

A QUANTITATIVE ANALYSIS OF  
TURKISH COMPETITION BOARD'S  
ANTITRUST INVESTIGATIONS  
SINCE ITS FOUNDATION

---

FEBRUARY 2022



## Preface

Turkish Competition Board ("TCB") celebrates its 25th anniversary this month! We aspired to memorialise the appointment of the first Board Members in February 1997 through this memo. At this moment, we wanted to celebrate the TCB, which took successful steps from the beginning and has made its name among the established public institutions as an "Authority".

The TCB proceeds to steer the markets via its decisions regarding competition law enforcement. Nevertheless, the prominent factor resonating with the public, in general, is still its decision to open an investigation and the fines imposed following these investigations. In this respect, we drill down the mentioned investigations from the initial ones, quantitatively evaluate them and present the inferences we reached.

In the first flush, the chairpersons of the TCB publicly declared on various platforms that they preferred not to come up with the fines imposed, and they prioritised the institutionalisation of the Turkish Competition Authority. This may be why the statistics of the fines imposed by the TCB have only been publicly available by the 5th annual report. We consider it significant and think it beneficial to check the relevant data to have inferences regarding the tendency of the decision-making practices and find out whether the trend declared initially by the preceding chairpersons has changed or not over time.

With kind regards,

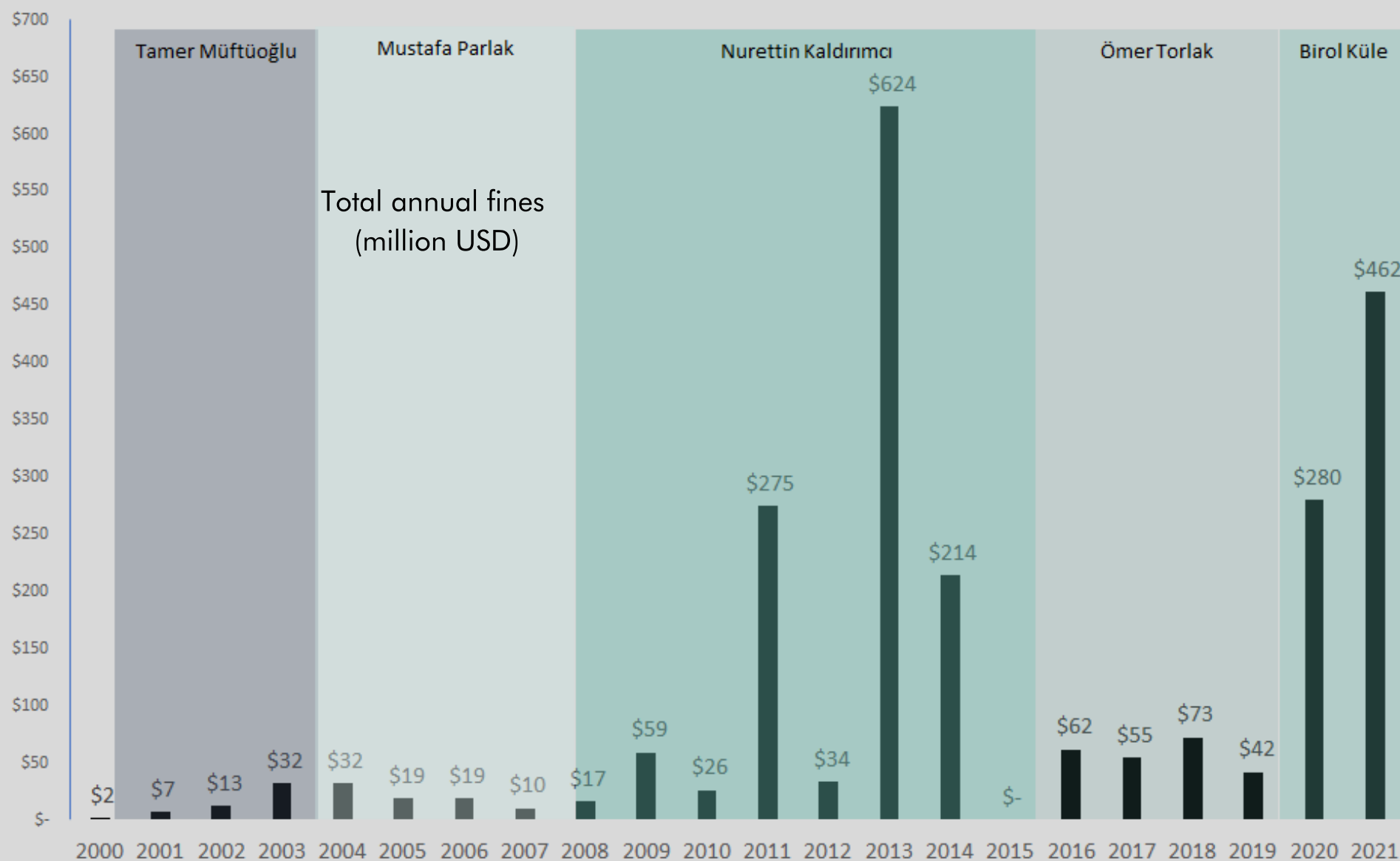
Ali Ilıcak, ICR Economic Research

# Carrot and stick (or rather first stick then carrot)



It is possible to deduce that the increasing trend in the number of investigations carried out in recent years may result from the TCB's desire to be in the driver's seat and increase its control over the markets. On the other hand, we deem the decreasing trend in the ratio of imposing a fine at the end of an investigation as an effort to keep the stiffness of this desire to control limited and be "selective".

## In some instances, the stick may be bigger



Following the enactment of the Regulation on Fines in 2009, the number of fines has increased significantly. Despite the depreciation of TRY in recent years, the level of fines imposed (in USD) during the last two years indicates a drift and a break in overall tendency.

Resource: Annual Reports of The Turkish Competition Authority. Yearly average rates are used while converting TRY to USD.

# Does the Chairperson jump on the wagon, or does the majority follow the Chairperson?



To have a sound grasp on the state of affairs presented in the preceding graph, it is indicative of checking the tendency of the Chairman's votes to see whether they are for or against the majority of votes. In case the decisions are finalised with majority voting (which amounts to 36% of all completed investigations), it is clear that the Chairman moves together with the majority.

The number of decisions where the Chairperson moves with the majority involves the decisions taken unanimously.

