

COMPETITION NEWSLETTER



TURKISH
COMPETITION
AUTHORITY



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Foreword

We are honored to introduce you the Turkish Competition Authority's new periodical, Competition Newsletter, which will be published quarterly. Turkish Competition Authority (TCA) has accumulated knowledge and experience for more than 25 years, last years of which it led landmark cases, and had significant impact on the economic wellbeing of Türkiye. In line with TCA's commitment of sharing its experience and better expressing its enforcement to the stakeholders, The Competition Newsletter is aimed at highlighting the main activities of the TCA.

As you know, we suffered a massive earthquake that hit 11 provinces in southern Türkiye. Upon the announcement of a state of emergency, Turkish Competition Board, postponed oral hearings which were planned between March and June, to the summer term. Thus, this summer has been a highly active and busy term for the Board. They have both concluded several investigations and initiated many new ones. Therefore, this brand new issue is dedicated exclusively to the concluded and newly initiated investigation decisions, as well as interim measure decisions of the Board during June-September. Subsequent issues will provide updates on other decisions, as well as legislative and institutional developments.

We will continue to work hard and keep our stakeholders updated with the upcoming issues. Hope you have a good read.

With our very best regards



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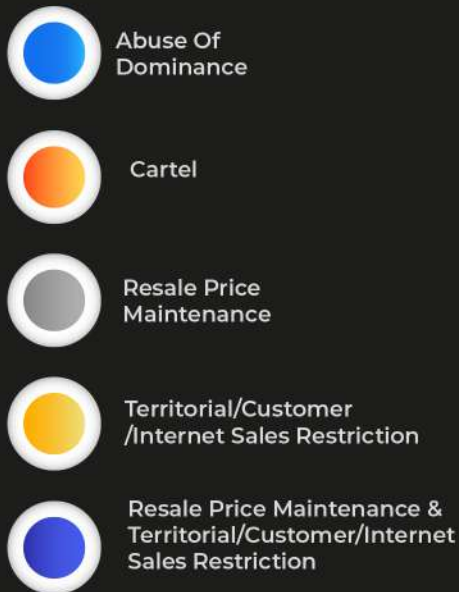
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Concluded Investigations by Infringement Types



1. Concluded Investigations

(1st June-15th September)

During the summer term (June-September), TCA concluded 23 investigations in the sectors spanning across the digital platforms, labor and cosmetics markets, as well as other sectors like automotive, agricultural products, consumer electronics/household appliances.

As can be seen from the chart, although TCA focused its attention on abuse of dominance cases and cartel conducts, it did not neglect the vertical infringements. This can be seen from the fact that just number of vertical cases accounts to 11.

➤ **Cartel investigations** were particularly significant in the sense that most of the markets were being investigated for the first time in the context of cartel allegations.

- Firstly, there was a hub and spoke allegation in cosmetics market, which is mostly scrutinized for resale price maintenance (RPM) practices. TCA issued settlement decisions on all parties concerned.
- Secondly, there was a cartel investigation in labor markets, which was unique in the sense that the agreements concerned influenced a wide range of product/service markets and undertakings. This case was concluded with settlement decisions for some undertakings and infringement and noninfringement decisions for the others.
- Third case is remarkable, as generally, the platforms were investigated under the abuse of dominance claims but this time, online platforms for buying and selling of second-hand automobiles were scrutinised for negative-matching agreements related to search advertisement. The Board concluded this case with a settlement decision for all of the parties concerned. Thus the labor market cartel case is the only example resulting in an infringement decision and administrative fines.
- The remaining 3 cases included price agreements between the fresh yeast producers, customer sharing agreements among fire suppression system providers and price agreements between undertakings in the fertilizer market. The first case was concluded with a settlement decision, while no infringement was detected in the latter two cases.





