



2021 ANNUAL REPORT



ANNUAL REPORT 2021

COMPETITION AUTHORITY

Üniversiteler Mahallesi 1597. Cadde No: 9
Bilkent Çankaya 06800 / ANKARA
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Tel: (0312) 395 25 80 (pbx) • info@pelinofset.com.tr • www.pelinofset.com.tr





Members of the Competition Board (Left to Right)

Board Member : Cengiz ÇOLAK

Board Member : Hasan Hüseyin ÜNLÜ

President : Birol KÜLE

Board Member : Şükran KODALAK

Board Member : Ahmet ALGAN

Board Member : Ayşe ERGEZEN

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To summarize the past year of operation from a broad perspective, we can refer to Albert Hirschman. The approach, which has looked for/found the source of human happiness/unhappiness in the social order, firstly in the market order, since the 19th century, has been on the agenda of all institutions at all levels consciously or unconsciously especially for the past few years. How can we build better institutions? How can we make the market order the source of progress, welfare, morality, determination, virtue; in other words, the real happiness? If the shocks such as Covid-19 and the climate change, economic cycles, supply and demand shocks are not unknown but known policy inputs, how can we have the courage to manage this new reality?



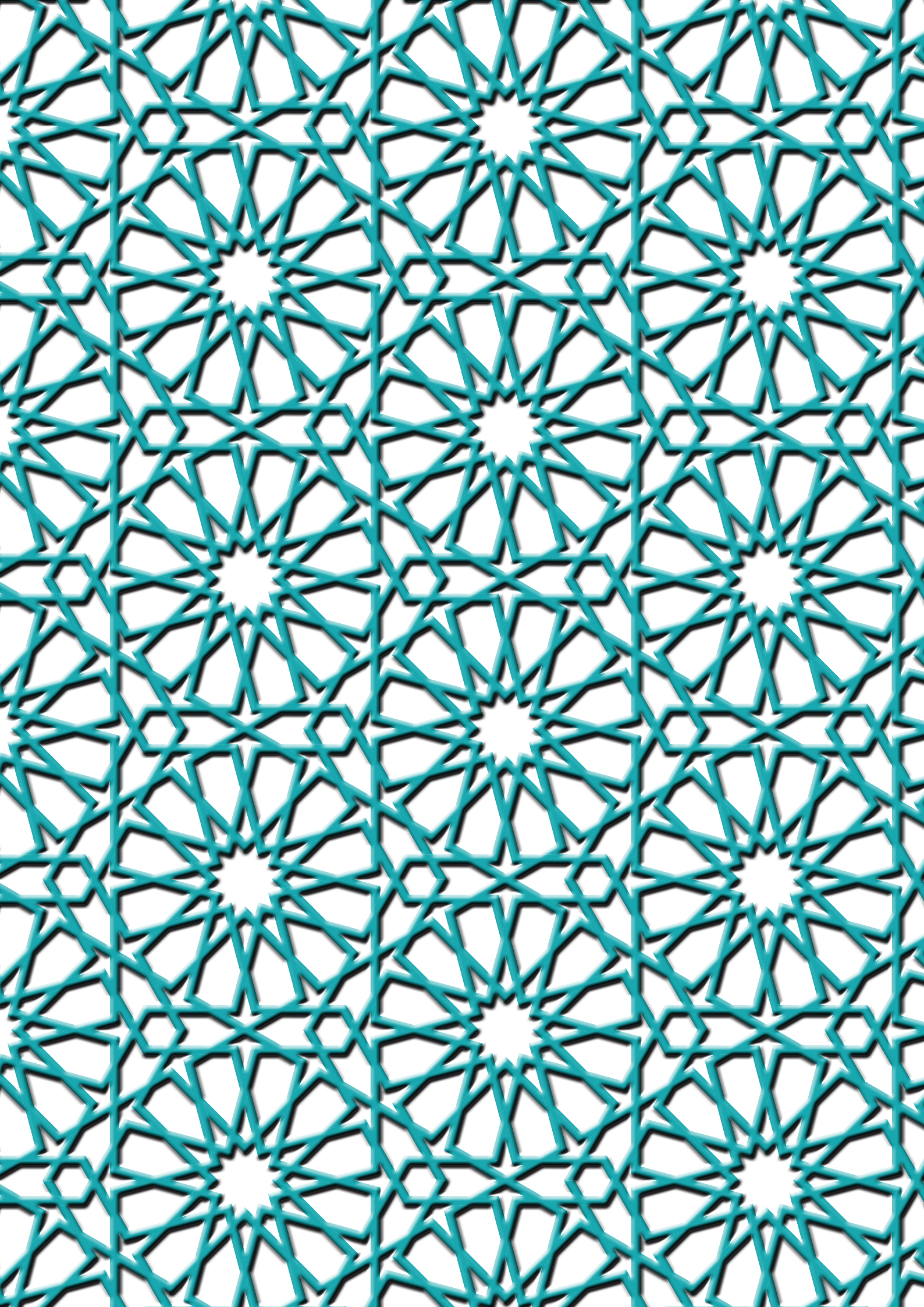
As the Competition Authority, last year, we worked continuously with our experts and personnel in order to enforce the law in the most efficient manner as well as to guide the markets in a competitive way. In terms of “efficient law enforcement”, the statistical information in our Report presents the necessary information under separate articles and sectors. Statistics can only provide us with additional assistance to understand success; formal rules are always insufficient and even concealing without a true feeling of justice. Last year witnessed important examples with respect to size of sanctions, number of parties and sectoral scope. However, the main issue to be shared with you in this foreword is how the decisions and advocacy efforts have affected our citizens' lives. As you know, whether the benefits of market order and globalism are dominant for citizens has been discussed since 2007 and 2008 Global Financial Crisis. Covid-19 and its effects have intensified those discussions and brought new and progressive dimensions to discussions with stronger and braver arguments -maybe positively.

In such environment, competition law and policy climb up to the upper ranks in the toolkit of both epistemic society and policy makers. The duty of competition law is to ensure that all economic decisions such as production, consumption, investment are taken in a way to allocate sources efficiently, and it is leaving most of the lessons learnt and enriching its background with new tools and approaches. Our legislative reform in 2020 and new competition law mechanisms were established with enforcement practices last year. Our reform agenda is always full due to technological innovations transforming the market and the duty of the law to shape the technology with social benefit objectives. As you can follow in our report, there was a remarkable increase in multilateral competition infringements as well as in the number of acquisition notifications last year.

In the files regarding the markets, which are important for our citizens' daily lives, contributions were made to sound market structures that produce welfare by means of administrative sanctions as well as behavioral and contractual measures. Our sector inquiries, both the completed ones and the newly initiated ones, which are invaluable for understanding and solving sectoral problems, improved our institutional knowledge and memory last year. Our training and advocacy activities continue determinedly despite the outbreak conditions. In addition, international learning networks and cooperation are deepening in a regional and bilateral dimension in terms of scope and quality. The scope and substance of new cases as well as new enforcement and conceptual improvements will continue to be reflected to our activities.

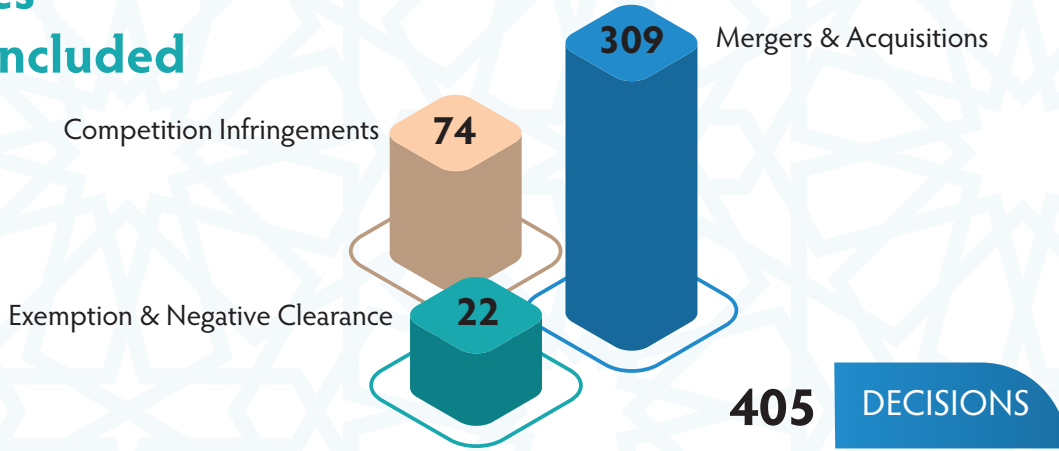
Wishing that a robust recovery is fully achieved and that diligence and industriousness, the *raison d'être* of markets and trade, become the norm again in 2022, I would like to present our Annual Report, which explains our activities in 2021 in detail, for your information and evaluation.

Birol KÜLE
Chairman of the Competition Board

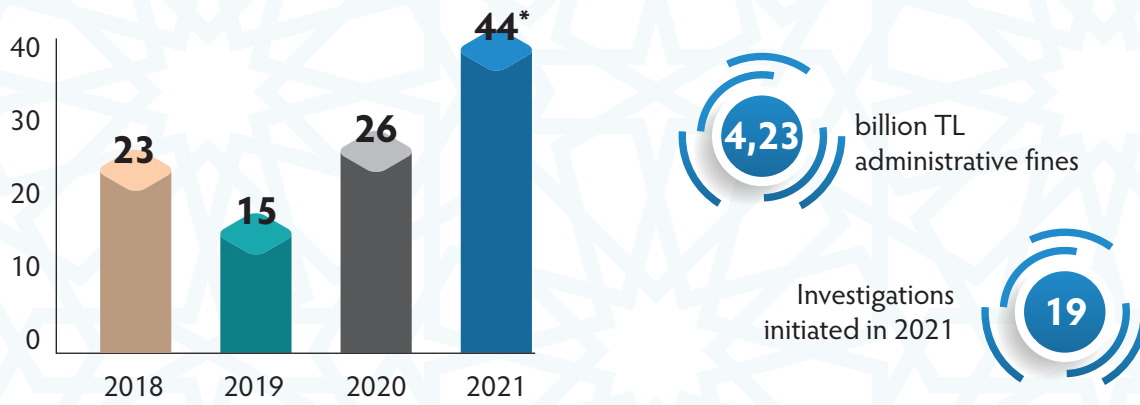


2021 IN NUMBERS

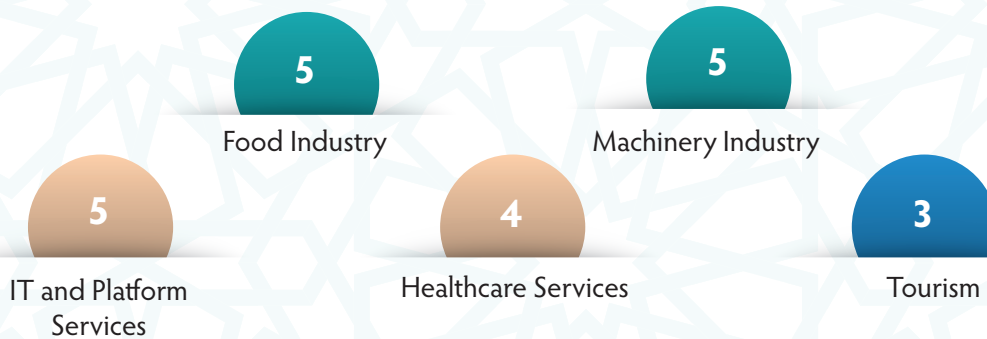
Files Concluded



Investigations



Breakdown of the Investigations Concluded According to Sectors (The first five sectors)



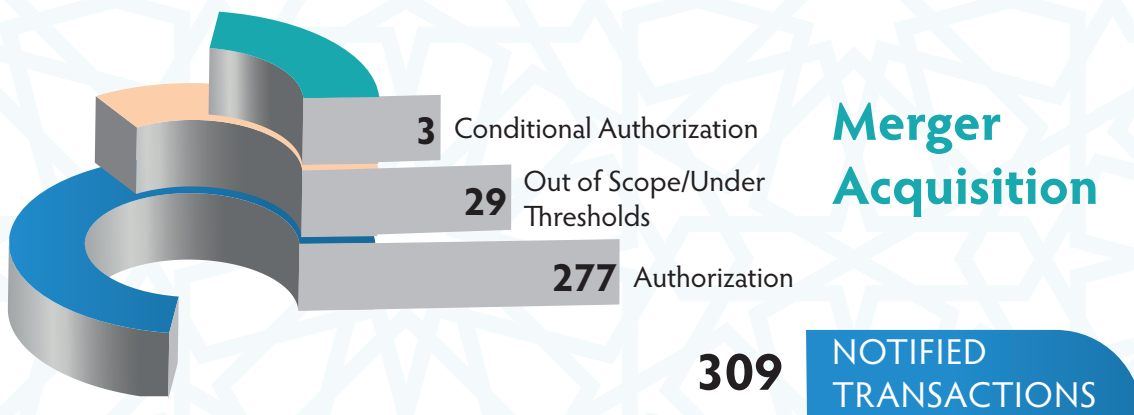
* The investigation process was completed in respect of 40 files in 2020. In four files, while the investigation was terminated for some of the undertakings as a result of settlement procedure, it is still ongoing for the other parties to the investigation.

Since 2019, the number of investigations has **increased by three fold**,
whereas the number of on-site inspections has **decreased** by ~ %30

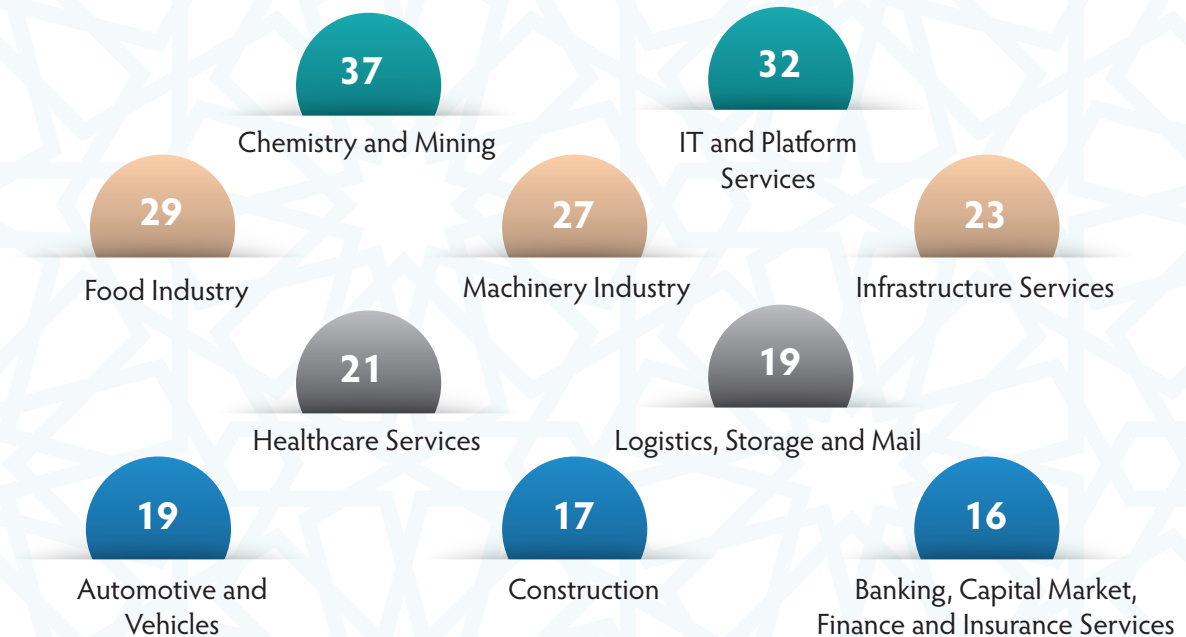


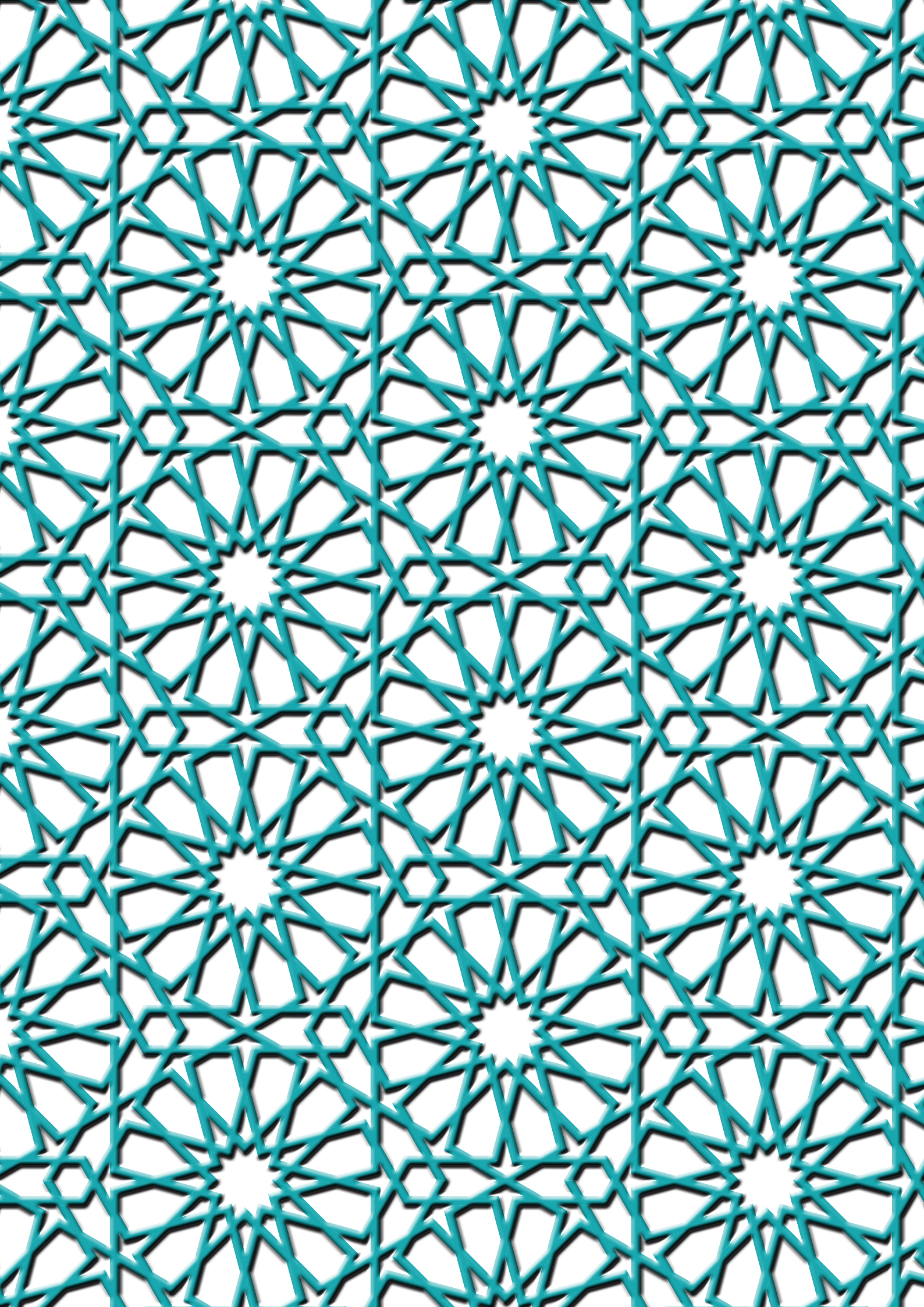
“Effective on-site inspection” + “increase in human resources capacity”

Year	The Number of Investigations Completed	The Number of Preliminary Inquiries	The Number of On-site Inspection Assignments
2019	15	54	909
2020	26	36	502
2021	44	29	653



Breakdown of Merger and Acquisition Decisions According to Sectors (The first ten sectors)





GENERAL INFORMATION

1.GENERAL INFORMATION

Article 167 of the Constitution of the Republic of Türkiye 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 was put into effect on 13.12.1994 to serve firstly the growth of consumer welfare and public welfare by establishing, protecting and improving competitive market order based on economic efficiency. Türkiye Competition Authority (TCA) started to work on 05.11.1997 after completing its organization within the framework of the Act.

It is necessary to review competition law legislation constantly taking into account the dynamism of economic life, knowledge and experience gained in enforcement 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 within the past 27 years since its enactment. 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 TCA is to prevent monopolization and cartelization, to increase consumer welfare, to contribute to the well-functioning of market mechanism, to contribute to the improvement of international competition power and to ensure that investment environment functions soundly by decreasing entry barriers.

In line with this mission, the following objectives are set:

- 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,
- Making necessary disposals to promote competition culture and ensure that public decisions and actions are made according to competitive understanding,
- Making researches related to competition law, economy and policy, developing policies and contributing to the development of 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 achieve those objectives.

The future vision of the TCA is to be an institution which supports sustainable growth and development, taking innovation, variety, productivity and quality to the highest level, promotes a 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 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 distribution of basic goods within the country in a stable way. While the shocks caused by pandemics, negative weather conditions or conflicts result in a rupture in the supply chain, the risk of being exposed to cuts and price shocks is much lower in competitive economies. As seen in the health sector during the pandemic, thanks to the role of competition that promotes innovation and product variety, consumers are affected less from supply and demand shocks. During Covid-19 period, financial policies implemented by governments to increase total demand produced more efficient results in economies with competitive markets. Competition authorities' advocacy role is important in minimizing the negative effects of bailout packages on market structure.