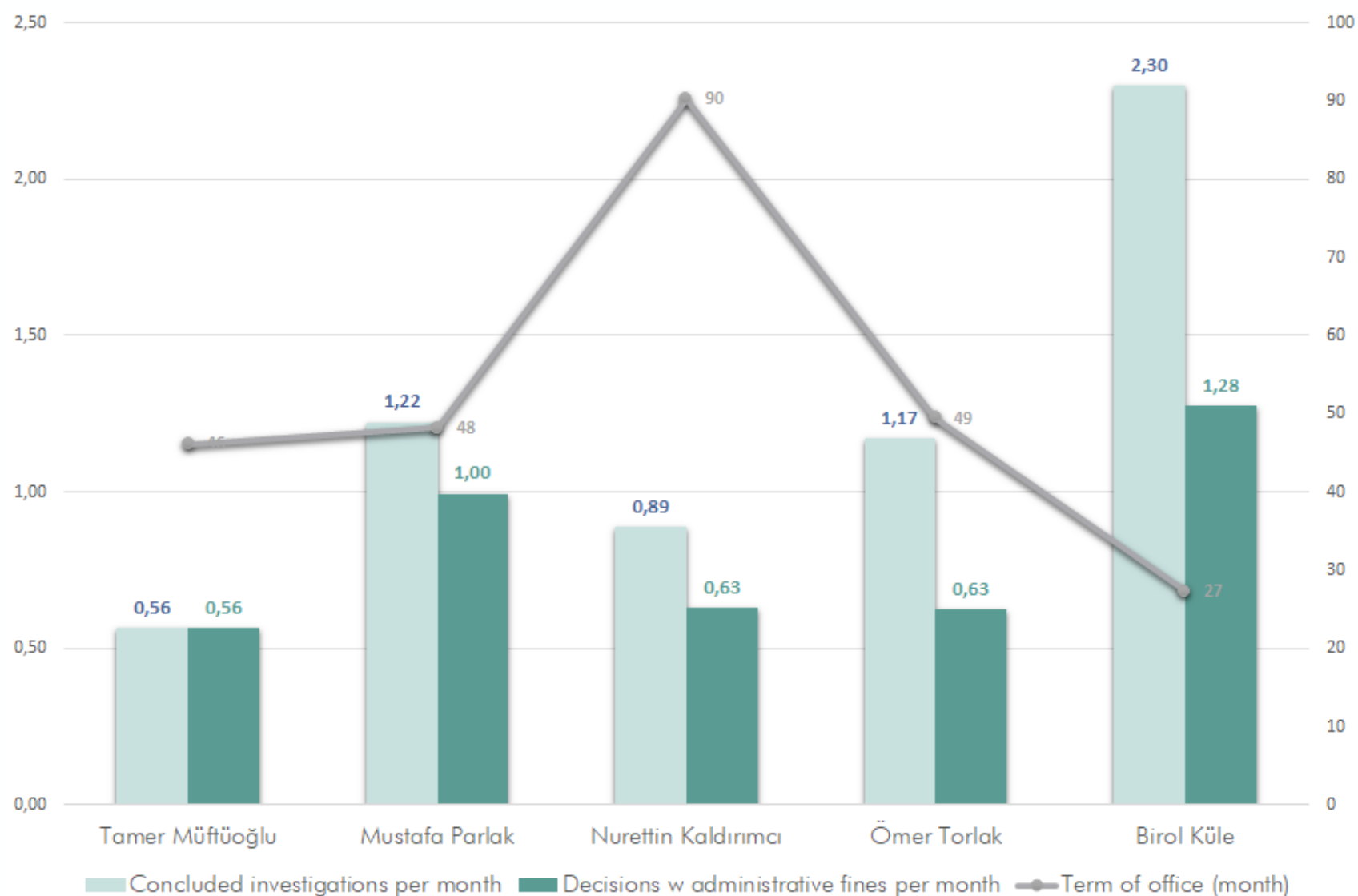
## The investigations are increasingly finalised unanimously



The TCB was set up by the Act on Competition to follow an administrative procedure and take decisions “as a committee” and started its activities in 1997 following the appointments of the first board members. However, the data reveals that over the years, the decisions resulted in majority voting, where the board members act as the representatives of varying government and judicial bodies are replaced with the ones taken unanimously.

