

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Turkish Competition Authority, TURKEY]

The following template is submitted by **Turkish Competition Authority** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Turkish Competition Authority (TCA) is a public authority which observes the implementation of the Act No. 4054 on the Protection of Competition (the Act) and carries out the duties assigned to it by the same Act. The TCA has financial and administrative autonomy and article 20 of the Act states that “[t]he Authority is independent in fulfilling its duties. No organ, authority and person may give commands and instructions to influence the final decision of the Authority.”

The headquarters of the TCA is in Ankara. The organization of the TCA consists of the competition board (Board), presidency and service units. The Board is the decision making organ of the TCA with respect to competition cases and regulation making.

Further information about the TCA is available in English at: <https://www.rekabet.gov.tr/en>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

According to article 2 of the Act, the Act is applicable to “any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Turkey”. In other words, the Act does apply to any undertakings operating or affecting markets in Turkey regardless of their nationality, ownership type or any other specifics. Accordingly, secondary regulations and procedures of the TCA does not discriminate undertakings or association of undertakings.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

First of all, as an administrative body, the TCA is bound by the principles engraved in the Constitution of the Republic of Turkey (Constitution) which protects fundamental rights of the individual such as right to privacy, right to petition, right to information.

[The Act](#) provides the main legal basis for the TCA in both substantive and procedural matters. The Act and amendments to it are published in the Official Gazette which is available online. They are also available on the website of the TCA. Section 4 of the Act titled "Procedure Examinations and Inquiries of the Board" (articles between 40 and 59) lays the foundation for rules and procedures applicable to investigations and other enforcement proceedings.

In order to provide further certainty, the TCA has adopted secondary regulations in compliance with the Act. Relevant regulations are listed below:

- [Regulation on Fines to be Applied in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position](#)
- [Regulation on Active Cooperation for Detecting Cartels \(Active Cooperation/Leniency Regulation\)](#)
- [Communiqué on the Application Procedure regarding Competition Infringements](#)
- [Communiqué on Hearings Held Vis-À-Vis the Competition Board](#)
- [Communiqué on the Regulation of the Right to Access to File and Protection of Trade Secrets](#)
- Directive on Procedures and Principles Regarding On-the-Spot Inspections Conducted by the Turkish Competition Authority within the Framework of Enforcement of the Act on Protection No 4054 (Directive on On-the-Spot Inspections)

All of the secondary regulations listed below are available to public on TCA's webpage except Directive on On-the-Spot Inspections. Directive on On-the-Spot Inspections is not available to public since it only involves internal matters of the TCA.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g.,*

forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.

- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

The Act states that if the Board decides to initiate an investigation, concerned parties are notified in 15 days. In order to initiate the first written reply period granted to the parties, notification letter should be accompanied by adequate information as to the type and nature of the claims (art. 43). Notifications include almost all the information and evidences collected during the preliminary inquiry.

In investigation process, subjects to the investigations has right to submit three written defenses and request a hearing by the Board. In addition to these, article 44 of the Act states that “the person or persons claimed to have infringed this Act may, at all times, submit to the Board any information and evidence likely to influence the decision”. Beyond legal requirements, the TCA facilitates informal and open communication between the Rapporteurs and the parties in order to inform them about the proceedings and enable them to express their arguments and concerns during investigations or merger proceedings.

According to article 14 of the Act, “while carrying out the duties assigned to it by this Act, the Board may request any information it deems necessary”. This power is used within principles of due process. In the requests, subject of the case and reasoning of the request are stated. Questions are formulated in a way to respect the boundaries of the case at hand. Contact information of the Rapporteurs are always included in the requests that it helps to facilitate communication between the TCA and the parties about further clarification of the request, extension of deadlines or other concerns.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The Act regulates the time periods for TCA’s proceedings. Rapporteurs who are entrusted with the task of conducting a preliminary inquiry submit their report to the Board in writing within 30 days (art. 40) and within 10 days following the submission of the preliminary inquiry report to the Board decides to close the case or proceed with an investigation (art. 41).

The report prepared for an investigation shall be submitted to the Board within 6 months at the latest. Where necessary, an additional period of up to 6 months may be granted by the Board on a one-time only basis (art. 43).

While exceeding these periods for a short time is not seen as a reason to overturn a Board decision on its own by the [Council of State](#), TCA pays great attention to comply with these time limits. Average investigation period including written defenses and hearings was 465 days for cartel cases and 477 days for abuse of dominance cases in 2018.

With respect to the merger cases, the Board is obliged to perform a preliminary examination within 15 days and either authorize the merger or acquisition, or, if it decides to take the transaction under final examination (art. 10). Final examination is subject to the time limits stated for the investigations.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Confidentiality is addressed in TCA's regulations widely. Article 53 of the Act states that "written decisions of the Board are published on the website of the TCA in such a way that they do not disclose the trade secrets of the parties." Article 25 of the Act forbids the members and staff of the Board from disclosing and using "in their own or others' interests the confidential information related to the Authority, and trade secrets of undertakings and associations of undertakings that they learned during the implementation of this Act, even if they have left their office."