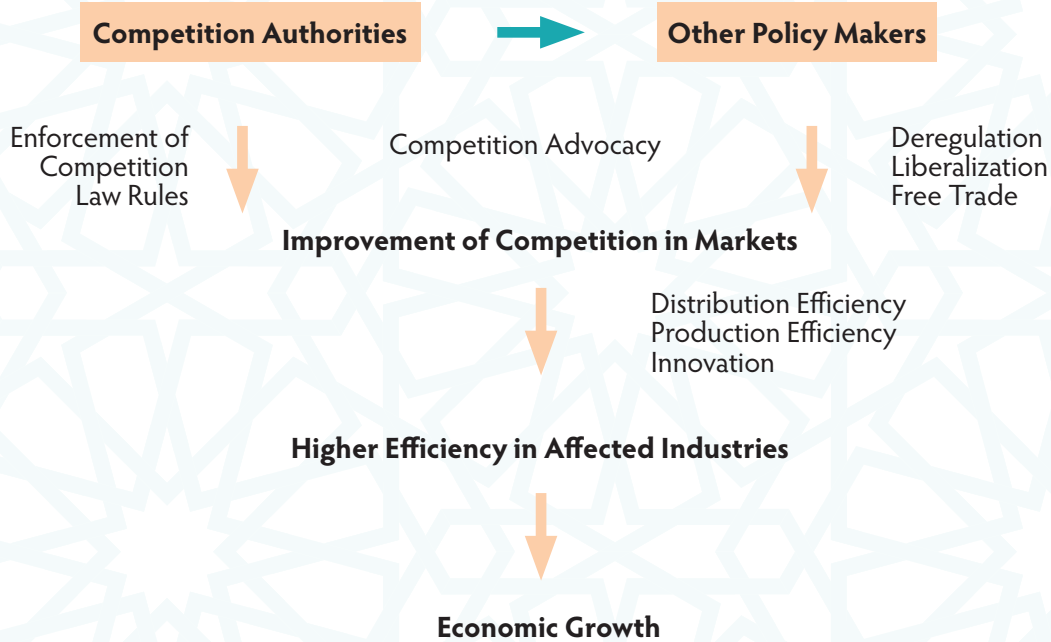
Economic Growth

Competition authorities contribute to the development of competition in markets by means of their fundamental duty that is enforcing competition law rules and 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 higher quality. In such environment, R&D, innovation and innovative products are important parameters of the race between firms. As a result, market efficiency is higher. In turn, higher efficiency contributes to national competitive power, economic growth and thus public welfare.

Competition Authorities take an important role by means of complementing other economic policies with their function of supervising markets. Indeed, to ensure that the decisions of the government related to monetary and fiscal policies produce efficient results and the national economy grows in a healthy way, it is essential that cartels and monopolies should not dominate the markets. Figure 1 summarizes the contribution of competition authorities to economic growth.¹

¹ 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 also contribute to price stability indirectly by means of improving competition in markets. Those contributions may be classified under two headings: First, by ensuring lower price levels in medium and long term, protection of competition in markets helps preventing the distortion of price stability. Preventing cartels and similar structures and dominant undertakings from hindering competition in the market and controlling mergers and acquisitions that will lead to monopolies can be considered in this context. Second are the effects whose results can be observed in a shorter time with the implementation of competition law rules directly. For instance detecting and terminating prohibited behavior such as increasing prices artificially via agreements between competitors, hindering new entries and preventing lower prices through resale price maintenance are indirect contributions by competition authorities with respect to ensuring price stability.

Increase in Foreign Investment

One of the factors that investors take into account while taking their investment decisions is the existence of a competition authority which enforces 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 and thus makes indirect contributions to foreign investment.

Indirect Contribution to Fair Income Distribution

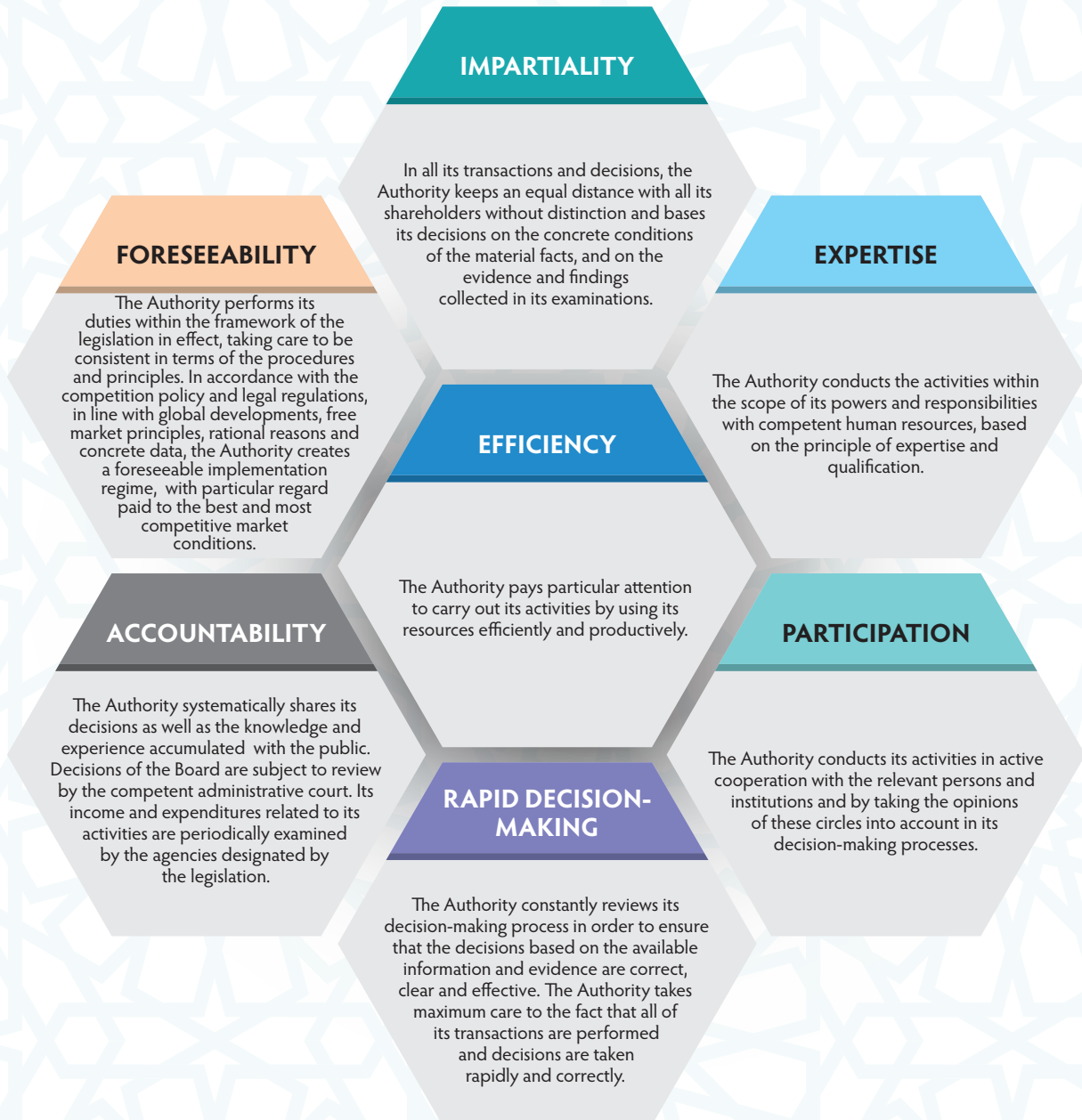
It is accepted that anticompetitive practices have negative effects on income distribution and markets where competition rules are not functioning efficiently may lead to inequalities. While anticompetitive practices affect many people, those who gain benefits from a cartel or a monopoly are generally a small group. Moreover, it is the low-income section of the society who is affected by higher prices and lower quality products caused by anticompetitive practices the most. Thus, preventing anticompetitive practices contributes indirectly to fairer income distribution especially through hindering unfair welfare transfers.

Increase in International Competition Power

Especially as a result of economic and technological developments in the last century, production facilities have improved, communication and transport vehicles 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 with 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 sound competitive market to improve international competitiveness as competitive markets motivate undertakings to work 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 fundamental values while fulfilling its main duties and functions bestowed according to its institutional purposes identified in the Act and pays attention to reflect those directly to the 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 regarding this aim under three main fields:

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

The abovementioned provisions form the basic framework of the Act no 4054. There is no discrimination between public enterprises and private enterprises or among 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 is established 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 the competitive process in markets for goods and services by using its powers granted by the Act.

Another duty of the Authority, competitive advocacy, is very important in terms of recovering market failures stemming from regulations, actions or transactions especially caused by other public institutions. 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 regarding competition law, and to monitor legislations, practices, policies and measures of other countries, concerning agreements and decisions limiting competition. Contributing to the formation and sound implementation of the competition policy, which consists of competition law legislation and other relevant legislation, throughout the country forms the significant part of the Board.

Competition advocacy is not limited to the duties listed in the Act no 4054. This notion is explained in a broader perspective by taking into account the basic 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 implement the vision on a healthy ground unless other public institutions are conscious about the benefits of a competitive market structure.

1.5. Information about the TCA

The Authority has public legal personality, administrative and financial autonomy and is independent in fulfilling its duties. **No organ, authority 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.

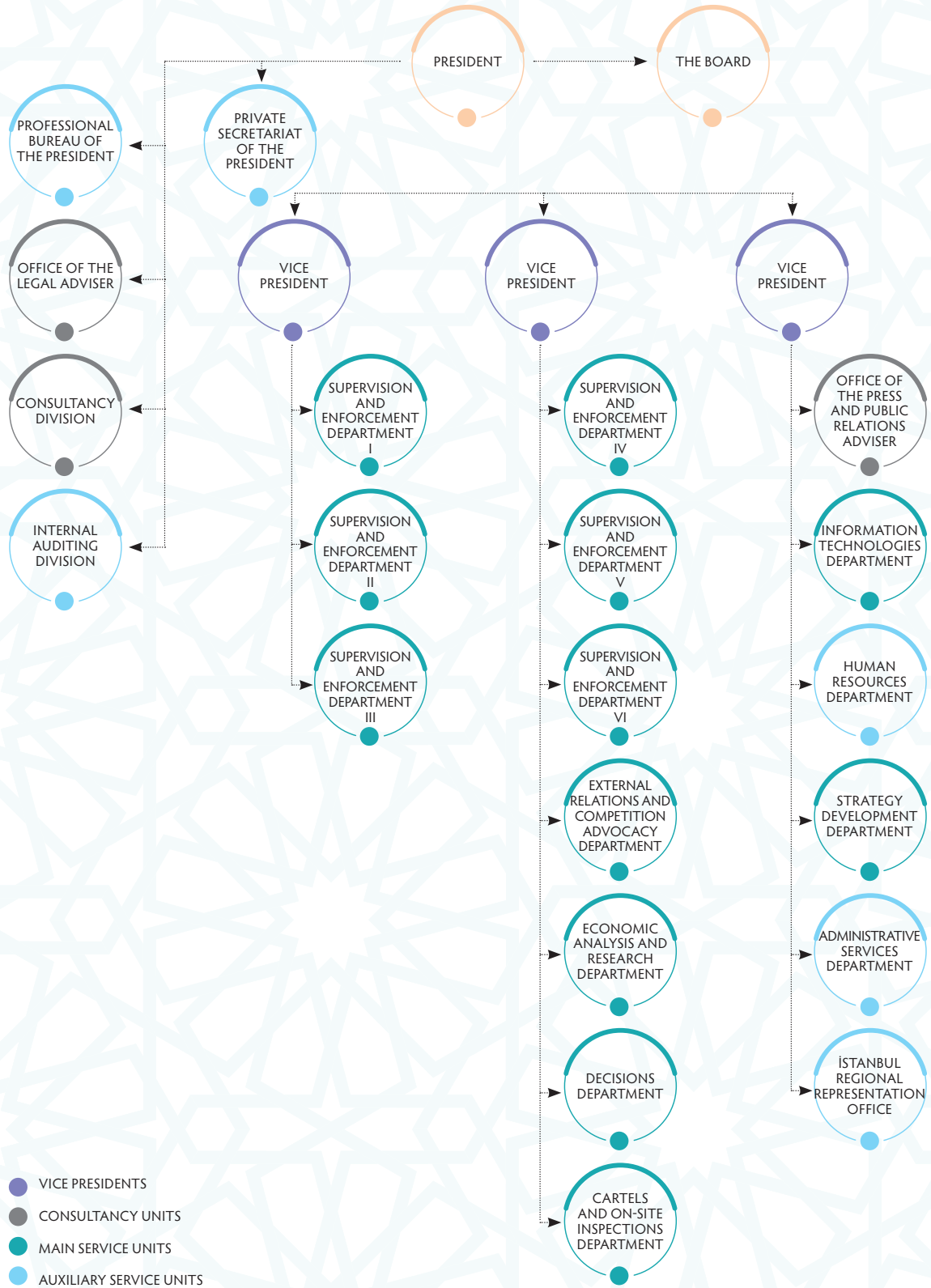
The Presidency consists of the Chairman, the Deputy Chairman and Vice Presidents of the Authority.

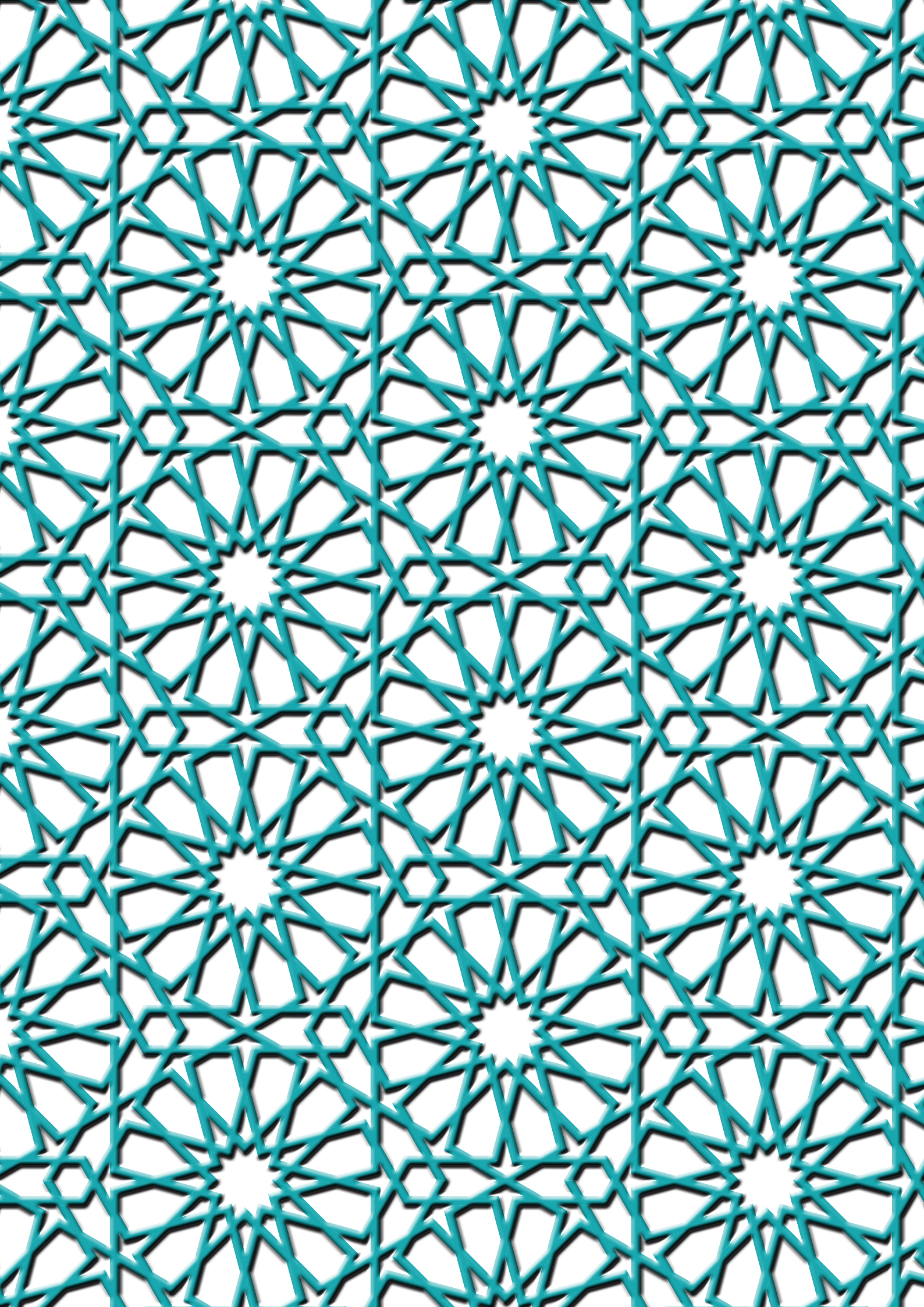
The Chairman of the Board is the highest supervisor of the Authority and is responsible for general management and representation. This responsibility covers arrangement, supervision, evaluation and announcement to public, when necessary, of the Authority's work in a general framework.

Service units consist of main service units 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 specified by the Act, the Authority carries out regulation and supervision activities under the scope of competition law enforcement; competition advocacy activities and policymaking activities.

The Authority published the Strategic Plan related to 2019-2023 period in 2019. The Strategic Plan includes the purposes related to those activities and the objectives to reach those purposes. The table below shows those purposes and objectives according to each field of activity.

Table 1: Purposes and Objectives

Competition Law Enforcement	
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
Competition Advocacy	
Purpose 2	To ensure that the Authority and competition law are known and internalized at individual, institutional and sectoral levels and this is reflected in shareholders' behavior.
Objective 2.1	To help institutions which determine or affect economic policies develop a competitive perspective
Objective 2.2	To increase the recognition about the Authority among shareholders
Policy making	
Purpose 3	To detect markets with failures and/or high potential for infringement 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 international arena
Objective 4.1	To develop international relations in the area of competition law
Purpose 5	To produce and spread knowledge about competition law and economy and transform this knowledge into benefits
Objective 5.1	To make academic and semi-academic studies related to competition law and economy
Institutional Capacity	
Purpose 6	To manage the human resources efficiently and improve its productivity
Objective 6.1	To increase the quality and quantity of training programs for the Authority personnel
Objective 6.2	To ensure efficient communication and coordination among the Authority 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 professional knowledge and use it more effectively

2.2. Fundamental Policies and Priorities

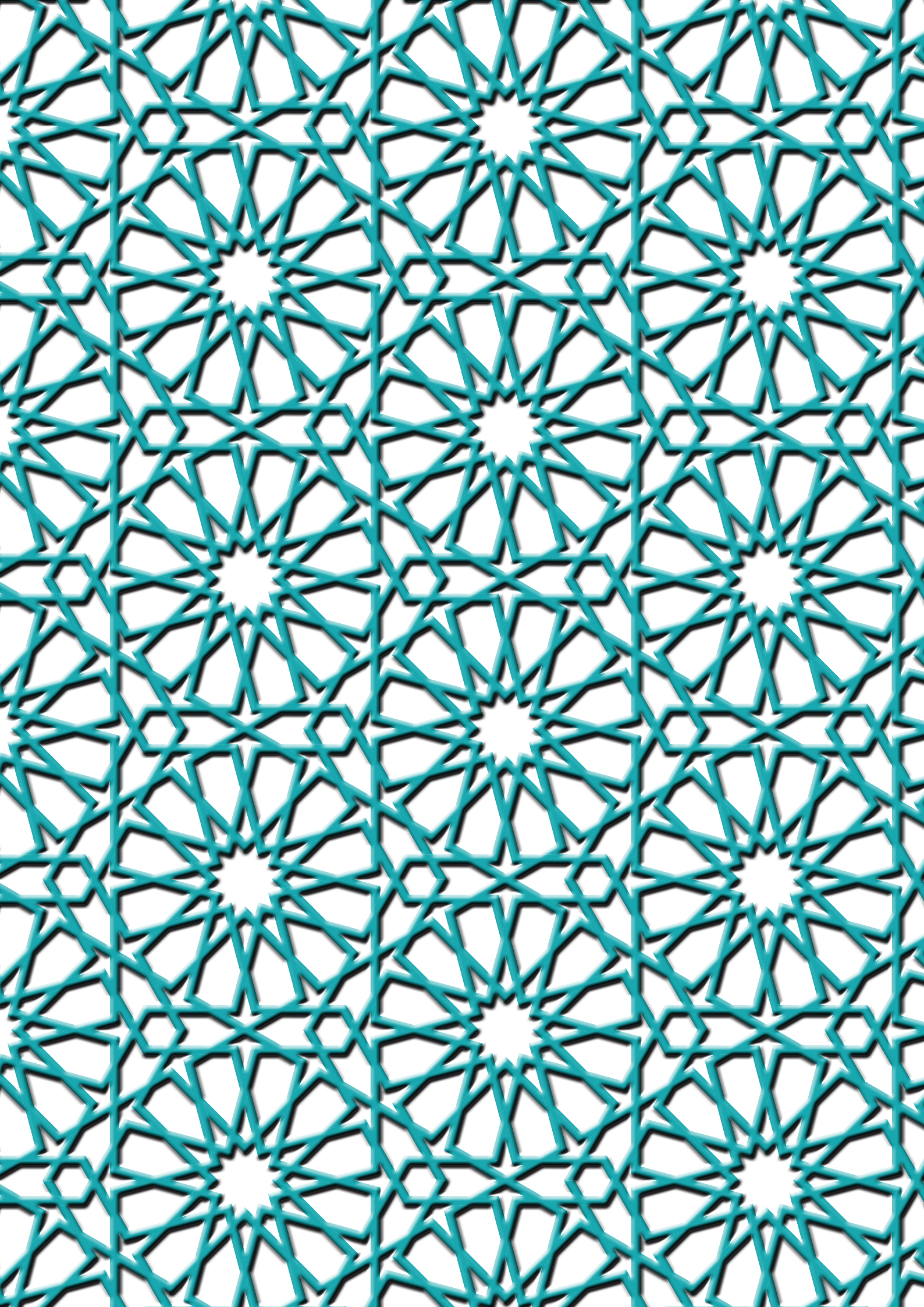
The TCA completed its 24th activity year in 2021. Within this time period, the Authority has made important contributions to the improvement of competition law and policy enforcement.

