

From the Presidency of the Competition Authority
DECISION OF THE COMPETITION BOARD

File number: 2021-1-025

Decision Number: 21-46/669-334

Decision Date: 30.09.2021

A. MEMBERS IN ATTENDANCE

Chairman Birol KÜLE

Members: Ahmet ALGAN, Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN,
Cengiz ÇOLAK

B. RAPPORTEURS: Cemile YÜKSEK, Betül AYHAN, Merve BİROĞLU,
Selçuk YILMAZ, Muhammet Murat KARAKAYA,
Osman Can AYDOĞDU, Talha ALPAY, İbrahim ŞAHİN,
Şeyda EROL, Nadire Büşra EKİNCİ, Derya ERMİŞ

C. APPLICANTS: - Ex officio

D. UNDER EXAMINATION: - DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ
Maslak Mah. Büyükdere Cad. Noramin İş Merkezi, No: 237/6, Sarıyer/İstanbul

- (1) **E. SUBJECT OF THE FILE:** The request that an interim measure be imposed concerning DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ's practices in the market for multi-category online marketplaces within the scope of article 9 of the Act no 4054 on the Protection of Competition
- (2) **F. PHASES OF THE FILE:** The Competition Board discussed the Initial Examination Report numbered 2021-1-25/İİ, which was prepared upon the claim that DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ (Trendyol) violated the Act no 4054 on the Protection of Competition (the Act no 4054) by means of its practices based on unfair contract provisions and discrimination, in its meeting on 29.07.2021 and took the decision no 21-36/487-M that a preliminary inquiry shall be initiated on Trendyol according to the first paragraph of article 40 of the Act no 4054. Within the scope of the preliminary inquiry, on-site inspections were conducted on Trendyol's premises on 26.08.2021 and 22.09.2021. In line with the information and documents obtained during the preliminary inquiry process, the Board took the decision no 21-44/650-M in its meeting on 23.09.2021 that an investigation shall be initiated about Trendyol and other undertakings within the same economic unity according to article 41 of the Act no 4054.
- (3) During this period, documents containing serious findings showing that Trendyol
- i. Intervenes in the algorithm to advantage the products it offers by means of its retailer role and provides "next day delivery" option only to its products,
 - ii. Uses the data of the sellers in the marketplace to prepare marketing/designing strategy to advantage its retailing activities,
 - iii. Discriminates among sellers in the marketplace by means of interventions to the algorithm and lack of transparency concerning sponsored products.
- (4) As a result of the said findings, according to article 9(4) of the Act no 4054, which states that "*where the occurrence of serious and irreparable damages is likely until the final decision is taken, interim measures can be taken in order to maintain the situation before the infringement*", the need for an interim measure concerning Trendyol, which was found to be dominant in the multi-category online marketplaces (e-marketplaces) was

brought to the agenda during the preliminary inquiry process. Within this framework, the Information Note dated 29.09.2021 and no 2021-1-025/BN-01 was discussed and a decision was taken.

- (5) **G. RAPPORTEUR OPINION:** The Information Note concluded that an interim measure should be imposed in order that Trendyol shall
- i. Terminate all types of conduct, practice and behavior related to products and services under its corporate umbrella aimed at gaining advantage before its competitors, including any interference via algorithms and coding, and avoid such behavior during the remaining part of the investigation process,
 - ii. In terms of marketplace activities, terminate sharing and using every kind of data obtained and produced in a way to advantage the products and services under its corporate umbrella compared to its competitors and avoid such conduct during the remaining part of the investigation process,
 - iii. Terminate all types of conduct, behavior and practice that could discriminate between sellers on the marketplace, including any interference via algorithms and coding, and avoid such behavior during the remaining part of the investigation process,
 - iv. Take all the technical, administrative and organizational measures in order to ensure the implementation and monitoring of the abovementioned interim measures,
 - v. Keep a record of parametric and structural changes made to all algorithm models used within the body of Trendyol (DSM Group) for product searches, seller listing, seller rating calculation, etc. for a period of at least 8 (eight) years, including version numbers and with incontestable integrity,
 - vi. Keep all source codes of software used (developed) within the body of Trendyol (DSM Group) for at least 8 (eight) years including version numbers and with incontestable integrity,
 - vii. Keep user access and authorization records as well as administrator audit records related to all software used to execute business processes within the body of Trendyol (DSM Group) for at least 8 (eight) years with incontestable integrity

and administrative fines shall be imposed on the undertaking concerned according to article 17 of the Act no 4054 in case those obligations are not carried out.

