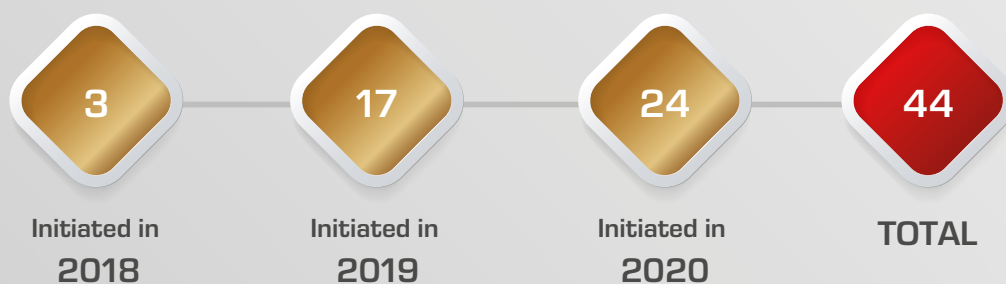
The graphic on the following page shows the breakdown of the decisions taken by the Board in 2020 concerning practices of undertakings under the scope of the prohibition laid down in article 4 and/or article 6 of the Act according to their types and sectors. It also shows the investigations still in progress as of the end of 2020.



### Breakdown of the decisions according to sectors (First ten sectors)



### On-going Investigations (As of the end of 2020)

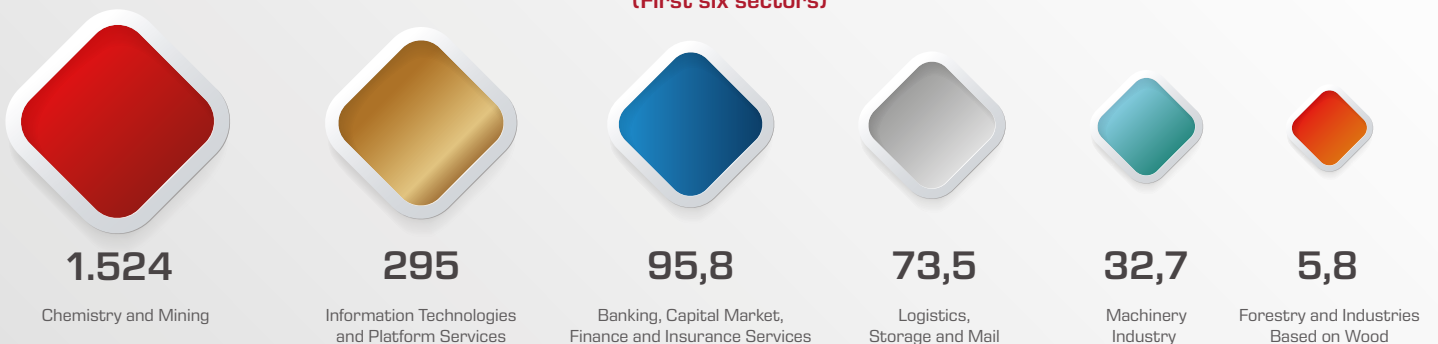


In 2020, out of 65 decisions taken about competition infringements, 36 decisions were taken as a result of preliminary inquiries and 29 decisions were taken as a result of investigations. 52 of the said decisions taken about competition infringements are related to 10 sectors shown in the graphic on the previous page while 13 decisions are related to other seven sectors. Those seven sectors include forestry and industries based on wood; food industry; infrastructure services; banking, capital market, finance and insurance services; professional, scientific and technical activities; textile and ready-made clothing. The number of investigations initiated in response to the claims that articles 4 and/ or 6 is violated is 24 in 2020. The total of ongoing investigations as of the end of 2020 is 44 when three investigations initiated in 2018 and 17 investigations initiated in 2019 are added.

Regarding the results of the decisions taken at the end of an investigation, in 10 files, the claims were rejected; in 16 files, undertakings were imposed administrative fines and three files were concluded with commitments. Administrative fines were imposed in nine sectors according to Article 16, paragraph three of the Act. The graph below shows the breakdown of the administrative fines imposed in investigations completed in 2020 according to sectors. The prominent sectors and the administrative fines imposed therein are as follows: 1.524 million TL in chemistry and mining, 295 million TL in IT and platform services, 95.8 million TL in banking, capital market, finance and insurance services. The administrative fines imposed in those three sectors correspond to approximately 93% of the total administrative fines given to competition infringements in 2020.

**Breakdown of administrative fines imposed to competition infringements in investigations concluded in 2020 according to sectors (Million TL)**

(First six sectors)



### **3.1.1. Examples from Decisions Related to Competition Infringements**

#### **1-Chemotherapy Medication Systems Investigation Decision (Board Decision dated 02.01.2020 and numbered 20-01/14-06)**

Within the scope of the file that is the subject matter of the investigation, the claim that certain undertakings operating in the market for chemotherapy medication preparation system engaged in bid rigging and allocated markets. Undertakings in this market operate at provider and/or dealer level. They work by means of giving offers in tenders and other purchasing processes made by public and private hospitals. Neither relevant product market nor relevant geographic market was defined in the investigation conducted under the scope of article 4 of the Act no 4054. As a result of the inspection, evidence showing that certain undertakings colluded in public tenders and private purchases for Samsun Training and Research Hospital (public hospital), Tekirdağ Namık Kemal Hospital (public hospital) and Private Adana Başkent Hospital (private hospital).

The decision emphasized that not only the tender itself but also the preparation stage should be competitive and competition infringements may occur at preparatory stages. Undertakings' collusive behavior during a tender process make the tender process transparent and resolves uncertainty; at the same time, lead to fewer participants and higher tender prices, consequently public loss and thus negatively affects social welfare.

It was stated in the decision that allocation of hospitals or manipulation of approximate cost calculation during the preparatory process for the tender, would not lead to

improvement or innovation in production or distribution of goods and provision of services in the market and thus consumer benefits. Therefore, the said conduct cannot benefit from exemption within the framework of article 5 of the Act and it was decided that article 4 of the Act was violated.

As a result of the evaluations made according to Fines Regulation, it was decided that the said conduct should be dealt under "other violations" category. The base fine was determined as 0.5%. The amount was not increased due to the period of the violation. On the other hand, since the share of the activities that are the subject of the violation in annual gross income was small, the base fine was reduced by half and consequently administrative fines at the rate of 0.25% were imposed.

In addition to the violation detected, as a result of the exemption assessment made regarding certain dealer agreements examined within the scope of the investigation, it was decided that opinions would be sent to two undertakings according to article 9, paragraph three of the Act.

#### **2- Mail/Cargo Investigation Decision (Board Decision dated 16.01.2020 and numbered 20-04 / 47-25)**

The claim that certain undertakings which operate in the mail/cargo transportation market violated the Act no 4054 through customer allocation was evaluated in the investigated file.

The violation suspicions against the undertakings party to the investigation concentrated in three fields of activity. These fields were domestic mail/cargo transportation, international express mail/cargo transportation and air cargo

transportation. The relevant product market was defined as the "mail/cargo transport market", as it included the three fields of activity mentioned. Undertakings referred as service providers within the scope of the file provide services to consumers both directly through their own distribution channels and through resellers. In resale working model undertakings which do not have an adequate distribution network in domestic or international transport resell to their customers by means of service procurement in areas where their activities are insufficient.

Within this structure, both service providers and resellers operate at the retail level. However, it was concluded in the decision that the parties that were in a competitive relationship in the downstream market were not competitors with each other at the production level since resellers lack the ability to produce the service they purchase. Therefore, it was stated that within the framework of the exception applied to bilateral distribution agreements by the Block Exemption Communiqué no 2002/2 on Vertical Agreements, the relationship between the parties was vertical and if the conditions were provided, it could benefit from block exemption. It was stated that the restrictions imposed on resellers by service providers within the framework of vertical relations were not based on exclusive customer groups determined according to objective criteria and it was understood from the communication evidence obtained that in addition to active sales passive sales to the said customers were prohibited; the restriction constituted a severe violation that could not be subject to exemption. Considering that service providers imposed the resellers the violation involving customer restriction within the scope of the vertical

relationship, it was concluded that service provider undertakings violated Article 4 of the Act no 4054 and the undertakings were imposed administrative fines.

### **3-Insurance Investigation Decision (Board Decision dated 23.01.2020 and numbered 20-06/61-33)**

Within the scope of the investigated file, whether certain undertakings operating in voluntary insurance market violated article 4 of the Act no 4054 was analyzed.

When the bilateral correspondence of the parties under investigation regarding reinsurance and coinsurance transactions were examined, the following conclusions were drawn: the undertakings negotiated and/or shared competitively sensitive information such as policy terms, price, premium, etc. during/before the bidding process, in addition, they decided whether they would give an offer to the customer directly by communicating with their competitors, and they even determined their co-insurer/re-insurer positions on the basis of customers for the future periods so they decreased the uncertainty in the market and in this context, they violated article 4 of the Act no 4054 by means of the agreements and concerted practices to which they were a party.

As a result of the evaluations made, it was decided that agreements and concerted practices that have the object of restricting competition between some of the parties to the investigation violated article 4 of the Act no 4054, accordingly, administrative fines would be imposed.

### **4-Google Shopping Investigation Decision (Board Decision dated 13.02.2020 and numbered 20-10/119-69)**

Under the scope of the investigated file, the

claim that Alphabet Inc., Google Reklamcılık ve Pazarlama Ltd. Şti., Google International LLC, Google LLC and Google Ireland Limited (all referred to as Google) complicated the competitors' activities in online comparison shopping services market by means of abusing their dominant position in the general search services market was analyzed.

In the investigation, comprehensive market analyses were made and whether there were services that could constitute an alternative was considered. It was found that content search services, specialized search services and social media websites are not substitutes for general search services, Google's Shopping service is an online comparison shopping service and constitutes a different market than general search services, other specialized search services, marketplace platforms, online retailing and online search advertising. Therefore, the relevant product markets are defined as "general search services" and "online comparison shopping services".

In dominant position analyses made for "general search services market" and "online comparison shopping services" market, it was found that Google has considerably higher market shares compared to its competitors in both markets, there is not a significant buyer power in the markets, the factors such as high network effects created by multi-sided market structure, Google's vertically integrated company structure and financial power, etc. create significant entry barriers in the market and Google is dominant in both markets.

Consequently, it was found that Google complicated its competitors' activities by promoting its comparison shopping services and distorted competition in

comparison shopping services market. It was decided that Google violated article 6 of the Act no 4054 and administrative fines were imposed.

Moreover, in the decision, the following obligations were imposed on Google to be fulfilled within three months for terminating the infringement and ensuring effective competition in the market:

- To provide the conditions which would allow competing comparison shopping services to be at a no less advantageous position than its own services on the general search results page,
- To remove clickable title feature of Shopping Unit in other channels in line with the mobile channel,
- To reasonably resolve uncertainty about the title and labeling of Shopping Unit about the fact that the area is advertisement,
- To cease preferential positioning of Shopping Unit in case the query submitted to Google clearly includes the product name and the brand or website name of its competitors offering comparison shopping services,
- To submit a report to the Authority once a year periodically for five years starting from the time when the first compatibility measure has been applied.

#### **5-Traffic Signalization Investigation Decision (Board Decision dated 12.03.2020 and numbered 20-14/191-97)**

The claim that ten undertakings operating in the signalization market violated article 4 of the Act no 4054 by means of bid rigging was analyzed within the scope of the file that is the subject of the investigation. After

the information and documents obtained within the scope of the investigation were evaluated, it was found that in many tenders organized by the General Directorate of Highways and by municipalities, competing undertakings shared unit price offers before the tender, prepared tender files for each other and the tender file was submitted to the administration by competing undertakings. Thus, it was concluded that some of the undertakings under investigation restricted competition by means of collusive tendering at the stages of determining approximate costs and giving offers in certain tenders. As a result of the evaluations made on a tender base within the framework of the investigation, it was found that undertakings were in anticompetitive coordination in eleven tenders. It was also found that in tenders organized by eleven administrations, the companies were in collusion during the process of determining the approximate cost before the tender was made.

As a result of the findings and evaluations made, it was concluded that all undertakings party to investigation, except Matrisled Elektrik Elektronik İnş. Tic. Ltd. Şti., violated

article 4 of the Act no 4054 by means of bid rigging and administrative fines were imposed.

### **6-Fuel Investigation Decision (Board Decision dated 12.03.2020 and numbered 20-14/192-98)**

The investigation that is the subject matter of the decision was initiated in response to the claim that five undertakings selling fuel, namely BP, Shell, Opet, Petrol Ofisi and Total Oil, intervened in the pump sale prices of their dealers, forcing them to sell fuel at the maximum price and prevented their dealers' freedom to put prices lower than the maximum price on the price displays. The relevant product market was defined as "oil distribution", "diesel distribution", "autogas LPG distribution" and the relevant geographic market was defined as Turkey in the investigation, which looked at whether the undertakings' practices in relation to their dealers infringed Article 4 of the Act no 4054. Extensive on-site inspections were conducted at the premises of the undertakings. Under the scope of the file, economic analyses were conducted, comparing the maximum prices notified by



the undertakings to their dealers and the minimum pump sale prices implemented by the dealers.

In addition to the evaluation of the documents obtained during the on-site inspection, the decision included an analysis comparing the daily recommended (maximum) sales prices notified to the dealers by the distribution companies with the minimum pump sale prices implemented each day for each specific product. The assessment of the documents showed that the undertakings prevented dealers from implementing discounts and asked the prices to be increased. As a result of the economic analysis conducted, it was concluded that the dealer prices were largely in line with the recommended prices. In that framework, it was concluded that BP, Petrol Ofisi, Shell and Opet violated Article 4 of the Act no 4054 by fixing the resale prices for their dealers and that administrative fines should be imposed on the aforementioned undertakings, while Total Oil did not violate Article 4 of the Act no 4054.

#### **7-Gaziantep Automobile Expertise Investigation Decision (Board Decision dated 09.07.2020 and numbered 20-33/439-196)**

In the file which is the subject matter of the investigation, in response to the claim that undertakings providing automobile expertise services in Gaziantep agreed and fixed the expertise price tariffs, it was decided that an investigation would be initiated concerning 12 undertakings providing automobile expertise services in order to determine whether article 4 of the Act no 4054 was violated. Within the framework of the documents acquired during the on-site inspection and information obtained within the scope of the file, it was concluded that

the said undertakings violated article 4 of the Act no 4054 by means of agreements they made to fix price tariffs, not to work on Sundays or provide services in turn according to the schedule they prepared.

All undertakings party to the investigation were imposed administrative fines. Considering the Board decision no 19-28/431-MP taken about the application made by one of the undertakings to benefit from the Leniency Regulation, it was decided that pursuant to article 5(1)(a) of the said Regulation, a reduction would be made in the administrative fines imposed.

#### **8-Logistics Investigation Decision (Board Decision Dated 03.09.2020 and numbered 20-40/563-246)**

In the investigation that is the subject of the file, whether certain undertakings operating in the logistics and transport sector violated article 4 of the Act no 4054 by means of collusive bidding for their customers and sharing competitively sensitive information was analyzed.