In the Strategic Plan for 2019-2023 period, taking into account those observations, the Authority sets the policies and priorities to make competition law and policy in our country more effective, dynamic and efficient.

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

- Taking initiatives to make the necessary amendments to the Act no 4054 for enforcing competition law more effectively and to make the necessary amendments to the secondary legislation in this framework,²
- Developing evidence collecting mechanisms in order to fight against competition infringements more effectively,
- Monitoring closely the markets which have changed with digitalization in order to develop efficient competition law and policies with respect to those markets,
- Carrying out activities in order to develop competition awareness in public institutions and authorities and competition culture in all segments of the society,
- Developing international relations in the area of competition law,
- Increasing institutional capacity and performance.

² "The Act 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 no 4054 prohibits agreements, concerted practices 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 be put into practice. Transactions that do not create effects on the market can be considered under the scope of article 4 regarding their objects and possible effects.

This article concerns practices with more than one party. Decisions of associations of undertakings reflect the willpowers and interests of their members, so it is deemed that they are created by more than one undertaking and they are evaluated according to the same article. In addition to the 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 instead of undertakings' independent conduct. If the presumption of concerted practice laid down in the third paragraph of that article is valid, the burden of proof that such conduct does not exist is on the undertakings.

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

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

Article 6 of the Act prohibits the abuse by one or more undertakings of their dominant position. It should be noted that article 6 does not prohibit being in a dominant position or transforming to a dominant position but abuse of dominance.

It is important to determine whether an undertaking holds a dominant position with respect to the implementation of this article. 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 or practices that might fall under the scope of the Act are not limited to the examples given in both articles.

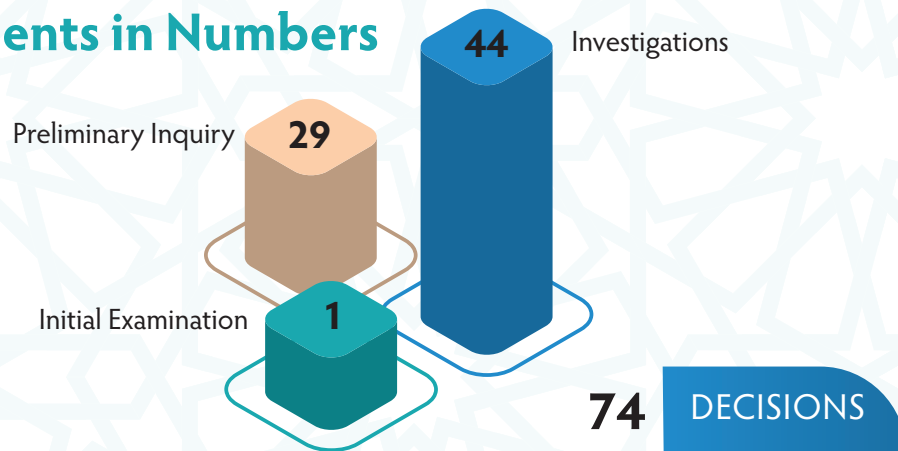
Within the framework of the Act no 7246 on the Amendments to the Act on the Protection of Competition, which was put into effect after being published in the Official Gazette dated 24.06.2020 and no 31165, regulation activities continued in 2021 like in 2020.

Practices that do not significantly restrict competition (de minimis), commitment and settlement procedures are brought to our legislation with the Act no 7246. Within this scope, the second paragraph of article 41 and the third paragraph of article 43 of the Act no 4054 state that the procedure and principles concerning practices that do not significantly restrict competition (de minimis) and the application of commitment procedures shall be established with a communiqué issued by the Competition Board while the ninth paragraph of article 43 of the Act states that the procedure and principles concerning the application of the settlement procedure shall be specified with a Regulation issued by the Competition Board. Accordingly,

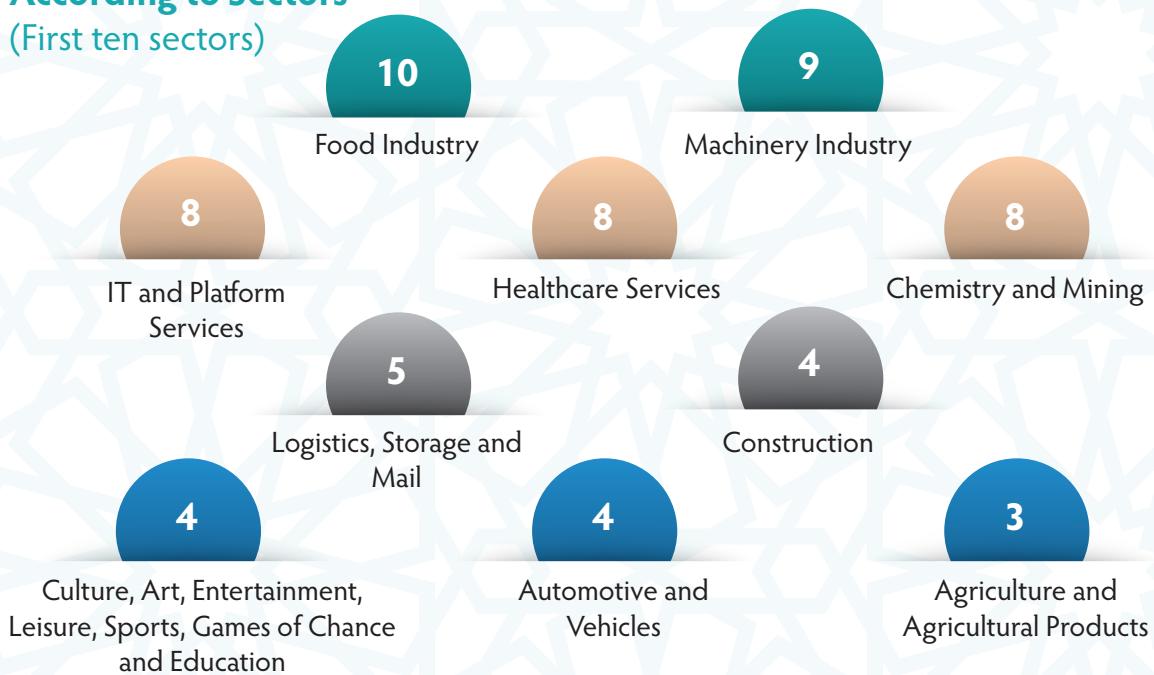
- i. Communiqué on the Commitments to be Offered In Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position (Communiqué No: 2021/2) was published in the Official Gazette dated 16 March 2021 and no 31425 and put into effect,
- ii. Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings that do not Significantly Restrict Competition (Communiqué No: 2021/3) was published in the Official Gazette dated 16 March 2021 and no 31425 and put into effect,
- iii. Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuse Of Dominant Position was published in the Official Gazette dated 15 July 2021 and no 31542 and put into effect.

The chart on the following page shows the breakdown of the decisions taken by the Board in 2021 about undertakings' practices falling under the scope of the prohibition laid down in article 4 and/or article 6 according to their types and sectors. It also shows the investigations still in progress as of the end of 2021.

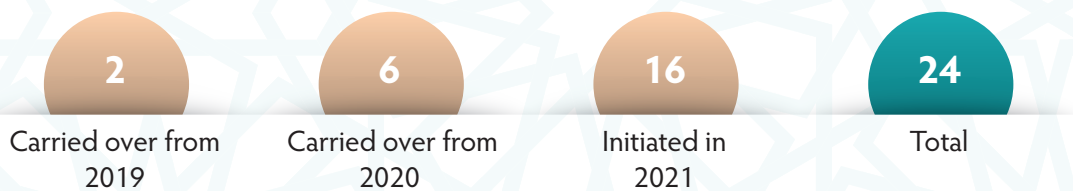
Competition Infringements in Numbers



Breakdown of the Decisions According to Sectors (First ten sectors)



Ongoing Investigations (As of the end of 2021)

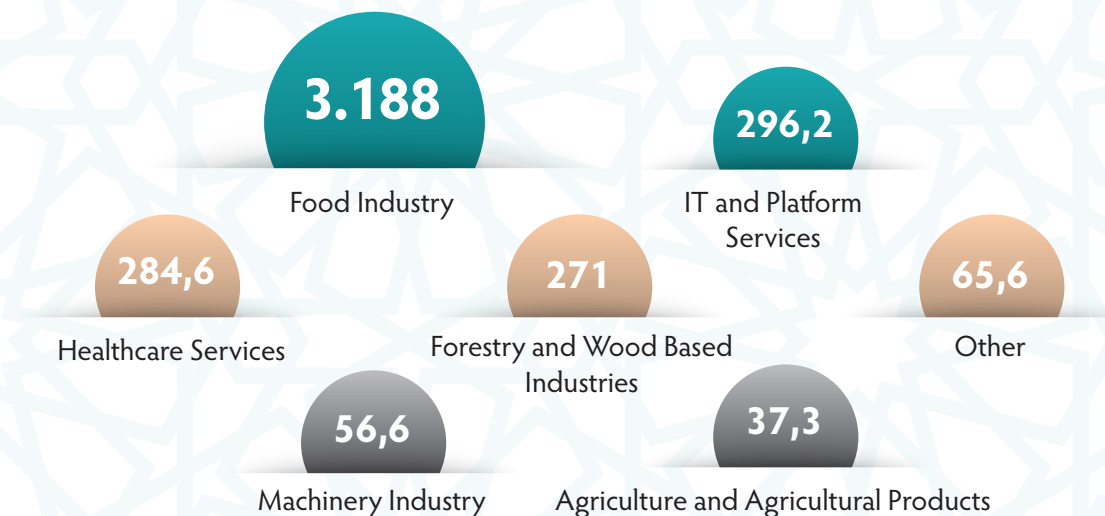


In 2021, out of 74 decisions taken concerning competition infringements, one decision was taken at the end of the preliminary inquiry process whereas 44 decisions were taken in relation to investigations. 63 of the decisions concerning competition infringements are related to the ten sectors that are shown in the graphic and 11 decisions are related to other seven sectors. Other seven sectors are telecommunication, banking, capital market, finance and insurance services, textile and ready-made clothing, forestry and wood-based industries, jewelry, accommodation and tour operating and other sectors. The decisions concerning the first ten sectors that have been the subject of the decisions the most constitute 85% of the total decisions about competition infringements in 2021. The number of investigations initiated upon the claims that article 4 and/or 6 is violated is 16 in 2021. The total number of ongoing investigations as of the end of 2021 is 24 when two investigations ongoing since 2019 and six investigations ongoing since 2020 are added.

While the number of investigations completed was 15 in 2019, this number increased by three fold and reached to 44 in 2021. The number of preliminary inquiries at the end of which an investigation decision was taken constituted 28% of the total preliminary inquiries. This ratio goes up to 107% together with the files carried over from the previous year in the past two years. While the number of on-site inspection assignments in 2019 was 909, the number of assignments was 502 in 2020 and 653 in 2021. There is 30% decline in on-site inspections in 2021 compared to 2019. Considering the increase in the number of investigations together with the decrease in the number of on-site inspections, it can be said that the effectiveness of on-site inspections and preliminary inquiry processes have improved. The increase in the TCA's capacity in information technologies and human resources plays an important role in the said improvement in effectiveness.

Regarding the results of competition infringement decisions, the claims were rejected in 44 files, administrative fines were imposed in 25 files and five files were concluded with commitments. Administrative fines were imposed in 12 sectors according to Article 16 paragraph three of the Act. The chart below shows the breakdown of the administrative fines given in investigations completed in 2021 according to sectors. According to the chart, the notable sectors are as follows: Food industry with 3.188 million TL administrative fines, IT and platform services with 296,2 million TL administrative fines, healthcare sector with 284,6 million TL administrative fines and forestry and wood based industries with 271 million TL administrative fines. The administrative fines imposed in those four sectors correspond to 96% of the total administrative fines given on substantive grounds with respect to competition infringements in 2021.

Breakdown of administrative fines imposed to competition infringements in investigations concluded in 2021 according to sectors (Million TL) (first seven sectors)



3.1.1. Examples from Decisions related to Competition Infringements

Turkish Pharmacists' Association (TEB) Investigation Decision (The Board Decision dated 07.01.2021 and numbered 21-01/19-9)



The claim that TEB violated article 4 of the Act no 4054 by means of its conducts regarding certain pharmacists and suppliers was examined in the file that is the subject of the investigation. TEB's decisions and actions regarding the sale of food supplements of certain undertakings in certain pharmacies at a discount through a social media platform called "*Sağlıklı Yaşıyoruz*" (We are living healthy) and restriction of Bephantol brand products' sale on the internet were evaluated within the concept "collective boycott".

It was found that İstanbul Pharmacists Chamber, affiliated with TEB, warned the suppliers of certain food supplements by threatening to boycott because they sold products at discount in certain pharmacies through the platform called "*Sağlıklı Yaşıyoruz*", and following that the said undertakings ended supplying products directly to the points where they had previously sold products in significant amounts.

Depending on the documents obtained in the on-site inspection, it was found that TEB and affiliated pharmacists chambers were annoyed because certain product groups that were sold in pharmacies (food supplements, dermocosmetics, etc.) were also sold on e-commerce websites. It was also found that since Bephantol brand product continued to be sold on the internet, TEB took a decision that the pharmacies would boycott by means of the following practices: all products and signs belonging to the supplier of the said product would be removed from display areas, its representative's visits would be refused, its products would not be recommended and some of its medicine under human medicine category would be returned. Within this framework, it was decided that TEB violated article 4 of the Act no 4054 by means of its decisions and practices that had a nature of collective boycott regarding suppliers and it would be imposed administrative fines.

Roche-Novartis Investigation Decision (Board Decision dated 21.01.2021 and numbered 21-04/52-21)



Whether Roche Müstahzarları A.Ş. (Roche) and Novartis Sağlık Gıda ve Tarım Ürünleri San. ve Tic. A.Ş. (Novartis) violated article 4 of the Act no 4054 by means of agreements or concerted practices in the market for anti-VEGF molecules applied intravitreally, where Roche operates with its drug Altuzan and Novartis operates with its drug Lucentis was analyzed in the file that is the subject of the investigation. As a result of the evaluation of the information and docu-

ments obtained concerning the parties to the investigation, it was found that Roche and Novartis carried out concerted practices to increase the use of *Lucentis*, which is the more expensive of the two drugs, *Altuzan* and *Lucentis*. Within this framework, Novartis was spreading misleading information among practitioners, public institutions and public about Altuzan's off-label use for intravitreal treatments. Roche made an application in 2011 to add the expression "Altuzan is not suitable for intravitreal use" in the Short Product Characteristics and Package Insert of Altuzan, whose off-label use intravitreally as an anti-VEGF agent was approved by the Offices of Türkiye, and the said amendment was made. Roche generates income not directly but indirectly from the sales of *Lucentis* in Türkiye and other countries due to the license agreement between Genentech Inc., which is a subsidiary of Roche Group, and Novartis. Lucentis is the more expensive of the said drugs that are used in eye diseases, especially age-related macular degeneration. It was found that, Novartis directly and Roche indirectly, through its subsidiary, generated income by means of the activities to increase the sale of Lucentis. Within this framework, it was decided that agreements and/or concerted practices of the parties to the investigation that restricted competition by object violated article 4 of the Act no 4054; thus, administrative fines would be imposed.

Biletix Decision (Board Decision dated 21.01.2021 and numbered 21-04/53-22)



Within the scope of the file that is the subject of investigation, the claim that Biletix Bilet Dağıtım Basım ve Ticaret A.Ş. abused its dominant position by adding additional costs to the tickets it sold under the categories such as service fee, transaction fee and shipping fee in excessive amounts as well as exclusivity agreements it made with organizers were analyzed.

Within the scope of the investigation, the relevant market was defined as "the market for intermediation services for the sale of event tickets (except football matches) through a platform", and the relevant geographic market was defined as "Türkiye". In order to determine whether Biletix is dominant in the market for intermediation services for the sale of event tickets (except football matches) through a platform, analyses were made regarding Biletix's and its competitors' market shares, entry barriers and countervailing buyer power. As a result of those analyses, it was found that Biletix is dominant in the relevant market.

When Biletix's conduct under investigation was analyzed, no finding was obtained showing that Biletix abused its dominant position. However, it was stated that since the drip pricing model applied by Biletix (a pricing method where an initial/basis price of a product or service is advertised and other fees related to that product or service are disclosed after the consumer starts purchasing process) affected consumers' cognitive choices and welfare negatively; an opinion that a measure could be taken regarding drip pricing under the scope of the Act no 6502 on the Protection of Consumer might be sent to the Ministry of Trade.

Moreover, an exemption assessment was made about the agreements between Biletix and organizers, which included exclusivity provisions. It was concluded that the said agreements could benefit from the exemption stipulated neither in the Block Exemption Communiqué no 2002/2 on Vertical Agreements nor in article 5 of the Act no 4054.

As a result of the findings and assessments, it was decided that Biletix is dominant in the market for intermediation services for the sale of event tickets (except football matches) through a platform; its conducts that were the subject of the complaint did not constitute an abuse according to article 6 of the Act no 4054; an opinion about drip pricing, which was found to be harmful for the consumer, might be sent to the Ministry of Trade, which can take a measure within the scope of the Act no 6502 on the Protection of Consumer; the agreements made between Biletix and organizers could not benefit from the exemption stipulated in the in the Block Exemption Communiqué no 2002/2 on Vertical Agreements; the said agreements could not be granted individual exemption as they could not fulfill the conditions listed in article 5 of the Act no 4054; the exclusivity provisions in the agreements should be removed and the agreements should be amended; provisions that will lead to de facto exclusivity should not be included in future agreements to be made by Biletix. An opinion about drip pricing was sent to the Ministry of Trade within the framework of the Decision.

Yemeksepeti Investigation Decision

(Board Decision dated 28.01.2021 and numbered 21-05/64-28)



In the file that is the subject of the investigation, the claims that Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik AŞ. (Yemek Sepeti) excluded its competitors out of the market by means of most favored customer clauses, (de facto) exclusivity and predatory pricing in the market for online food order platform services market were analyzed in terms of violation of article 6 of the Act no 4054.

Yemek Sepeti received the investigation report prepared as a result of the investigation on 11.12.2020. The undertaking submitted its request to offer commitments regarding the anticompetitive concerns under the scope of the file according to article 43 of the Act no 4054 with a petition on 25.12.2020; afterwards commitment discussions were made.

As a result of the evaluation of the commitments, the Board decided that the commitment offered by Yemek Sepeti would be accepted, as it would resolve the competition problems and the investigation would be concluded by rendering the commitment binding.

Tefal Investigation Decision (Board Decision dated 04.03.2021 and numbered 21-11/154-63)



The file that is the subject of the investigation examined the claims that Groupe SEB İstanbul Ev Aletleri Ticaret AŞ (Tefal) and İlk Adım Dayanıklı Tüketim Malları Elektronik Tekstil İnşaat ve İletişim Hiz. San. Tic. Ltd. Şti. (İlk Adım) violated article 4 of the Act no 4054 by restricting internet sales of their dealers and other resellers through their practices aimed at fixing the resale prices of their dealers in the distribution network.

While a relevant product market was not defined, the assessments made were based on the “small domestic appliances market” and the geographic market was defined as “Türkiye”.

The investigation involved conducting on-site inspections at Tefal and İlk Adım premises. It was understood from information and documents that Tefal and İlk Adım intended to intervene in the resale prices of their dealers and other sellers and to increase prices by interfering in those dealers with low prices, most of the interventions concerned online sales and that sanctions were imposed on some undertakings that distorted price stability.

Under the scope of the file, an economic analysis was conducted comparing the recommended prices the undertakings notified to their dealers and the sale prices implemented by the dealers. This economic analysis looked at the mean deviation rates which varied according to the dealer and sales channel characteristics, and found that it was impossible to come to a conclusion on whether Tefal's actions had an impact or not, since there was no objective reference value.

It was decided that Tefal and İlk Adım violated article 4 of the Act no 4054 by fixing the resale prices of final outlets and by restricting sales over websites that their behavior did not fulfill the exemption conditions listed in Article 5 of the Act, thus they could not benefit from an individual exemption, and consequently administrative fines were imposed on the undertakings concerned.

İzmir Container Decision (Board Decision dated 04.03.2021 and numbered 21-11/155-64)



In the file, which is the subject of the investigation whether 74 undertakings engaged in inland transport to and/or from the ports in central and surrounding districts in İzmir violated article 4 of the Act no 4054 by means of price fixing and allocation of customers was analyzed.

As a result of the assessment of the information and documents obtained under the scope of the file, it was concluded that the undertakings

made a price fixing agreement within the framework of discussions about how to apply the price list, developing strategies about how to explain the price increases to customers and communications about actions to be taken against conduct that would distort price unity. Moreover, it was also found that the undertakings made an agreement to allocate customers as they shared which customers requested an offer, offers made to customers and names of their current customers and gave warnings to other undertakings. Accordingly, it was concluded that they violated article 4 of the Act no 4054 by means of the said agreements in the nature of a cartel and/or concerted practices.

