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How Will Turkey Deal with Unfair Practices During COVID-19 Outbreak: Establishment of the Unfair Price Assessment Board

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Introduction

While the world is dealing with novel coronavirus pandemic, many countries resorted to protectionist measures in order to preserve the quality of social life and stability of the economy from the effects caused by the outbreak. A package of measures to that end was introduced by the Turkish lawmakers via 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**”), which was promulgated in the Official Gazette dated 17 April 2020 and No. 31102.

Act No. 7244 puts forth various amendments that aim to undermine effects of the outbreak on social and economic order, notably, inter alia, it introduces major changes to the Act No. 6585 on Regulation of Retail Trade (“**Act on Retail Trade**”).

1. What changes does the Act No. 7244 bring about?

Article 14 of the Act No. 7244 introduces a new clause to the Act on Retail Trade, namely, Additional Article 1, that concern “*Exorbitant price increase, stockpiling and Unfair Price Assessment Board*”. Additional Article 1 prohibits, all manufacturers, suppliers and undertakings that operate in retail level from making exorbitant price increases. Additionally, relevant clause prohibits market participants from engaging in activities that may give rise to scarcity in market, distort the market balance and free competition or prevent consumers from accessing goods.

Furthermore, Additional Article 1 introduces Unfair Price Assessment Board (“**Board**”). As per the Act No. 7244, the Board shall consist of thirteen members and be chaired by the Director-General of Domestic Trade (Directorate General of Domestic Trade is a unit that operates under the Turkish Ministry of Trade [“**Ministry**”]). The Board is vested with the authority to make regulations concerning exorbitant price increases and stockpiling, to inspect and examine thereof and thereby to implement administrative fines and take any measures necessary.

Act No. 7244 also stipulates administrative fines to be implemented, when manufacturers, suppliers and undertakings that operate in retail level violate the rules introduced by Additional

Article 1. As per the Article 13 of the Act No. 7244:

- if the rule that prohibit exorbitant pricing is violated, 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.

2. What does the administrative powers vested to Unfair Price Assessment Board imply from a competition law perspective?

While the Board's area of focus is set via amendments introduced by Act No. 7244, it is not yet known how often the new administrative structure would resort to its enforcement authority. It may be inferred that since Act No. 7244 aims to undermine the impact of the novel coronavirus pandemic on economic and social life, the inspections, administrative fines and other necessary measures will be employed more frequently as long as the pandemic continues. However, it is noteworthy to mention that there is no clause, which is introduced by the Act No. 7244 that puts forth the Board's term of operation. Thus, the amendments made in the Act on Retail Trade ensures the Board's operability following the end of the pandemic.

As regards competition law, it should be noted that the Turkish Competition Authority ("TCA") has announced that it would deal with the undertakings that might try to use the outbreak to their advantage, via conducts in detriment to consumer welfare and competitive structure of the markets, strictly. In a public announcement^[1] dated March 23, 2020, the TCA specifically pointed its finger at the undertakings active in the market for fresh vegetables and fruits and indicated that extreme price increases during COVID-19 outbreak may violate competition act:

"It is observed that in our food market, especially in the market for fresh vegetables and fruits, there are extreme price increases in an opportunist 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.

Announced to the public."

While the TCA's announcement may be deemed as a warning for the undertakings that have engaged in anti-competitive practices during COVID-19 outbreak for future investigations, Unfair Price Assessment Board is expected to be more effective for battling opportunistic market behaviour amid the outbreak.

It should be noted that Article 6 of the Act No. 4054 of the Protection of Competition

(“**Competition Act**”), which prohibits abuse of dominant position, already enables the TCA to scrutinize and penalize excessive (*exorbitant*) pricing. However, establishing that the relevant undertaking is in dominant position in the relevant market is a prerequisite for penalizing excessive (*exorbitant*) pricing as per Article 6 of the Competition Act. On the contrary, with the amendments introduced by Act No. 7244, excessive or exorbitant prices may be penalized as per the Act on Retail Trade, without the requirement of establishing that the scrutinized undertaking is in dominant position.

In a similar way, as per article 4 of the Competition Act, the TCA shall establish that there is an anti-competitive agreement or concerted practice between two or more undertakings, in order to penalize a simultaneous price increase or supply cutting. However, recent amendments on Act on Retail Trade, enables the Ministry to implement fines against the activities that may give rise to scarcity in market, distort the market balance and free competition or prevent consumers from accessing goods, without the requirement of establishing that there is an anti-competitive agreement or concerted practice between the market players.

[1] Please see, <https://www.rekabet.gov.tr/en/Guncel/public-announcement-afef54447272ea118125005056b1ce21>.

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