First of all, it is stated in the investigation report that due to the nature of the road freight transport service, undertakings operating in the same market provide vehicles to each other by making supply agreements, and this situation leads to vertical relations between undertakings operating as competitors in the market.

Second, considering the nature of the relationship between the parties and the document examined as a whole, it was concluded that it was not possible to decide that an agreement that had the object or effect of restricting competition was made. Moreover, it was also concluded that the statements in the document examined were not sufficient to show that competition was restricted. Within this framework,

it was decided that there were not any findings showing that the Act no 4054 was violated and it was not necessary to impose administrative fines on the parties.

### **9-Google Adwords Investigation Decision (Board Decision dated 12.11.2020 and numbered 20-49/675-295)**

Within the scope of the investigated file, the claim that Google Reklamcılık ve Pazarlama Ltd. Şti., Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc. (all referred to as Google) abused their dominant position and complicated undertakings' activities by means of the updates related to general search services and Adwords advertisements was analyzed.

Within the framework of the investigation, comprehensive market analyses were made and whether there were services that could constitute an alternative in each market was considered. As a result of the evaluations made, it was concluded that content search services, specialized search services and social media websites were not substitutes for general search services; under the scope of content provision services market, organic results and text ads were substitutes for each other; lastly, even if such market definition was not a necessity with respect to the conclusions made within the scope of the file, it was thought that text ads offered by Google and its competitors were different from other search based advertisement types and non search based advertisement types. Thus, the relevant product markets were defined as "general search services", "content provision services" and "text advertising".

As a result of the dominant position analyses made concerning the relevant product markets defined, it was concluded that Google had considerably higher market

shares compared to its competitors in "general search services" and "text advertising" markets, there was not a significant buyer power in the markets, the factors such as high network effects created by multi-sided market structure, Google's vertically integrated company structure and financial power, etc. created significant entry barriers to the market and Google was dominant in "general search services" market and "text advertising market" with its Adwords service.

As a result of the findings and evaluations, it was decided that Google complicated the activities of organic results, which did not generate income for it, in content services market, by means of positioning text ads at the top of general search results intensely and in a way to create uncertainty about their advertisement content and was imposed administrative fines because of violating article 6 of the Act no 4054.

Moreover, the following obligations were imposed to be fulfilled and documented to the Authority within six months following the notification of the reasoned decision in order to terminate the infringement and ensure effective competition in the market:

- Google should display text ads in a manner, size and/or position not to exclude organic results,
- Google should submit the Authority the compliance measures it has prepared one month before the given time period expires at the latest,
- Google should submit a report once a year periodically to the Authority for five years starting from the date when the first compatibility measure is implemented.

### 3.2. Exemption/Negative Clearance

According to article 5 of the Act on exemption, the Board may exempt agreements, concerted practices or decisions of associations of undertakings from the provisions of article 4 provided that they fulfill all the requirements listed in that Article. There is not an obligation/necessity to notify, which means that the evaluation for exemption must be done first by undertakings and associations of undertakings. Undertakings should take into account block exemption communiqués, guidelines explaining those communiqués and other relevant guidelines as well as previous Board decisions in addition to the conditions listed in article 5 while making an evaluation for exemption. The communiqués and guidelines issued within this framework are:

- “Block Exemption Communiqué no 2002/2 on Vertical Agreements” and “Guidelines on Vertical Agreements”
- “Block Exemption Communiqué no 2008/2 on Technology Transfer Agreements” and “Guidelines on the Application of Articles 4 and 5 of the Act no 4054 on the Protection of Competition to Technology Transfer Agreements”
- “Block Exemption Communiqué no 2008/3 on Insurance Sector”
- “Block Exemption Communiqué no 2013/3 on Specialization Agreements”
- “Block Exemption Communiqué no 2016/5 on Research and Development Agreements”

- “Block Exemption Communiqué no 2017/3 on Vertical Agreements in the Motor Vehicles Sector” and “Guidelines Explaining the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector”

- “Guidelines on Horizontal Cooperation Agreements”

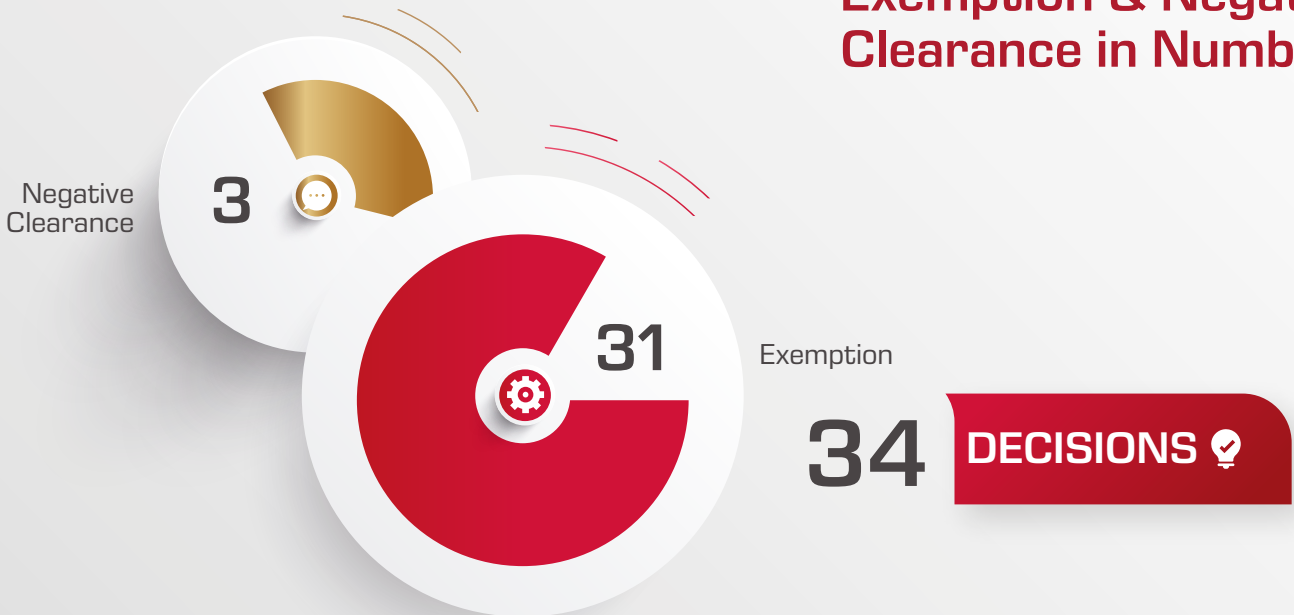
- “Guidelines on Subcontracting Agreements”

- “Guidelines on the General Principles of Exemption”

According to Article 8 of the Act, upon the application by the undertakings or associations of undertakings concerned, the Board may grant a negative clearance certificate indicating that an agreement, decision, practice or merger/acquisition is not contrary to articles 4, 6 and 7 of the Act.

The method for making exemption/negative clearance applications are explained in “Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings” Article 13 of the Act regulates the withdrawal of exemption or negative clearance decisions. Accordingly, the Board may withdraw exemption or negative clearance decisions or prohibit certain behavior by undertakings in case the situations listed in the said article arise. Exemption/negative clearance files concluded by the Board in 2020, breakdown according to sectors and results of those decisions are presented in the graph on the following page.

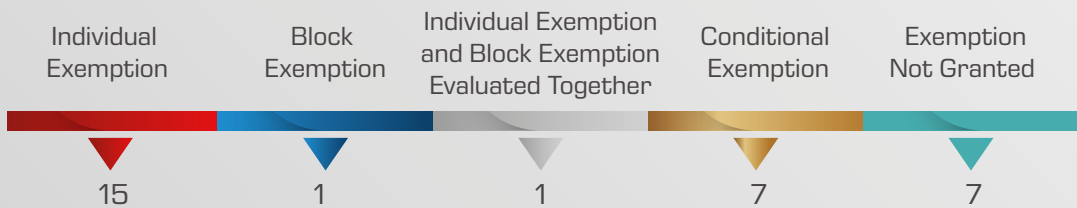
## Exemption & Negative Clearance in Numbers



### Breakdown of the decisions according to sectors (First seven sectors)



### The Results of Exemption Decisions



According to the chart, in 2020, a total of 34 exemption/negative clearance files were concluded, three being negative clearance and 31 being exemption. Banking, capital market, finance and insurance services; health care services, construction; automotive and vehicles; chemistry and mining and machinery industry are the sectors with the highest number of exemption/negative clearance analyses made in 2020.

### **3.2.1. An Example of Negative Clearance/ Exemption Decisions**

#### **1-Johnson&Johnson Exemption Decision (Board Decision dated 03.09.2020 and numbered 20-40/553-249)**

A block exemption, or if this is not possible, an individual exemption was requested for Johnson&Johnson's practice of working with only nine pharmaceutical warehouses and not working with warehouses other than those identified for the distribution of certain drugs it owns in the independent pharmacy channel.

The product market definition made is based on Anatomic Therapeutic Chemical Classification (ATC), which the European Commission takes as a basis. Each category in the said classification has four levels, arranged from general to specific. The first level of the category (ATC-1) is the most general, and the fourth level (ATC-4) is the most detailed. Within the framework of the file, assessments were conducted according to the ATC-3 level. The relevant geographical market was determined as Turkey.

The subject matter of the file is distribution of Johnson&Johnson's certain human medicine, namely Darzalex, Imbruvica, Stelara and Zytiga, through nine pharmaceutical warehouses and not working with warehouses other than those specified. Johnson&Johnson stated that they were planning to change the

system currently used for distributing their products and set up a quantitative distribution system with the agreement they signed for the specified products. The reason for selecting these products was that they were expensive since they were used for treating severe illnesses and therefore they were frequently subject to parallel trade.

As a result of the analysis made, it was found that the market share of the contract products was below the 40% threshold. It was concluded that the selective distribution system the practice aimed to implement was not necessary for the human medicine market, that this market had numerous products similar to the contract products in terms of the characteristics listed by the applicant, thus the criteria for the selection of the distributors within the framework of the practice in question could not be explained by the characteristics of the relevant products. In addition, it was determined that the contract would restrict passive sales as well as active sales. Therefore, it was concluded that the agreement could not benefit from the block exemption. As a result of the individual exemption analysis according to article 5, paragraph one of the Act no 4054, it was decided that the agreement could not be granted an individual exemption on the grounds that the intended system would not lead to any efficiencies, that no consumer benefit would occur since prohibiting trade relation with the warehouses outside the system would make it harder for consumers to access the drugs, and that the other conditions were not met.

### **3.3. Mergers and Acquisitions**

Article 7 of the Act no 4054 prohibits mergers or acquisitions which would result in significant lessening of competition within a market for goods or services in the entirety or a portion of the country, in order

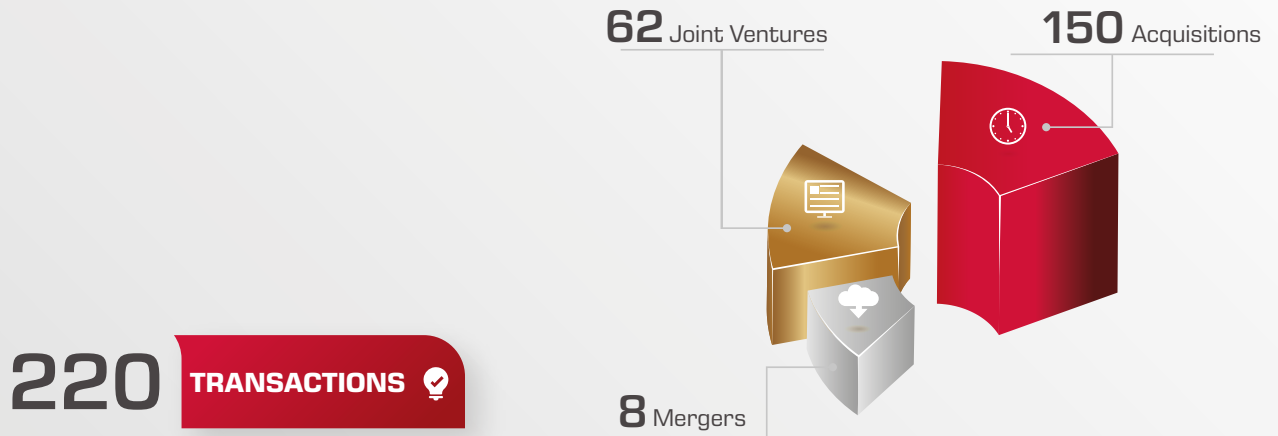
to create a dominant position or strengthen an existing dominant position. The article also provides for that certain transactions should be notified and authorized by the Board to be legally valid and states that Board declares, via communiqués to be issued by it, the types of mergers and acquisitions which have to be notified to the Board and for which authorization has to be obtained, in order for them to become legally valid. Within this framework, The Communiqué no 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board” is in force.

The Competition Board also issued several guidelines related to monitoring mergers and acquisitions in addition to the said Communiqué. Those are

- *Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control*, which is related to cases considered as a merger or an acquisition and permanent change in control which is the fundamental factor in determining those cases,
- *“Guidelines on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions”* for increasing legal clarity and predictability for undertakings and enforcers,
- To demonstrate the general principles to be taken into account by the Competition Board in preliminary assessments concerning horizontal mergers and acquisitions “Guidelines on the Assessment of Horizontal Mergers and Acquisitions”,
- To demonstrate the general principles to be taken into account by the Competition Board in preliminary assessments concerning non horizontal mergers and acquisitions “Guidelines on the Assessment of Non Horizontal Mergers and Acquisitions”,
- To guide the parties about the remedies they will submit in order to eliminate competition problems to be created by a concentration that might be prohibited by Article 7 of the Act, “Guidelines on Remedies that are Acceptable by the Turkish Competition Authority in Merger/Acquisition Transactions”.