Out of 74 undertakings party to the investigation, 72 undertakings were imposed administrative fines on the grounds that they violated article 4 of the Act no 4054 by means of price fixing and customer allocation. On the other hand, it was decided that two undertakings did not violate article 4 of the Act no 4054, thus it was not necessary to impose administrative fines.

Esenboğa Bonded Temporary Storage Decision (Board Decision dated 11.03.2021 and numbered 21-13/169-73)



Within the framework of the file that is the subject of the investigation, whether “warehouse switching fees”³ of Havaalanları Yer Hizmetleri A.Ş. (HAVAŞ), MNG Havayolları ve Taşımacılık A.Ş. (MNG), S Sistem Lojistik Hizmetler A.Ş. (S SİSTEM) and Türk Hava Yolları A.O., which provide bonded temporary storage services in Ankara Esenboğa Airport, are subject of an infringement with respect to article 6 of the Act no 4054 by means of increasing customers’

switching costs and restricting/preventing switching to competing warehouses.

The hypothetical analysis regarding warehouse switching request showed that the fee in question had a potential to restrict competition in the market. Taking into account undertakings’ product portfolio, average weight and period of stored products, it was concluded that the fees charged for switching warehouses constituted an important switching cost for product owners. Moreover, it was also found that the sector is subject to intensive legal monitoring and regulation.

While the investigation was in progress, respectively HAVAŞ, MNG, S SİSTEM and THY offered commitments. It was decided that the commitment offered in respect of each undertaking would be accepted and rendered binding since it will resolve the competitive concerns in case the fee tariff item, which is the subject of the commitment, is applied by 50% discount to be valid only in Ankara Esenboğa Airport and the investigation was concluded.

³ These fees are formed following a customer request and can have different names in undertakings’ tariffs.

Taximeter Investigation Decision

(Board Decision dated 11.03.2021 and numbered 21-13/174-75)



In the file in question, it was decided that an investigation would be launched on five undertakings upon the claim that undertakings providing sale and replacement services for taximeters in İstanbul collusively fixed prices in order to determine whether Article 4 of the Act no 4054 was violated.

Within the framework of the documents acquired during on-site inspections and the information gathered under the file it was concluded that three of the undertakings in question violated Article 4 of the Act no 4054 by collusively fixing prices in the tariffs market, which is one of the side product and service markets for taximeters and taxis, and the other two undertakings violated the same Article by facilitating the violation through sending reports to manufacturers on product-service type and price information, and the undertakings were imposed administrative fines.

In addition, it was decided that an opinion concerning the setting of maximum tariff configuration fees under Article 27(1)(g) of the Act no 4054 should be sent to the Ministry of Industry and Technology, which is charged with preparing the regulations on taximeters.

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Unilever Sanayi ve Ticaret Türk A.Ş. Decision

(Board Decision dated 18.03.2021 and no 21-15/190-80)



The investigation examined Unilever Sanayi ve Ticaret Türk A.Ş.'s (Unilever) practices in the industrial ice-cream market under Articles 4 and 6 of the Act no 4054.

The decision noted that Unilever, which is active in the industrial ice-cream market with the Algida brand, held dominant position in this market, as well as its sub-categories of "instant consumption ice-cream market" and "take-home

ice-cream market". At the same time, it was also established that the agreement Unilever signed with Getir Perakende Lojistik AŞ introduced non-compete obligations in violation of the Board decision dated 15.05.2008 and numbered 08-33/421-147, that Unilever complicated the activities of its competitors and abused its dominant position through the discounts it implemented, and an administrative fine was imposed on the undertaking as a result of these practices.

The file also observed that the exclusivity clause in the loan agreement regulating the use of the ice-cream freezers owned by Unilever prevented competition at the outlets and violated Article 4 of the Act no 4054 and that an individual exemption under Article 5 of the Act could be granted to the agreement provided the exclusivity clause was removed from the agreement. In that framework, it was decided that, in an outlet with 100 m² or less net closed sales space, provided there were no freezers directly accessible for the consumer other than those owned by Unilever, competing products should be allowed to use 30% of the visible space of the Unilever ice-cream freezers and the total ice-cream volume at the outlet.

Cappadocia Balloon Investigation Decision (Board Decision dated 25.03.2021 and numbered 21-17/208-86)



In the file which is the subject of the investigation, the claims that Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş., which rents hot air balloon rides in Cappadocia, excluded competing undertakings out of the market by not providing balloon rides to customers of hotels and agencies apart from its own hotels and agencies were analyzed.

The relevant product markets were defined as "hot air ballooning services" and "incoming services" whereas the geographic market was defined as "Cappadocia region" for hot air ballooning services and as "Türkiye" for incoming services market. It was found that firstly, hot air balloon operators in Cappadocia region aimed to establish a joint sales and marketing platform where sales prices of hot air balloon rides were determined under the umbrella of a cooperative but since some of the undertakings backed out from joining the cooperative, the planned cooperative was not founded. It was learnt that after the failure to establish the cooperative, the companies titled CO DMC and LE CO Deri were established under the partnership of some of the undertakings party to the investigation. LE CO Deri started to sell the rides it rented through the rental agreements it made between 14 hot air balloon operators over a platform that operated within the body of LE CO Deri and/or CO DMC.

As a result of the findings and evaluations, it was decided that some of the undertakings party to the investigation violated article 4 of the Act no 4054 because they were parties to agreement/ concerted practices aimed at price fixing before the joint reservation and sales platform CO DMC and/or during the joint reservation and sales platform CO DMC period in the hot air ballooning market; therefore, the said undertakings should be imposed administrative fines. It was also decided that rental agreements made directly among some of the undertakings as well as the agreements among some of the undertakings enabling them to work with the platform should be terminated in order to end the violation and establish a competitive environment; in addition, the joint reservation and sales platform under the title CO DMC or another title should end its activities.

Google Local Search Investigation Decision
(Board Decision dated 08.04.2021 and no 21-20/248-105)



Basically, the investigation examined whether 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 in local search services market and discriminated in favor of their local search and accommodation price comparison services in a way to exclude their competitors.

The relevant product markets were defined as “general search services market”, “local search services market” and “accommodation price comparison services”.

The relevant geographic market was defined as “Türkiye”. Although determining whether Google is dominant in the market for general search services is sufficient in terms of a violation assessment according to article 6 of the Act no 4054, assessments were also made regarding Google’s market power in local search and accommodation price comparison markets in order to analyze the effects of the practices in question more properly. The assessments made within this framework included analyses concerning the market shares of Google and its competitors, entry barriers and counter-vailing buyer power in the relevant market. As a result of the analyses, the following was found: Google is dominant in the market for general search services, Google has a high market power in local search and accommodation price comparison services markets and its competitors’ power to develop strategies against Google’s activities is weak.

Considering Google’s practices under investigation, it was found that Google has advantages to the detriment of its competitors thanks to its products called “Local Unit” and “Google Hotel Ads” in terms of position, area and display and does not allow its competitors to enter this advantageous area. Accordingly, it was concluded that Google violated article 6 of the Act no 4054 through complicating its competitors’ activities and distorting competition in the markets for local search services and accommodation price comparison services by means of granting advantages to its own local search (Local Unit) and accommodation price comparison services (Google Hotel Ads-GHA) in the general search results page with respect to position and display and preventing competing local search websites from entering to Local Unit.

In the meeting of the Competition Board dated 08.04.2021, it was decided that Google shall be imposed administrative fines and that

- a. Google shall provide the conditions which would allow competing local search services and competing accommodation price comparison services to be at a no disadvantageous position compared to Google’s own relevant service on the general search results page,
- b. Google shall submit a report once a year periodically to the Authority for five years following the implementation of the first compatibility measure in order to establish efficient competition in the market.

DYO Investigation Decision (Board Decision dated 15.04.2021 and No 21-22 / 267-117)

Whether DYO Boya Fabrikaları Sanayi ve Ticaret A.Ş. (DYO) violated article 4 of the Act no 4054 by means of intervening to its main dealers' resale conditions and restricting customers and territories was examined in the file that is the subject of the investigation. According to the information obtained within the scope of the file, it was found that DYO developed a "Hinterland System" in order to regulate purchase-sale transactions between wholesale dealers and sub-dealers; the Hinterland System did not cover exclusivity; DYO

imposed restrictions concerning customers and territories where dealers would sell products and applied sanctions such as cutting turnover premiums on those who did not comply with the restrictions.

Moreover, it was found on the documents obtained in the on-site inspection that DYO constantly followed dealers' prices and intervene to those prices; beside the intervention, sanctions were imposed on those who did not comply with the notified prices.

As a result of the evaluations made, it was concluded that DYO violated article 4 of the Act no 4054 by determining the resale prices of its dealers and its practices for restricting customers and territories, and accordingly it was decided that the undertaking would be imposed administrative fines.

Şişecam Investigation Decision (Board Decision dated 26.08.2021 and numbered 21-40/590-287)

The file that is the subject of the investigation examined the claims that Trakya Cam Sanayi A.Ş. (successor Türkiye Şişe ve Cam Fabrikaları A.Ş.-ŞİŞECAM) made unfair price increases in sheet glass products and thereby violated the Act no 4054.

The file defined the relevant product market as the "sheet glass market" in consideration of the previous Board decisions on the subject.

The dominant position analysis found that Trakya Cam held dominant position in the sheet

glass market, in light of Trakya Cam's long term high and stable market share, its portfolio strength and production capacity stemming from the eight production lines, high funding power arising from being a part of the Şişecam Group, and the existence of entry barriers caused by the features of the sheet glass market and the protective policies implemented in the market.

In line with the EU and Board practices, a price-cost difference test and a price comparison analysis were conducted under the file. The price-cost difference test examined Trakya Cam's costs and cost components, profit margins and mark-up rates. The price comparison analysis compared Trakya Cam's prices and profitability with rivals' prices and average import prices. In addition, a comparison was made between the prices of Trakya Cam's domestic and foreign facilities.

The Economic Analysis and Research Department prepared a report examining whether Trakya Cam's authorized sellers system resulted in a price level that could be seen as excessive pricing for other undertakings which are not Trakya Cam's customers.

Within the framework of the file, it was decided that Türkiye Şişe ve Cam Fabrikaları A.Ş. did not violate Article 6 of the Act no 4054 on the Protection of Competition through excessive pricing within the period under investigation, and that it was not necessary to impose administrative fines on the undertaking.

Coca-Cola Satış ve Dağıtım A.Ş. Investigation Decision (Board Decision dated 02.09.2021 and No 21-41 / 610-297)



The file that is the subject of the investigation examined whether Coca-Cola Satış ve Dağıtım A.Ş.'s (CCSD) practices at the final outlets led to de facto exclusivity. The investigation report observed that CCSD held dominant position in the "carbonated drinks," "cola drinks" and "flavored carbonated drinks" market, and abused this dominant position via discount systems and fridge policies, which complicated its rivals' activities in the carbonated drinks market. During the investigation, CCSD submitted a commitments package to eliminate the competitive concerns in the relevant market. Within the frame-

work of the commitments package, the contracts with a "General" scope, drawn in a way that could cover all of the product portfolio in the traditional channel and the on-premises consumption channel, were terminated; rules based on separate market definitions were established concerning the promotions in the relevant market and the amount and duration conditions in the agreements; exclusive agreements for non-carbonated drinks were terminated; and for 25% of CCSD-owned beverage fridges located in outlets smaller than 100 m² and in on-premises consumption channel was opened for competitors' access.

Within the scope of the file, a period of one year was specified for the completion of commitments as of the notification of the reasoned decision and it was decided that the relevant commitments package is able to eliminate the competition problems identified during the investigation phase, and therefore the commitments package should be made binding as per Article 43(3) of the Act no 4054 and Article 14(1) of the Communiqué no 2021/2 on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position, and the investigation process should be terminated.

Retail Investigation Decision (Board Decision dated 28.10.2021 and numbered 21-53/747-360)



The pricing behavior of the chain stores engaged in the trading of retail food and cleaning products during 2018-2021 as well as those of the undertakings at the production and wholesale level that are the suppliers of the former were examined under the investigation.

The decision found that, among the chain stores operating in the relevant market, Yeni Mağazacılık A.Ş. (A 101), BİM Birleşik Mağazalar A.Ş., CarrefourSA Carrefour Sabancı Ticaret

Merkezi A.Ş., Migros Ticaret A.Ş. and Şok Marketler Ticaret A.Ş. ensured the coordination of prices and price increases by either direct or indirect contact through common suppliers. Competitively sensitive information such as future prices, price increase dates, seasonal activities and campaigns were also shared directly or through common suppliers. The companies used the suppliers to intervene in the prices of those undertakings which discounted prices or which did not yet increase their prices when prices in the market in general were increasing, and ensured that they also hiked their prices to the disadvantage of the consumers. Where the competitors' prices did not increase, the undertakings constantly monitored compliance with the collusion by quickly implementing discounts specific to a product and/or region and through the use of penalizing strategies, including making out return invoices to the supplier. Thus, it was concluded that the aforementioned undertakings violated Article 4 of the Act no 4054 by agreements or concerted practices that showed the characteristics of a hub-and-spoke cartel, aimed at fixing the retail prices of many products they offered for sale.

The decision noted that, together with the aforementioned undertakings, one of the suppliers under investigation, Savola Gıda ve San. Tic. A.Ş. (Savola), was also a part of the hub-and-spoke cartel, since it helped ensure collusion/coordination between the retailers in question concerning the shelf prices and price increases related to its own products and intermediated the sharing of competitively sensitive information between the retailers, such as future prices and dates of price increases and concluded that Savola violated Article 4 of the Act no 4054 and thus it was jointly and equally responsible for the violation, together with the retailers. The relevant Competition Board decision also ruled that SAVOLA violated Article 4 of the Act no 4054 by fixing retail prices of the undertakings operating at the retail level. As a result of the assessment conducted under the Regulation on Fines it was decided that the aforementioned practices of the chain stores and the supplier should be addressed under the category of "cartels".

SPGPrints Commitment Decision (Board Decision dated 28.10.2021 and no 21-53/736-369)

In the file that is the subject of the preliminary inquiry, the claim that SPGPRINTS Baskı Sistemleri Tic. Ltd. Şti. (SPGPRINTS) abused its dominant position by means of password application in maintenance-repair market of laser engraving machines, of which it is a manufacturer was examined. SPGPrints offered commitments to eliminate competitive concerns detected during the examination period.

In order to eliminate competitive concerns, SPGPrints offered the commitment that it will provide the customers who signed the *Customer Statement*, which regulates terms and conditions for providing the necessary passwords for maintenance-repair, as soon as possible and free of charge. It was concluded that the commitment offered by SPGPrints would eliminate the competitive concerns regarding the foreclosure of the market for maintenance-repair of SPGPrints branded laser engraving machines. It was decided that the commitment period would be limited to five years; the commitment package might be reviewed after five years taking into account the facts such as new economic and technological conditions and the market structure; at the end of each financial year, a sample of the Customer Statement to be signed in the following year as well as the password requests made to SPGPrints during the relevant financial year be submitted to the Authority to monitor the commitment.

Considering that the commitments offered are proportional to the competition problems detected, and applicable, it was decided that the commitments would be rendered binding on the undertaking and the preliminary inquiry would be terminated.

3.2. Exemption/Negative Clearance

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

- "Block Exemption Communiqué no 2002/2 on Vertical Agreements"⁴ 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 on 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 undertaking 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 exemption/negative clearance applications are explained in "Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings".

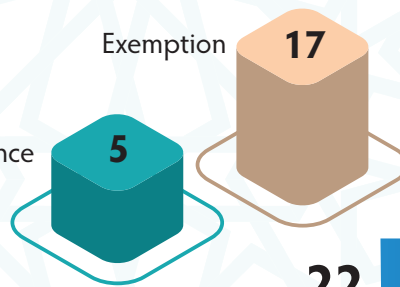
Article 13 of the Act regulates the withdrawal of exemption or negative clearance decisions. Accordingly, the Board may withdraw exemption or negative clearance decisions or prohibit certain behavior by the parties in case the situations listed in the said article occur. Exemption/negative clearance files concluded by the Board in 2021, the breakdown of those according to sectors and results of the decisions are presented in the graph on the following page.

⁴ The Communiqué on the amendments to the Block Exemption Communiqué on Vertical Agreements (Communiqué No: 2002/2) was published in the Official Gazette dated 05 November 2021 and no 31650, and was put into effect (The communiqué no 2014/4).

Exemption & Negative Clearance in Numbers

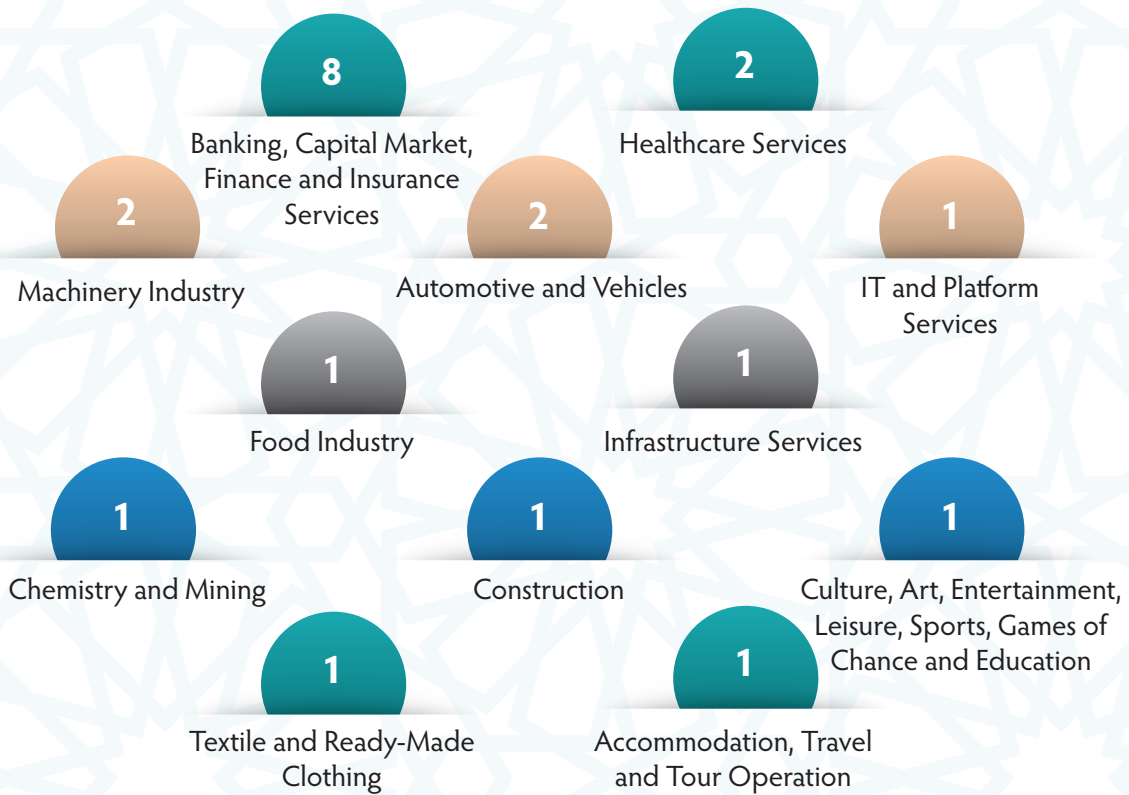
Negative Clearance

Exemption



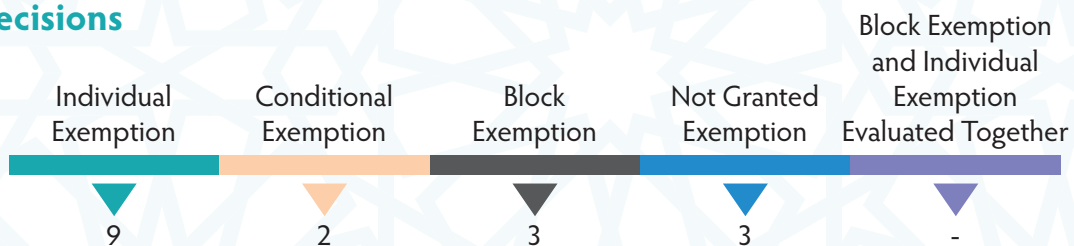
DECISIONS

Breakdown of the Decisions According to Sector



22 TOTAL

Results of Exemption Decisions



The graphs on the previous page show that a total of 22 exemption/negative clearance files were concluded, five being negative clearance and 17 being exemption. Banking, capital market, finance and insurance services, machinery industry, healthcare services, automotive and vehicles sectors are the ones with the highest number of exemption/negative clearance examinations.

3.2.1 Examples from Negative Clearance/Exemption Decisions

THY Exemption Decision (Board Decision dated 11.03.2021 and numbered 21-13/175-76)



The decision evaluates the negative clearance/exemption request concerning the practice by means of which a vacation package brand to be created by Türk Hava Yolları A.O. (THY) will be offered with vacation packages to be created by Erka Etkinlik ve Turizm A.Ş. (Erka) and Erka Tk Turizm Bilişim A.Ş. (Erka Bilişim) by using that brand during the term of the agreement within the scope of the "Vacation Package Sale Cooperation Agreement" signed between THY and

Erka and Erka Bilişim.