Concluded Investigations

- **Abuse of dominance investigations** were into digital platforms like Sahibinden (2 separate cases), Trendyol, Obilet; optical markets (EssilorLuxottica) and media platforms (Digiturk). While the excessive pricing case of Sahibinden, an online classified ad listing platform, was concluded without finding any infringement, the others were concluded with infringement decisions, remedies and administrative fines, except the Obilet case which was terminated upon commitments. Therefore, there are examples of cases that remedies took precedence over fines, and there are also cases with record penalties imposed
- **As for the vertical restraint cases**, the number of RPM claims draw particular attention, since 9 out of 11 vertical restraints cases involve RPM concerns, either solely or together with other vertical restraints such as territorial, customer and/or internet sales restrictions. The investigated markets are fast moving consumer goods, food, cosmetics and consumer electronics/household appliances for RPM practices; automotive and food sectors for the territorial, customer and/or internet restrictions. RPM conducts are considered hard-core restrictions according to De Minimis Communiqué No 2021/3. Additionally, for one RPM case relating to food sector, no infringement was found, for the other relating to consumer electronics/household appliances, administrative fines were imposed, and the remaining cases were concluded with settlement decisions. All other vertical restraint cases were closed with commitments.

Below, further information for the selected investigations is provided.





1.1. The Board ordered Sahibinden, dominant online listing platform for real estate and vehicle sale/rental, to port listing data of its business users.

In response to a complaint alleging that Sahibinden had abused its dominant position by refusing to provide an application programming interface and/or interoperability for an integrator to be able to serve as a listing intermediary between the business users and online platforms. The Board found Sahibinden's refusal to access as objectively justifiable and evaluated that under the market conditions at this stage, imposing an obligation of interoperability through such integration would be disproportionate.

However, in response to the competitive concerns raised by business users and rival platforms together with contractual clauses containing data transfer restrictions, the Board launched an ex officio investigation to determine whether Sahibinden had abused its dominant position by blocking data transfer of its business users and by other means.

At the end of this investigation, the Board decided that Sahibinden (i) made it harder for its business users to use multiple platforms by preventing data portability, (ii) implemented actual/contractual exclusivity by this method and by the non-compete clauses in its contracts, (iii) obstructed the operations of its competitors and thereby had abused its dominant position. As a result, an administrative fine of 40,150,533.15 TL was imposed.

In addition to the fine, the Board obliged Sahibinden

- To ensure that business users can efficiently port their ad data on the Sahibinden platform to competing platforms and can keep those data updated, free-of-charge.
- To allow these members to port and update their data within the shortest reasonable time without delay and free-of-charge (In case (i) business users of competing platforms request to port their ad data on competing platforms to the Sahibinden platform and (ii) the competing platforms accept this request).

Highlights:

- Though the Board recently has had a case law on data portability in digital platforms such as Nadirkitap, Trendyol; Sahibinden case establishes the detailed standards for how a data portability requirement can be ensured.
- This case distinguishes from the others as it not only requires to transfer the data, but also to keep the data up to date.
- The details on how this requirement will be implemented will be open to public, possibly in 2024.





1.2. Trendyol, Türkiye's Alibaba-held dominant multcategory e-marketplace, held liable for self-preferencing.

Following the completion of a sector inquiry on e-marketplaces, the Board initiated a preliminary investigation into Trendyol. The documents obtained from the dawn raids indicated that Trendyol was engaging in self-preferencing and discriminatory conducts. In line with the findings of the sector inquiry regarding the concentrated structure of the market and the significant increase in Trendyol's market share in a period as short as one year (2020-2021 period). The Board issued interim measures for Trendyol's conducts since delaying necessary interventions in the digital markets could cause irrevocable harm.

At the end of the investigation period, the Board decided that i) Trendyol has favored its retail private label products unfairly by intervening in the algorithm and by using the data of third party sellers making sales on its marketplace; ii) all these practices have restricted its rivals' activities, ii) thus should be imposed administrative fines (61,342,847.73 TL).





Trendyol, Türkiye's Alibaba-held dominant multcategory e-marketplace, held liable for self-preferencing.

Trendyol was also subjected to an extensive set of obligations, ranging from avoiding any interventions made via algorithms and coding (which would grant advantage to its private label (PL) products), to not using data obtained/produced/derived from the activities on the marketplace for its PL products. In doing so, the Board set out detailed provisions that specifically shed light on how to comply with the given general obligations. For instance, the Board required Trendyol to block the science search team's access to PL category information, or to establish separate teams for managing PL products in Trendyol marketplace. Additional obligations were imposed for ranking products and filtering brands, such as the requirement to store (in an undeniable way) parametric and structural changes to or codes belonging to algorithms.