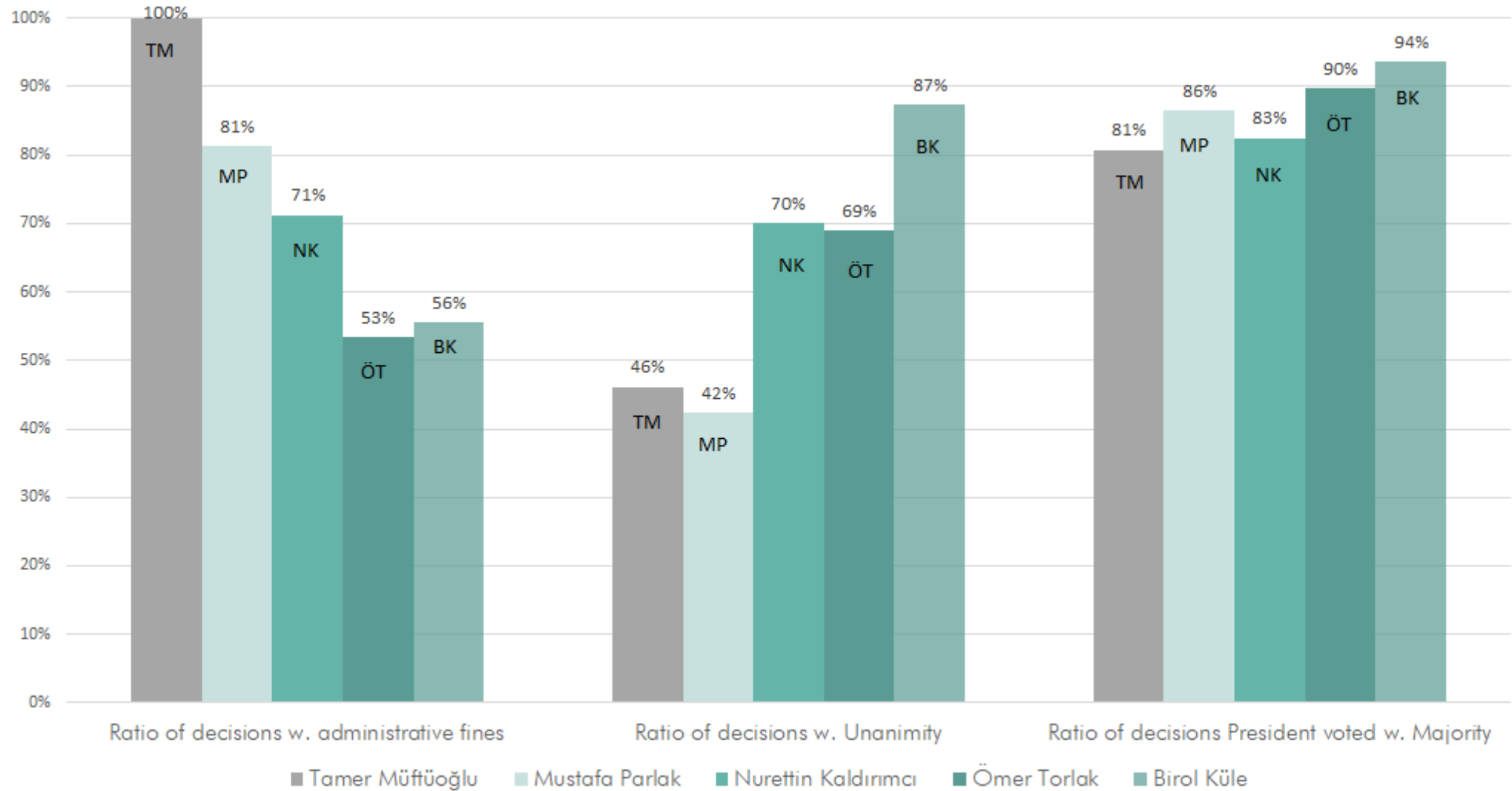
The graph indicates the decisions taken following an antitrust investigation.

## Performance of the chairpersons



We also checked other parameters apart from the amount of the imposed fines to grasp the fluctuations in how the Authority works under the administration of various Chairpersons. For the first time in the history of the TCB, the ratio of decisions finalised with an administrative fine exceeds 1 per month during the current Chairperson, Mr Küle.