The relevant market is "individual vacation package market", which is the notified business model and "airline passenger transport market" within the scope of the file. The individual vacation package market can be defined as vacation packages formed by means of providing the relevant services via the infrastructure to be established between travel agencies/tour operators and service providers within the framework of the criteria set by the customers (travel date, place of arrival, accommodation period, whether transfer service is requested, etc.). Airline passenger transport is THY's main field of activity. For determining the relevant geographic market, although each line between a departure and an arrival point is defined as a separate geographic market in the previous decision of the Board, taking into account the number of cities where THY operates flights and the fact that the contract may cover all lines, the relevant geographic market is defined as "lines from and to Türkiye" without making a city-matched definition.

The business model in question is enabling the use of a vacation package brand (Turkish Airlines Holidays and Turkish Airlines Holidays Plus) to be created by THY, which operates in the market for airline passenger transport, for vacation packages to be formed through the necessary technical infrastructure by Erka, which operates as a travel agency, and Erka Bilişim according to the contract provisions and the term of the contract determined; offering those vacation packages to customers over an online platform and enabling their sale through traditional and online agencies compatible to the criteria to be set, if necessary.

As a result of the examination, it was concluded that an individual exemption assessment is necessary regarding all contract lines in order to make a holistic evaluation by taking into account THY's market share in domestic passenger transport market. The following evaluations are made:

Increasing the presence of the personalized and flexible vacation packages of the globally known new market will enable reaching wider holiday regions with a larger customer group. THY's designation of Erka as the exclusive agency is aimed at protecting THY brand and ensuring that the agency will make the necessary investments while launching the new brand. The cooperation between Erka and THY will not hinder THY's current relations with different travel agencies. THY will continue to offer special prices to travel agencies for existing vacation packages. THY's relation with Erka will not prevent other travel agencies from benefiting from the special prices.

Travel agencies do not significantly depend on THY to continue their activities but THY is relatively more dependent on agencies for the sale of flight tickets as THY's main field of activity is airline passenger transport. The contracts concerning ticket sales between THY and agencies will continue without a significant decrease after the practice that is the subject of the file is implemented by THY and Erka.

Consequently, individual exemption was granted to the Vacation Package Sale Cooperation Agreement as it fulfills the conditions listed in article 5 of the Act no 4054.

Paşabahçe Exemption Decision

(Board Decision dated 10.06.2021 and numbered 21-30/385-193)



The file is related to the request that individual exemption be granted to the Authorized Seller Agreement (the Agreement) prepared for the distribution of household glassware and chinaware, which is planned to be signed between Paşabahçe Cam San. ve Tic. A.Ş. (Paşabahçe) and its authorized sellers. The relevant market is defined as two separate product markets being "household glassware" and "household/table chinaware" whereas the relevant geographic

market is Türkiye.

The examination is about the principles of the supply relation between Paşabahçe, which is the supplier and the authorized sellers. The authorized sellers are on lower levels of the distribution chain and operate at wholesaler level. They sell the products, which they buy from Paşabahçe to customers in the household segment such as glassware retailers, local market chains, individual markets, stallholders or intermediate wholesalers. According to the Agreement, the authorized sellers will resell the contract products in their exclusive regions/ to their exclusive customer groups. Within the framework of the notified transaction, resellers are prohibited from making active sales to region/customer allocated to another reseller and to the exclusive customer group allocated to

Paşabahçe. However passive sales are not prohibited. Moreover resellers are imposed a non-compete obligation.

As a result of the examinations made, it is concluded that Paşabahçe's market share was below 40% threshold in the market for household/table chinaware contract products and can benefit from exemption granted by the Block Exemption Communiqué no 2002/2 on Vertical Agreements (the Communiqué no 2002/2); on the other hand its market share is above 40% threshold in household glassware and cannot benefit from exemption according to the Communiqué no 2002/2. In the individual exemption assessment regarding household glassware, the following evaluations are made: the Agreement that Paşabahçe plans to sign with authorized sellers covering single brand, exclusive distribution and exclusive purchasing obligation fulfills the conditions listed in article 5(a) and (b) of the Act no 4054 however exclusive distribution and exclusive purchasing obligations restricts intra-brand competition and do not fulfill the condition in subparagraph (c). It is not possible to prove that single brand obligation restricts competition in an important part of the market within the framework of subparagraph (c). Single brand obligation is sufficient to reach the aims in subparagraphs (a) and (b). At this point, exclusive distribution and exclusive purchasing obligations restrict competition unduly. Therefore, individual exemption cannot be granted to the agreement in question.

Enerjisa-Galatasaray Negative Clearance Decision (Board Decision dated 21.10.2021 and numbered 21-51/706-350)

The file examines whether Energy Performance Agreement (EPA) signed between Enerjisa Müşteri Çözümleri A.Ş. (EMÇ) ve Galatasaray Sports Club Association (Galatasaray) can be granted negative clearance certificate. The Agreement concerns issues such as project designing, installment and maintenance of solar energy plant (SEP) on Ali Sami Yen Sports Complex's roof.

As a result of the examination made, the following was found: The relevant product market is defined as "performance-based energy project market". EPA is not under the scope of article 4 of the Act no 4054 as it does not impose any exclusivity conditions on the parties. Considering the share of the SEP to be installed in the total roof SEP power in Türkiye, EMÇ will have a very small market share in "performance-based energy project market". The electric power to be generated in SEP will be consumed mostly by Galatasaray. The remaining part will be given to the network. Even if the whole electric power to be generated in SEP is sold, Galatasaray's market share in electricity generation and sales market will be low. For these reasons, Galatasaray and EMÇ cannot be dominant in the relevant market. Moreover, the transaction in question is not contrary to article 7 of the Act no 4054, since EPA is not a merger or an acquisition leading to concentration. Consequently, it was decided that the agreement in question shall be given negative clearance certificate according to Article 8 of the Act No. 4054.

BSH Exemption Decision

(Board Decision dated 16.12.2021 and numbered 21-61/859-423)



In the application made by BSH Ev Aletleri Sanayi ve Ticaret A.Ş. (BSH), BSH requests that the prohibition on its authorized dealers to make sales on platforms called “online marketplaces” such as N11, Amazon, Trendyol, Morhipo, Hep-siburada be granted negative clearance/exemption.

In the file, in terms of relevant product market definition, on a product basis and separately, oven, refrigerator, washing machine, dishwasher, freezer, tumble dryer, bagged and bagless vacuum cleaner, hot drinks, food preparation and electrical cooking products constitute separate and independent product markets. The relevant geographical market was defined as Türkiye.

It was found that BSH distributes Bosch, Siemens and Profilo branded products in the contracts it make with its dealers in a selective distribution system. Moreover, those products are distributed in a selective distribution system also through electronic stores since there are certain store criteria similar to the dealers. Within this framework it was concluded that both dealers and electronics stores are authorized sellers.

BSH stated that it plans to prohibit, with the notified circular, authorized dealers from making sales via online marketplaces because there are misleading information about BSH products and content such as explanations and pictures not suitable for corporate identity, brand image, quality and security conditions in the sales via online marketplaces. In the application, it is stated that the dealers are free to make sales on their websites but a request is made to prohibit the sales via marketplaces completely. However, there is not such a request for electronics stores and electronics stores are already selling the products in question via online marketplaces.

In order to show both white goods authorized sellers’ and consumers’ e-trade trends, consumer and dealer surveys were made by an independent survey firm; information requests and interviews were made with BSH, competing suppliers, BSH dealers, competing suppliers’ dealers and online marketplaces. Although BSH’s application was about the circular complementary to the exclusive agreements signed with dealers, agreements with dealers and agreements signed with electronics stores such as Media Markt and Teknosa were analyzed.

Since BSH stated that the prohibition of resellers from making sales via marketplaces aims at ensuring selective distribution system’s functioning, the prohibition was evaluated according to the criteria stated in paragraph 171 of the Guidelines on Vertical Agreements, considering also BSH’s

selective distribution system. Within this framework, the following evaluations were made: BSH's restriction of sales made by its dealers via online platforms entirely without quantitative criteria will prevent directly or indirectly online sales. In addition, it is contrary to the equality principle for conditions imposed by the supplier and may discourage buyers from using the internet as a distribution channel. For this reason, the said practice is a hard core restriction and takes the agreement out of the scope of block exemption.

In addition, as a result of the examination of the agreements with dealers and electronics stores, it was found that "ban on active sales to final users" and "exclusive purchasing obligation" were imposed on the members of selective distribution system and "requirement to request permission from BSH beforehand regarding online sales" to an electronics store, MEDIAMARKT. Therefore, individual exemption assessment was made because neither the circular nor the agreements could benefit from block exemption according to the Block Exemption Communiqué no 2002/2 on Vertical Agreements due to the provisions they covered.

As a result of the individual exemption assessment made according to article 5(1) of the Act no 4054, it was decided that the circular cannot be granted individual exemption on the following grounds: The practice in question will not produce efficiency gains. There will not be consumer benefits as online shopping is widely used. Prohibiting authorized sellers' sales on online marketplaces may restrict intra-brand and inter-brand competition, hinder entries, prevent authorized sellers' access to an important part of the internet channel and distort competition to the detriment of relatively small and weak undertakings, and in this way may affect competition negatively. There are other ways to reach the objective of the circular. At the same time, the practice in question may make it easy for suppliers to control resale prices of authorized sellers. Similarly, the agreements made with authorized sellers cannot benefit from individual exemption on the following grounds: Prohibiting active sales in the selective distribution system and imposing exclusive purchasing obligation to sellers may limit options for consumers and decrease intra-brand competition. The intended results of the said provisions are disproportionate and it is possible to protect selective distribution system's efficiency in other ways.

3.3. Mergers and Acquisitions

Article 7 of the Act no 4054 prohibits mergers and acquisitions, which would result in significant lessening of competition within the whole or a part of the country, particularly in the form of creating or strengthening a dominant position. The Article also stipulates that certain agreements should be notified and authorized by the Board to be legally valid and that the 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 them to become legally valid.

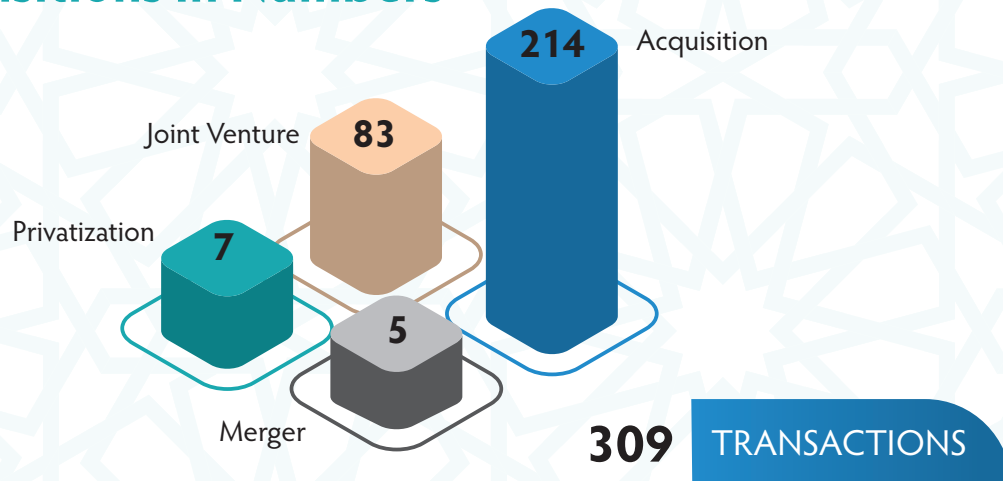
The Communiqué no 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board is in force in this framework.

In addition, the Competition Board issued several guidelines related to monitoring mergers and acquisitions. 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,
- “Guidelines on the Assessment of Horizontal Mergers and Acquisitions” for explaining 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 Non-Horizontal Mergers and Acquisitions” for explaining the general principles to be taken into account by the Competition Board in preliminary assessments concerning non-horizontal mergers and acquisitions,
- “Guidelines on Remedies that are Acceptable by the Competition Authority in Merger/Acquisition Transactions”, for guiding the parties about the remedies they will submit in order to eliminate competitive concerns to be created by a concentration that might be prohibited by Article 7 of the Act,

As seen from the graphic, in 2021, the Competition Board concluded 309 applications; five mergers, 214 acquisitions, 83 joint ventures and seven privatizations. Regarding those applications, 306 were concluded as a result of preliminary inquiries and three were concluded as a result of final examinations. The first six sectors that have been the subjects of merger/acquisition decisions the most are chemistry and mining, IT and platform services, food industry, machinery industry, infrastructure services and health care services. The decisions related to those sectors constitute about 55% of all merger/acquisition decisions. Logistics, storage and mail sector and automotive and vehicles sector with 19 decisions each, construction sector with 17 decisions and banking, capital market, finance and insurance services sector with 16 decisions follow the first six sector. 277 merger and acquisition transactions were authorized without conditions and three were authorized conditionally out of 309 merger and acquisition transactions examined by the Competition Board in 2021. One transaction was not authorized. 29 merger/acquisition transactions submitted to the Board were out of scope or not subject to authorization. One transaction was taken under final examination whereas three transactions were approved within the framework of the commitments offered by the parties.

Mergers and Acquisitions in Numbers



Breakdown of the Transactions According to Sector (First ten sectors)



The final examinations completed in 2021	Sector
	Optics
	Machinery and Equipment
	Insurance

The final examination initiated in 2021	Sector
	Insurance

3.3.1. Examples from Decisions Related to Mergers and Acquisitions

Danfoss and Eaton Final Examination

(Board Decision dated 04.05.2021 and numbered 21-25/313-144)



The subject of the file is the acquisition of the sole control of Eaton Corporation plc's (Eaton) hydraulics business by Danfoss A/S. In the transaction, the relevant product markets are defined as "automation and control systems market", "hydraulic mobile valves market", "hydraulic mobile pumps market", "hydraulic steering wheel for off-road vehicles", "orbit engines market" and "the market for hydraulic engines except orbit engines", where competitive concerns are high. It is stated that it is not necessary to define geographical market precisely.

Following the preliminary inquiry, the Board took a decision about the request for authorization for the planned acquisition that a final examination would be made according to article 10 of the Act no 4054.

Detailed examinations were made about the dynamics in hydraulic steering wheel for off-road vehicles, orbit engines market such as the players' market power, entry barriers, countervailing market power and global market, etc. within the scope of the final examination.

Moreover, the transaction was taken under final examination by several authorities including the European Commission because of the parties' global activities and positions in the relevant market. Afterwards, the parties offered the commitment package which includes the remedies that will resolve competitive concerns in question to the Commission. As a result, the Commission conditionally authorized the transaction. The parties submitted a letter about the commitments and explanations about their effects in Türkiye to the TCA records.

As a result of the assessments, the following observations were made:

- There is substitution relation technically between hydraulic steering wheel unit models to be divested according to commitments and the models to be kept by Danfoss,
- Existing buyer agreements will also be transferred to the buyer of the divested business to enable it to compete with the product range of the merged entity,
- The increase in merged undertaking's market share in the market for hydraulic steering wheel units after the divestiture will be at minimal levels compared to the period before the commitments,
- The hydraulic steering wheel units market in Türkiye is based on import and there are not important entry barriers in import,
- There are countervailing buyer power in the market,
- Global competitive pressure will increase after the divestiture.

It was concluded that as a result of the commitments offered by the parties to the Commission, it is not possible that the efficient competition in the relevant markets will be significantly restricted within the framework of article 7 of the Act no 4054 and accordingly there were not any drawbacks for authorizing the transaction within the framework of the commitments offered to and approved by the Commission and the transaction was authorized.

EssilorLuxottica S.A. Final Examination Decision
(Board Decision dated 10.06.2021 and numbered 21-30/395-199)



The notified transaction is related to the acquisition by EssilorLuxottica S.A. (ESSI-LUX) of the shares that Hal Holding N.V. holds indirectly in GrandVision N.V. through its subsidiaries in Türkiye. ESSI-LUX operates in the markets for “production and wholesale of stock lenses”, “wholesale of semi-finished lenses (RX lenses)”, “wholesale of branded sunglasses”, “wholesale of branded prescription optical eyeglass frames”, “production and distribution of ophthalmic machinery, equipment and consumables” and “retail sale of optical products”. GrandVision N.V. carries out operations through Atasun Optik Perakende Ticaret A.Ş. in the market for “retail sale of optical products”. The activities of the parties overlap horizontally in the market for “retail sale of optical products” and vertically with respect to other markets. Within the scope of the file, it is found that ESSI-LUX is dominant in the market for the wholesale of ophthalmic lenses and branded sunglasses and has significant market power in other markets and following the transaction it will have a powerful, leading vertically integrated structure at the retail level. Accordingly, the transaction in question has been authorized within the scope of the behavioral commitments offered to clear competitive concerns in those markets.

Martı Joint Venture Decision
(Board Decision dated 17.06.2021 and numbered 21-31/405-205)

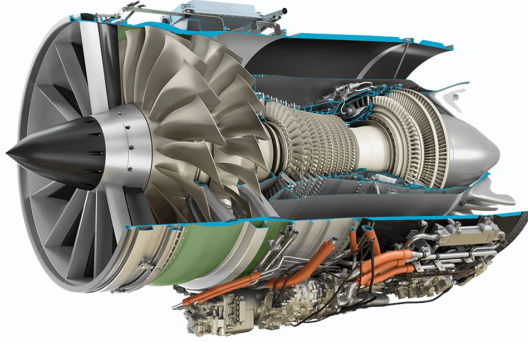
MARTI ABD, which is the subject of the acquisition, is an undertaking incumbent in the United States and owns 100% of MARTI TÜRKİYE. MARTI TÜRKİYE is active in short-distance urban transport and makes its activities in this area by means of electrical scooters rented by users. As a result of the notified transaction, in addition to founding members, European Bank for Reconstruction and Development (EBRD) and Actera Group (Actera) will have shares in the company and both new partners will have veto rights in strategic decisions as shareholders.

As a result of the assessments, the following evaluations were made:

- The requirement of joint control is fulfilled, as it will not be possible to take a decision without affirmative votes of the members of the board of directors assigned by ACTERA and EBRD.

- There are not any horizontal and vertical overlaps between the parties' activities and thus affected markets in Türkiye.
- There is not a coordination risk leading to a restriction of competition in a significant part of the market in question.
- It is not possible that the transaction would result in a significant lessening of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position.

Preliminary Inquiry Decision concerning GE Capital Aviation Services Business of AerCap Holdings N.V. and General Electric Company (Board Decision dated 01.07.2021 and numbered 21-33/439-220)



The notified transaction is about the request that the acquisition of General Electric Company's Capital Aviation Services (GECAS) business by AerCap Holdings N.V. (AerCap) be authorized within the scope of the Act no 4054 and the Communiqué no 2010/4.

In light of the information obtained within the scope of the file, horizontally affected markets are aircraft financing and its sub-segment aircraft leasing market and engine leasing market whereas vertically affected markets are the markets where aircraft engine leasing-aircraft leasing as well as aircraft trade-aircraft component sales activities take place.

As a result of the assessments, the following evaluations were made:

- Considering the market share tables prepared on the basis of the information provided within the scope of the notification, total market shares of the parties on a global level and in Türkiye market will not decrease competition significantly in respect of all markets where there is horizontal overlap.
- In aircraft financing market, especially in aircraft leasing market, there are strong competitors such as BOC Aviation, ORIX Aviation, BBAM, SMBC Aviation Capital, Tokyo Century, Air Lease and Avolon.
- In respect of aircraft financing, it is possible that alternatives such as cash, bank loan, capital market issue, support from export loan institutions, manufacturer financing and leasing may make a pressure on leasing prices.

- In aircraft leasing market, airline switching costs are low and airlines can often change financing methods by organizing tenders according to price offers.
- In engine leasing market, there are a lot of alternatives such as Rolls Royce, Pratt & Whitney, Engine Lease Finance, Willis Lease, SMBC Aero Engine Lease, Castlelake, ORIX and Fortress and the parties' total market shares are below (.....)% in Türkiye
- The vertical relation between GECAS's aircraft engine leasing activity and AerCap's aircraft leasing activity and between AerCap's aircraft trade and GECAS's aircraft component sales activity will not create competitive concerns.

Consequently, within the framework of information and findings obtained in the scope of the file, it was concluded that the notified transaction would not result in significant lessening of effective competition in the market and the transaction would be authorized.

Final Examination concerning Aon Plc. and Willis Towers Watson Public Limited Company (Board Decision dated 14.07.2021 and numbered 21-35/503-246)



The notified transaction is about acquisition of Willis Towers Watson Public Limited Company's (WTW) entire shares by Aon plc. (Aon). After the preliminary inquiry, the Board decided that the transaction would be taken under final examination.

Within the scope of the final examination, the following evaluations were made: In terms of "commercial non-life insurance distribution

market", "health and social payment market", "consultancy services for pension payments market", which are the affected markets, the market shares of the parties after the transaction will not reach a level to create competitive concerns. There are many competitors in the market. Therefore, there are not any competitive concerns in the abovementioned markets. However, in "commercial non-life reinsurance distribution market", as a result of the transaction, two of the largest three undertakings will merge. In that market, the highest concentration will occur as a result of the transaction and competition will be significantly lessened due to the lack of an important competitive power as a result of the transaction.

While the final examination was still in progress, the parties submitted their commitments, which concerned the transfer of WYW's global commercial non-life reinsurance business, including treaty and optional reinsurance business, to a third party, to the European Commission (Commission).

It was concluded that the commitments submitted by the parties to the Commission also cover Türkiye, in case those commitments are realized, potential anticompetitive effects in the relevant

market, which create competitive concerns regarding the transaction, will be eliminated; thus, the notified transaction will not result in significant lessening of competition in the market within the framework of article 7 of the Act no 4054 and it was decided that the transaction would be authorized within the framework of the commitments submitted to the Commission.