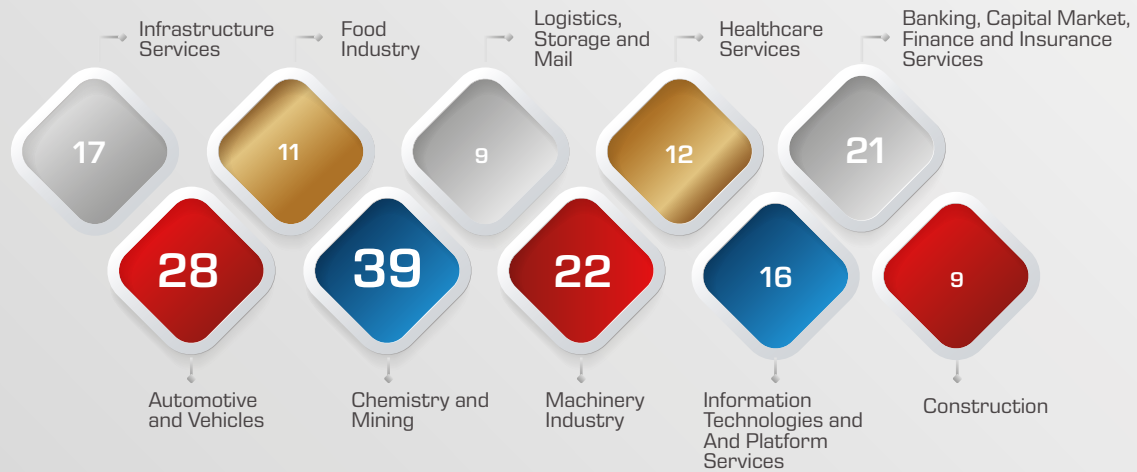
As seen in the chart on the following page, the Competition Board concluded eight mergers, 150 acquisitions and 62 joint ventures, corresponding to 220 applications totally. Regarding those applications, 217 were concluded as a result of preliminary inquiries and three were concluded as a result of final examinations. The first six sectors with the most decisions taken related to mergers/acquisitions are respectively chemistry and mining; automotive and vehicles; machinery industry; banking, capital market, finance and insurance services; infrastructure services; information technologies and platform services. Decisions taken related to those sectors constitute 65% of all merger/acquisition decisions. Health care services with 12 decisions, food industry with 11 decisions, construction sector with nine decisions and logistics, storage and mail sector with nine decisions follow the first six sectors. 190 merger and acquisition transactions were authorized without conditions and one was authorized conditionally out of 220 merger and acquisition transactions examined by the Competition Board in 2020. One transaction was not authorized. 28 merger/acquisition transactions submitted to the Board were out of scope or not subject to authorization. Six transactions were taken under final examination in 2020, three of which were concluded within 2020. Final examination process related to other three transactions is on-going.

## Mergers & Acquisitions in numbers



### Breakdown of the transactions according to sectors

(First ten sectors)



#### Final examinations initiated in 2020

- Mining
- Automotive and Vehicles
- Chemistry and Mining
- Automotive and Vehicles
- Healthcare
- Machinery and Equipment

#### Final examinations concluded in 2020

- Mining
- Automotive and Vehicles
- Chemistry and Mining

### 3.2.1. Examples from Decisions Related to Mergers and Acquisitions

#### 1-Fiat Chrysler and Peugeot Final Examination Decision (Board Decision dated 30.12.2020 and numbered 20-57/794-354)

The notified transaction was related to the request for authorization, under the scope of the Act no 4054 and the Communiqué no 2010/4 for the planned merger through the integration of Fiat Chrysler Automobiles N.V. (FCA) and Peugeot S.A. (PSA) to the body of FCA. After the preliminary inquiry, the Board decided that regarding the request for authorization for the planned merger, a final examination would be made according to Article 10, paragraph one of the Act no 4054.

Under the scope of the final examination conducted, assessments were made about the following issues: the transaction's effects on the market for production and sale of passenger cars, (competitive pressure among segments, models entering to and exiting from the market and possibilities for undertakings to reposition their products, the evaluations for the segments C, D, M and GUPPI analysis) and the transaction's effects on the light commercial vehicle market, (structural connection between FCA and FORD, market structure and symmetry, market players' behavior in the past, transparency, joint agreement on the coordination conditions and coordination sustainability).

As a result of the evaluations made, it was found that

- The transaction would not lead to a significant decrease in competition in the market for the production and sale of passenger cars and the market for the production and sale of light commercial vehicles with a gross weight of 3.5 to 6 tons,

- On the other hand, it is possible that efficient competition might decrease significantly in the market for production and sales of light commercial vehicles with a gross weight of up to 3,5 tons by means of coordinated effects.



It was decided that the transaction would be conditionally authorized within the framework the commitments submitted by Fiat Chrysler Automobiles N.V. and Koç Holding.

#### 2-Marport Port Final Examination Decision (Board Decision dated 13.08.2020 and numbered 20-37/523-231)

The notified transaction is related to the request that the acquisition of 50% shares and the sole control of Marport Liman İşletmeleri Sanayi ve Ticaret A.Ş. (MARPORT) by Terminal Investment Limited Şàrl (TIL) be authorized within the framework of the Act no 4054 on the Protection of the Competition and the Communiqué no 2010/4.

The notified acquisition was related to the transfer of the sole control of MARPORT to TIL from the joint control of Arkas Konteyner Taşımacılık A.Ş. (ARKAS) and TIL. In the evaluation of the notified acquisition, the relevant market was defined as the market for "port management for container handling

related to background traffic”, where competitive concerns are concentrated, and the relevant geographic market was defined as “Northwest Marmara”.

It was determined that Mediterranean Shipping Company Holding S.A. (MSC), which has the joint control of TIL in local loads, is in the position of the most important customer of MARPORT, similarly, Asyaport Liman A.Ş., which operated in the same relevant product market, served to MSC, which has almost the whole of joint control on the basis of the local/transit load.

As a result of the evaluations made, it was concluded that

- MARPORT was a leader in the market for port management for container handling within the scope of local cargo in the Northwest Marmara Region by 2019, ASYAPORT was the third, with the services it largely provided to MSC, as a result of the notified transaction MSC would include MARPORT to the container handling activities that it carried out through ASYAPORT, therefore, MSC/TIL group would have a high share in actual and potential terms in the market for port management for the container handling in terms of local cargo in the Northwest Marmara Region,

- MSC, which is an important line operator on the global scale, would operate a significant part of the container handling capacity of the Northwest Marmara Region. When this fact was considered together with its power in line transportation, it might create disadvantage for other line operators using the Northern Marmara Region and lead to increase in the costs of these line operators.

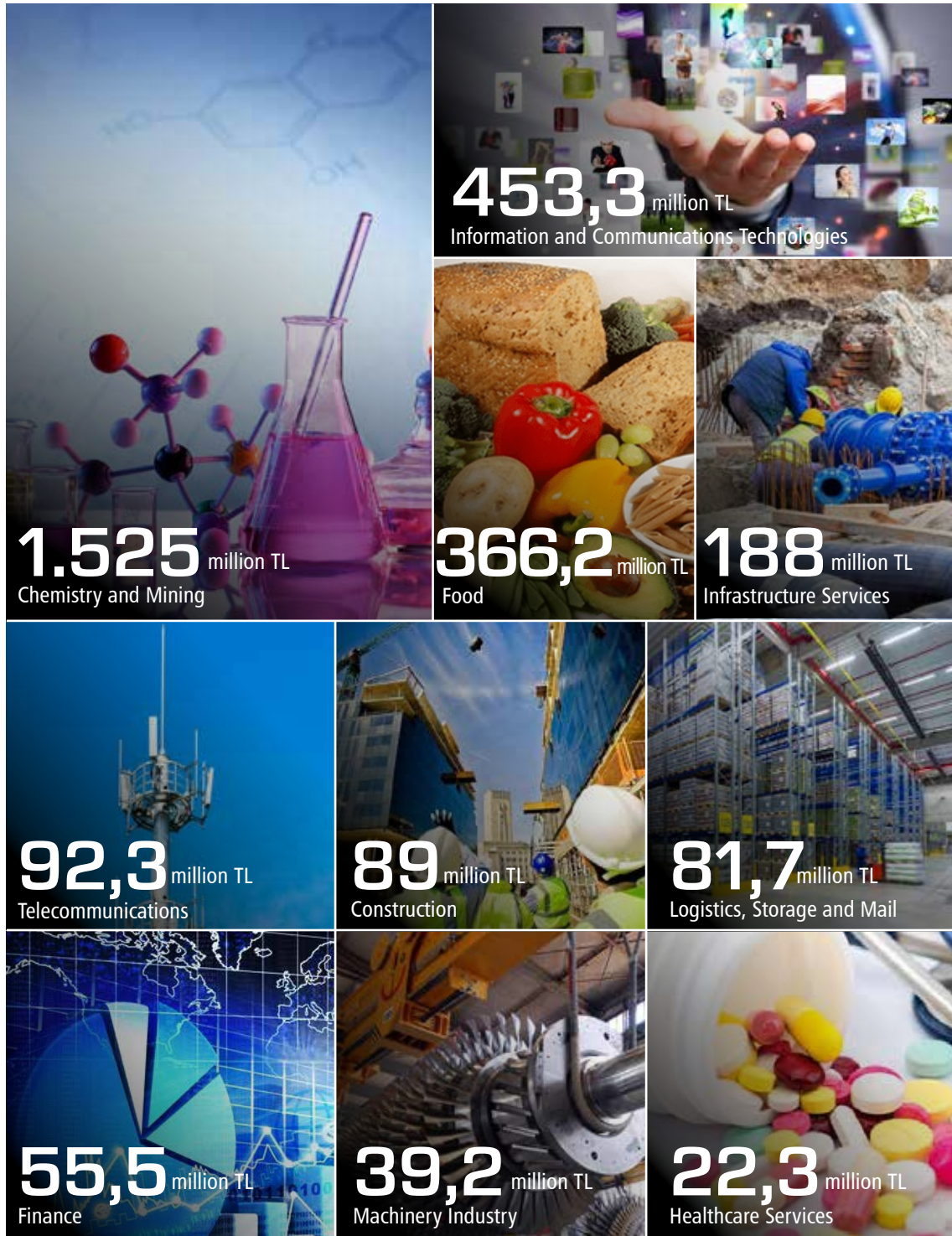
- In addition, the alliances among container transporters provide

advantage to the vertically integrated port operators in the alliance compared to other ports which are not vertically integrated, this narrow oligopolistic structure strengthened by these alliances would be further strengthened if the control of MARPORT was transferred to MSC, an important global line player and an important container service buyer in the region.

- On the other hand, as a result of vertical integration, global line players and alliances would work only with certain ports, which may confine other terminal operators to the demand created by independent line players. Therefore, the transaction would prevent other terminal operators from reaching a profitable scale and complicate their remaining in the market, where the idle capacity is large, fixed costs are high and economies of scale are important, and might affect negatively their incentives to make investments. Thus, it was decided that the transaction would result in significant lessening of competition due to the abovementioned reasons and would not be authorized according to article 7 of the Act no 4054.



Sectors with the Highest Administrative Fines Imposed (2016-2020)

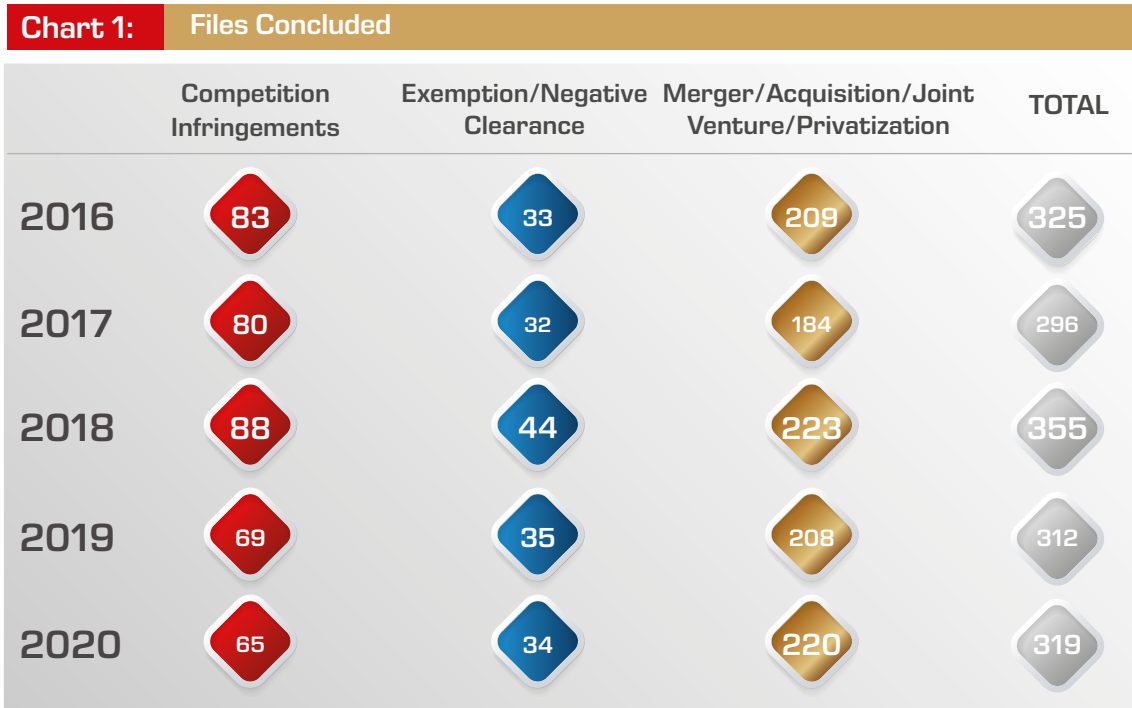


# **COMPETITION IS GOOD, IT PREVENTS MONOPOLIZATION**



**TURKISH COMPETITION AUTHORITY  
PROTECTS THIS ENVIRONMENT**

3.4. Statistical Information for the Last Five Years

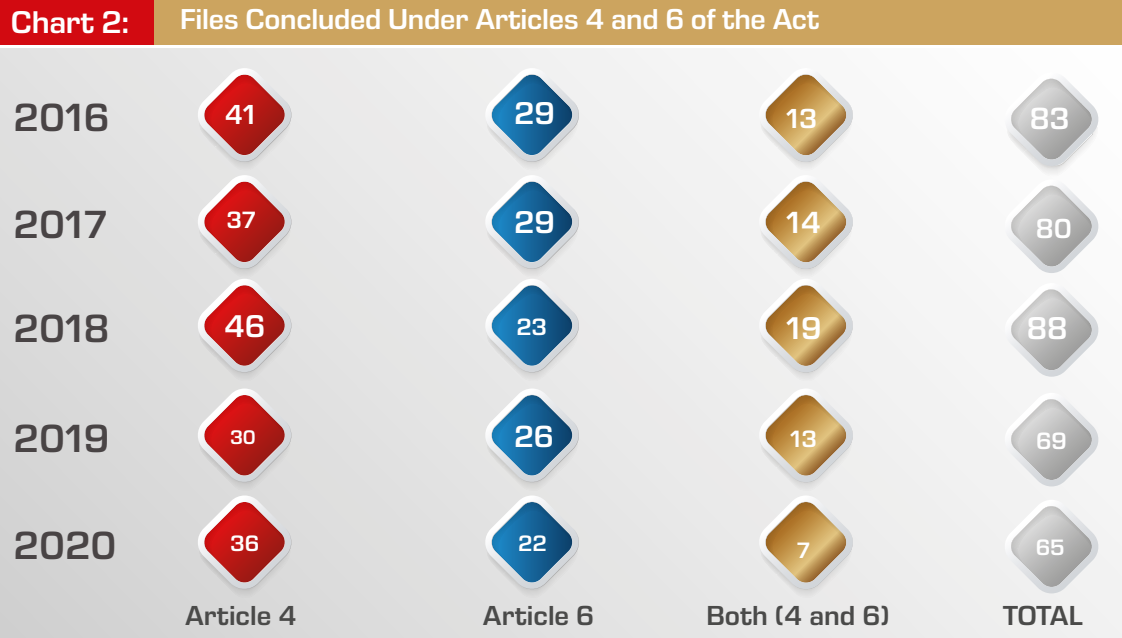


In Chart 1, an examination of the Competition Board’s last five years’ work between 2016 and 2020 shows that the number of decisions concluded were lowest in 2017 with 296 files, while it was highest in 2018 with a total of 355. In 2016 and 2019, the number of the concluded files were 325 and 312, respectively. In 2020, the total number of finalized files was 319, which is an increase of 2% compared to the previous year. In that respect, it may be said that the total number of finalized decisions during the period in question has been fluctuating through the years.