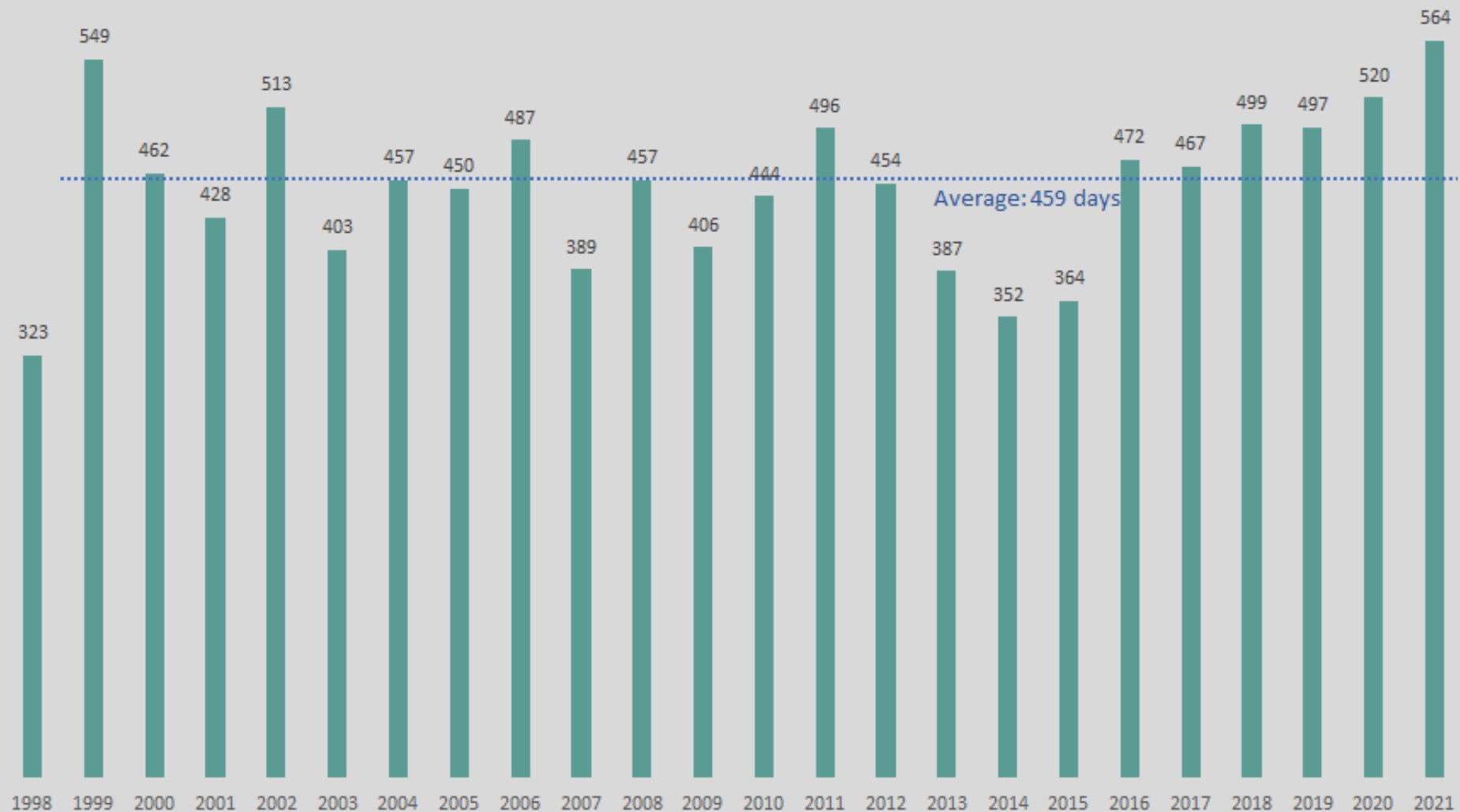
## Differing styles of doing business



As the ratio of decisions finalised with a fine to the total final decisions decreases over time by the successor Chairperson, the tendency of the decisions to be taken unanimously increases a matter of fact that supports our previous observations. Though a slightly upward trend is evident within the last two periods, it is a steady case that the views of the Chairperson overlap with the majority.