Communiqué on the Regulation of the Right to Access to File and Protection of Trade Secrets provides guidance regarding the definition and treatment of confidential information.

According to article 9 of Communiqué on Hearings Held Vis-À-Vis the Competition Board, hearings are public in principle. However articles 9 and 10 of the same Communiqué explain on what grounds and how parties may be granted right to be heard in a confidential session.

While it is primarily parties' responsibility to claim confidentiality, TCA also pays regard to protection of confidentiality. Additionally, confidentiality claims are reviewed by the TCA before accepted. Confidential hearing sessions can be given as an example of confidentiality claim review. In doing these, TCA tries to establish an optimum balance between confidentiality and transparency.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is

encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Article 25 of the Act includes some prohibitions for the Chairman and members of the Board to ensure their impartiality. It is stated that “The Chairman and members of the Board may not undertake any official or private mission, engage in commerce, be shareholders in partnerships, unless it is based on a special Act.

The Chairman and members of the Board are, prior to assuming office, obliged to dispose of all kinds of securities in their possession within the meaning of the capital market legislation, apart from securities issued by the Treasury in connection with borrowing, by means of selling or transferring them to persons other than their kin by blood up to the third degree and their kin by marriage up to the second degree. Those members who do not act in conformity with this provision within 30 days shall be deemed to have resigned from membership.”

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant’s possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

As noted above, the Act states that if the Board decides to initiate an investigation, concerned parties are notified in 15 days. In order to initiate the first written reply period granted to the parties, notification letter should be accompanied by adequate information as to the type and nature of the claims (art. 43). Notifications include almost all the information and evidences collected during the preliminary inquiry.

In investigation process, subjects to the investigations has right to submit three written defenses and request a hearing by the Board. First written plea is submitted within 30 days after notification. Second written plea is submitted after notification of investigation report. It is submitted within 30 days after notification of the investigation report by the parties. According to article 45 of the Act rapporteurs “submit an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Board and the parties concerned. The parties may reply to such opinion within 30 days. In case the parties provide justifiable grounds, these periods may be extended only once and by one fold at the most.” In practice, such extensions are granted almost always.

Parties also have right to defend themselves through a hearing. According to article 46 of the Act, “hearing is held within at least 30 days and at most 60 days from the end of the investigation stage. Invitations for the hearing are forwarded to the parties at least 30 days before the date of the hearing.” As mentioned above Communiqué on Hearings Held Vis-À-Vis the Competition Board provides clarification regarding the hearing procedures.

These defense rights are bolstered with right to access to file and LPP practice.

In addition to these, article 44 of the Act states that “the person or persons claimed to have infringed this Act may, at all times, submit to the Board any information and evidence likely to influence the decision”.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Parties can be represented by representatives including lawyers of their choosing before the TCA during proceedings.

Although legal professional privilege (LPP) is not explicitly recognized in the Act, LPP is recognized and protected by the TCA.

Article 19 of Directive on On-the-Spot Inspections explains that correspondence between an independent lawyer and its client is privileged as long as the correspondence is about right to defense. If a disagreement about whether a certain document is privileged or not emerges during an inspection, the document is secured by a sealed envelope and decision regarding the nature of the document is taken by the Board. As noted previously, Directive on On-the-Spot Inspections is restricted and not available to public.

Board decisions (decision no [14-29/596-262](#), decision no [15-42/690-259](#) and decision no [16-42/686-314](#)) shed light on LPP and they are available to public on TCA’s webpage.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or*

sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.

- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

According to article 53 of the Act, each decision of the Board is written by the Chairman of the Board or a member to be commissioned by her or him.

According to article 52 of the Act, a reasoned decision includes names and surnames of the members of the Board who made the decision, names and surnames of those who carried out the examination and inquiry; names, titles, residences and distinguishing characteristics of the parties, summary of the claims of the parties, summary of the examination and of the economic and legal issues discussed, opinion of the rapporteur, evaluation of all evidences and pleas submitted, grounds and the legal basis of the decision, conclusion and reasoning of dissenting votes if they exist.

The same article states that duties imposed on and rights granted to the parties with the decision have to be written explicitly such that they do not cause any doubts and hesitations.

A short version of the decision is announced to the concerned parties for their information as soon as a decision is taken. A reasoned decision is written and signed in a reasonable period of time and it is notified to the parties in return for signature.

Decisions of the Board are published on the website (<https://www.rekabet.gov.tr/tr/Kararlar>) of the TCA.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

According to article 125 of the Constitution, “[r]ecourse to judicial review shall be available against all actions and acts of administration”. In this respect, all the decisions of the TCA are subject to judicial review of the independent courts.

Article 55 of the Act states that “suits shall be filed against administrative sanctions before the competent administrative courts. All types of suits filed against Board decisions shall be deemed a priority matter.”

In order to facilitate judicial review, the TCA indicates competent courts and time limit to file a lawsuit in its each decision.