

Kluwer Competition Law Blog

Turkey – Recent Regulation on the Unfair Price Assessment Board: How the Board Will Function?

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Last month, a law package to tackle the social and economic challenges that coronavirus pandemic cause was introduced via the Act No. 7244 on Reducing the Effects of the Novel Coronavirus (COVID-19) Outbreak on Economic and Social Life and Amendments to Certain Acts (“**Act No. 7244**”)[1]. Among other regulatory and protectionist measures, the Act No. 7244 also amended the Act No. 6585 on Regulation of Retail Trade (“**Act on Retail Trade**”) with a new clause, which introduced a new authority, namely Unfair Price Assessment Board (the “**Board**”).

In an effort to determine the specifics pertaining to the Board, a new regulation, namely, the Regulation on Unfair Price Assessment Board (“**Regulation**”) was promulgated in the Official Gazette dated 28.05.2020 and numbered 31138[2].

The Authority Vested to the Unfair Price Assessment Board

As per the article 1 of the Regulation, the purpose and the scope of the Regulation is defined as:

“... to regulate the procedures and principles regarding the formation, duties and authorities of the Unfair Price Assessment Board which will operate in cases of state of emergencies, disasters and economic fluctuations, and other emergencies, and the supervision of exorbitant price increases and stockpiling activities of manufacturers, suppliers and undertakings that operate in retail level and the implementation of administrative fines”.

Pursuant to the definition put forth by article 1 of the Regulation, the Board is authorized to tackle exorbitant prices and stockpiling activities, during state of emergencies, disasters, economic fluctuations, and other emergencies. That is because, as per the article 3 of the Regulation, “*exorbitant price increases*” and “*stockpiling*” are deemed as conducts, which can merely be realised during state of emergencies, disasters, economic fluctuations, and other emergencies.

Furthermore, it is noteworthy to mention that article 3 of the Regulation sets a limit to the products and services, which are within the scope of the Board’s area of authority. As per article 3 of the Regulation, “*exorbitant price increase*” is defined as; “*exorbitant and unjust price increase by manufacturers, suppliers and undertakings that operate in retail level in the products and services that are required for basic needs of the public such as nutrition, healthy living and protection without any valid ground, such as increase in the cost of input and other production costs*”.

Accordingly, the Regulation manifests that the Board is merely authorized to supervise and tackle the exorbitant price increases in product and services that are required for basic needs of the public.

In light of the foregoing, the Board shall, and is entitled to perform the following, pursuant to article 7 of the Regulation:

- take the necessary measures to protect the market balance and consumers against exorbitant price increases and stockpiling activities and to ensure the implementation of these measures,
- make inspections and examinations, or have them made, regarding exorbitant price increases and stockpiling practices; obtain the pleas of the manufacturers, suppliers and undertakings that operate in retail level regarding these inspections and examinations,
- impose administrative fines on the manufacturers, suppliers and undertakings that operate in retail level which are found to be in violation of the rules that prohibit exorbitant pricing and stockpiling activities,
- determine the principles and rules regarding exorbitant price increases and stock piling activities and
- perform other duties assigned by the Minister of Trade concerning exorbitant price increases and stockpiling activities.

How Will the Board Function?

The Regulation also brings a new system named as “system for complaints”, which is defined as an electronic system to be created by the Ministry of Trade (“**Ministry**”) for the purpose of receiving complaints from applicants, who can be either legal entities or natural persons, about stockpiling activities and exorbitant price increases of manufacturers, suppliers and undertakings that operate in the retail level.

It should be noted here that, the Regulation deems the absence of a lawsuit, which is related with the matter brought before with the complaint, as a precondition for making an application. Indeed, as per article 10 of the Regulation, if it is determined that the applicant has applied for a judicial remedy, prior to the application or before the Board has taken a decision as to the application, the application shall be cancelled.

Article 11 of the Regulation sets forth that the Board’s inspection may be done upon complaints or on the Board’s own initiative. As per article 11, the manufacturers, suppliers and undertakings that operate in retail level shall be granted a period for submitting their pleas, which commence from the date of the inspection conducted as to such undertakings and not be less than ten days and may be extended for ten days for once only.