Highlights:

- Whereas the amount of fine does not seem to be resounding, high number of detailed remedies signal how rigorous the Board approaches the mitigation of the anticompetitive effects in digital markets.
- Secondly, the remedies imposed are not just composed of general provisions, but include precisely targeted measures.
- Thirdly, the investigation covered not only practices in the listing, but also self-preferencing via algorithm. While the Board's Google Shopping decision can be accounted as the first example for the former, this decision is the first case of TCA for self-preferencing via algorithmic interventions.



1.3. Investigation into platforms for bus ticket sales market was terminated upon the commitments submitted.

Obilet is the leading platform for bus ticket sales in Türkiye. In addition to sales services,

- It provides ticketing software services to bus companies thereby enabling the digitalization of trips' inventory data (i.e. route, bus schedule and seat information etc.),

- It distributes the inventory data it collects from bus companies to other ticket sales platforms.

Thus the undertaking has a vertically integrated structure and holds the leader position on these 3 services. In 2022, a complaint was filed to the TCA on Obilet's alleged excessive commission rates for bus ticket sales and exclusionary conducts to the competitors. With the investigation team's concerns over the contracts new claims were added to the investigation ex officio:

- The first concern involved Obilet tying its ticketing software services to ticket sales services. Bus companies were allegedly compelled to buy Obilet's ticketing software to be able to receive platform services from this company. In that way, the competition in software services and inventory distribution services was adversely affected, increasing the dependency of the bus companies and rival platforms on Obilet.

- The second concern was online ad restriction clauses including both narrow and wide ad restrictions between competitors, as well as ad restrictions between buyers and suppliers. It has been assessed that narrow ad restrictions between competitors do not fall under the scope of Act no 4054. Yet wide ad restrictions among competitors and vertical ad restrictions were considered to be capable of constituting an infringement of Article 4 of the Act.

- The third concern revolved around the communication ban imposed by Obilet on its competitors while distributing the inventory data. As a result, rival platforms were unable to directly contact with the bus companies and could only receive the inventory data from Obilet. This has been considered as a hindrance to price competition in platform services, creating barriers for competing platforms to inform bus companies about sales data over their own platforms. Thus, this situation created a competitive disadvantage for these competitors and a potential infringement of Article 4 of the Act.

While the investigation process was ongoing, Obilet submitted a commitment package aimed at eliminating the abovementioned concerns. Third-party opinions were also received regarding the commitment package. Subsequently, the Board accepted the commitments as they were able to solve the competition problems.



Highlights:

- The commitments submitted contain ten aspects, reaffirming the Board's rigorous approach towards anticompetitive practices in digital markets. In some cases, providing guidance on how the market can be competitive becomes more important than merely imposing fines or ceasing the anticompetitive conduct.

- In the Obilet case, several contract examples have been developed to fulfill the commitments. These examples show the way Obilet will work with bus companies and other platforms under different business models.

- Additionally, it's worth noting that in this case, vertical online advertising restrictions were examined for the first time.



1.4. The Board follows up adherence to the commitments given, as is the case with EssilorLuxottica

In 2018, the Board had reviewed a merger notification of Luxottica Group S.p.A. and Essilor International S.A, both of which operated in the optical market. At that time, Luxottica was active in the production of sunglasses and optical glasses frames; while Essilor was engaged in the fields of sunglasses, optical lenses and optical machinery equipment. The Board has made its examination in two aspects:

- (i) The horizontal effects: This involved the evaluation of the transaction in the wholesale markets for.
- (ii) The conglomerate effects: The Board took into account that both companies had product ranges that are complementary to each other and that range covered almost all needs of the opticians.

As Luxottica and Essilor were the leader and the largest follower in the they proposed a set of structural and behavioral commitments. As a result, the Board cleared the merger, subject to these submitted commitments.