A breakdown of the files finalized in between 2016-2020 according to type shows that a majority of them consists of merger and acquisition cases each year. These are followed by competition infringements. The smallest share in total number of decisions is exemption/negative clearance cases. As a

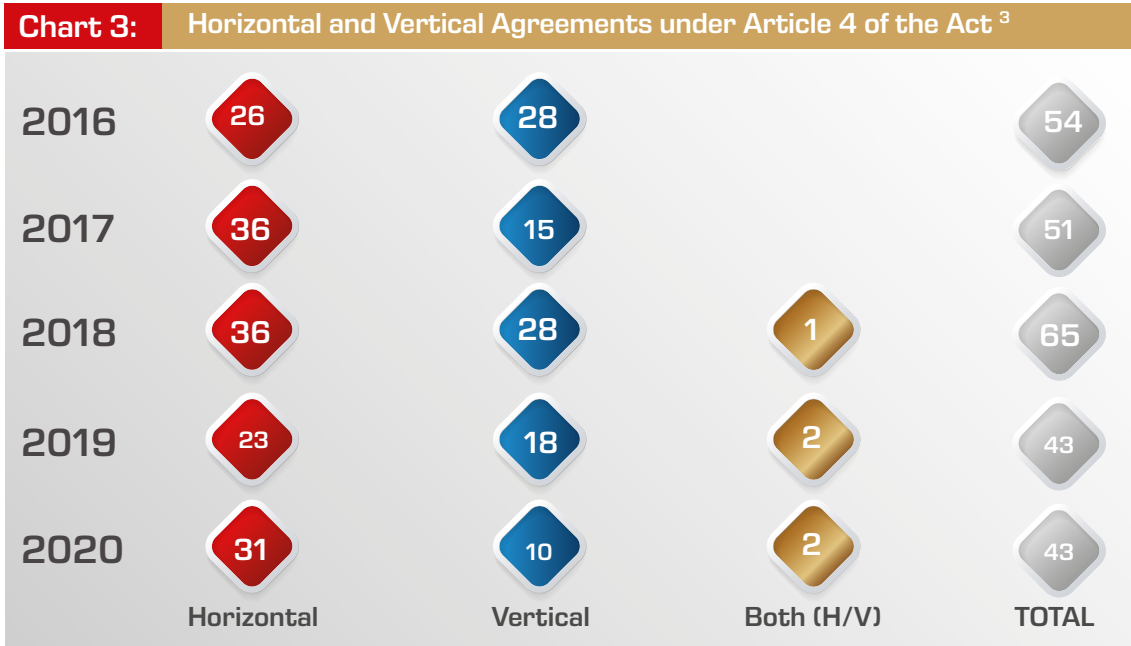
matter of fact in 2020, 220 out of 319 final decisions are mergers and acquisitions, 65 are competition infringements and 34 are exemption/negative clearance files. In other words, around 69% of the cases concluded in the year in question are mergers and acquisitions, around 20% are competition infringements and 11% are exemption/negative clearance files.

A comparison of 2020 to the previous year in terms of types of concluded decisions show that there has been a decrease from 69 to 65 in the number of competition infringement cases in 2019, and from 35 to 34 in the number of exemptions/negative clearances. On the other hand, the number of merger/acquisition decisions went up from 208 to 220. In that framework, it can be said that the largest change has been in the number of final decisions concerning competition infringements.

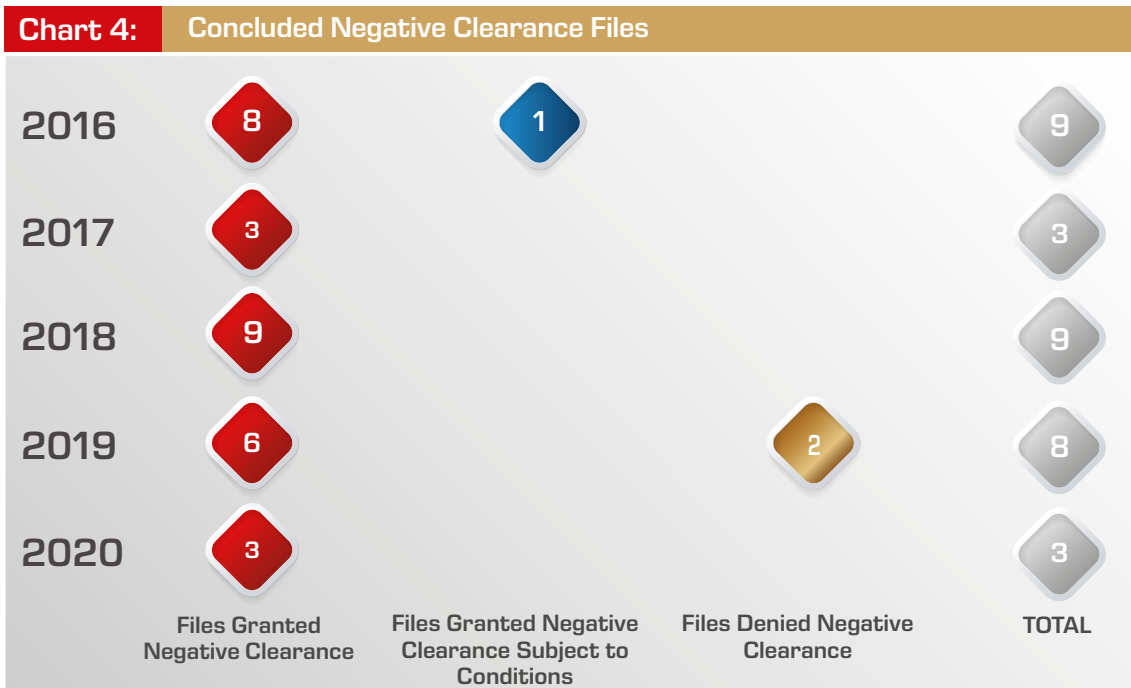


As shown in Chart 2, during the 5-year period examined, the total number of decisions by the Competition Board regarding infringements of Articles 4 and/or 6 of the Act was 83, 80, 88, 69 and 65, respectively. In that framework, during the three-year period between 2016 and 2018, there has been less than 10% variation in the number of competition infringement decisions compared to the previous year. The number of final decisions concerning competition infringements fell around 22% in 2019 compared to the previous year. In 2020, the number of finalized files decreased by around 6% compared to 2019. Also in 2020, out of the 65 decisions taken concerning competition infringement claims, 36 looked at Article 4 violations, 22 looked at Article 6 violations, and 7 looked at both Article 4 and Article 6 violations. In that respect, it may be observed that a majority of the competition infringement

decisions taken by the Board in 2020 concerned claims of Article 4 violations, similar to the previous years. Chart 3 shows that the number of Competition Board decisions concerning claims of Article 4 violations throughout the last five years were 51 in 2017, 65 in 2018, and 43 in 2019 and 2020. This means out of a total of 385 competition infringement files examined in this five-year period, 256 – i.e. around 66% – concerned claims about Article 4 violations. Around 74% of these 256 cases assessed the Article 4 violation claim on its own, with the other 26% addressed claims of Article 6 violation as well. In 2020, an overview of the types of agreements in the 43 decisions on Article 4 infringement claims shows that 31 of those concerned horizontal agreement between undertakings, while 10 concerned vertical agreements between undertakings. Two decisions concerned agreements with both vertical and horizontal aspects.



In 2020, three negative clearance decisions were taken by the Competition Board.



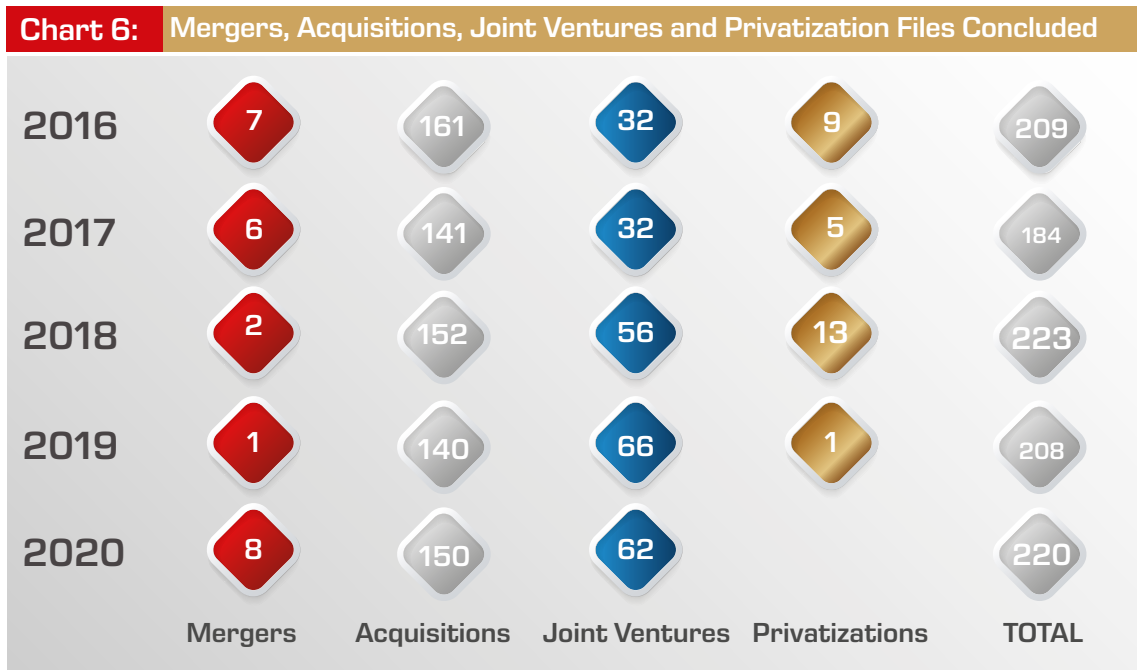
<sup>3</sup> This Chart includes the files in the first and third columns of Chart 2.

**Chart 5: Concluded Exemption Files**

	2016	2017	2018	2019	2020
Files Granted Individual Exemption	10	19	18	16	15
Files Under Block Exemption	2	3		5	1
Files Granted Individual Exemption Subject to Conditions	4	3	3		7
Files Granted Block Exemption Subject to Conditions			3		
Denied Exemption	3	2	4	1	7
Withdrawal of the Exemption		1		2	
Individual and Block Exemption Assessed Together Unrecognized Files	3	1	4	3	1
Other	2		3		
<b>Total</b>	<b>24</b>	<b>29</b>	<b>35</b>	<b>27</b>	<b>31</b>

As shown in Chart 5, there were 31 exemption applications concluded in 2020. A look at the breakdown of the exemption decisions taken by the Competition Board in 2020 according to outcomes reveals that unconditional individual exemption was granted to 15 agreements, seven

agreements were granted individual exemptions subject to conditions, one was assessed under block exemption provisions, one was assessed under both block exemption and individual exemption, and seven agreements did not receive an exemption.



As shown in Chart 6, 220 merger/ acquisition /joint venture/privatization transactions were concluded in 2020. Compared to the previous year, there has been a 5% increase in the number of merger-acquisition/joint venture/privatization cases finalized. Similar to the 2016-2019 period, a significant majority of these decisions have been acquisitions in 2020, as well. With 150 files, acquisitions comprised around 68% of the transactions concluded under Article 7 of the Act in 2020. Transactions related to the establishment of joint ventures had a

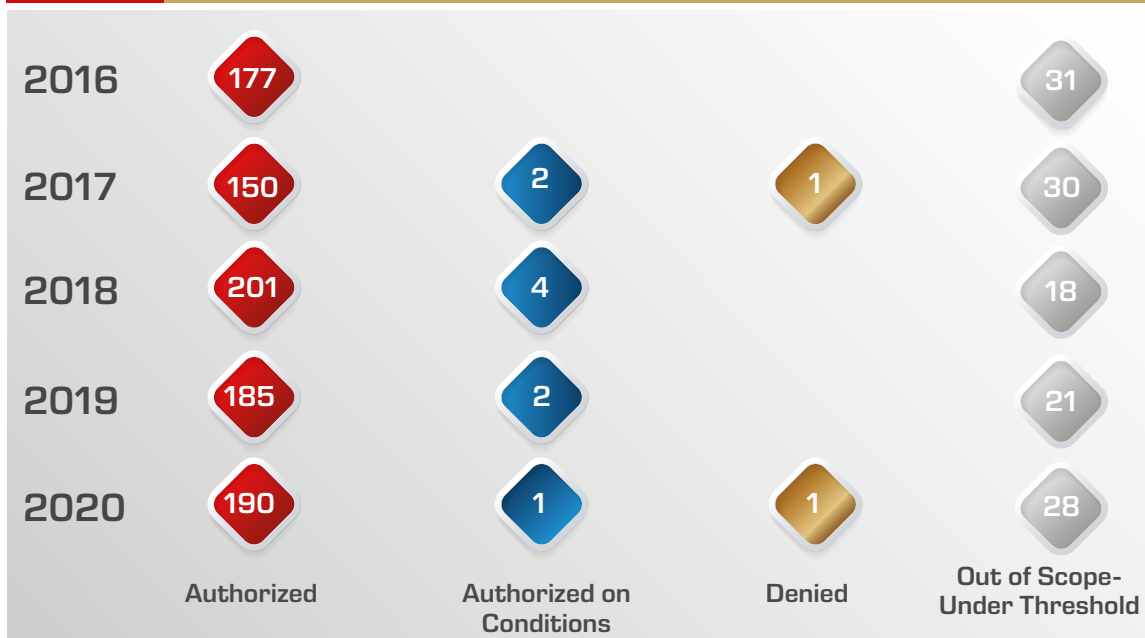
share of around 28%, with 62 files in total. In 2020, final decisions were taken concerning eight merger transactions.

