

New Inquiries by the TCA During the Covid-19 Outbreak

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In April 2020, The Turkish Competition Authority ("TCA") initiated two separate preliminary inquiries in the protective face mask and retail sectors. These inquiries are a part of the TCA's current patrol on anti-competitive activities in sectors that directly affect consumers during the Covid-19 outbreak.

As a result of Covid-19 and its dire consequences, numerous industries and undertakings have been negatively affected. While most undertakings are struggling to survive these hard times, demand for some products, such as disinfectant and protective masks, has skyrocketed. In Turkey, government agencies are taking measures to prevent prices of the most needed and essential products from increasing.

The TCA, as the competition law enforcement body, is closely monitoring pricing trends and market behaviors in industries of the most needed and essential products. On 23 March 2020, the TCA made its first public announcement with respect to Covid-19 and defined the price increases in food market as "opportunistic" while warning the undertakings that it will not hesitate to investigate such tendencies:

"It is observed that in our food market, especially in the market for fresh vegetables and fruits, there are extreme price increases in an opportunistic manner nowadays, while we are facing with global COVID-19 outbreak.

Being granted the power to protect consumer welfare and prevent actions and practices distorting effective competition conditions, the Competition Authority closely follows the price increases in question and all actors that contribute to those.

In this framework, the most serious administrative fines laid down by the Competition Act will be imposed to people and institutions (all actors such as producers, mediators, transporters, final sellers) which are engaged in anticompetitive practices in the food market, especially in the market for fresh vegetables and fruits."

Two days after the initial public announcement, Birol Küle, Chairman of the Competition Board, presented the TCA's harsh stance with a press briefing and concluded with the following statement:

"I announce very clearly that we will show no mercy to the opportunists, and we will not refrain from issuing the heaviest fines while publicly announcing the names of these individuals and undertakings, and thus damaging maybe their greatest asset, the reputation of such economic entities. In these difficult days, I think there is no point in allowing opportunist companies to operate. We do not have any problems with anyone operating properly, continuing to supply the market, and earning the deserved profits. However, sooner or later the door of opportunists will surely be knocked. We will do everything so that the market order will not fail or collapse in this period. Be aware."

While the outbreak adversely affected the TCA's ability to carry out on-site inspections, the preliminary investigations are carried out via Requests for Information ("RFI") sent to the undertakings at question. While conducting investigations by solely issuing RFIs may have its shortcomings, providing the TCA with incomplete, false or misleading information, or failing to provide the information within the determined duration, may result with an administrative fine of one in thousand (i.e. 0.1%) of annual gross revenue of the undertaking.

With the decision dated 26 March 2020 and numbered 20-16/230-M, the TCA initiated a preliminary inquiry into protective face masks industry and issued RFIs to importers, exporters, manufacturers and retailers of protective face masks. The TCA reportedly requested the unit cost, unit price, sales volume, import and export volume of the face masks under protection level breakdown (i.e. FFP1, FFP2, FFP3, surgical mask, etc.) from each undertaking.

Besides face masks, the TCA initiated another preliminary investigation into retail chains engaged in retail food and cleaning products alongside wholesalers and producers of these products with its decision dated 31 March 2020 and numbered 20-17/242-M. The TCA reportedly requested explanations about the recent price increases in personal cleaning and hygiene products as well as purchase & sales volume and value information with respect to various products.

TCA's and Chairman's press releases alongside the initiation of highly comprehensive preliminary inquiries are strong indications that the TCA is and will be heavily active during this extraordinary time to prevent prices of the most needed and essential products from increasing. It should also be underlined that since the TCA is currently unable to conduct on-site inspections, the right to issue information requests is heavily utilized and failure to provide requested information may result in administrative fines.