Kraft Heinz-Assan Decision

(Board Decision dated 16.09.2021 and numbered 21-43/639-318)



The file in question examined the potential impacts of authorizing the Kraft Heinz Company's acquisition of sole control over Assan Gıda Sanayi ve Ticaret A.Ş. (Assan) and the companies under its control on the relevant market. While the file does not include a clear relevant product market, "on-site consumption (non-domestic) channel of the ketchup market," "on-site consumption (non-domestic) channel of the mayonnaise market," "on-site consumption

(non-domestic) channel of the brand ketchup market" and "on-site consumption (non-domestic) channel of the brand mayonnaise market" were examined separately.

The decision concluded that while ASSAN was an important player especially in the production and sales of private label ketchup and private label mayonnaise markets, the acquisition concerned would not lead to a significant lessening of effective competition in the tomato paste market, private label ketchup and mayonnaise supply markets, brand ketchup and mayonnaise supply markets, on-site consumption channel of the ketchup market, on-site consumption channel of the mayonnaise market, retail (domestic) channel of the ketchup market, retail (domestic) channel of the mayonnaise market and the condiments market.

Fenerbahçe Kalamış Marina Privatization Decision

(Board Decision dated 21.10.2021 and numbered 21-51/726-359)



The notified transaction is the authorization request for the privatization of Fenerbahçe-Kalamış Yat Marina (Kalamış Marina), which is owned by Türkiye Maritime Organization, by means of granting the operating right for 40 years, within the framework of article 7 of the Act no 4054 and the Communiqué no 2013/2 on the Procedures and Principles to Be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority

in Order for Acquisitions Via Privatization to Become Legally Valid.



Turkish Competition Authority
**REKABET
KURUMU**

Depending on the pre-notification made for the privatization in question, the Board found that the transaction is subject to notification and it is not necessary to impose any conditions/obligations related to the transaction. Following the pre-notification, as a result of the bargaining negotiations about the tender, Tek-Art Kalamış and Fenerbahçe Marmara Turizm Tesisleri A.Ş. (Tek-Art) were designated as the buyers. Then the transaction was taken to final examination.

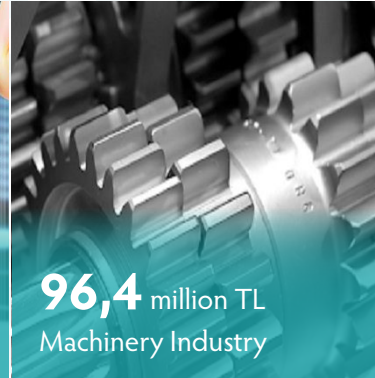
It is planned that Kalamış Marina, which was operated by Tek-Art before the transaction, will be operated again by Tek-Art after the notified transaction. On the basis of the said transaction, the relevant product markets are defined as “the market for mooring services in marinas and boat parking areas” in terms of mooring services, “the market for boat yard services” in terms of land services and “the market for area renting services” in terms of renting services. The relevant product markets are defined as “the provinces closer than 40 km to Kadıköy province in İstanbul, where Kalamış Yat Limanı is located, in terms of mooring services, “cities bordering to Marmara Sea” in terms of boat yard services and “İstanbul Anatolian side” in terms of area renting services.

As a result of the evaluations made within the scope of the examination, the following observations were made:

- Kalamış Marina, which is operated by Tek-Art at present, will continue to be operated by the same undertaking.
- As a result of the transaction, market shares and HHI ratios will not change and there will not be concentration.
- Since the marina to be transferred is not acquired by its close competitors - Pendik, Tuzla and Ataköy marinas or their owners/operators who have the control over those- the transaction will not result in significant lessening of competition in the relevant markets.

It was decided that the notified acquisition would not result in significant lessening of effective competition; therefore there are not any drawbacks for authorizing the transaction.

Sectors with the Highest Administrative Fines Imposed (2020-2021)



3.4. Statistical Data for the Last Five Years

Table 2: Finalized Files

Year	Competition Infringements	Exemption/ Negative Clearance	Merger/ Acquisition/ Joint Venture / Privatization	TOTAL
2017	80	32	184	296
2018	88	44	223	355
2019	69	35	208	312
2020	65	34	220	319
2021	74	22	309	405

A look at the last five years of the Competition Board's work between 2017 and 2021 shows that the lowest number of finalized decisions was taken in 2017 with 296 files, and the highest number was in 2021, with 405 files. The total number of finalized files in 2021 increased by around 27% compared to the previous year, reaching 405. In parallel, the total number of finalized files in the relevant period of time may be said to vary by year.

The distribution of the files finalized in the 2017-2021 period according to their types show that the majority of files in each year were merger and acquisition cases. These are followed by files on infringements of competition. The lowest share in the total number of decisions are exemption/negative clearance files. In fact, of the 405 finalized decisions in 2021, 309 were mergers and acquisitions, 74 were infringements of competition and 22 were exemption/negative clearance files. In other words, out of the decisions finalized in the relevant year, around 76% involved mergers and acquisitions, 18% involved infringements of competition, and 6% exemption/negative clearance cases.

When compared with the previous year in terms of the types of the files finalized, 2021 saw an increase in infringements of competition decisions from 65 in 2020 to 74, and in merger and acquisition decisions from 220 to 309. On the other hand, the number of exemption/negative clearance decisions dropped from 34 to 22. As a result, the highest proportional change compared to the previous year was in the number of finalized decisions concerning mergers and acquisitions. However, in general, there is an increase in the number of examined infringements of competition and merger/acquisition files in 2021.

Table 3: Files Concluded under Articles 4 and 6 of the Act

Year	Article 4	Article 6	Mixed (4 and 6)	TOTAL
2017	37	29	14	80
2018	46	23	19	88
2019	30	26	13	69
2020	36	22	7	65
2021	40	23	11	74

The total number of decisions taken by the Competition Board in the five-year period under examination on whether Article 4 and/or Article 6 were violated were 80, 88, 69, 65 and 74, respectively. In 2021, there was an increase of around 14% in the number of finalized decisions as compared to 2020. Of the 74 decisions taken in 2021 concerning claims of infringements of competition, 40 examined violations of Article 4, 23 examined violations of Article 6, and 11 examined violations of both Article 4 and Article 6. In that framework and similar to the previous years, the majority of the decisions taken by the Board with relation to claims of infringements of competition in 2021 also involved claims of Article 4 violations.

Table 4 shows the history of the Competition Board decisions that include claims of Article 4 violations in the last five-years, revealing that the number of decisions was 51 in 2017, 65 in 2018, 43 in 2019, 43 in 2020 and 51 in 2021. Thus, out of the 376 files that examined competition violations in this five-year period, 253, i.e. around 67%, concerned claims of violation of Article 4 of the Act. Around 75% of these 253 files addressed claims of Article 4 violations on their own, while another 25% addressed claims of Article 6 violations in addition to Article 4. A look at the types of agreements addressed in the 51 decisions examining claims of Article 4 violations in 2021 shows that 30 of these decisions concerned horizontal agreements between undertakings and 19 decisions involved vertical agreements between undertakings. Two files concerned both vertical and horizontal agreements.

Table 4: Vertical and Horizontal Agreements under Article 4 of the Act⁵

Year	Horizontal	Vertical	Mixed (H/V)	TOTAL
2017	36	15		51
2018	36	28	1	65
2019	23	18	2	43
2020	31	10	2	43
2021	30	19	2	51

Table 5: Negative Clearance Files Finalized

Year	Granted Negative Clearance	Granted Negative Clearance Subject to Conditions	Denied Negative Clearance	TOTAL
2017	3			3
2018	9			9
2019	6		2	8
2020	3			3
2021	5			5

Competition Board took five negative clearance decisions in 2021.

⁵ This Table covers the files included in the first and third columns of Table 3.

Table 6: Finalized Exemption Files

Year	2017	2018	2019	2020	2021
Granted Individual Exemption	19	18	16	15	9
Files under Block Exemption	3		5	1	
Granted Individual Exemption Subject to Conditions	3	3		7	2
Files under Block Exemption Subject to Conditions		3			3
Denied Exemption	2	4	1	7	3
Exemption Withdrawn	1		2		
Individual and Block Exemption Assessed Together	1	4	3	1	
Other		3			
TOTAL	29	35	27	31	17

As shown in Table 6, the number of exemption applications finalized in 2021 was 17. An examination of the distribution of exemption decisions taken by the Competition Board in 2021 according to outcome shows that nine of these decisions granted individual exemption to the relevant agreements without conditions, two granted individual exemption subject to conditions, three granted block exemption subject to conditions, and three denied exemption for the relevant agreement.

Table 7: Merger, Acquisition, Joint Venture and Privatization Files Finalized

Year	Merger	Acquisition	Joint Venture	Privatization	TOTAL
2017	6	141	32	5	184
2018	2	152	56	13	223
2019	1	140	66	1	208
2020	8	150	62		220
2021	5	214	83	7	309

In 2021, 309 merger/acquisition/joint venture/privatization transactions were finalized. Compared to the previous year, the number of finalized merger/acquisition/joint venture/privatization transactions saw an increase of around 40%. Similar to the 2017-2020 period, most of these were comprised of merger decisions in 2021 as well. Around 69% of the transactions finalized under Article 7 of the Act in 2021 were acquisitions, with a total of 214 files. Joint venture establishment transactions had a share of about 27%, with 83 files. In 2021, five merger and one privatization transactions were finalized.

As shown in Table 8, the distribution of the decisions taken in 2021 under Article 7 of the Act according to their outcomes reveals that 29 out of the 309 applications received were out of scope/below threshold. There were 300 applications that did fall under the scope of the act and were subject to authorization, 277 of which were authorized without conditions, and three on a conditional basis. No applications related to merger/acquisition/joint venture/privatization transactions were denied authorization in 2021. In this five-year period only two merger/acquisition/joint venture/privatization transactions were prohibited, one in 2017 and one in 2020, and 12 transactions were authorized subject to conditions.

In that framework, out of the merger and acquisition transactions that were notified in the relevant five year period and found to be subject to the authorization of the Competition Board, around 99% were authorized without conditions.

Table 8: Outcomes of the Concluded Merger, Acquisition and Privatization Files

Year	Authorized	Authorized Subject to Conditions	Denied	Out of Scope/ Below Threshold
2017	150	2	1	30
2018	201	4		18
2019	185	2		21
2020	190	1	1	28
2021	277	3		29



Article 40 of the Act no 4054 grants the Board the power to launch an investigation or conduct a preliminary inquiry to decide whether an investigation is necessary, either on its own initiative or in response to the applications submitted. In that framework, the Competition Board examined 15 files on its own initiative. The distribution of the 15 files examined on the Board's own initiative according to their types shows that 13 of them concerned claims of Article 4 violations, and two concerned claims of Article 6 violations. Thus, similar to the first four years of the relevant five-year period, it may be said that a majority of the files examined on the Board's initiative in 2021 were also comprised of files related to the violations of Article 4

Table 9: Distribution of the Files Examined Ex Officio

Year	Article 4	Article 6	Mixed (4 and 6)	Article 7	Exemption/ Negative Clearance	TOTAL
2017	10	2	1	1	1	15
2018	10		3	1		14
2019	8	1		1		10
2020	8					8
2021	13	2				15

Table 10: Fines *

	Year	Infringements	Mergers / Acquisitions	Exemptions / Negative Clearances	TOTAL
Substantive Fines	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
	2021	4.229.946.505			4.229.946.505
False or Misleading Information/Documents in Applications (art. 16/1-a)	2017				
	2018		320.376		320.376
	2019				
	2020		838.656		838.656
	2021				
Failure to Notify the Merger and Acquisition Transaction in Due Time (art. 16/1-b)	2017				
	2018				
	2019				
	2020		21.001.468		21.001.468
	2021		1.242.897		1.242.897
Missing, False or Misleading Information/Documents Submitted under a Request of Information and/or On-Site Inspection (art. 16/1-c)	2017	36.754			36.754
	2018				
	2019	826.106			826.106
	2020	61.468.770			61.468.770
	2021				
Preventing or Complicating On-Site Inspections (art. 16/1-d)	2017				
	2018	194.082			194.082
	2019	38.116.077			38.116.077
	2020	2.550.980			2.550.980
	2021	121.038.512			121.038.512
Proportional Administrative Fines (art. 17)	2017				
	2018	138.552			138.552
	2019	4.522.657			4.522.657
	2020	151.407.833			151.407.833
	2021	3.392.292			3.392.292

* Does not include fines imposed in files that were re-evaluated in response to court decisions and takes into account Articles as amended with the Act no 5728, dated 23.01.2008.

Table 11: Fines Imposed under Articles 4 and 6 of the Act (TL)*

	Year	Files Examined under Article 4	Files Examined under Article 6	Files Examined under Articles 4 and 6	TOTAL
Substantive Fines	2017	38.776.937	158.109.340	2.543.993	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
	2021	3.453.040.530	296.084.900	480.821.076	4.229.946.505
Missing, False or Misleading Information/Documents Submitted under a Request of Information and/or On-Site Inspection (art. 16/1-c)	2017	18.377	18.377		36.754
	2018				
	2019	800.079	26.027		826.106
	2020	61.468.770			61.468.770
	2021				
Preventing or Complicating On-Site Inspections (art. 16/1-d)	2017			3.225.409	3.225.409
	2018	81.501		112.581	
	2019	4.896.131	33.219.946		38.116.077
	2020	2.550.970			2.550.970
	2021	117.247.394		3.791.119	121.038.512
Proportional Administrative Fines (art. 17)	2017				
	2018	138.552			332.634
	2019	251.262	4.271.395		4.522.657
	2020	75.934.394	75.473.439		151.407.833
	2021	3.392.292			3.392.292

* Excluding administrative fines imposed for files re-evaluated in response to court decisions.

Table 12: Fines Imposed in Files Examining Horizontal and Vertical Agreements*

	Year	Horizontal	Vertical	Mixed
Substantive Fines	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
	2021	687.288.455	557.861.439	2.688.711.711
Missing, False or Misleading Information/Documents Submitted under a Request of Information and/or On-Site Inspection (art. 16/1-c)	2017	18.377		
	2018			
	2019	800.079		
	2020	61.468.770		
	2021		7.133.811	
Preventing or Complicating On-Site Inspections (art. 16/1-d)	2017	3.120.137		
	2018	194.082		
	2019	4.896.131		
	2020		2.550.970	
	2021	110.113.582	10.924.930	
Proportional Administrative Fines (art. 17)	2017			
	2018	138.552		
	2019	251.262		
	2020	75.934.394		
	2021	3.392.292		

* Excluding administrative fines imposed for files re-evaluated in response to court decisions.





MAY 6

A cooperation protocol was signed with the Energy Market Regulatory Authority.



JUNE 2

Appointed as a Competition Board member with a Presidential Decree, Cengiz ÇOLAK, took office after swearing in.



JULY 6

E-Marketplace Sector Examination Preliminary Report Workshop was held in Ankara, with the participation of the shareholders.



SEPTEMBER 20

An organizational cooperation protocol between the Competition Authority and the Social Sciences University of Ankara was signed by President Birol KÜLE and the Rector Prof. Dr. Musa Kazım ARICAN.

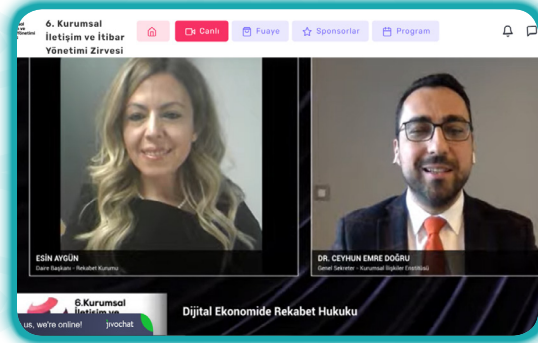


NOVEMBER 11

University students visited President Birol KÜLE.

DECEMBER 16

6th Corporate Communication and Reputation Management Summit was attended.



DECEMBER 22

Assistant Experts of the 18th Term met with President Birol KÜLE after completing their training.



DECEMBER 29

Minister of Trade Dr. Mehmet MUŞ visited the Authority.



SECOND HALF OF 2021

The second year of the "Internship Rally Project," which was organized by the Human Resources Office of the Presidency of the Republic of Türkiye, and of which the Authority is a shareholder completed its second year.

JANUARY 12

A Memorandum of Cooperation was signed between the Competition Authority and the Competition Council of MOROCCO. The Memorandum of Cooperation aims to improve the already close relationship between the two agencies.

The signature ceremony was performed online and attended by President Birol KÜLE, President of the Moroccan Competition Council Driss GUERRAOUI, Rabat Ambassador of Türkiye Mr. Ahmet Aydın DOĞAN and Türkiye Ambassador of the Kingdom of Morocco, Mr. Mohammed Ali LAZREQ.



MARCH 9

Prof. Alberto HEIMLER shared his new theory on competition law with the attendees of the "Competition Talks" webinar, which was followed live by private sector representatives, academics, personnel from other competition agencies and the staff of the TCA.

MARCH 19

Vice President Ferhat TOPKAYA presented the opening speech of the "National Competition Barometer" Webinar, organized by the Competition Council of Morocco. In addition, a presentation titled "Market Studies" was made on behalf of the Authority.



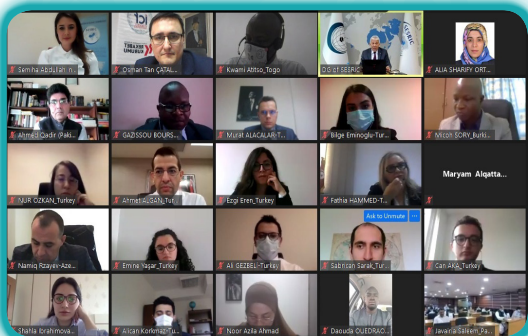


MARCH 23-24

The 2nd ESCWA-UNCTAD-OECD Competition Forum was attended and a presentation titled "Practical Challenges in Cartel Investigations during COVID-19" was made.

MARCH 30 - APRIL 1

Within the framework of the "Competition Authorities Capacity Building Program" of the Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRI), the TCA and the Tunisian Competition Council provided a training session in French, titled "Anti-Competitive Practices and Competition Advocacy" to experts from the Burkina Faso Competition Commission. The opening remarks for the training program were made by SESRIC Director General Nebil DABUR, Competition Board Member Hasan Hüseyin ÜNLÜ, President of the Tunisian Competition Council Ridha Ben MAHMOUD and President of the Burkina Faso Competition Commission Bibata NEBIE OUEDRAOGO.

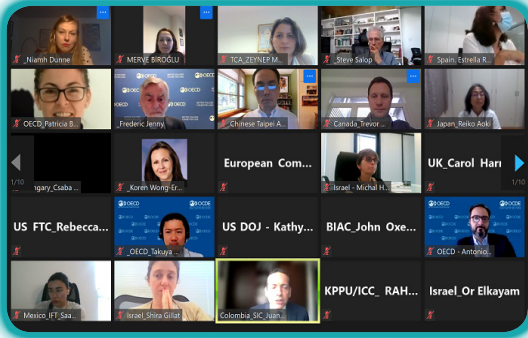


APRIL 6-7

An online workshop on "Competition vs. Regulation and the Appropriate Organizational Structure of a Competition Agency" was held by the Authority, in cooperation with SESRIC.

APRIL 27-28

The webinar titled “South-South Sharing of Policy Experiences on Platform Dominance,” was organized online by UNCTAD, in cooperation with Public Citizen and Third World Network.



JUNE 07-11

OECD's online “June 2021 Competition Week” meeting was attended.

JULY 5-9

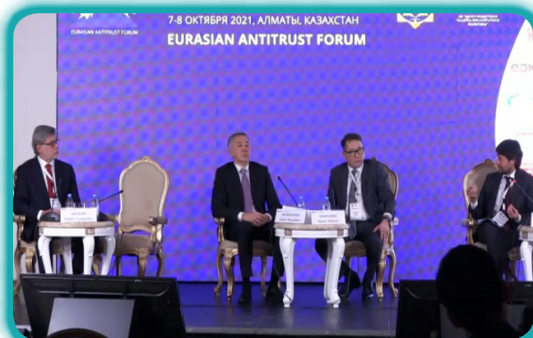
The “Intergovernmental Group of Experts on Competition Law and Policy” meetings, held online by UNCTAD were attended.



UNITED NATIONS
UNCTAD

OCTOBER 7

Vice President Dr. Faik Metin TIRYAKI made an online presentation at the Eurasian Antitrust Forum VII, organized by Kazakhstan.



NOVEMBER 20-21

The Albanian Competition Authority made the first study visit to the TCA within the framework of the Balkan Initiative Platform, established under the leadership of the TCA.

NOVEMBER 17-19

The TCA attended the Cartel Workshop, organized by the ICN Cartel Working Group.



DECEMBER 6-8

The "Global Forum" organized by the OECD was attended.

3.5. Training and Internship Activities

TCA 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 24 years, and has been providing internship opportunities since 2003.

In 2021, training was provided to the 18th Term assistant experts who took office in 2021 as well as the other professional staff. In addition and in line with the requests received, training programs were organized for personnel from other public institutions and organizations.

Another activity the Competition Authority has been providing traditionally since 2003 is the internship program for university students, aimed at contributing to the know-how on competition law and practice and increasing interest in this field. In terms of content, these two-week programs are intended to be closer to an intensive training than a conventional internship. In the first week, an overview on the competition law legislation of Türkiye 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, 2,039 undergraduate and graduate students have participated in the internship program at the Authority, 1,961 of which completed their training and received their certificates. In that framework, two sessions of the "Competition Law Internship Program with Participation Certificate" for university students were held, the first between April 19-30, 2021 and the second between May 31 - June 11, 2021.

