

# Commitment Decisions: An Overview of the Turkish Competition Authority's Enforcement

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In June of 2020, a new commitment procedure was first introduced to Turkish legislation as part of *Law No. 4054 on the Protection of Competition* (the "Competition Law"). While the European Commission has a long history of adopting commitment decisions according to Article 9 of Regulation 1/2003, the commitment procedure is a rather new tool for the Turkish Competition Authority ("TCA"). It was only on 16 March 2021 that Communiqué No. 2021/2 on Commitments to be Offered in Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (the "Commitment Communiqué") entered into force and set forth the rules and procedures to be followed in commitment decisions.

The commitment procedure provides the TCA with the possibility of ending investigations faster than the regular investigation procedure. If the TCA considers that the commitments offered by the investigated party are sufficient to overcome the identified competition concerns, it makes those commitments binding and can cease its investigation with no further consequences for the investigated firm. The major advantage for the investigated firm is that in this scenario the TCA does not adopt an infringement decision and impose a monetary fine. On the other hand, the commitment procedure helps reducing the TCA's caseload and ensures efficiency in the decision-making process. Accordingly, the commitment procedure has quickly become an essential tool in the TCA's enforcement.

## I. Procedural Aspects

According to the Communiqué, parties to an investigation can request to start the commitment procedure within three months following the receipt of the investigation notice. The commitment procedure is not an option in

investigations concerning hardcore competition law restrictions such as price fixing, information exchange, resale price maintenance, and territory/customer sharing.

Upon the parties' request, the Competition Board, the decision-making body of the TCA, rules on whether to initiate commitment discussions with the parties. To accept or refuse the request is in the Competition Board's discretion. If the investigated firm decides to submit commitments upon the commitment discussions, it must do so within the timeframe granted by the Competition Board.

The TCA then assesses whether the commitments proposed by the parties are indeed sufficient to eliminate the identified competition concerns. While assessing this, the TCA may also conduct a market test by gathering complainants' and other third parties' views on the commitments offered. However, unlike the European Commission's practice, market-testing is not a mandatory step in the commitment procedure. If the TCA finds that the commitments are likely to be sufficient to address the identified competition concerns, it renders a commitment decision and ends the ongoing investigation without finding an infringement.

If the Competition Board decides that the proposed commitments are insufficient, however, it may grant the investigated firm a single opportunity to amend its commitments within a specific time period. Although lack of market-testing makes the decision-making process faster, it sacrifices the transparency of the process.

## II. Development of the TCA's Enforcement Practice on Commitments

Due to its advantages, the commitment procedure is widely preferred by firms party to a TCA investigation. Investigated firms have a

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tendency to offer commitments to avoid being subjected to an infringement decision or monetary fine. In addition, with the commitment procedure, the investigation can end much faster. Accordingly, the TCA has rendered many commitment decisions pursuant to the procedure detailed in the Communiqué. Since the introduction of the commitment procedure to the Turkish competition law, the TCA has rendered 33 commitment decisions.<sup>2</sup> In 20 of these decisions, the TCA accepted the parties' request to initiate commitment discussions and stopped the investigation by making the offered commitments binding. In the other 13 decisions, the TCA refused the parties' request to initiate commitment discussions or did not find the commitments to be sufficient.

Twelve of the TCA's commitment decisions concern allegations of abuse of dominant position, while only 6 of them involve restrictive agreements. The main reason for this is the broad exclusion of hardcore violations in the commitment procedure. For example, resale price maintenance falls within the hardcore restrictions criteria according to the Turkish competition law, and thus the commitment procedure is not applicable. In addition, the commitment procedure is more practical for abuse of dominance cases as they generally involve only one party.

According to the Decision Statistics published on the TCA's website, a total of 95 investigations were concluded in 2020, 2021, and 2022. In other words, since the introduction of the commitment procedure, approximately 16 percent of investigations ended with commitments (excluding the preliminary investigations which ended with commitments).

These decisions extend to a wide range of sectors ranging from packaged snacks and home appliances to online marketplaces and insurance.

It is also important to note that none of the commitment decisions specified that a market test was conducted to assess whether the offered commitments were suitable to address the competition problems.

### **III. Conclusion**

Since its introduction to the Turkish competition law, many investigated firms have benefitted from the commitment procedure by shortening the investigation and avoiding a monetary fine.

Although the Competition Board refused to initiate commitment discussions in nearly half of the commitment decisions, the grounds for refusal generally related to the fact that the competition problems identified in the investigations constituted hardcore competition law restrictions. On the other hand, in 20 out of 33 of the decisions, the commitments offered by the parties were approved by the Competition Board without conducting any market test.

Due to its benefits both for the TCA and for the investigated firms, we expect the trend towards more use of commitment decisions to continue. On the other hand, for rather new types of infringements commitment decisions do not establish precedents or guidance for future assessments. In addition, lack of market-testing of commitments may damage the efficiency of commitments in addressing competition concerns.

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<sup>2</sup> Excluding the commitment decisions which are not published on the TCA's website as of the date of this article.