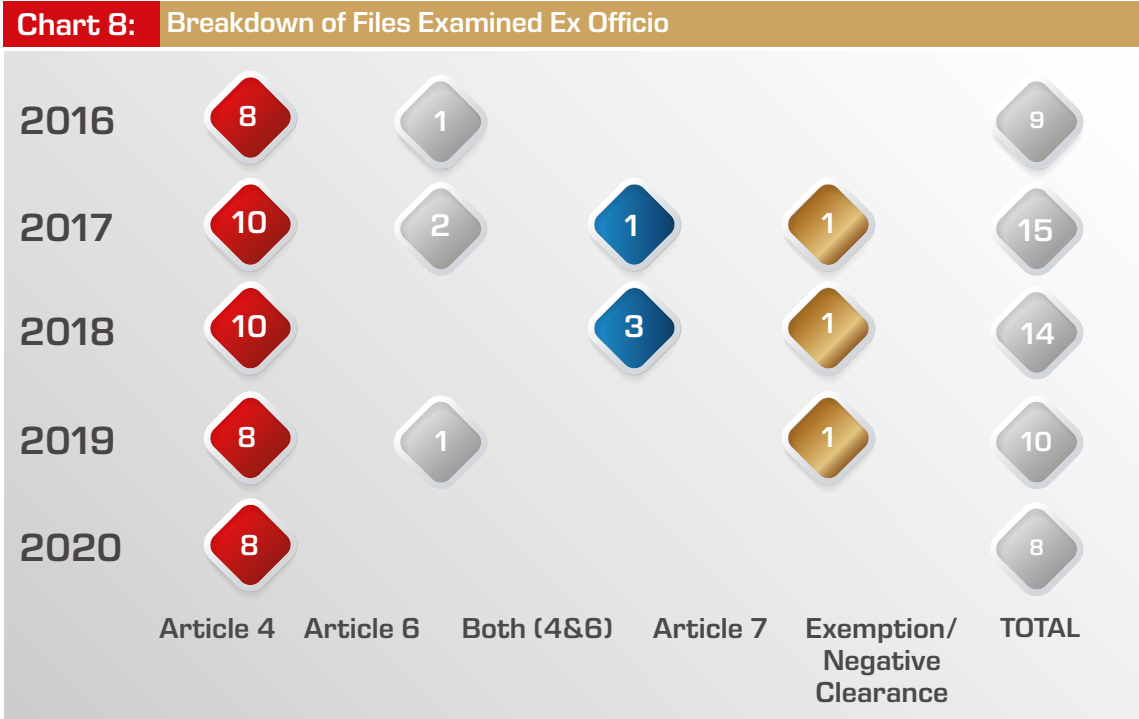
From Chart 7, the breakdown of the decisions taken in 2020 concerning Article 7 of the Act in terms of outcome shows that out of the 220 applications received, 28 were out of scope/under the threshold. A total of 192 applications were found to be covered by the Act and subject to authorization, 190 of which were authorized without conditions, and one was authorized subject to conditions.

There was one application in 2020 concerning merger / acquisition / joint venture/privatization transactions which was denied authorization. In the previous five-year period, only two merger / acquisition / joint venture / privatization transactions were prohibited, one in 2017 and the other in 2020; with 9 further transactions receiving

authorization subject to conditions. In this framework, it may be said that, in the aforementioned five-year period, around 99% of the merger and acquisition transactions notified and found to be subject to authorization by the Competition Board were authorized with no conditions.

**Chart 7:** Outcomes of the Mergers, Acquisitions, Joint Ventures and Privatization Files Concluded





Article 40 of the Act no 4054 grants the Board the power to directly initiate investigations or to launch preliminary inquiries in order to determine whether an infringement has occurred, on its own initiative or in response to the applications it receives. In that framework, the Competition Board has examined 8 files on

its own initiative in 2020. Chart 8 presents the breakdown of the eight files according to their types, showing that all of these cases concerned Article 4 violation claims. Therefore, similar to the previous four years of the relevant five-year period, it may be said that the majority of the files examined ex officio in 2020 were Article 4 violations.

**Table 2: Fines (TL)\***

Types of Fines	Year	Infringements	Merger/ Acquisitions	Exemption/ Negative Clearance	TOTAL
Substantive Fines	2016	186.435.909			186.435.909
	2017	199.430.270			199.430.270
	2018	349.374.235			349.374.235
	2019	237.674.115			237.674.115
	2020	1.964.045.143			1.964.045.143
False or Misleading Information/Documents in Applications (art. 16/1-a)	2016				
	2017				
	2018		320.376		320.376
	2019				
Failure to Notify the Merger/Acquisition within the Due Period (art. 16/1-b)	2020		838.656		838.656
	2016		31.236		31.236
	2017				
	2018				
Missing, False or Misleading Information/ Documents in Information Requests and/or On-Site Inspections (art. 16/1-c)	2019		21.001.468		21.001.468
	2016	7.551.954			7.551.954
	2017	36.754			36.754
	2018				
	2019	826.106			826.106
Prevention or Obstruction of On-Site Inspections (art. 16/1-d)	2020	61.468.770			61.468.770
	2016				
	2017	3.225.409			3.225.409
	2018	194.082			194.082
Proportional Administrative Fines (art. 17)**	2019	38.116.077			38.116.077
	2020	2.550.980			2.550.980
	2016				
	2017				
Proportional Administrative Fines (art. 17)**	2018	138.552			138.552
	2019	4.522.657			4.522.657
	2020	151.407.833			151.407.833

\* Fines imposed in files re-evaluated in response to court decisions were not included, and article provisions as amended with the Act dated 23.01.2008 and numbered 5728 were taken into consideration.

\*\* Of the proportional administrative fines imposed in 2020, a total of 75.473.439 TL was for failure to comply with the obligations introduced in the final decision/ interim measure or with the commitments undertaken (17/1-a), and a total of 75.934.394 TL was for failure to provide the requested information or documents within the period specified (17/1-c). No proportional administrative fines were imposed in 2020 for preventing or obstructing on-site inspections (17/1-b).

**Table 3: Administrative Fines Imposed Under Article 4 and 6 of the Act (TL)\***

Types of Fines	Year	Files Under Article 4	Files Under Article 6	Files Under Both Article 4 and 6	TOTAL
Substantive Fines	2016	133.693.788	52.742.121	2.543.993	186.435.909
	2017	38.776.937	158.109.340		199.430.270
	2018	19.014.529	330.359.706		349.374.235
	2019	228.733.560	8.940.555		237.674.115
	2020	1.656.837.739	307.207.404		1.964.045.143
Missing, False or Information/ Documents Under Information Request and/or On-Site Inspection (art. 16/1-c)	2016		7.551.954		7.551.954
	2017	18.377	18.377		36.754
	2019	800.079	26.027		826.106
	2020	61.468.770			61.468.770
Preventing or Obstructing On-Site Inspections (art. 16/ 1- d)	2016				
	2017			3.225.409	3.225.409
	2018	81.501		112.581	194.082
	2019	4.896.131	33.219.946		38.116.077
Proportional Administrative Fines (art. 17)	2020	2.550.980			2.550.980
	2016				
	2017				
	2018	138.552			138.552
	2019	251.262	4.271.395		4.522.657
2020	75.934.394	75.473.439		151.407.833	

\* Excluding administrative fines imposed in relation to the files re-evaluated in response to court decisions.



**Table 4:** Fines Imposed in Files Examining Horizontal and Vertical Agreements (TL)\*

Types of Fines	Year	Horizontal	Vertical	Mixed
Substantive Fines	2016	79.367.156	54.326.632	133.693.788
	2017	21.279.796	20.041.134	
	2018	9.201.300	9.813.229	19.014.529
	2019	164.392.558	64.341.001	
	2020	60.030.330	1.596.807.409	1.656.837.739
Misleading, False or Misleading Information/Documents Under Information Request and/or On-Site Inspection (art.16/1-c)	2016			
	2017	18.377		
	2018			
	2019	800.079		
Preventing or Obstructing On-Site Inspections (art. 16/1-d)	2016			
	2017	3.120.137		
	2018	194.082		
	2019	4.896.131		
Proportional Administrative Fines (art. 17)	2020		2.550.970	
	2016			
	2017			
	2018	138.552		
	2019	251.262		
2020	75.934.394			

\* Excluding administrative fines imposed in relation to the files re-evaluated in response to court decisions.



## JANUARY 20-31

Competition Law Internship Program with Certificate of Participation



## FEBRUARY 25-26

Under the auspices of the President of the Republic of Turkey, a Memorandum of Cooperation was signed between the Turkish Competition Authority and the State Service for Antimonopoly Policy and Consumer Rights Protection under the Azerbaijani Ministry of Economy.

## MARCH 9-10

Istanbul Competition Forum Workshop



## OCTOBER 5-9

“Competition Law and Policy” training was provided to experts from the Tunisian Competition Council, with the contributions of SESRIC, operating under the Organization of Islamic Cooperation.

## OCTOBER 12

Training Program for the 17th Term Assistant Experts was launched with the opening speech of Birol Küle President of the Competition Authority.



## NOVEMBER 23 - DECEMBER 18

The first internship program was implemented under the "Internship Rally Project," organized by the Human Resources Office of the Presidency, of which Turkish Competition Authority is a shareholder.

## DECEMBER 15-16

Istanbul Competition Forum Annual Webinar



## DECEMBER 21-25

Turkish Competition Authority was granted an award for its contributions to "Increasing the use of local cyber-security products in the public sector and establishment of a national cyber-security ecosystem" in the "Cyber-Security Week" event, organized by the Turkish Cyber Security Cluster and supported by the Presidency of Defense Industries of the Presidency of Republic as well as the Presidency of the Republic Digital Transformation Office.

### 3.5. Training and Internship Activities

Turkish Competition Authority has attached significant importance to its training and internship activities since its establishment. In that framework, the Authority has continued its training activities both within and outside the organization for 23 years, and has been providing internship opportunities since 2003.

In 2020, training was provided to the assistant experts who took office in 2020 as well as the other professional staff. In addition, training programs were organized for personnel from other public institutions and organizations, in line with the requests received.

Another activity the Competition Authority has been providing since 2003 is the internship program aimed at university students, in order to contribute to the know-how on competition law and practice and to increase interest in this field. In terms of content, these two-week programs are intended to be closer to intensive training than a conventional internship. In the first week, an overview

on Turkish competition law legislation is provided to the students, enriched with the Competition Board decisions. In the second week, the participants take part in a case study based on a hypothetical file. Training under the aforementioned internship programs are provided by the Competition Authority's professional staff. To date, 1729 undergraduate and graduate students have completed the internship training at the Authority and received their certificates. In that framework, "Competition Law Internship Program with Participation Certificate" for university students was held between January 20-31, 2020.

Another activity aimed at university students in 2020 is the "Internship Rally Project" organized by the Human Resources Office of the Presidency of the Republic, in which the Competition Authority took part as a shareholder. Four university students took advantage of the first internship program carried out by the Authority under this framework between November 23 - December 18, 2020. Table 5 lists the training and internship activities conducted.



**Table 5: Training and Internship Activities**

Date	Subject of the Training	Provider Institution/ Organization/Person
January 20 - 31, 2020	Competition Law Internship Program with Participation Certificate for university students	Turkish Competition Authority
February 20, 2020	In-house training discussing the topics addressed during the 2019 ICN Brazil Cartels Working Party Meeting	Turkish Competition Authority
July 08, 2020	Presentation of the Competition Authority to the Assistant Experts from the Capital Markets Board	Turkish Competition Authority
July 17, 2020	In-house training for Assistant Competition Experts on the differences between the dominant position test and the significant decrease in competition test.	Turkish Competition Authority
July 27, 2020	In-house training for Assistant Competition Experts on identification of dominant position and elements of dominance	Turkish Competition Authority
September 14-18, 2020	Training on safe code development	Private Sector
September 16, 2020	Presentation of the Competition Authority to Assistant IT Experts from the Information and Communication Technologies Authority	Turkish Competition Authority
October 5-6, 2020	Test expertise training	Private Sector
October 12, 2020 - January 20, 2021	Training Program for 17th Term Assistant Competition Experts	Turkish Competition Authority
November 23, 2020	"Competition Economics and Quantitative Methods" Training for professional staff	Ankara Yıldırım Beyazıt University
November 23 - December 18, 2020	The first internship program organized within the framework of the Presidency of the Republic's Internship Rally Project	Turkish Competition Authority
Year-round online access	Online cyber-security awareness training platform	Information Security Association

### 3.6. Activities of the Legal Advisor's Office

In accordance with Article 55.1 of the Act no 4054, actions for annulment concerning the final decisions of the Board, administrative measures and administrative fines were brought before the Council of State as the court of first instance until 2012. 13th Chamber of the Council of State was

charged with handling the aforementioned actions, but an amendment made in 2012 appointed Ankara Administrative Courts as the court of first instance. An examination of the actions brought against the Board decisions show that most of these were concerning the final decisions taken as a result of investigations.

**Table 6:** List of Actions Brought For and Against the Authority between 1997 and 2020<sup>4</sup>

Nature of the Board Decision	Ongoing	Concluded	General Total
Investigation	199	1056	1255
Preliminary Inquiry	99	207	306
First Examination	4	85	89
Appeal of Fines	19	54	73
Mergers/Acquisitions	8	46	54
Privatization		33	33
Exemption	13	49	62
Interim Measure	2	10	12
Periodic Fine	9	11	20
Request of Information and Documents	6	21	27
Annulment of Tacit Rejection	1	10	11
Missing Documents during On-site Inspections	2	7	9
Against Notification	1	6	7
Joint Ventures	1	7	8
Negative Clearance	2	4	6
Withdrawal of the Exemption		2	2
Article 42/2	28	60	88
Article 5/4	12	5	17
Filing Lawsuit	2		2
Other Technical Lawsuits	4	7	11
Interim Measure Periodic Fine		1	1
Appeal of Board Decisions	11	5	16
Right to Access the File	16	9	25
Nullity*		1	1
Intervening Party*		1	1
Debt Enforcement*	73	412	485
Lawsuits Related to Other Administrative Acts*	12	303	315
Annulment Suits*	73	220	293
Lawsuits Related to Other Criminal Acts*	2	11	13
<b>TOTAL</b>	<b>599</b>	<b>2643</b>	<b>3242</b>

\*These actions are not directly related to professional subjects but are continuations of actions concerning professional decisions or other actions.

<sup>4</sup> Decisions annulled by the Council of State and taken as a result of a re-evaluation of the files by the Board were not included in the tables in order to prevent duplication.

**Table 7: List of Actions Brought Against Board Decisions in 2020**

Nature of the Board Decision	Ongoing	Concluded	General Total
Investigation	60	2	62
Acquisition	2		2
Preliminary Inquiry	14		14
Interim Measure	2		2
Periodic Fine	9	1	10
Article 42/2	4		4
Article 5/4	4		4
Exemption	3		3
Request of Information and Documents	1	1	2
Annulment Suits*	19	1	20
Appeal of Board Decisions	3		3
Right to Access the File	9		9
On-site Inspection	9		9
Debt Enforcement*	1	1	2
Other Technical Lawsuits		1	1
Lawsuits Related to Other Administrative Acts*	6	2	8
<b>TOTAL</b>	<b>146</b>	<b>9</b>	<b>155</b>

\* These actions are not directly related to professional subjects but are continuations of actions concerning professional decisions or other actions.

**Table 8: Distribution of Actions Finalized between 2016 and 2020**

Court Decision Outcome	2016	2017	2018	2019	2020
Against the Authority	15	9	14	6	24
For the Authority	67	115	71	60	124
Other*	7	7	12	4	7
<b>TOTAL</b>	<b>89</b>	<b>131</b>	<b>97</b>	<b>70</b>	<b>155</b>

\*The "Other" entry includes those cases where the action was considered unfiled, the petition was rejected as well as dismissals for non-jurisdiction, partial acceptance and partial dismissals, and cases where a decision was not taken due to waiver of claims or other reasons.

