

Client Alert

The Turkish Competition Authority Launched Public Consultation for Draft Communiqué on Commitments

The Law Amending the Law on Protection of Competition, which entered into force in June 2020, introduced the “commitment” procedure to Turkish competition law. The commitment procedure sets up the regulatory infrastructure for undertakings/associations of undertakings to propose commitments to the Competition Board (the “**Board**”) in investigations conducted pursuant to Articles 4 and 6 of Law No. 4054 on Protection of Competition. The Board can decide to end the investigation without any infringement decision, provided that the submitted commitments are sufficient to eliminate the competition concerns. In this regard, the Turkish Competition Authority prepared the “Draft Communiqué on Commitments to be Submitted in Preliminary and Full-Fledged Investigations Regarding Anti-Competitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position” (the “**Draft Communiqué**”) to lay down the general principles applicable to the commitment mechanism. The public consultation on the Draft Communiqué was launched on 30 November 2020.

Some of the significant principles introduced by the Draft Communiqué are listed below:

- The commitment mechanism in the Draft Communiqué is not applicable for hardcore competition law restraints, including price fixing between competitors, territory/customer sharing and restriction of supply.
- During a full-fledged investigation process, undertakings must submit their willingness to propose a commitment to the Competition Authority within three months following the investigation notice’s receipt. Once submitted, the Board will initiate the commitment negotiations as soon as possible. However, if the Competition Authority has not yet explicitly set forth the relevant competition law concerns, the Board may postpone the commitment negotiations.
- The Board will not accept commitments that contain alternative scenarios.
- The commitment letters must include the following: The relevant competition law concern addressed by the commitment; how the relevant competition law concern will be solved;

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the content, starting date and duration of the commitment; timeline to be considered for the commitment's implementation; the conditions for the relevant time periods' extension; the commitment's overall effect on the market and how compliance can be monitored.

- The commitments must be proportional to the relevant competition concerns, sufficient to solve these concerns and feasible to be implemented quickly and effectively.
- The Board may decide to request opinions of the complainant(s) and relevant third parties regarding the submitted commitment.
- If the Board considers that the relevant competition law concern can be solved through the submitted commitment, it may decide not to initiate an investigation or cease an on-going investigation by rendering the commitment as "binding" on the investigated parties at any stage of the commitment process.
- If the commitment letter is not timely submitted or withdrawn after the submission, the commitment process will be deemed ceased.
- If the Board does not approve the submitted commitments, the commitment process will end. Once the commitment process ends, the investigated undertakings cannot submit any further commitments.

The public may submit opinions on the Draft Communiqué by 28 December 2020.