

ICC COMPENDIUM OF
ANTITRUST DAMAGES ACTIONS

TURKEY

Court **decisions**
in key jurisdictions

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Introduction

This chapter is part of the *ICC Compendium of Antitrust Damages Actions* (the “Compendium”) which can be read in full on the ICC website at www.iccwbo.org.

Designed to provide decision-makers with a comparative overview of the issues most frequently arising in private antitrust litigation in key jurisdictions, the Compendium includes an unprecedented collection of decisions issued in the same jurisdictions. This database is the essential complement to the overviews for a comparative approach and will allow a better understanding of the rules presented in the compendium. Each case summary will provide users with a brief description of the facts of the case and outline the solutions brought by the courts to the issues raised by the case with regard to the topics addressed in the overviews. Rather than performing keyword searches through the common online databases in each jurisdiction, antitrust practitioners and enforcers will have all key decisions at hand. Courts will be able to see what other courts in other jurisdictions have decided on a given issue, which may contribute to a greater consistency and, within the European Union, to enhance integration. This compendium also intends to provide competition authorities with a general view on the consequences of their decisions.

Methodology for the selection of cases

The selection criteria predominantly focus on cases where the judicial review has been initiated and the ruling has been finalised. Among such finalised rulings, only the cases where the courts have ruled in favour of the applicant and granted quantifiable compensation for the antitrust related damages are referenced. Considering that the decisional practice of the Turkish courts provides only a limited number of examples, the selection criteria do not narrow the scope by applying a further materiality threshold based on the amount of the award or the damage.

Country: Turkey	
Case Name and Number: 2015/1008 E., 2017/1325 K.—(Based on the infringement decision of the Turkish Competition Board numbered 8 March 2013 and numbered 13-13/198-100)	
Date of judgment: 22 March 2019	
Economic activity (NACE Code): K.64.30—Trusts, funds and similar financial entities	
Court: Istanbul Commercial Court of First Instance, 4th Chamber	Was pass on raised (yes/no)? No
Claimants: Mustafa Oğuz Bülbül (Customer of the infringing bank in vehicle loan)	(If in EU) Was the EU Damages Directive referred to/relied upon (and if so, for procedural or substantive provisions)? N/A
Defendants: Türkiye Vakıflar Bankası T.A.O.	Were damages awarded (if so, how much and to whom)? If not, why not (e.g. lack of standing, causal link)? Was there another outcome or remedy? Yes—TRY 1.298 (approximately US\$ 235—EUR 210)—The client of the infringing bank was awarded compensation amounting to two times of his actual damages occurred due to the artificially increased interest rate on his vehicle loan.
Is/was the case subject to appeal (yes/pending/no)? If yes, briefly describe current status/outcome: The amount of compensation awarded to the claimant is below the threshold to apply for appeal. Therefore, the ruling is final and binding.	Amount of damages initially requested: The amount of damages initially requested was three times the actual damages accrued by the claimant without expressing an explicit amount. The Turkish competition law regime allows the victims of an anti-competitive agreement to request compensation up to three times their actual damages. The amount of initial request is based on the amount of damages which needs to be calculated by the civil courts. Hence, the claimant requested his damages to be calculated by the court and the compensation amount to be set as three times of such damages. However, the court has set the compensation amount as only two times the actual damages TRY 1.298 (approximately US\$ 235—EUR 210) based on the merits of the case.

<p>Key Legal issues:</p> <ul style="list-style-type: none"> • Anti-competitive agreement • Fixing interest rates in deposit, loan and credit card services 	<p>Is the dispute likely to be settled privately? No—The dispute is not likely to be settled privately. The civil procedural law—which governs damage claims arising from competition law violations—allows private settlements. The parties may have a mutual agreement on the merits of an ongoing lawsuit and submit this settlement agreement to the civil court. However, the jurisprudence of civil courts on antitrust related damage claims are not maturely settled yet. Additionally, the calculation of damage amount associated with an individual claim is rather difficult in collective infringements (such as cartel cases or concerted practices). Therefore, the outcome of a damage claim is not reasonably predictable and, as a result, the parties are not inclined to negotiate private settlements.</p>
<p>Direct or indirect claims? Direct</p>	<p>Method of calculation of damages: Under Turkish law, civil courts are responsible for the calculation of the damages. However, the decisions of such courts have not provided any tangible guidance on the method of calculation so far.</p>
<p>Individual or collective claims? Individual</p>	<p>Name and contact details of lawyer who has drafted summary: Şahin Ardiyok, Senior Partner, Balcioğlu Selçuk Ardiyok Keki Attorney Partneship, SArdiyok@baseak.com</p>
<p>Follow-on (EC or NCA?) or stand-alone? Follow-on (Based on the infringement decision of the Turkish Competition Board numbered 8 March 2013 and numbered 13-13/198-100)</p>	

Brief summary of facts

In 2013, Türkiye Vakıflar Bankası T.A.O. (“Bank”), together with 11 other banks, were found to have engaged in an anti-competitive agreement to determine the interest rates in certain retail banking services (*i.e.* deposits, loans and credit cards). The fining decision of the Competition Board was appealed before and approved by the Ankara Regional Administrative Court and the High Council of State (13th Chamber) in 2014 and 2015,

respectively. Upon the approval of the fine by the highest appellate court in 2015, Mustafa Oğuzcan Bülbül (“Client”), who has suffered from the infringement through his contractual relationship with the Bank on a vehicle loan, has filed an action for damages.

Brief summary of judgment

After having reviewed the merits of the case and the parties’ arguments, together with expert witness reports, the 4th Chamber of Istanbul Commercial Court of First Instance ruled that the Bank had violated competition law through an anti-competitive agreement with its competitors and it was at fault in this infringement. The determination on the elements of violation and fault was substantially based on the relevant Board decision and echoed the findings therein.

The court of first instance also decided that the Client had paid more on interest than he would have in the absence of the infringing agreement and therefore established a causal link between the infringement and the damage.


Accordingly, the court exercised its discretion and awarded the Client with a (punitive) compensation amounting to two times his actual damages to be collected from the Bank. As the amount of compensation awarded to the Client is below the threshold to apply for appeal, the ruling of the court of first instance became final and binding, effective as of the decision date.

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