Table 8 includes information on how the actions related to professional subjects were concluded in the 2016-2020 period. Accordingly, among the actions related to professional subjects finalized in that year, the percentage of those resulting in the

Authority's favor was 75,3% in 2016, 87,8% in 2017, 73,2% in 2018, and 85,7% in 2019. This ratio was 80% in 2020, with 124 of a total of 155 cases having been finalized in favor of the Authority.

### 3.7. Regulatory Activities

The regulatory activities carried out in 2020 are listed below.

#### 3.7.1. Regulations That Took Effect in 2020

##### 3.7.1.1. Act no 7246 Amending the Act on the Protection of Competition

Act no 7246 Amending the Act on the Protection of Competition was adopted and enacted by the Grand National Assembly of Turkey on 16.06.2020, and entered into force with its publication in the Official Gazette dated 24.06.2020 and numbered 31165.

In line with the goals of establishing a more efficient competition law system in Turkey that is aligned with the practices of the EU and developed countries, rendering the Competition Authority more efficient and dynamic by providing it with the structure and the tools to better meet the needs of the markets, and thus catching up with modern competition law practices, the amendments to the Act on the Protection of Competition

- Increased legal certainty by clarifying the “self-assessment” procedure in the exemption regime,
- Introduced the “significant decrease in competition” test in merger and acquisition examinations to allow better assessment of unilateral and cooperative effects that may arise from merger and acquisition transactions,
- Provided an important tool to the Competition Authority for effective

fight with competition infringements by clearly specifying the powers related to the implementation of structural remedies,

- Strengthened the legal infrastructure of the on-site inspection power, which is very important for acquiring evidence for competition infringements,
- Implemented the de minimis, commitments and settlement procedures in order to ensure more efficient use of public resources.

##### 3.7.1.2. Communiqué Concerning the Increase of the Minimum Administrative Fines Specified in Paragraph 1 of Article 16 of the Act No 4054 on the Protection of Competition, to Be Valid Until 31.12.2021 (Communiqué No: 2021/1)

In accordance with Article 17 of the Misdemeanor Law no 5326, “Communiqué Concerning the Increase of the Minimum Administrative Fines Specified in Paragraph 1 of Article 16 of the Act No 4054 on the Protection of Competition, to Be Valid Until 31.12.2021 (Communiqué No: 2021/1),” was published in the Official Gazette dated 18.12.2020 and numbered 31338, becoming effective on 01.01.2021, with an aim to delineate the lower thresholds of the administrative fines to be implemented between 1.1. 2021 and 31.12.2021 after the application of the re-evaluation rate.

Under the Communiqué no 2021/1, minimum administrative fines specified in Article 16.1 of the Act no 4054 was set to 34.809 TL.

### **3.7.1.3. Guidelines on the Examination of Digital Data in On-Site Inspections**

In order to explain the procedures to be used in the examination of digital data under Article 15 of the Act no 4054, Guidelines on the Examination of Digital Data in On-Site Inspections was adopted and published with the Competition Board decision dated 08.10.2020 and numbered 20-45/617.

### **3.7.2. Ongoing Regulation Work**

As mentioned above, Act no 7246 introduced de minimis, commitment and settlement tools into our legislation. Article 41.2 and 43.3 of the Act no 4054 state, respectively, that procedures and principles for de minimis and commitment rules would be determined with Communiqués to be issued by the Competition Board, while Article 43.9 of the same Act states that the Competition Board would issue regulations to set out the principles and procedures for the settlement institution. To that end, and in line with the relevant decisions of the Competition Board, “Draft Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings Deemed Not to Have A Significant Restrictive Effect on Competition” and “Draft Communiqué on the Commitments to be Presented in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition as well as Abuses of Dominant Position” were released for public consultation, and the opinions submitted by the shareholders are currently being evaluated. Work on the preparation of the draft regulation for the procedures and principles related to the commitment procedures are ongoing.

In addition, work started in 2019 to review the merger and acquisition control legislation was extended in 2020, with the adoption of the “significant lessening in effective competition test” for the examination of mergers and acquisitions as a result of the amendment made by the Act no 7246 to Article 7 of the Act on the Protection of Competition.

### **3.8. Economic Analysis and Research Activities**

#### **3.8.1 Inspection-Related Activities**

Various economic analysis and research activities were conducted in 2020 within the framework of ongoing investigations, merger and acquisition examinations and sector inquiries. Statistical as well as econometric methods were used to analyze the price movements of undertakings in order to determine whether Article 4 of the Act was violated, to see whether the price movements in question could be explained by cost shocks, and to identify the relationship between recommended prices and the prices implemented by the dealers. In order to identify Article 6 infringements, relevant market definitions were made and analyses were conducted to check for exorbitant pricing within the scope of the file. In a merger transaction examined under Article 7 of the Act, geographical markets were identified, and the potential competitive and anti-competitive effects of the transaction were analyzed within the identified geographical markets. In that context, significant contributions were made to the examinations conducted in the fertilizers, port management, chemical products, wheat flour, durable consumer goods and welding sectors. An economic opinion was prepared for the Sector Inquiry

Preliminary Report on the fast moving consumer goods sector, which was shared with the public on 5.2.2021.

### **3.8.2. 2020 Mergers and Acquisitions Overview Report**

Mergers and Acquisitions Overview Report includes data on the mergers and acquisitions examined by the Competition Authority in the past year and constitutes an important guiding data set for the investment climate of Turkey, since it can direct the decisions of investors. The report makes the following main observations concerning the mergers and acquisitions planned for 2020.

The TCA examined a total of 220 mergers and acquisitions in 2020, rendering its final decision within 18 days following the notification deadline on average. Of these transactions, 75 concerned companies founded under Turkish law, with a total value of 29 billion 192 million TL. The number and value of these transactions are above the average for the last eight years. Among the Turkish transactions, the highest number of transactions in 2020 was in "power generation and distribution," and the highest transaction value was in "activities of monetary intermediary organizations". In the same year, it was observed that foreign investors planned to invest in Turkish companies in 34 separate transactions. Among the abovementioned direct foreign investments, Germany is in the first place in the ranking based on transactions, followed by United Arab Emirates and Luxembourg. In terms of transaction volume, the investors from South Korea and Qatar shared the first place.

### **3.8.3. Impact Analysis Report**

Conducted every two years, impact analysis studies allow the representation of the effects of the Competition Board decisions as monetary value and thus they help monitor institutional performance within the framework of transparency and accountability principles while constituting an important competition advocacy activity for the relevant shareholders, since they clearly reveal the importance of the function the Authority plays in the economy.

According to the calculations of the Impact Analysis Report, based on OECD assumptions, the benefit to the consumers generated by the 2019-2020 activities of the Authority is 5,27 billion TL on average annually, and about 10,55 billion TL in total with December 2020 prices. A comparison of the contribution of the Authority to consumer welfare with its budgetary expenses show that the estimated annual average consumer benefit is around 44 times its expenses. In the impact analysis conducted by the United Kingdom's Competition Authority, that same ratio is declared to be 14,6 times for the United Kingdom.

The relevant study does not cover all of the interventions/activities of the TCA in the relevant period and the deterrence effects, nor does the benefit calculated includes the positive effects of the relevant decisions on factors such as innovation, quality and productivity. As a result, these estimates included in the Impact Analysis only partially reflect the benefits generated by the activities of the TCA for the economy and the consumers.

### 3.8.4. Economics Training for the Professional Staff

In 2020, a 60-hour training program titled “Competition Economics and Quantitative Methods” was started, offered by a qualified academic to the professional staff in the Economic Analysis and Research Department. The program was conducted both face-to-face and online, due to the requirements of the pandemic conditions.

### 3.9. Information Technology Activities

#### 3.9.1. E-Government Application Portal

Work on improving the services offered through the e-government application portal continued in 2020. The following table shows the statistics related to the applications made to the Authority over the portal.

**Table: 9** E-Government Application Portal Statistics

TYPE OF REQUEST	NUMBER OF APPLICATIONS
Receiving Competition Infringement Applications	505
Receiving Merger&Acquisition Applications	142
Receiving Negative Clearance/Exemption Applications	17
Receiving Applications to Access the File Made to the Competition Authority	23
Submission of the 1st, 2nd and 3rd Written Pleas by the Parties	155
Receiving the Extension Requests for Written Pleas in Investigations	23
Receiving the Requests for Participating the Hearing before the Competition Authority	30
Receiving the Applications for Objections or Submitting Information by 3rd Parties for Merger and Acquisition Applications	20
Receiving the Replies to the Information Requests from the Parties or 3rd Parties in All Files or Activities	956
Receiving the Requests for the Re-evaluation of the Board decision under Administrative Jurisdiction Procedures Law Art. 11	8

#### 3.9.2. Information Security

TSE/ISO 27001 Information Security Management System, first put into practice in 2019, was also utilized in 2020 in order to manage, monitor and protect institutional information and assets. In that framework, as a result of the comprehensive audit conducted by the Turkish Standards Institute, the Authority was granted the TSE/ISO 27001 Information Security Management System

certificate for a period of three years. In addition, the Authority was granted an award for its contributions to “Increasing the use of local cyber-security products in the public sector and establishment of a national cyber-security ecosystem” during the “Cyber-Security Week” event, organized by the Turkish Cyber Security Cluster and supported by the Presidency of Defense Industries of the Presidency of Republic as well as the Presidency of the Republic Digital Transformation Office.

### 3.9.3. Providing Information Infrastructure for the Events Organized by the Authority

Both ICF meetings held in 2020 was supported by the Authority personnel in terms of infrastructure and software. Online surveys conducted during the ICF was prepared by the Authority's IT personnel and the results of the surveys were instantly monitored through the system set up. At the same time, to minimize the negative effects of the Covid-19 pandemic on the Authority workflow, the domestic and national meeting software "Diyalog" was put into use. The Diyalog software helped successfully organize several trainings and meetings online, including the training sessions of the 17th term assistant competition experts.

## 3.10. International Relations Activities

### 3.10.1 European Union (EU)

Contributions were made to the meetings of the Customs Union Joint Committee, which was established as per the Turkey/European Union (EU) Association Council Decree No. 1/95 and which addresses the subjects falling under the framework of the functioning of the Customs Union, as well as to the meetings of the Sub-Committee No. 2 on Internal Market and Competition, established by the Association Council Decree No. 3/200 in order to monitor the developments related to the priorities of the association and the harmonization of the legislation.

As a candidate country for EU, Turkey both benefits from the Instrument for Pre-Accession Assistance (IPA), which includes financial assistance for candidate countries, and it participates in the Union Programs and Agencies which were established to encourage cooperation between candidates on EU policies. In accordance with the Presidential Circular no. 2019/20, the EU

Programs Council held on February 4, 2020 under the coordination of the Directorate for EU Affairs decided that Working Groups should be established for each EU Program that concern the public institutions during the period of 2021-2027. Within that framework, the TCA is part of and makes contributions to the Single Market Working Group.

### 3.10.2. Multilateral Relations

#### 3.10.2.1. Organization for Economic Cooperation and Development (OECD)

The TCA participated in the First MENA Competition Forum, which was organized with the cooperation of OECD, United Nations Economic and Social Commission for Western Asia (UN-ESCWA) and UNCTAD at the headquarters of the UN-ESCWA in Beirut/LEBANON on January 23-24, 2020, aimed at providing technical assistance to Middle East and North Africa (MENA) Countries and Gulf countries to help them improve in the field of competition.

The Authority also attended the "Vertical Mergers and Vertical Restraints Workshop" and the "OECD Competition Open Day" events held by the OECD Competition Branch at the OECD Headquarters in Paris/FRANCE on February 25 and 26, 2020, respectively.

In 2020, the Authority also prepared the Turkish contribution on the following subjects discussed during the meetings of the Competition Committee and the working parties under that Committee:

- Consumer Data Rights and Competition
- Conglomerate Effects of Mergers
- Abuse of Dominance in Digital Markets
- Economic Analysis in Final Examinations,
- Use of Sector Inquiries in Addressing Current Competition Issues

### ***3.10.2.2. United Nations Conference on Trade and Development (UNCTAD)***

The TCA attended the panel “Strengthening Consumers and Competition in Digital Economy,” under the Consumer and Competition Protection section of the 8th United Nations Conference organized by UNCTAD between October 19-23, 2020.

### ***3.10.2.3. International Competition Network (ICN)***

The Authority participated in the ICN Merger Workshop which was held on February 27-28, 2020 in Melbourne/AUSTRALIA by the Australian Competition and Consumer Commission on behalf of the ICN Merger Working Group, titled “Achieving the Right Balance: How Competition Authorities Are Approaching Merger Control and Remedies in the Changing Market Environment.”

### ***3.10.2.4. Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC)***

#### **SESRIC Evaluation Meeting**

On October 14, 2020, a meeting was held between the TCA and SESRIC, which operates under the Organization of Islamic Cooperation (OIC). The meeting in question set a roadmap for developing the cooperation between SESRIC and the Competition Authority throughout 2020 and 2021

### ***3.10.2.5. International Training Seminars***

#### **Tunisian Competition Council Training**

With the contributions of SESRIC, a training on “Competition Law and Policy” was provided to the experts and assistant experts of the Tunisian Competition Council between October 5-9 2020. During the five-day training program, the Authority’s

experiences and the global practices concerning market definition, sector examinations, anti-competitive agreements, abuse of dominant position, mergers and acquisitions, and fines/damage calculations were shared with the participants.

### **3.10.3. Bilateral Relations**

Withing the framework of bilateral relations, the Competition Authority has been signing memoranda of understanding with the competition agencies of other countries since 2005.

In that context, a working visit was organized to Baku/AZERBAIJAN on February 25-26, 2020, which was headed by the President of the Republic of Turkey Recep Tayyip ERDOĞAN and attended by the Minister of Trade, Ms. Ruhsar PEKCAN. During the visit, a Memorandum of Cooperation was signed between the Turkish Competition Authority and the Republic of Azerbaijan Ministry of Economy, State Service for Antimonopoly Policy and Consumer Rights Protection. The number of the Memoranda of Understanding in effect between the TCA and the competition agencies of other countries has reached 22 as of the end of 2020.

### **3.10.4. Istanbul Competition Forum (ICF)**

In 2019, the TCA founded the Istanbul Competition Forum with the contributions of UNCTAD, intended to strengthen the cooperation and relationships between the competition agencies in the region. Events organized within the framework of ICF continued in 2020. These events are listed below.

#### **The ICF Workshop**

Under the ICF, a Workshop was organized in Istanbul on March 9-10, 2020, with

the participation of experts and mid-level managers from the competition authorities of 19 countries. The first day of the two-day Workshop hosted the panels on “Competition in Digital Platforms,” “Market Definition in Digital Platforms” and “Consumer Harm Theory in Digital Platforms,” while the second day’s panel was titled “Handling of Cross-Border Cases.”