In 2021, however, the Board received claims that EssilorLuxottica provided glass-cutting machines under favorable conditions in exchange for purchasing eyeglass lenses from EssilorLuxottica itself, thus excluding rival eyeglass manufacturers from the market. The Board found that EssilorLuxottica's agreements, which offered optical lenses and optical machinery simultaneously and its other practices, created de facto exclusivity and were exclusionary. That not only accounts for infringement of Article 6 of Act no 4054, which covers abuse of dominance, but also a violation of the commitments that were made binding with the 2018 decision. Thus, the Board fined the merged undertaking 492 million TL due to its noncompliance with the commitments for a period of 1096 days. The Board decided not to impose a separate administrative fine for abuse of dominance under the principle of "ne bis in idem".



Highlights:

- What the law says (Article 17(a) of Act no 4054): In the case of obligations introduced or commitments made by a final decision or interim measure decision are not complied with, (...) the Board shall, for each day, impose on undertakings and associations of undertakings an administrative fine by five in ten thousand of annual gross revenues of the relevant undertakings and associations of undertakings and/or members of such associations...
- This case is an example of the longest fine ever recorded amongst the fines imposed for non-compliance with commitments.



1.5. The Board delved into gentlemen's agreements in the labor market.

While TCA was carrying out a dawn raid as part of another investigation, internal documents indicating no-poaching agreements between several platforms in digital market have been found. Subsequently, the Board opened an ex officio preliminary investigation. The investigation was then expanded to 48 undertakings operating in various sectors such as e-commerce, telecommunications, software development, ready-made clothing/textile, food/beverage and logistics.

The investigation examined whether parties had engaged in no-poaching agreements designed to prevent hiring of each other's employees or to limit the employee mobility. Such agreements are based on employers' mutual withdrawal from competing for labor, one of the most important inputs. No-poaching agreements may limit labor mobility between undertakings and may artificially suppress wages from receiving their real value. As a result, inefficiencies in the distribution of employees can occur and the competitive structure of labor markets may be distorted. Within the framework of the abovementioned points, the investigation has been terminated with

- A settlement for 11 undertakings, leading to a total fine of 101,039,554.64 TL,
- An infringement decision for 16 undertakings, leading to a total fine of 151,147,901.82 TL.

The remaining 21 undertakings were not found to be in violation of Act no 4054, either due to lack of evidence or because the agreements were considered to include legitimate vertical relations and thus as ancillary restraints.



Highlights:

- The Board evaluated that no-poaching agreements being arrangements aimed at sharing labor input, are inherently agreements between competitors, and therefore they fall within the scope of the definition of cartel.
- Though several cases were carried out regarding the labor market such as the Private Hospital case (2022), this particular one is distinguished as the agreements influence a wide range of product/service markets and undertakings, and the total fine accounts for the highest one over them.



Highlights:

- In accordance with the De Minimis Communiqué No 2021/3, RPM conducts are deemed as hard-core restrictions. Upon this declaration and the inflationary economic environment, the Board carefully scrutinized the markets that have a direct impact on consumers.
- With these decisions, the Board aimed at ceasing the price rigidity, ensuring price competition and price diversity in the market, hence making it possible for consumers to access products at more affordable prices.



1.6. Intervention in sellers' prices and restriction of internet sales are on the Board's radar.

In respect to RPM and restriction of internet sales, the Board carries out detailed investigations particularly in consumer electronics/household appliances, food and cosmetics markets. In these sectors, which directly respond to consumer needs, price competition is the key element among the other competition parameters.

Hence, in the last three months, the Board has taken following actions:

- Imposed administrative fines on providers of consumer electronics/household appliances, namely, Samsung, LG, SVS and Arçelik, due to their RPM practices. The fines amounted to 227,161,142.04 TL, 33,870,305.21 TL, 1,984,907.00 TL and 365,379,161.06 TL respectively.
- Agreed to settle with the providers of cosmetics and personal care products, namely, Ashley Joy, Ayaz, Farmakozmetika and Ege Teknoloji due to their RPM practices, and additionally with Ege Teknoloji, for its role as a hub to control the prices.
- Reached settlement with the providers of cosmetics and personal care products, namely, L'Oreal Türkiye, Easyvit, Elca due to their RPM and internet sales restriction practices.