Additionally, article 11 of the Regulation explicitly prohibits the Board from taking a decision to impose administrative fine, or implement such a decision, if the plea of the undertaking under scrutiny is not taken or heard. However, if the undertaking under scrutiny fails to submit its plea to the Board within the period provided in the Regulation, the Board can decide to impose an administrative fine to the relevant undertaking and implement the respective decision.

Article 14 of the Regulation sets forth that the decisions taken by the Board shall be implemented by the Ministry. In addition, it was stipulated that the Ministry may announce the decisions of the Board in order to inform and enlighten the public and to protect the economic interests of the

parties in the relevant markets of goods and services.

Article 15 of the Regulation sets forth the administrative fines to be imposed on the relevant undertakings in case Additional Article 1 of the Law on Retail Trade is violated. Pursuant to the article 15 of the Regulation;

- in case of exorbitant pricing, the Board shall impose an administrative fine between TRY 10,000 and TRY 100,000 and
- if it is determined that any of the market participants had engaged in actions that cause scarcity in market, distort the market balance and free competition or prevent consumers from accessing goods, the Board shall impose an administrative fine between TRY 50,000 and TRY 500,000.

As a side note, the Regulation sets forth some factors, which are non-exhaustive, to be considered while deciding on the administrative fines. Pursuant to article 15, the following factors shall be taken into consideration;

- severity of the unlawful conduct and the context of unfairness,
- the type, size of the relevant undertaking and the sector it operates in,
- the benefit that relevant undertaking gained from the exorbitant price increase or stockpiling and
- whether an administrative fine had been previously imposed regarding the same issue.

The Regulation also provides for a transitory provision, which would hold great importance for the complaints submitted prior to the establishment of the Board. As per the transitory article 1, it is provided that the applications made to the Ministry concerning exorbitant price increases prior to 17.04.2020, the date when Act No. 7244 is enacted, shall be finalized by the Advertisement Board.

Conclusion

When the Act No. 7244 was first published, the changes it brought to the Act on Retail Trade concerning exorbitant price increases and stockpiling activities, and especially the establishment of the Board arouse interest among the manufacturers, suppliers, and retailers. The Regulation, which is promulgated almost one month later than the Act No. 7244, provided clarity as to the powers vested in the Board and its functioning.

Last but not least, the most noteworthy development introduced by the Regulation is that it defines the boundaries of the Board's authority. Accordingly, the Regulation restrained the Board's authority to battle exorbitant prices or other unfair practices, via defining the times when the Board shall exercise its authority as the states of emergencies, disasters and economic fluctuations, and other emergencies. Accordingly, the Regulation signals that the Board will not function as an *ad hoc* administrative body solely established for the current coronavirus pandemic, but rather as a regulatory body which may be called for duty in the respective scenarios.

[1] Please see: <https://www.resmigazete.gov.tr/eskiler/2020/04/20200417-2.htm>. Last date of access is 31.05.2020.

[2] Please see: <https://www.resmigazete.gov.tr/eskiler/2020/05/20200528-8.htm>. Last date of

access is 31.05.2020.

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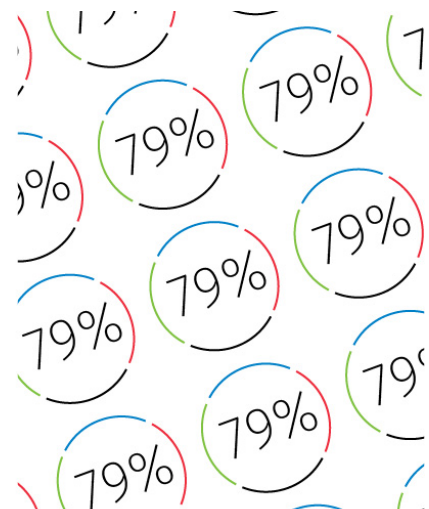
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