**ICF Webinar**

On June 2, 2020, a Webinar was organized which was attended by representatives from international organizations including UNCTAD and OECD, as well as by George Washington University Faculty of Law Professor William KOVACIC and speakers from the competition agencies of the Russian Federation, Albania, Tunisia, Uzbekistan and Greece.

**2020 ICF Annual Webinar**

During the COVID-19 pandemic, ICF meetings continued in the form of online webinars. In that context, the Forum came together online on December 15-16, 2020, with the agenda “Competition Issues in Digital Markets.” The Forum was launched with the opening speeches by the Minister of Trade Ms. Ruhsar PEKCAN, and the President of the Competition Authority Mr. Birol KÜLE. The Webinar was attended by the President and administrators of the TCA, as well as the presidents of foreign competition agencies, academics, and representatives from international organizations.

**3.11. Activities within the Framework of Competition Advocacy and Institutional Relations**

**3.11.1. Sector Inquiries**

Besides the power of supervising markets granted to the Competition Board by the Act no 4054, among the most important functions of the TCA in terms of competition advocacy are the studies known as sector examinations, aimed at identifying and solving structural and/or behavioral competition issues related to a part or whole of a specific sector or market. Sector inquiries finalized by the Turkish Competition Authority in the last five years are listed below.

**Finalized Sector Inquiries**

(Last five years)

Cinema	2016
Cement	2016
TV Broadcasting	2017
Hazelnut	2018
Fair Organization	2019

In 2020, sector inquiries were launched into the markets of “online marketplaces,” “fresh fruit and vegetable,” “fuel” and “financial technologies.” The sector examination into “fast moving consumer goods retail” has continued in 2020. There are no sector inquiries completed in 2020. The details of the sector examinations which the Competition Authority plans to share with the public in 2021 can be found in Table 10.

Table 10: Sector Inquiries Launched/Continued in 2020		
Sector Examined	Reason for Launching an Examination	Planned Date of Completion
Online Marketplaces	The Online Marketplace sector inquiry focuses on the e-marketplaces which are among the leading actors of e-commerce, getting an increasingly larger share of the consumer expenses in line with increasing internet access facilities and mediating the access of many SMEs to large consumer groups. In this framework, the relevant sector examination is intended to better understand the competitive dynamics of e-marketplaces and identify any potential competition problems, in order to determine the best ways to address such problems as soon as possible and, if necessary, to be able to intervene effectively using current or novel instruments.	June 2021
Fast Moving Consumer Goods Retail Sector	The sector examination into Fast Moving Consumer Goods Retailing investigates whether there are structural and competitive problems in this market focusing on the problems in the relationship between suppliers and chain stores, and assesses the regulations which might be implemented to make the market more competitive.	September 2021
Fresh Fruit-Vegetables	This sector examination focuses on assessing price stability and structural problems in agricultural production, especially with regard to the fresh fruit and vegetables market, and aims to make observations and suggest solutions for these markets.	December 2021
Fuel	The fuel sector examination was initiated in response to the need to identify any current or potential market failures in the fuel sector and to develop solutions for these failures. The sector examination in question aims to provide a better understanding of the structure and operation of all stages of the fuel market, identify the competition problems and make suggestions concerning the proactive steps that might be taken in order to establish effective competition in the market.	December 2021
Financial Technologies	The technology-driven radical transformation observed in the financial sector during the recent years has forced competition authorities to take various initiatives to accommodate the innovations in the field of financial technologies (FinTech). Conducted within that context, the Fintech sector examination primarily focuses on the payment services market, which presents the most tangible outcomes of the technologic transformation of the financial sector in Turkey. The study plans to ask the opinions of a large group of stakeholders, from banks and payment organizations to electronic fund organizations and technology companies, in order to grasp the current conditions of Turkey's FinTech ecosystem and predict the future of the ecosystem, thereby allowing for the evaluation of a large group of perspectives.	December 2021

**3.11.2. Events Aimed at Publicizing Competition Law and Promoting the Functions of the Authority**

Correspondence from various ministries, universities and other institutions were replied either directly or by forwarding them to the relevant departments, and translation needs of the departments were met to the extent possible. In order to ensure exchange of information and experience, representatives participated in the “Public Sector Promotion Days” organized by the Hacettepe University’s Hacettepe Economy Society under the “Career Days Event,” as well as the Selçuk University Career Society’s “What is Competition Law?,” “Implications of the New Competition Law Regulation,” and “Career Opportunities in the Competition Authority” meetings.

Various activities are organized with an aim to make contributions to the awareness and know-how of competition law, and to provide information to the general public

concerning the legislation which the Competition Authority is charged with implementing and the decisions taken during the application of the said legislation.

Additionally, representatives from the Authority participated in a large number of meetings held by public agencies and non-governmental organizations related to the Authority’s field of activity. In that framework, on behalf of the Authority, Head of the External Relations and Competition Advocacy Department Recep GÜNDÜZ attended the meeting “Wheat and Flour: Production, Trade and Sustainability,” organized by the Turkish Flour Industrialists’ Federation (TFIF) on March 12-15, 2020 within the umbrella of the 16<sup>th</sup> International Congress and Exhibition at Antalya.

**3.11.3. Symposiums, Conferences, Panels and Meetings Organized**

Table 11 lists the symposiums, conferences, panels and meetings organized by the TCA in 2020.

**Table 11: Symposiums, Conferences, Panels and Meetings Organized**

Date / Venue	Relevant Institution / Person	Event
March 9-10, 2020 İSTANBUL	Competition Authority with the participation of UNCTAD	ICF
June 02, 2020 ANKARA	Competition Authority with the participation of UNCTAD and OECD	ICF Webinar
October 05-09, 2020 ANKARA	Competition Authority with the contributions of SESRIC	“Competition Law and Policy” training for the experts/ assistant experts from the Tunisian Competition Council
December 15-16, 2020 İSTANBUL	Competition Authority	ICF Annual Webinar



## ICF WORKSHOP



The first event of ICF in 2020 was organized in the form of a Workshop on March 9-10 in Istanbul, with the participation of experts and mid-level administrators from the competition agencies of 19 countries. The first day of the two-day Workshop hosted the panels "Competition in Digital Platforms," "Market Definition in Digital Platforms" and "Consumer Harm Theory in Digital Platforms," while the second day's panel was titled "Handling of Cross Border Cases."

## ICF WEBINAR

The second event of ICF in 2020 was a webinar organized on June 2, 2020. Moderated by the Head of the Supervision and Enforcement Department IV Recep GÜNDÜZ, the webinar was attended by UNCTAD Legal Officer Ebru GÖKÇE DESSEMOND and OECD Representative Antonio CAPOBIANCO, as well as Professor William KOVACIC from George Washington University Law School and speakers from the Competition Authorities of Russia, Albania, Tunisia, Uzbekistan and Greece.



## ICF ANNUAL WEBINAR



The third meeting of the ICF in 2020 was an online event organized on December 15-16, 2020. The meeting started with the opening remarks by the Minister of Trade Ruhsar PEKCAN and the President of the Competition Authority Birol KÜLE. The topics discussed were "Competition Issues in Digital Markets," "Competition Enforcement in Times of Covid-19," and "Competition Issues in Labor Markets." Senior representatives of foreign competition agencies, academics and representatives from international organizations such as UNCTAD and OECD contributed to the discussions.



### DECEMBER 15

The keynote speech of the meeting was given by Lina KHAN, Associate Professor of Law at the Columbia Law School.

### DECEMBER 16



The second day of the meeting hosted two sessions titled "Competition Enforcement in Times of Covid-19," and "Competition Issues in Labor Markets." The first session, moderated by the Vice-President of the Competition Authority Faik Metin TIRYAKI, was attended by Competition Board Member Ayşe ERGEZEN, UNCTAD Competition and Consumer Committee Expert Ebru Gökçe DESSEMOND, Uzbekistan Anti-monopoly Committee Deputy President Farrukh KARABAYEV, TÜBİSAD President Kübra Erman KARACA, and the President of the Kosovo Competition Authority, Valon PRESTRESHI.



The second session was moderated by Ebru Gökçe DESSEMOND, UNCTAD Competition and Consumer Committee Expert, and the speakers were Alberto HEIMLER, Chairman of the OECD Working Party 2, Marshall STEINBAUM, Assistant Professor at the Utah University, and Meltem BAĞIŞ AKKAYA, Head of the External Relations and Competition Advocacy Department of the TCA.

**3.12. Publications**

**3.12.1. Competition Journal**

Beginning publication in 2000, the Competition Journal is a refereed periodical published semiannually by the Turkish Competition Authority. Publishing original articles in the field of competition law, policy and industrial economics in the Turkish and English languages, the Competition Journal was added to the SOBIAD National Index in 2020.



There were four articles in the December 2019 issue of the Competition Journal, published in 2020.

Articles submitted to the e-mail address [rekabetdergisi@rekabet.gov.tr](mailto:rekabetdergisi@rekabet.gov.tr) for publication in the Competition Journal are first assessed for article writing rules and then forwarded to two expert referees for evaluation. For each article published in the Competition Journal, a royalty payment is made and 10 journals are sent to the author, free of charge.

**3.12.2. Competition Bulletin**

Aiming to share current developments in competition law with its followers, the Competition Bulletin includes important decisions taken by the Competition Board, global developments in the field of competition law and decisions taken by foreign competition agencies, court rulings of Turkish courts concerning the Turkish Competition Board decisions, and recent studies in the field of competition economics.



**3.13. Opinions Rendered to Public Institutions and Organizations**

Another activity conducted by the TCA within the scope of its competition advocacy work is rendering opinions to public institutions and organizations. The opinions rendered under this framework may concern draft regulation prepared by the relevant institution or organization, or they may concern other activities of public institutions and organizations. The table listing the opinions rendered by the TCA to public institutions and organizations in 2020 is below.

**Table 12:** Opinions Rendered to Public Institutions and Organizations

Subject of the Opinion	Number of Opinions
Draft Legislation	7
Other Activities	3
TOTAL	10

### **3.14. Strategic Plan Performance Monitoring and Assessment Activities**

Strategic Plan performance monitoring and assessment activities are carried out under the Act no 5018.

The Strategic Plan for 2019-2023 determines the goals and targets of the Authority based on a total of four axes. Respectively, these are the application of the competition law, competition advocacy, policy development, and institutional capacity. Within those four axes, the developments to be implemented during the duration of the Plan and the goals and targets which would realize those developments are identified (see Section 2.1. Goals and Targets).

The monitoring and assessment process aims to provide institutional learning, and thereby ensure constant improvement in the activities. It is of vital importance for the success of the Plan that the degree of achieving the institutional goals and targets set out in the Strategic Plan is periodically monitored and assessed. Strategic plans serve as a roadmap for public institutions to find better and more rational solutions to their problems within the dynamic ecosystem in which they exist, and they must be reviewed in light of the information acquired as a result of the monitoring and assessment activities. Monitoring and assessing a strategic plan is an indispensable element for both the successful implementation of the said

plan, and in terms of compliance with the principle of accountability.

Monitoring is an iterative process in which qualitative and quantitative data is gathered and analyzed constantly and systematically, both before and during the implementation, in order to keep track of the progress made in comparison to the goals and targets. Outcomes of the goals and targets are frequently monitored via performance indicators and periodically reported for the evaluation of the administrators. Carefully carried out by the Competition Authority as well, the monitoring process allows the Authority to evaluate whether the route set out in the Strategic Plan is being followed. The assessment, on the other hand, is a detailed examination conducted to see to what extent ongoing or completed activities have helped in reaching the goals and targets and to what extent they contributed to the decision-making process. To that end, strategic plans which are monitored periodically may be revised after the evaluation, if necessary.

In that context, the Competition Authority conducted an integrated assessment of the activities carried out in 2020 within the framework of the 2019-2023 Strategic Plan, based on the goals and targets determined in line with the strategic axes. During the 2020 monitoring and assessment period, the performance score of the Competition Authority has been 100% for every goal and target under each axis of the Strategic Plan, despite the negative effects of the pandemic.

### 3.15. Other Activities

In 2020, a total of 13 written questions from the Grand National Assembly of Turkey were received through the Ministry of Trade, the Authority's related ministry, and answered either directly or in coordination with the relevant departments.

As part of explaining the Competition Authority's vision and mission to the public through social media, videos on the following topics were published on the Youtube channel.

- Competition Is Good, It Prevents Monopolies and the Competition Authority Protects This Environment
- Amendments to the Act on the Protection of Competition
- Competition Board's Google Decisions
- The Impact of the Competition Board Decisions on Our Daily Lives

- Amendments to the Act on the Protection of Competition (Mergers and Acquisitions)

- The mission of the Competition Authority

- Handling of Vertical Agreements under Competition Law

- Amendments to the Act on the Protection of Competition (Exemptions and On-Site Inspections)

- Event broadcasts

The speeches and presentations made during the Istanbul Competition Forum on "Digitalization and International Cooperation," organized by the TCA in 2019 with the participation of UNCTAD and cooperation of TİKA, were transcribed and translated by the External Relations and Competition Advocacy Department personnel and published by the Authority in two languages.







# **GENERAL ASSESSMENT**

#### 4. GENERAL ASSESSMENT

An examination of the activities of the TCA in 2020 shows that a total of 319 file was finalized in the relevant year. In light of the fact that 312 files were concluded in 2019, the total number of finalized files increased in 2020 by 2%, which suggests that the negative effects of the COVID-19 pandemic did not cause a decrease in the principal activities of the TCA.

Looking at the subject distribution of the 319 files concluded by the Board in 2020, 65 of these files were about competition infringements, 34 were about exemption/negative clearance applications, and 220 were about merger/acquisition/joint venture/privatization transactions. This distribution can be compared to that of 2019, revealing a decrease in the number of competition infringements from 69 to 65 and negative clearance/exemption files from 35 to 34, while the number of merger/acquisition/joint venture /privatization files went up from 208 to 220. In that framework, the increase in the total number of files finalized in 2020 by 7 files compared to the previous year is mainly due to the increase in the number of merger/acquisition/joint venture /privatization files.

In 2020, the number of files finalized as a result of preliminary inquiry and investigation processes conducted in response to claims of Article 4 and/or 6 infringements was 65. In 2020, logistics, storage and mail, chemistry and mining, machinery industry, construction, automotive and vehicles were the sectors with the highest number of competition infringement examinations. These five main sectors have a share of around 54% within the competition infringements cases finalized by the Competition Board in 2020.

Of the 65 files finalized concerning claims of Article 4 and/or 6 infringement, eight were examined ex officio by the Competition Board in 2020. In other words, about 15% of the finalized competition infringement cases in 2020 consist of ex officio examinations. All of the competition infringement cases examined ex officio concerned Article 4 violations. Examining the share of ex officio competition infringement files launched in 2020 within all competition infringement files show that the Board has been able maintain its proactive approach, similar to the previous year.

A look at the distribution of the competition infringement cases concluded in 2020 according to the related Article of the Act shows that 36 of them concerned claims of Article 4 infringement, 22 concerned claims of Article 6 infringement, and seven concerned claims of Article 4 and 6 infringement. Within that framework, the share of the files claiming Article 4 infringement within the total number of competition infringement cases was higher than that of the files claiming Article 6 infringement in 2020, similar to the previous five-year period. Out of a total of 43 files claiming Article 4 infringement, 31 concerned horizontal agreements while 10 concerned vertical agreements. Two files concerned both vertical and horizontal agreements.