Newly Initiated Investigations by Types of Claims



Cartel



Abuse Of
Dominance



Resale Price
Maintenance



Resale Price Maintenance &
Territorial/Customer/Internet Sales Restriction



Other
Vertical Restraints



2. Newly Initiated Investigations (1st June-15th September)

During the same term, the TCA launched 17 new investigations.

► **The cartel investigations** are mostly in local scale, four of which contain price fixing allegations in professional activities, car dealership, accommodation, publication, logistics & storage sectors in the cities of Afyon, Adana-Antalya-Gaziantep, Giresun, and Antalya respectively. Additionally, one cartel investigation pertains to bid rigging activities in power transformer market.

► **The abuse of dominance case** concerns around allegations of discriminatory behavior in the evaluation of unlicensed electricity generation applications. This case was opened upon the Court's reversal decision.

► **Vertical restraint cases**, particularly RPM claims continue to draw particular attention, since 8 out of 11 vertical restraints cases involved RPM concerns, either solely or together with other vertical restraints such as territorial, customer and/or internet sales restrictions. The markets being investigated were fast moving consumer goods and cosmetics for the RPM probes, whereas "online betting and digital sports platforms" and "pay television broadcasting market of Turkish Super League and 1st League competitions" were investigated for exclusive dealing and passive sales restriction concerns respectively.





3. Interim Measures

We have witnessed several interim measure decisions during this summer term. Actually, this indicates the Board's commitment addressing conducts that could lead to serious and irreparable harm. In some markets like those operating based on tender systems, a delay in intervention may cause long-lasting deterioration. Similarly, in the markets where the negative effects of the conduct are substantial, timely intervention becomes a crucial factor. This was the case in two investigations into entertainment and media sectors, which are described below.





3.1. The Board took interim measures on exclusivity agreements between Maçkolik and Nesine, the leading online betting and digital sports platform and the leading online betting company.

Maçkolik, known for offering statistical information such as live match results and a wide database for football matches was at the center of a complaint claiming that Nesine (D Elektronik), as the leading online betting company, worked exclusively with Maçkolik since 2019. Especially after the legalization of live betting in Turkey in 2019, live score tracking has become even more important for consumers who place live bets, and Maçkolik, the most well-known platform in this field, has been more popular.

However, competition concerns arose since rival online betting companies could not be listed on Maçkolik or could not give any (banner or pop up) ads on the premium inventory of Maçkolik. Moreover, Maçkolik committed Nesine a certain number of clicks, with penalties imposed on Maçkolik if these targets could not be met. As a result, rivals were hindered from receiving traffic from Maçkolik.

Initially Nesine proposed commitments to address these concerns but the Board decided to seek opinions of the rival betting companies. Following the consultations, it was concluded that the commitments were not eligible to effectively eliminate the competition problems.

Recognizing the risk of serious and irreparable damages until the final decision, the Board took interim measures to cease the exclusivity clauses and the click commitments. Subsequently, the Board initiated a new investigation into Maçkolik and with an interim measures decision it imposed Maçkolik to provide equal opportunities in ad inventory and listing services for the rival online betting companies.





3.2. Interim measures imposed on Krea, were prolonged.

In Türkiye, the broadcasting rights of the Turkish Super League and the 1st League are marketed through a tender organized by the Turkish Football Federation, and the winning bidder gains exclusive broadcasting rights for these leagues during the tender period. Currently, Krea exclusively owns the broadcasting rights for the relevant leagues. As the sole broadcaster of the mentioned football competitions, Krea (Digiturk) provides sub-broadcast rights of “broadly summarized images”, “editorial images” and “extended summary images” to other broadcasting organizations.

However, it was alleged that Krea engaged in discriminatory conducts among those broadcasting organizations. While the investigation was ongoing, it was depicted that Krea provided those images to TRT channel before offering them to other broadcasters. This raised concerns that viewing rates and rating results of rival broadcasters could be adversely affected. Subsequently, due to the possibility of “serious and irreparable damage” to occur until the final decision, the Board imposed ex officio interim measures to stop any potential discrimination among broadcasters.





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