Another activity aimed at university students in 2021 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. On various dates, three university students took part in the internship program carried out at the Authority under the umbrella of this project. In addition, four university students and one high-school student completed a short-term internship at the Authority. Among the candidates who submitted their applications under the "Internship Rally" program, one student from the Department of Economics interned at the Economic Analysis and Research Department between August 23, 2021 - September 20, 2021; and two students from the Department of Translation and Interpretation interned at the External Relations and Competition Advocacy Department between September 20, 2021 - October 15, 2021 and September 27, 2021 - October 22, 2021, respectively. In addition, one student from the Department of Industrial Engineering interned at the Economic Analysis and Research Department between September 20, 2021 - January 31, 2022; one student from the Department of English Language and Literature interned at the External Relations and Competition Advocacy Department between August 2, 2021 - August 27, 2021; one student from the Department of Political Science and Public Administration interned at the Strategy Development Department between May 31, 2021 - June 25, 2021; one student from the Computer Engineering Department interned at the Information Technologies Department between August 9, 2021 - September 10, 2021, and one high school student also interned at the same department between September 2021 and June 2022, for 3 days each week. The training and internship activities conducted are included in Table 13.

Table 13: Training and Internship Activities

Date	Subject of the Training	Providing Institution/ Organization
November 23, 2020 - April 13, 2021	"Competition economics and statistical programming" training for professional staff	Ankara Yıldırım Beyazıt University
February 2021	In-service training on "basic forensic IT" and "use of forensic investigation software for mobile devices;" aimed at the department staff who took office as part of the 17th Term Assistant Competition Experts	Competition Authority
April 19-30, 2021	Competition Law Internship Program with Participation Certificate for university students	Competition Authority
May 24-28, 2021	Intensive training on quantitative methods for competition analyses	Barcelona School of Economics
May 31, 2021 - June 11, 2021	Competition Law Internship Program with Participation Certificate for university students	Competition Authority
June 07-11, 2021 – June 21-25, 2021 – July 05-09, 2021	Training on "Microsoft Windows Server and Active Directory," "Microsoft Exchange Server," and "Microsoft SQL Server," aimed at department staff who took office as part of the 17th Term Assistant Competition Experts	Private Sector
August 23, 2021 - December 22, 2021	Training for the 18th Term Assistant Competition Experts	Competition Authority
September 2021	Online training package for security software	Private Sector
October-December 2021	Training for 17th Term Assistant Competition Experts on concepts in competition law and policy	Ankara Yıldırım Beyazıt University
October 12, 2021 - November 27, 2021	Basic Training and Preparatory Training Programs for the Authority staff who took office as 18th Term Assistant Competition Experts	Competition Authority
October 15, 2021	Presentation for Assistant Experts from the Privatization Administration	Competition Authority
November 22, 2021	Presentation for Assistant Professional Staff from the Capital Markets Board	Competition Authority
November 22-26, 2021	One week online training on the forensic examination software for mobile devices	Private Sector
Year-round	Participation in the regular meetings held by the Tax Council of the Ministry of Treasury and Finance	Ministry of Treasury and Finance
Year-round	Year-long access for all users to the domestic online cyber-security awareness training platform, which was purchased at the end of 2020 for a period of one year.	Private Sector
Year-round	Foreign language training	Various Private Classes/ Universities

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, administrative measures and administrative fines of the Board 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 14: List of Actions Brought For and Against the Authority between 1997 and 2021⁶

Nature of the Board Decision	Ongoing	Concluded	General Total
Investigation	229	1.079	1.308
Preliminary Inquiry	84	227	311
First Examination	4	85	89
Appeal of Fines	23	56	79
Mergers/Acquisitions	7	48	55
Privatization		33	33
Exemption	12	51	63
Interim Measure	4	10	14
Periodic Fine	10	12	22
Request of Information and Documents	4	23	27
Annulment of Tacit Rejection	1	10	11
Missing Documents during On-the-Spot Inspections	1	8	9
Against Notification	1	6	7
Joint Venture	1	7	8
Negative Clearance	5	4	9
Withdrawal of the Exemption		2	2
Article 42/ 2	31	60	91
Article 5/ 4	21	5	26
Filing Lawsuit	2		2
Other Technical Lawsuits	7	7	14
Interim Measure Periodic Fine		1	1
Appeal of Board Decisions	18	5	23
Right to Access the File	18	11	29
Nullity*		1	1
Intervening Party*		1	1
Debt Enforcement*	73	412	485
Lawsuits Related to Other Administrative Acts*	16	307	323
Nullity Suits*	74	230	304
Lawsuits Related to Other Criminal Acts*	3	11	14
TOTAL	649	2.712	3.361

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

⁶ 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 15: List of Actions Brought Against Board Decisions in 2021

Nature of the Board Decision	Ongoing	Concluded	General Total
Investigation	66		66
Acquisitions	1		1
Preliminary Inquiry	9		9
Interim Measure	2		2
Periodic Fine	3		3
Article 42/ 2	7		7
Article 5/ 4	10		10
Exemption	1		1
Exemption/Negative Clearance	3		3
Appeal of Fines	4		4
Request of Information and Documents	1		1
Nullity Suits*	20		20
Appeal of Board Decisions	8		8
Right to Access the File	4		4
On-site Inspection	2		2
Filing Lawsuit*	1		1
Other Technical	4		4
Lawsuits Related to Other Criminal Acts*	1		1
Lawsuits Related to Other Administrative Acts*	10	1	11
TOTAL	157	1	158

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

Table 16: Distribution of Actions Finalized between 2017 and 2021 According to Outcome

Court Decision Outcome	2017	2018	2019	2020	2021
Against the Authority	9	14	6	24	8
For the Authority	115	71	61	124	40
Other*	7	12	4	7	6
TOTAL	131	97	71	155	54

* The "Other" entry includes those cases where the action was considered unfiled or 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 16 includes information on how the actions related to professional matters were concluded in the 2017-2021 period. Accordingly, among the actions related to professional matters finalized in that year, 88% in 2017, 73% in 2018, 86% in 2019, and 80% in 2020 resulted in the Authority's favor. This ratio was 74% in 2021, with 40 out of a total of 54 cases having been finalized in favor of the Authority.

3.7. Regulatory Activities

The regulatory activities carried out in 2021 are listed below.

3.7.1. Regulations That Took Effect in 2021

The Act no 7246 introduced to the legislation procedures related to practices that do not significantly restrict competition (*de minimis*), commitments and settlements. Articles 41/2 and 43/3 of the Act no 4054 state, respectively, that the rules and principles for the application of the procedures related to practices that do not significantly restrict competition (*de minimis*) and commitments would be determined by the communiqués to be issued by the Competition Board, and Article 43/9 of the Act notes that the rules and principles for the application of the settlement procedures would be determined by a regulation to be issued by the Competition Board. In that framework,

- **Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position (Communiqué No: 2021/2)**

The Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position entered into force after its publication in the Official Gazette dated 16.03.2021 and numbered 31425 (Communiqué No. 2021/2)

- **Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings That Do Not Significantly Restrict Competition (Communiqué No: 2021/3)**

Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings that do not Significantly Restrict Competition entered into force after its publication in the Official Gazette dated 16.03.2021 and numbered 31425 (Communiqué No. 2021/3)

On the other hand,

- **Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of Dominant Position**

Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of Dominant Position entered into force after its publication in the Official Gazette dated 15.07.2021 and numbered 31542.

- **Block Exemption Communiqué on Vertical Agreements (Communiqué No: 2002/2)**

Communiqué Amending the Block Exemption Communiqué on Vertical Agreements (Communiqué No. 2002/2) entered into force after its publication in the Official Gazette dated 05.11.2021 and numbered 31650 (Communiqué no. 2021/4).

- **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 31.12.2022 (Communiqué No: 2022/1)**

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 31.12.2022 (Communiqué No: 2022/1)," was published in the Official Gazette dated 24.12.2021 and numbered 31669 and entered into force on 01.01.2022, with an aim to delineate the lower thresholds of the administrative fines to be implemented between 1.1. 2022 and 31.12.2022 after the application of the re-evaluation rate.

Under the Communiqué no 2022/1, minimum administrative fines specified in Article 16.1 of the Act no 4054 was set to 47.409 TL.

3.7.2. Ongoing Regulation Work

Work is currently ongoing on the Draft Regulation amending the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of Dominant Position, as well as on the amendments proposed in the Communiqué no 2010/4, Guidelines on the Assessment of Horizontal Mergers and Acquisitions (Horizontal Guidelines) and Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions (Non-Horizontal Guidelines).

3.8. Economic Analysis and Research Activities

3.8.1. Activities Related to Examinations

In 2021, many numerical/economic analyses were conducted by the Competition Authority in various sectors within the framework of investigations, merger and acquisition examinations and sector examinations, taking advantage of the most recent techniques used in competition economics literature. Numerical methods including difference in differences, statistical significance tests and regression analyses were conducted to be used in the assessments aimed at establishing whether Articles 4 and 6 of the Act were violated. Under Article 7 of the Act, quantitative methods based on econometric demand estimates were applied in order to define the relevant geographical market and forecast the potential anti-competitive effects that might arise after a merger. In addition to preparing economic opinions on files, the staff of the relevant department also directly took part in various files as rapporteurs, including the investigation launched on certain chain markets and some undertakings at the production and wholesale level, the results of which were shared with the public on 29.10.2021. Significant sectors such as fast moving consumer goods retailing, e-commerce, food, port and transportation services are among the sectors where the relevant examinations took advantage of the numerical analyses conducted.

3.8.2. Impact Analysis Report

Measuring the monetary effects of the decisions taken by competition authorities on the consumer help monitor institutional performance under the principles of transparency and accountability, and it also serves an importance purpose in that it clearly shows the role competition law plays in protecting the national economy and consumer welfare. To that end, the Authority started to publish impact analysis reports in 2017, and these reports are still being updated and released to the public at regular intervals. The impact analysis published in 2021 estimated the benefit provided by the Authority activities to the consumer in the 2019-2020 period to be 1,89 billion TL on average, under a conservative approach based on December 2020 prices. According to the OECD methodology, the same benefit is estimated at 5,27 billion TL. In light of the calculations above, the benefit provided to the economy is 15,8 times the average annual budgetary expenses of the Authority in the relevant period according to the conservative calculation, and it is around 44 times the budgetary expenses according to the calculation based on the OECD methodology.

Constituting a significant activity of competition advocacy before the stakeholders, it is planned that the impact analysis studies will continue biennially.

3.8.3. 2021 Mergers and Acquisitions Overview Report

The 2021 Mergers and Acquisitions Overview Report addresses the merger/acquisition and privatization transactions examined and concluded in 2021 among those notified to the Competition Authority, and aims to summarize the developments with relation to mergers and acquisitions in the relevant year. The Report is intended as one of the significant data sets in terms of the investment climate in Türkiye. The report in question makes the following main observations concerning mergers and acquisitions.

In 2021, a total of 309 merger, acquisition and privatization transactions were notified to the Competition Authority. In 125 of these transactions, the target companies were founded in accordance with Turkish laws. The notified transaction value was around 137,5 billion TL for the mergers/acquisitions and privatizations where the target company was based in Türkiye. The total transaction value of the mergers and acquisitions where all of the parties are companies based in Türkiye was around 15,9 billion TL. Foreign investors made investments in Turkish companies in 51 separate transactions. In 2021, Luxembourg based investors were at the top of the rankings in transactions involving target companies based in Türkiye, with 10 transactions. Total projected foreign investment for mergers, acquisitions and privatizations where the Turkish companies were being transferred was 111,3 billion TL. In 2021, the highest number of transactions in Türkiye in terms of mergers and acquisitions was in the field of "production, transmission and distribution of electricity". The highest transaction value among these transactions was notified in the field of "production of packaging materials from plastics".

In 2021, one transaction was taken under final examination and three transactions were authorized subject to the commitments offered by the notifying parties. In the same year, Competition Authority decided on the merger and acquisition transactions notified within an average of 11 days after the date of notification.



3.8.4. Training for the Professional Staff

The training programs aimed at the professional staff of the Economic Analysis and Research Department have been increased in order to strengthen the organizational capacity. In that context, the department staff took part in academic training sessions on competition economics and statistical programming, provided both in person and online in accordance with the pandemic conditions, and organized domestically or abroad. The staff also endeavored to reflect their experience in the field in academic articles in addition to the files they were in charge of. New training sessions are being planned for the staff of the relevant department, including on competition economics, microeconometrics, as well as data analytics and machine learning in line with international developments.

3.9. Activities in the Field of Information Technologies

3.9.1. E-Government Application Portal

Work on improving the services offered through the e-government application portal continued. Applications over the portal have increased due to the ongoing pandemic conditions. The following table includes numerical information on the online applications made in 2021.

Table 17: E-Government Application Portal Statistics

TYPE OF REQUEST	NUMBER OF APPLICATIONS
Requests for Additional Time for Written Pleas in Investigations	88
Applications to Access the File Submitted to the Competition Authority	32
Request for Attending the Hearing before the Competition Authority	59
Merger & Acquisition Applications	287
Negative Clearance/Exemption Applications	14
Third Party Objections or Applications to Provide Information in Merger/Acquisition Applications	24
Leniency Applications	1
Submission of First, Second and Third Written Pleas by the Parties in Investigations	277
Responses of the Parties or Third Parties to the Requests for Information in All Types of Files or Studies	1.314
Request for the Re-evaluation of the Board Decision under Article 11 of the Administrative Judicial Procedure Law.	16
Competition Infringement Applications	472
Commitment Applications (Communiqué no 2021/2)	26

3.9.2. IT Security

In order to manage, monitor and protect institutional information and assets, the Authority continued to use the TSE/ISO 27001 Information Security Management System, which is a documented management system based in the risk management approach that aims to ensure operability and continuity and for which the Authority was granted a certificate for a period of three years in 2020.

In that framework, the Authority successfully passed the annual interim audit performed by the Turkish Standards Institute in March.

Necessary actions were taken to ensure the physical and cyber security of the information systems. To that end, various products installed to

- Prevent harmful activities and effects from the online environment,
- Ensure the security of the Authority's website and the outward-facing applications,
- Identify and prevent the harmful activity attempts throughout the intranet,
- Prevent harmful software from accessing the servers and clients,
- Prevent access to harmful websites,
- Prevent access of unauthorized computers and mobile devices from accessing the intranet,
- Scan the source codes of software for security flaws, and
- Scan the server operating systems for security flaws and make any required updates

were actively used, managed, updated and re-configured when necessary, with the relevant logs being maintained and assessed regularly.

In order to make sure that the necessary services are not interrupted in case the Authority's IT infrastructure becomes unusable or in case data is lost for various reasons, the Disaster Recovery Center that was established at a remote data center was maintained.

In order to increase visibility and enhance its benefits, numerous configurations and improvements were applied to the Security Information and Event Management (SIEM) software, which was procured to get warning about cyber security incidents and take rapid action.

A number of phishing attack drills were conducted, using the software procured to increase the awareness of the personnel about these types of attacks which trap users by fake but convincing e-mails. The results of these drills were evaluated to provide online training to the personnel concerned.

A professional IT security company was hired to offer their infiltration testing services, and the results of the testing were assessed to implement actions that would maximize the level of cyber security.

The Authority's website and other services that are accessible from outside were constantly scanned and controlled over the internet so as to maximize their cyber security.

The relevant scanning procedures were regularly conducted to reveal any potential cyber security flaws in the software and operating systems used in the IT infrastructure, and any flaws identified were fixed.

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 Decree No. 1/95 of the Association Council between Türkiye and European Union (EU) 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. 3/2000 in order to monitor the developments related to the priorities of the association and the harmonization of the legislation.

As a candidate country for the EU, Türkiye both benefits from the Instrument for Pre-Accession Assistance (IPA), which includes financial assistance for candidate countries, and 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 Co-operation and Development (OECD)

The TCA attended the workshop on “Methodologies to Measure Market Competition,” which was organized by the OECD on February 23, 2021, exclusively for competition authorities. The Authority made contributions to the sessions on “Environmental Sustainability and Competition,” “Competition Issues in Digital Ecosystems,” “Competition Policy in the Economic Recovery,” and “Competitive Effects of Killer Acquisitions,” during the online meeting held on February 24, 2021, under the framework of the OECD Competition Day.

Experts from the TCA made a presentation for another online meeting on February 25, 2021, in a session on “OECD Workshop on Gender Inclusive Competition Policy Cartels and Collusion: Market Definition Prioritisation and Public Interest Approach”.

A presentation was made at the 2nd ESCWA-UNCTAD-OECD Competition Forum, held on March 23-24, 2021, on the subject “Practical Issues in Cartel Investigations during the COVID-19 Pandemic”.

The online meeting titled “Transparency and Procedural Fairness in Competition Law Enforcement,” held by the OECD on April 6, 2021 and the meetings organized within the framework of the OECD Competition Week between June 7-11, 2021 were attended.

Between December 6 and 8, 2021, Economic Analysis and Research Department of the TCA made contributions to the OECD's Global Competition Forum, in the session on “Economic Analysis and

Evidence in Abuse Cases," which addressed subjects such as "Trade, Development and Competition," "Economic Analysis and Evidence in Abuse of Dominance Cases," "Establishment of Competitive Neutrality by Competition Authorities." At the same time, in the session on "Techniques and Evidence for Assessing Exclusive Dealing and Bundling," a presentation was made on the workings of the economic analysis processes in general, as well as on the Coca-Cola case which was concluded subject to commitments.

On February 9, 2021, Chair of the OECD Working Party No. 2 Prof. Alberto HEIMLER, shared his new theory on competition law with his presentation titled "A New Approach to Economic Foundation of Antitrust Law" as part of the "Competition Talks" online meeting organized by the TCA, which was followed live by private sector representatives, officers from foreign competition agencies and Authority staff.

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

The TCA contributed to the online "South-South Sharing of Policy Experiences on Platform Dominance" meeting, organized by UNCTAD with the cooperation of Public Citizen and the Third World Network on April 27-28, 2021, with a presentation on the "Whatsapp/Facebook" investigation being conducted by the Authority and the interim measure decision taken by the Board concerning that investigation. Representatives from the TCA attended the "Intergovernmental Group of Experts on Competition Law and Policy," held online between July 5 and 9, 2021.

The TCA also made written contributions and presentations to the 5th Session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, held by UNCTAD's Competition and Consumer Policies Branch on July 5-6, 2021, under the heading "Consumer Law, Policy and Regulatory Actions in Response to and in the Aftermath of the Covid-19 Pandemic," as well as to the 19th Session of the Intergovernmental Group of Experts on Competition Law and Policy, held between July 7-9, 2021, under the heading "Competition Law, Policy and Regulation in the Digital Era".

3.10.2.3. International Competition Network (ICN)

ICN is a platform created by competition authorities to facilitate mutual exchange of information, share best practices, and build opinions in the field of competition law and policy. One of the founders of the ICN, the TCA is currently in the steering group of the organization and serving as the co-chair of Subgroup 1 of the Cartel Working Group, titled Legal Framework.

Between November 17-19, 2021, the TCA attended the Cartel Workshop on "A Stronger Cartel Enforcement for an Effective Recovery," which was hosted by the Portuguese Competition Authority and coordinated by the Co-chairs of the ICN Cartel Working Group.

A representative from the Authority served as the moderator of the plenary session on "Cartel Enforcement in the Next Decade: Priorities and New Trends Looking beyond the Pandemic," and a presentation was made on "Trends and Developments in the Fight with Cartels," which was prepared as a report and shared with all ICN member agencies by the TCA. The Authority also contributed to the Workshop by providing speakers in the breakout sessions on "Dawn Raids during

the COVID Pandemic: Risks, Challenges and Opportunities” and “Hub-and-Spoke Cartels,” where presentations were made about the Authority experience.

In addition, the TCA provided responses to the various requests for information and documents, including surveys, projects and reports, etc. received from different working groups of the ICN throughout the year. In September, the TCA attended five sessions of the Virtual ICN Promotion & Implementation Workshop, co-sponsored by the Agency Effectiveness, Merger, and Unilateral Conduct Working Groups, with the cooperation of International Cooperation Project Group and the Promotion and Implementation Team.

3.10.2.4. *İstanbul Competition Forum - ICF*

Türkiye has been endeavoring to serve as a leader to the countries in the region in every respect, and as an outcome of this goal in the field of competition law and policy, has created an organization with high levels of participation under the name ICF.

The goal of ICF is to provide assistance to the countries in the same region in the field of competition law and policy, and to improve cooperation between these countries. UNCTAD's Competition and Consumer Policies Branch have made contributions to the effort, in order to ensure that ICN reaches its intended goals. In fact, as part of this cooperation, ICF 2019 Conference was held for the first time between November 25-26, 2019, with highest-level participation from UNCTAD's Competition and Consumer Policies Branch. The two-day Conference brought together officials from 30 different countries, including representatives from international organizations active in the field of competition law and policy, distinguished academics, lawyers and experts in competition law and economics, as well as more than 400 national and international participants.

The success of this first meeting served to reinforce the desire to turn the ICF meetings into a tradition that will continue in the years to come. Within the framework of the ICF, experts and mid-level managers from the competition authorities of 19 countries, including the TCA, came together at a Workshop held in İstanbul on March 9-10, 2020. On June 2, 2020, an online meeting was held, attended by officials from the OECD and UNCTAD as well as academics and representatives from the competition agencies of Russia, Uzbekistan, Tunisia, Greece and Albania as speakers. The meeting discussed how the tools of competition law and policy were used during the COVID-19 pandemic and in response to the economic shock that followed, and what actions were taken by the competition authorities in the same period.