Looking at the Competition Board decisions on competition infringements, 36 out of 65 decisions were taken as a result of preliminary inquiries, and 29 as a result of examinations. Ten of the decisions taken as a result of investigations dismissed the claims in question, while 16 imposed administrative fines on the undertakings.

Comparing the 34 total exemption/negative clearance applications finalized in 2020 with the 35 applications made in 2019 reveals that there was not a significant change in the number of negative clearance/exemption cases finalized. Only three of the applications assessed in 2020 concluded with a negative clearance decision. Out of the 31 exemption applications finalized in the same year, 16 were concluded with a Board decision stating that the agreement in question could benefit from a block exemption and/or individual exemption. Seven applications were concluded with an exemption subject to conditions, and it was decided that seven more applications could not be granted exemption. Looking at the distribution of exemption-negative clearance files according to sectors, it can be seen that banking, capital markets, finance and insurance services as well as healthcare services sectors were in the lead, with around 47% of the negative clearance/exemption examinations having been conducted in these sectors.

In 2020, 220 merger and acquisition application were finalized, which shows an increase of around 6% in the number of finalized decisions in comparison to 2019. Of the aforementioned 220 applications, about 68% were acquisitions and about 28% concerned transactions related to the establishment of joint ventures, with around 4% including merger transactions. In that framework, it is possible to say that, in the last five years, there has not been a significant change in the distribution of the merger and acquisition transactions. However, a look at the sectoral distribution of the same applications reveals that chemistry and mining; automotive and vehicles; machinery industry, banking, capital markets, finance and insurance

services as well as infrastructure services sectors saw the largest number of M&A transactions, with these sectors having a share of around 58% in total applications. An overview of the outcomes of the Board decisions show that 190 transactions were authorized without conditions, and one transaction was rejected. Twenty-eight transactions were found to be out-of-scope or below the threshold.

Within the context of the files finalized in 2020, undertakings found to have infringed competition were imposed a total of TL 1.964.045.143 in administrative fines, in accordance with Article 16.3 of the Act. Out of the abovementioned amount imposed on the undertakings, TL 1.656.837.739 was for Article 4 infringements and TL 307.207.404 was for Article 6 infringements. In addition, a total of TL 64.019.750 in administrative fines were imposed in 2020, with TL 61.468.770 imposed under Article 16.1(c) of the Act for providing false or misleading information in on-site inspections, while TL 2.550.980 was imposed under Article 16.1(d) of the Act for preventing on-site inspections.

An examination of the sectoral distribution of the fines imposed under Article 16.3 for the infringement of competition law rules in 2020 shows that the highest amount of administrative fines was imposed on the chemistry and mining sector, with a total of 1.524,09 million TL. This is followed by the information technologies and platform services sector, with 295,06 million TL in administrative fines.

Administrative fines imposed on these two sectors comprise around 93% of the total fines imposed for competition infringements in 2020. These sectors are followed by the logistics, storage and mail sector with

73,54 million TL in fines, and banking, capital markets, finance and insurance services sector with 34,37 million TL in fines.

In 2020, 155 of the lawsuits filed against the Board decisions on professional matters were concluded. Of these lawsuits, 124, i.e. 80%, were concluded in favor of the Authority.

In 2020, the "Act no 7246 Amending the Act on the Protection of Competition" was published in the Official Gazette dated 24.06.2020 and numbered 31165, and became effective. The amendment in question increased the predictability of the exemption regime, introduced the "significant lessening of effective competition" test for merger and acquisition examinations, clarified the powers related to the application of structural remedies, reinforced the legal infrastructure of the on-site inspection powers, clarified the assessment criteria for those practices which do not appreciably restrict competition in order to allow for the more efficient use of organizational resources, and implemented the commitment and settlement processes.

Within the framework of competition advocacy activities, sector examinations on the "online marketplace," "fast moving consumer goods retail sector," "fresh fruits and vegetables," "fuel" and "financial technologies" sectors are ongoing as of the end of 2020. The inquiries in question are deemed to be very important for identifying the competition issues in the related fields and for finding proactive solutions to establish competitive functioning of the relevant industries.

Another pillar of competition advocacy activities is comprised of events aimed at

promoting competition law and the functions of Authority. In that framework, due to the COVID-19 pandemic the TCA provided online assistance to the on-the-job training programs of various public institutions, and organized training programs and meetings with the cooperation of other public institutions, non-governmental organizations and universities.

Another activity carried out within the framework of competition advocacy is rendering opinions to public institutions and organizations. Essentially, these opinions serve to examine a planned legislation, or a planned practice by the relevant agency or organization from a competitive perspective and, to the extent possible, to ensure that a competitive perspective is included in the relevant legislation text or practice. In this context, the TCA rendered a total of 10 opinions to various public agencies and organizations in 2020, seven of which concerned draft legislation and three of which concerned other practices of the relevant agency or organization.

In 2020 economic analysis and research activities picked up speed due to the rise of the institutional capacity in this area, making important contributions to the assessment of the relevant cases with the econometric analyses conducted concerning eight investigations launched in the fertilizers, port operation, chemical products, wheat flour, durable consumer goods and welding sectors. Additionally, within the scope of the economic analysis and research activities, the 2020 Mergers and Acquisitions Overview Report as well as the Impact Analysis Report that aims to determine the effect of the Competition Authority activities on consumer welfare during 2019 and 2020 were prepared.

According to the 2020 Mergers and Acquisitions Overview Report, the 220 transactions examined by the Competition Authority in 2020 were finalized in 18 days following the date of final notification, on average. According to the calculations of the Impact Analysis Report based on OECD assumptions, the consumer benefit from the Authority's activities in 2019-2020 were 5.27 billion TL annually on average with December 2020 prices, and 10,55 billion TL in total.

As in the previous years, the TCA attached great importance to improving international relations in 2020. To that end, the TCA attended various multilateral meetings, international conferences and international training seminars including those organized by the European Union, Organisation for Economic Co-operation and Development, United Nations Conference on Trade and Development, International Competition Network and the Statistical, Economic and Social Research and Training Centre for Islamic Countries, through online means of communication due to the pandemic. The Authority also hosted numerous meetings for the Istanbul Competition Forum, both face-to-face and online.

In terms of the training activities, the Authority continued its work on the training programs aimed at the assistant experts who took office in 2020 as well as for other professional staff. Another part of the training activities was the first "Internship Rally" program coordinated by the Human Resources Office of the Presidency of the Republic and conducted through the participation of Ministries, connected, related and associated and coordinated institutions and organizations as well as volunteering employers from the

private sector, which was attended by four university students.

In addition, the Authority was given an award during the "Cyber-Security Week" event, organized by the Turkish Cyber Security Cluster and supported by the Presidency of Defense Industries of the Presidency of Republic as well as the Presidency of the Republic Digital Transformation Office in 2020, for its contributions to "increasing the use of local cyber-security products in the public sector and establishment of a national cyber-security ecosystem".

As a result, despite the pandemic conditions making significant impact around the world and in Turkey, the Competition Authority continued to carry out all of its functions in terms of applying the competition law rules, continued its competition advocacy activities, and had a quite busy and productive year in spite of the aforementioned conditions. Improving the institutional capacity continued to be a priority target in 2020, with special attention placed on conducting an institutional self-evaluation based on past experiences, in order to ensure better outcomes in the future. As in the previous years, the TCA monitored the developments in the national and international markets, the relevant literature and country practices in 2020. Within the framework of the know-how acquired as a result of such studies and the Strategic Plan for 2019-2023, the Turkish Competition Authority will continue with its operations in the forthcoming period, with an aim to carry out its mission and achieve its vision.

## 5. EVALUATION OF ORGANIZATIONAL CAPABILITY AND CAPACITY

### Internal and External Analysis

The TCA endeavors to carry out the functions and responsibilities it has been charged with by law, working with external factors such as the political and economic environment it experiences, and with the internal factors including the organizational structure, human resources and institutional culture. The strengths and the improvable aspects of the internal organizational environment and the current opportunities and challenges of the external environment are listed below.

#### 5.1. Strengths

- High credibility of the Authority
- Professional expertise and independence of the rapporteurs
- Pool of qualified human resources
- Feeling of professional belonging

#### 5.2. Improvable Aspects

- Insufficiency of the evidence gathering powers
- Need for improving the economic analysis capacity
- Inability to act in a sufficiently proactive manner

#### 5.3. Opportunities

- The emphasis on “competition” in the higher policy documents
- Increase in the general awareness for the indispensability of competition
- Proliferation of competition law practices around the world
- Continuing economic growth

#### 5.4. Challenges

- Technological developments making it easier to hide competition infringements
- Anti-competitive provisions in other legislation
- Increase of concentrations in the markets
- Increase in the general level of prices in goods and services markets
- Misinformation in the public concerning the mission of the Turkish Competition Authority



### 6. RECOMMENDATIONS AND PRECAUTIONS

The Strategic Plan for 2019-2023 published in 2019 aims to re-establish the mission and vision of the Competition Authority under the guiding light of the previous institutional experience, assessments on the developments in the international arena, and the awareness of the changes emerging in the markets as well as in the ways of doing business caused by developing technology and increasing digitalization.

New goals and targets have been set towards implementing the mission and vision determined under the three main pillars of competition law enforcement, competition advocacy and policy development. Another pillar is determined to be the institutional capacity which will allow the TCA to reach these goals and targets, and it has been made the subject of various other goals and targets to complement the aforementioned pillars. According to the 2020 Monitoring and Assessment Report prepared in line with the goals and targets established in the 2019-2023 Strategic Plan, the performance score of the TCA in 2020 was found to be 100%, despite the negative impact of the pandemic.

In that context, the Authority will continue to do its utmost to implement the amendments to the Act no 4054 through the secondary legislation required. The full implementation of these amendments will improve the evidence-gathering capabilities of the Authority, facilitate alignment with international developments and allow timely and proper intervention in changing markets, and thus will increase the efficiency of competition law enforcement.

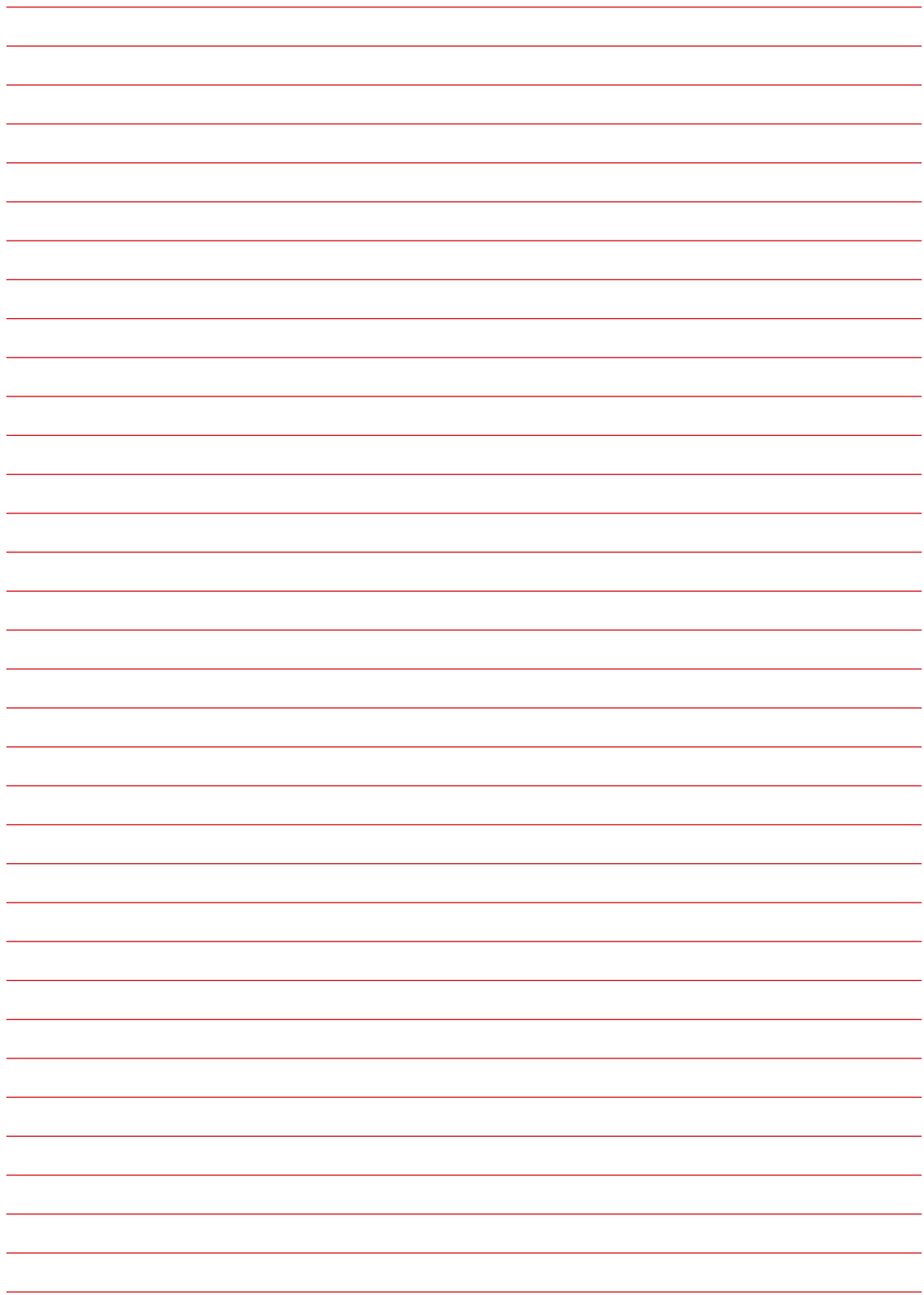
As known, work within the competition advocacy efforts aimed at ensuring that the Competition Authority and competition law are recognized and embraced at the level of individuals, agencies and sectors and that this recognition is reflected in the behavior of the shareholders ultimately contributes to the development of competitive markets in Turkey.

Another area that will constitute an important portion of the TCA's efforts in the future is the development of policies to properly direct the resources of the Authority. To that end, it is particularly important to determine distorted markets and/or markets with a high potential of competition infringements. For that reason, the Authority will continue its work to identify the relevant priority areas through its ongoing or new sector inquiries.

Lastly, the TCA is well aware of the fact that it will achieve its goals and reach its targets at a satisfactory level only if it has sufficient institutional capacity and continuously develops that capacity to meet the novel requirements it will face. To that end, the Authority will continue to organize studies and activities to improve its human resources in terms of knowledge, ability and capacity through domestic and overseas training programs, seminars and conferences.

As an agency which has earned the trust of all concerned shareholders before the public by its correct decisions, its transparent and inclusive sense of work, and its qualified human resources, the Turkish Competition Authority will put the utmost effort into maintaining its status in the future and develop competition law practices in Turkey.







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