

## Law Bulletin

Competition Law | Turkey | March 2020

### HOW DID COVID-19 AFFECT COMPETITION LAW?

The COVID-19 pandemic which surfaced in China and influenced the whole World and European countries in particular, has begun to affect Turkey as of 11 March 2020. This new type virus has adversely affected the daily lives and commercial activities of individuals and legal entities. We observe that the pandemic, along with its affects on fulfilment of contractual obligations and other areas of law, has certain consequences on the processes of competition authorities.

Measures regarding COVID-19 declared by many countries' competition authorities in the past weeks indicates that the functioning of competition law will decelerate due to the pandemic. Accordingly, the European Commission has allowed employees who are not in essential positions to telecommute as of 12 March 2020. The Commission urging notification of mergers/acquisitions electronically, requested enterprises to postpone their merger/acquisition notifications as much as possible until further notice<sup>1</sup>. Similarly, the United States Department of Justice and the Federal Trade Commission, allowing their employees to telecommute and merger/acquisition notifications to be accepted electronically, have declared that hard copy notifications will not be accepted<sup>2</sup>.

The United Kingdom's Competition and Markets Authority announced a series of preventive measures on 18 March to mitigate the impacts of the pandemic<sup>3</sup>. Within the scope of these measures it was determined that (i) employees will telecommute, (ii) all meetings will be held through video conference, (iii) compliance with legally binding time periods will proceed however some relevant time periods may be extended, and lastly (iv) resources will be allocated by prioritizing the most substantial and critical works. Finally, the German Competition Authority has declared that it will hold its meetings as teleconference meetings and will decide on whether verbal defences will be postponed or not, by evaluation on a case-by-case basis. Additionally, the

<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_445](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_445)

<sup>2</sup> <https://www.ftc.gov/news-events/press-releases/2020/03/premerger-notification-office-implements-temporary-e-filing>

<sup>3</sup> <https://www.gov.uk/government/news/cma-covid-19-update>

# KOLCUOĞLU DEMİRKAN KOÇAKLI

German Competition Authority requested from the enterprises to re-evaluate the timing of the notifications of their merger/acquisition applications that they have planned to carry out within this period<sup>4</sup>. Similar measures were taken in Austria and Italy as well.

Measures taken by competition law authorities in Europe and USA both seems to contain telecommuting in order to minimize personal contact and adjournment of merger/acquisition notifications. As consequence of these measures, extension of competition law examination processes and some transactions being on hold may be in question.

The Turkish Competition Authority has not yet announced any series of measures or action plan against the pandemic. Nevertheless, with the impact of the pandemic growing, measures from the Turkish Competition Authority such as postponement of hearings, encouragement regarding holding off merger/acquisition notifications, pushing the handling of negative clearance/individual exemption applications and postponement of some preliminary investigations may also come up. In case of such measures, the pandemic may slow down the implementation of competition law as it does with other aspects of life. However, stretching does not seem possible for the statutory time periods under the Law on the Protection of Competition No. 4054.

Another important matter is the administrative fines imposed on undertakings that fail to submit their replies to information requests of the Turkish Competition Board within the deadlines. During this extraordinary period, the companies may not be able to comply with the deadlines. The European Commission's decision to suspend three Phase II investigations due to companies' inability to comply with the deadlines indicates that similar problems may be experienced in Turkey with the spread of COVID-19.

As another consequence of the pandemic regarding competition law, it may be expected that the Turkish Competition Authority conducts investigations focusing on products that have a high increase in price (disinfection products, personal care products, medical masks etc.) subsequent to the COVID-19 pandemic, similar to its various investigations conducted pursuant to high price increases and speculation claims in vegetable/fruit prices in the past years.

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<sup>4</sup>[https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2020/17\\_03\\_2020\\_Communication\\_Bundeskartellamt.html](https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2020/17_03_2020_Communication_Bundeskartellamt.html)