Communication under the ICF umbrella continued with the annual conference held online between December 15-16, 2020. The 2021 annual ICF meeting could not be held in person due to the continuing measures taken in response to the COVID-19 pandemic, and an in-person conference is being planned for the first half of 2022, provided conditions under the pandemic are favorable.

During 2021, the speeches and presentations made at the online meetings of the ICF were transcribed and translated by the Authority translators and were published as a TCA release in two languages.

3.10.2.5. The Balkan Initiative

The "Balkan Initiative" platform was formed with the leadership of the TCA, declaring nine Balkan countries' determination for cooperation. On November 9, 2021, the first Workshop for the platform was organized by the TCA under the title "Recent Trends in Competition Law Enforcement in the Balkans." In addition to Türkiye, the Workshop was attended by Greece, Albania, Bosnia-Herzegovina, Bulgaria, North Macedonia and Montenegro at the highest level.

The country representatives mostly made presentations at the Workshop concerning the challenges encountered in competition law enforcement during the COVID-19 pandemic and abuse of dominance cases in the digital markets. It was emphasized that the Workshop aimed to set up a platform to institutionalize close cooperation and exchange of opinions and experiences between the competition agencies in the region, and the participating countries reiterated their determination to support the Workshop. The ultimate goal is to organize regular Workshops by different Balkan countries each year on various themes.

3.10.2.6. International Training Seminars

The TCA assists with and supervises the applications under the technical assistance project launched for the member countries of the Organization of Islamic Cooperation (OIC). In the future, the activities required by the existing cooperation will be systematically and periodically organized, both domestically and abroad. In that context, between March 30 - April 1, 2021, the TCA and the Tunisian Competition Authority jointly provided an online training session for the Burkina Faso National Competition and Consumer Authority on "*Restrictive Competition Practices, Promotion of Competition and Collusive Bidding in Tenders*," within the framework of the Competition Authorities Capacity Building Program (CA-CaB), under the partnership of the Statistical, Economic and Social Research and Training Centre for Islamic Countries and the TCA.

The cooperation between SESRIC and the TCA was not limited to training programs, and a Workshop titled "*Competition vs. Regulation and the Appropriate Organisational Structure of a Competition Agency*" was held on April 6-7, 2021. The Workshop was attended by 47 experts and executives from the national competition agencies of 16 OIC member countries and a regional competition authority. The Workshop included sessions on "*Why Compete, When You Can Cooperate? The Effect of Competition on Economic Units*," "*Competition vs. Regulation: What is the right balance?*," and "*Organizing a Competition Authority: Is there an Optimal Way?*".

3.10.3. Bilateral Relations

Within the framework of bilateral relations, the TCA has been signing memoranda of understanding with the competition agencies of other countries. In that context, a Memorandum of Cooperation was signed with the Moroccan Competition Council and the TCA on January 12, 2021. The signature ceremony was performed online due to the COVID-19 pandemic and was attended by President of the TCA Birol KÜLE, President of the Moroccan Competition Council Driss GUERRAOUI, Rabat Ambassador of Türkiye Mr. Ahmet Aydın DOĞAN and Türkiye Ambassador of the Kingdom of Morocco, Mr. Mohammed Ali LAZREQ.

The Memorandum of Cooperation aims to improve the already close relationship between the two agencies.

In addition, under the heading of bilateral relations,

- A presentation on "*Market Studies*" was made at the online meeting titled "*National Competition Barometer Project*," organized by the MOROCCAN Competition Council on March 17, 2021.
- The TCA attended the Eurasian Antitrust Forum VII, organized by Kazakhstan on October 7, 2021, with a presentation titled "*At the Dawn of Digital Age: Challenges and Opportunities in Light of Türkiye Experience*".
- On November 20-21, 2021, a committee comprised of executives at the Albanian Competition Authority made a study visit to the Authority in order to exchange information and experiences. Country experiences and information on recent competition challenges were exchanged during the visit.
- Requests for information and/or opinions from the competition authorities of other countries, received within the context of memoranda of cooperation or general bilateral relations were responded to, in coordination with the relevant departments of the Authority.

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

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

The TCA attaches great importance to making theoretical and practical contributions to competition law, reaching different audiences to increase competition law awareness, and transferring know-how. To that end, on July 6, 2021, the E-Marketplace Sector Examination Preliminary Report Workshop was organized, with the participation of a large number of representatives from the sector.

3.11.2. Sector Examinations

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.

With that goal in mind, as of the end of 2021, there are ongoing sector examinations on "financial technologies in payment services," "fast moving consumer goods retailing," "fresh fruits and vegetables," "fuel," "e-marketplace platforms," "online advertising," and "pharmaceuticals."

Sector examinations finalized by the TCA in the last five years are listed below.

Finalized Sector Examinations (Last 5 Years)	
TV Broadcasting	2017
Hazelnut	2018
Expo Business	2019

Table 18: Sector Examinations Launched/Ongoing in 2021

Sector under Examination	Reason for the Examination	Planned Date of Completion
Financial Technologies in Payment Services Sector	The technology-focused radical transformation observed in the finance sector during the last few years requires competition authorities to take certain initiatives and adapt to the innovations in the field of financial technologies (fintech). The sector examination in question was conducted in order to monitor the global developments in fintech, assess the current status of the fintech ecosystem in Türkiye's payment services, establish the effects of the developments in this field on competition, and determine what approaches to adopt from a competition law perspective.	January 2022
Fast Moving Consumer Goods (FMCG) Retailing Sector	The sector examination into the FMCG retailing sector was launched in order to make a correct competitive analysis of the FMCG retailing market that was shaped through the changes of the recent years and to develop policy suggestions concerning any potential problems that might arise due to the buyer power emerging as a result of the increasing concentration in the sector, and the report preparation stage of the examination has been completed. It is planned that the Sector Inquiry Report will be shared with the public in the near future.	2022/First Quarter
Fresh Fruit and Vegetables Sector	The sector examination was launched in response to the high prices and/or price volatility observed in the agricultural product groups, in order to identify the factors distorting price stability in the agricultural sector, determine the reasons of the structural problems with the agricultural policy, and suggest solutions for these problems, and the report preparation stage of the examination has been completed. It is planned that the Sector Inquiry Report will be shared with the public in the near future.	2022/First Quarter
Fuel Sector	The fuel sector examination is launched in response to the need to identify any existing or potential market failures in the fuel sector and suggest solutions for these problems. The relevant sector examination intends to clarify the structure and functioning of all of the stages of the fuel market as well as the competition problems in the market, and to make suggestions for any steps that can be taken with a proactive approach in order to establish effective competition in the market concerned.	May 2022
E-Marketplace Platforms Sector	The rapidly increasing trend of internet shopping, which was particularly accelerated by the COVID-19 pandemic, was an important factor in the decision to launch the sector examination. Based on the understanding that e-marketplaces play an important role in letting sellers reach all of these consumers shopping over the internet, the sector examination aims to better appreciate the pro- and anti-competitive effects of e-marketplaces. With this goal in mind, the relevant study questions the pro-competitive aspects of e-marketplaces such as allowing little-known small businesses to reach more consumers and providing access to a wider variety of products and prices for the consumers, as well as their anti-competitive aspects which may arise due to their market power based on data ownership and network effects, and their simultaneous role as both the platform owner and as a seller on those platforms.	2022/Second Half
Online Advertising Sector	The Online Advertising Sector Examination was launched in order to closely monitor the national and international current developments in the online advertising field, which gathered significant momentum in the recent years as a result of rapid improvements in IT technologies and the widespread use of the internet, so as to determine any behavioral and/or structural competition problems in the sector and develop solutions/policy suggestions aimed at dealing with these problems.	2022/Second Half
Pharmaceuticals Sector	The pharmaceuticals sector examination aims to scrutinize the structure and functioning of the sector in order to identify the factors affecting competition in the sector, and to suggest solutions for dealing with competition problems in the sector.	June 2023

3.11.3 Symposiums, Conferences, Panels and Meetings Organized

On January 28, 2021, the Turkish Patent and Trademark Attorneys Assembly Meeting was held jointly by the TCA and the Union of Chambers and Commodity Exchanges of Türkiye (Türkiye Odalar ve Borsalar Birliği – TOBB), in an online format. On March 5, 2021, the Global Innovation Index Türkiye 2021 Studies meeting was held online, with the participation of the Authority and representatives from the responsible organizations and institutions.

3.12. Publications

3.12.1. Competition Journal



Beginning publication in 2000, the Competition Journal is a refereed periodical published semiannually by the TCA. The Competition Journal includes original articles in Turkish or English in the fields of competition law, policy and industrial economics, with the latest issue being published in September 2021 with a total of four articles.

Articles submitted to the e-mail address 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.

3.13. 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 2021 is below.

Table 19: Opinions Rendered to Public Institutions and Organizations

Subject of the Opinion	Number of Opinions
Draft Legislation	16
Other Activities	3
TOTAL	19

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 improvements to be made during the duration of the Plan and the goals and targets which would realize those improvements are identified (see Section 2.1. Goals and Targets).

The monitoring and assessment process aims to provide institutional learning, and thereby ensure constant optimization in the activities. It is of vital importance for the success of the Plan to periodically monitor and assess the degree of achievement of the institutional goals and targets set out in the Strategic Plan. 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 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 2021 within the framework of the 2019-2023 Strategic Plan, based on the goals and targets determined in line with the strategic axes. During the 2021 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

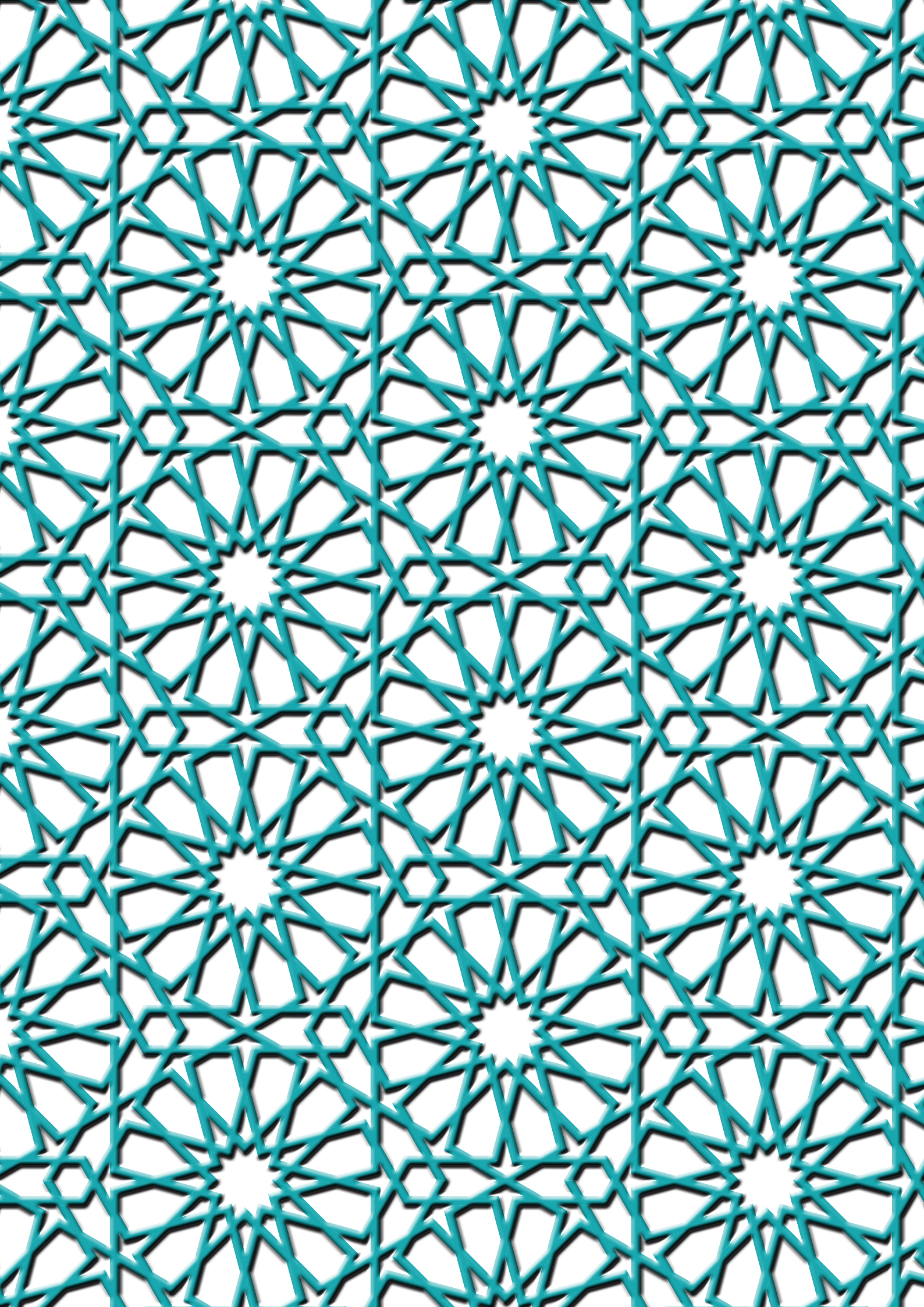
In 2021, a total of 30 written questions from the Grand National Assembly of Türkiye were received through the relevant ministry, and were answered either directly or in coordination with the relevant departments.

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 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)
- Other videos on events and public service announcements

In addition to the activities listed above:

- Opinion requests received from the Permanent Turkish Representation at the OECD, various ministries and other public institutions were answered either directly or in coordination with the relevant departments.
- A cooperation protocol was signed with the Energy Market Regulatory Authority.
- Translation/Interpretation needs of the departments were met within the bounds of possibility.
- Two promotion videos were made in order to inform the citizens about the vision and mission of the TCA via social media channels.
- Survey, information, document and interview requests from international associations and/or publications were addressed. As an example, in that context, the annual GCR Rating Survey was completed within 2021.



GENERAL ASSESSMENT

4. GENERAL ASSESSMENT

An examination of the activities of the TCA in 2021 shows that a total of 405 files were finalized in the relevant year. In light of the fact that a total of 319 files were concluded in 2020, the total number of finalized files increased by 27% in 2021, 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 405 files concluded by the Board in 2021, 74 of these files were about competition infringements, 22 were about exemption/negative clearance applications, and 309 were about merger/acquisition/joint venture/privatization transactions. This distribution can be compared to that of 2020, revealing an increase in the number of competition infringements from 65 to 74, and merger/acquisition/joint venture/exemption files from 220 to 309, with a decrease in the number of negative clearance/exemption files from 34 to 22. In that framework, the increase in the total number of files finalized in 2020 by 86 files compared to the previous year is mainly due to the increase in the number of merger/acquisition/joint venture /privatization files.

In 2021, 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 74. In 2020, food, machinery industry, information technologies and platform services, healthcare services and chemistry and mining were the sectors with the highest number of competition infringement examinations. These five main sectors have a share of around 58% within the competition infringements cases finalized by the Competition Board in 2021.

Of the 74 files finalized concerning claims of Article 4 and/or 6 infringement, 15 were examined *ex officio* by the Competition Board in 2021. In other words, around 20% of the finalized competition infringement cases in 2021 consist of *ex officio* examinations. Of the competition infringement cases examined *ex officio*, 13 concerned Article 4 violations. Examining the share of *ex officio* competition infringement files launched in 2021 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 2021 according to the related Article of the Act shows that 40 of them concerned claims of Article 4 infringement, 23 concerned claims of Article 6 infringement, and 11 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 2021, similar to the previous five-year period. Of a total of 51 files claiming Article 4 infringement, 30 concerned horizontal agreements while 19 concerned vertical agreements. Two files concerned both vertical and horizontal agreements.

Looking at the Competition Board decisions on competition infringements, 29 out of 74 decisions were taken as a result of preliminary inquiries, and 44 as a result of investigations. Fourteen of the decisions taken as a result of investigations dismissed the claims in question, while 25 imposed administrative fines on the undertakings.

Comparing the total of 22 exemption/negative clearance applications finalized in 2021 with the 34 applications made in 2020 reveals that there was a significant decrease of 55% in the number of negative clearance/exemption cases finalized. Only five of the applications assessed in 2021 were concluded with a negative clearance decision. Of the 17 applications finalized in the year in question, 11 was concluded with the Board deciding that the agreement in the application could benefit from block exemption and/or individual exemption. Five applications were concluded with an exemption subject to conditions, and it was decided that three 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 sector as well as machinery industry, healthcare services and automotive sectors were in the lead, with around 63% of the negative clearance/exemption examinations having been conducted in these four sectors.

In 2021, 309 merger and acquisition application were finalized, which shows an increase of around 40% in the number of finalized decisions in comparison to 2020. Of the aforementioned 309 applications, about 69% were acquisitions and about 27% concerned transactions related to the establishment of joint ventures, with around 4% involving 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 with relation to their nature. A look at the sectoral distribution of the same applications reveals that chemistry and mining; information technologies and platform services; food industry; machinery industry and infrastructure services sectors saw the largest number of M&A transactions, with these five sectors having a share of around 48% in total applications. Looking at the outcomes of the Board decisions, it can be seen that 277 transactions were authorized without conditions, and three were authorized subject to conditions. Twenty-nine transactions were found to be out-of-scope or below the threshold.

Within the context of the files finalized in 2021, undertakings found to have infringed competition were imposed a total of 4.229.946.505 TL in administrative fines, in accordance with Article 16.3 of the Act. Out of the abovementioned amount imposed on the undertakings, 3.453.040.530 TL was for Article 4 infringements, 296.084.899 TL was due to Article 6 infringements and 480.821.075 TL was for Article 4 and 6 infringements. In addition 121.038.512 TL in administrative fines were imposed for preventing on-site inspections in 2021.

An examination of the sectoral distribution of the fines imposed under Article 16.3 for the infringement of competition law rules in 2021 shows that the highest amount of administrative fines were imposed in the food industry sector, with a total of 3.187.702.785 TL. This is followed by information technologies and platform services sector with administrative fines of 296.242.797 TL imposed, healthcare services sector with 284.644.207 TL imposed, and forestry and wood-based industries sector with 271.061.660 TL imposed. Administrative fines imposed on these four sectors comprise around 96% of the total fines imposed for competition infringements in 2021. These sectors are followed by sectors in the "Other" category with 65.606.044 TL in fines, machinery industry sector with 56.607.355 TL in fines, and agriculture and agricultural products sector with

37.319.849 TL in fines. In 2021, 54 of the lawsuits filed against the Board decisions on professional matters were concluded. Of these lawsuits, 40, i.e. 74%, were concluded in favor of the Authority. Within the framework of competition advocacy activities, sector examinations on the "financial technologies in payment services," "fast moving consumer goods (FMCG) retailing," "fresh fruits and vegetables," "fuel," "e-marketplace platforms," "online advertising" and "pharmaceutical" markets are ongoing as of the end of 2021. The relevant inquiries 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 are comprised of events aimed at promoting competition law and the functions of Authority. Within this framework, in 2021 the TCA supported in-service training programs of various public agencies, and organized various 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 19 opinions to various public agencies and organizations in 2021, 16 of which concerned draft legislations and three of which concerned other practices of the relevant agency or organization.

In 2021, economic analysis and research activities made important contributions to the assessment of various cases through the econometric analyses conducted, including the investigation launched on some chain markets and undertakings at the production and wholesale level, which was shared with the public. Significant sectors such as fast moving consumer goods retailing, e-commerce, food, port and transportation services are among the sectors where the relevant examinations took advantage of the numerical analyses conducted. Additionally, the 2021 Mergers and Acquisitions Overview Report and the Impact Analysis Report aiming to determine the effect of the Competition Authority activities on consumer welfare during 2019 and 2020 can be listed within the scope of the economic analysis and research activities. According to the 2021 Mergers and Acquisitions Overview Report, the Competition Authority examined 309 transactions in 2021, concluding them within an average of 11 days after the last notification date. According to the calculations of the Impact Analysis Report based on OECD assumptions, the consumer benefit from the Authority's activities in 2019-2020 was, on average, 1,89 billion TL annually with December 2020 prices, and 5,27 billion TL according to the OECD's methodology. In light of the calculations above, the benefit provided to the economy is 15,8 times the average annual budget expenses of the Authority in the relevant period, and it is around 44 times the budgetary expenses according to the calculation based on the OECD methodology.

As in the previous years, the TCA attached great importance to improving international relations in 2021. 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 in person 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 2021 as well as for other professional staff. Another part of the training activities was the "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 three university students.

As a result, despite the pandemic conditions making significant impact around the world and in Türkiye, the Competition Authority continued to carry out all of its functions in terms of its primary duty 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 2021, 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 TCA 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 the markets for goods and services
- Misinformation in the public concerning the mission of the TCA





6. RECOMMENDATIONS AND PRECAUTIONS

The Strategic Plan for the 2019-2023 period, published in 2019 by the TCA, 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.

In that context, the Authority will continue to work its hardest to implement the amendments made to the Act no 4054, together with the relevant secondary regulations. 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.

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 will ultimately contribute to the development of competitive markets in Türkiye. At this juncture, it is important for the TCA to continue its competition advocacy activities in a manner that is as inclusive as possible.

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. Therefore, the Authority has already put into its agenda the actions it will take in order to identify these areas in the forthcoming period.

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, Türkiye Competition Authority will put the utmost effort into maintaining its status in the future and develop competition law practices in Türkiye.