## Duration of the Investigation



As we delved into such detailed information, now in this graph, we take a closer look at the average duration of the investigations. The benefits and fairness of explicitly regulating the procedural rules within the Act on Competition are routinely emphasised during the early conferences held by the Competition Authority. Indeed, the duration of the antitrust investigations stayed stable though it gradually increased within the last eight years.

## Table of important legislative changes

Date	Legislation	Number of Board Members	Do the members of the TCB represent different government bodies?	Appointment procedure of the members	Terms of office (years)	Is there room for reappointment?	Who appoints the Chairman of the TCB?	Who appoints the Second Chairman?	Other significant issues
07/12/1994	Law 4054	11	Yes	The represented government body nominates 2 candidates among which one of them is appointed by the Council of Ministers followed by the consent of the President	6	Yes	Board nominates 3 candidates. Council of Ministers appoints among them	Board members themselves vote to choose the Second Chairman among the candidates from the current members	
24/10/2011	Decree-Law 661	7	Yes	The represented government body nominates 2 candidates among which one of them is appointed by the Council of Ministers followed by the consent of the President	6	Yes	Appointed by the Council of Ministers followed by the consent of the President	Appointed by the Council of Ministers followed by the consent of the President	The power of the TCB to appoint the mid-level managers of the Authority is transferred to the Chairman's sole discretion
02/07/2018	Decree-Law 703	7	No	President	4	No	President	President	
18/07/2021	Law 7333								The Chairman and members of the Board, for a period of two years by the expiry of their membership, cannot be assigned in legal persons operating in the sectors on the investigations carried out within the scope of this Act, within the two years before the date of their leaving the office and cannot represent such natural and legal persons before the Authority in administrative processes related to the enforcement of this Act.

One needs to be aware of the significant modifications in the Competition Act regarding the rules regulating the appointment and the discretionary Powers of the board members and the chairman of the TCB. We believe this helps to have a good understanding of the changing patterns of the TCB's decision-making that we attempt to demonstrate in the previous presentations.

# Notes

We have gone through 319 antitrust investigation cases in total. Some rules & assumptions we have adopted during our analysis are as follows.

1. To make a long-term comparison of the number of fines, we calculated the fines in terms of USD considering the average conversion rates of the corresponding year. However, we are aware of the fact that USD also faced inflation during these 24 years. We did not attempt to dive into this realisation.
2. While checking the majority and unanimity votes, we only considered the items (clauses) of the decisions that conclude whether there is an infringement.
3. The graphs presented here do not involve the data on the re-decision overturned by the Administrative Courts.
4. From the exhibition of Graphs 2 and 3, it may be understood as if the terms of the chairpersons immediately follow each other. In reality, some periods extend to almost five months between the successor and predecessor chairpersons.
5. Since some of the reasoned decisions taken in 2021 have not been published, we could acquire the relevant data from the announcement of the final decision – except for one decision.
6. We embedded the decisions finalised with a commitment in the ones finalised without a fine.

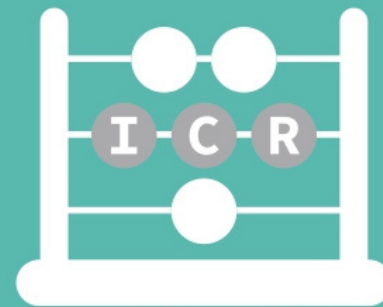
## ABOUT US

ICR Economic Research offers the use of economic theory and quantitative techniques to complement legal teams' cases. It is getting harder and harder for antitrust lawyers to convince the competition authorities without integrating their arguments with economic theory or utilising economic evidence. We help lawyers when it comes to competition economics.

## CONTACT THE AUTHORS

Ali Ilıcak  
Berlin  
[ali.ilicak@icreconomics.com](mailto:ali.ilicak@icreconomics.com)

Dr. Murat Çetinkaya  
Ankara  
[mcetinkaya@icreconomics.com](mailto:mcetinkaya@icreconomics.com)



ECONOMIC  
RESEARCH