H. EXAMINATION AND EVALUATION

- (6) As a result of the preliminary inquiry, it was found that Trendyol was dominant in the market for *“multi-category e-marketplaces”*. Examinations and evaluations suggesting that an interim measure shall be taken about Trendyol are given below.

H.1. The Evaluation of the Documents Obtained During the On-Site Inspection Within The Scope of the Act no 4054

- (7) The documents obtained during the on-site inspection concerning Trendyol’s software and algorithm show that Trendyol
- i. Intervenes in the algorithm to advantage the products it offers by means of its retailer role and provides “next day delivery” option only to its products,

- ii. Uses the data of the sellers in the marketplace to prepare marketing/designing strategy to advantage its retailing activities,
- iii. Discriminates among sellers in the marketplace by means of interventions to the algorithm and lack of transparency concerning sponsored products.

Those documents are given below under the relevant anticompetitive conduct in order. Accordingly, the documents are evaluated under self-preferencing and discrimination.

H.1.1. Trendyol's Self-Preferencing Conduct Concerning Its Retailing Activities

- (8) Self-preferencing has become a much-discussed issue with the development of digital markets. It is defined as advantageous positioning by dominant undertakings of their products and services compared to their competitors in the same platform service.¹ The reason why self-preferencing leads to concerns from a competition law perspective is that undertakings dominant in a platform service gain an unfair competitive advantage by leveraging their market power in another relevant market through self-preferencing².
- (9) Self-preferencing conduct becomes more obvious with the development of digital platforms because it is possible to leverage the market power in a much shorter and easier way without costs thanks to network effects, economies of scale and easy vertical integration. Therefore, the risk of preventing the entry of competing services/products of a reasonable price to the market is higher³. Self-preferencing conduct leads to uncertainty and concerns in terms of dynamic efficiency and consumer benefit.⁴ Accordingly, actions that do not provide competitive benefits, innovation and/or consumer benefit and seem to be only expansion of market power are more likely to be regarded as an infringement⁵. This approach is verified by both Competition Board's and other national competition agencies' decisions. For instance, in Google Shopping decisions of the Competition Board and the Commission, it was found that depending on its power in general search service market, Google provided advantages to its vertical service (price comparison service/Google Shopping) compared to competing comparison services; in another words Google favored its own services. It was concluded that Google's self-preferencing conduct affected the visibility of competing comparison shopping websites in general search results and prevented those enterprises from reaching consumers using Google search engine.
- (10) Mainly, self-preferencing conduct is seen as the manifestation of exclusive abuse, which is an established analytic tool of competition law. Accordingly, Trendyol's self-preferencing conduct is considered anticompetitive under the scope of article 6, subparagraph (a) of the Act no 4054, which is "*preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market*".

¹ CREMER, J., et al., (2019), "Competition Policy for the Digital Era", p.7.

² CREMER, J., et al., (2019), "Competition Policy for the Digital Era", p.7. AYHAN Betül, (2020), Rekabet Hukuku Perspektifinden Çevrim içi Platformlarda Kendini Kayırma Sorunu ve Çözüm Önerileri, Competition Authority, unpublished expert thesis, Ankara, p.1.

³ GRAEF, I., (2019), "Differentiated Treatment in Platform-to-Business Relations: EU Competition Law and Economic Dependence", p.450, SARIÇİÇEK C., (2020), "Me, Myself and Amazon" 32-33.

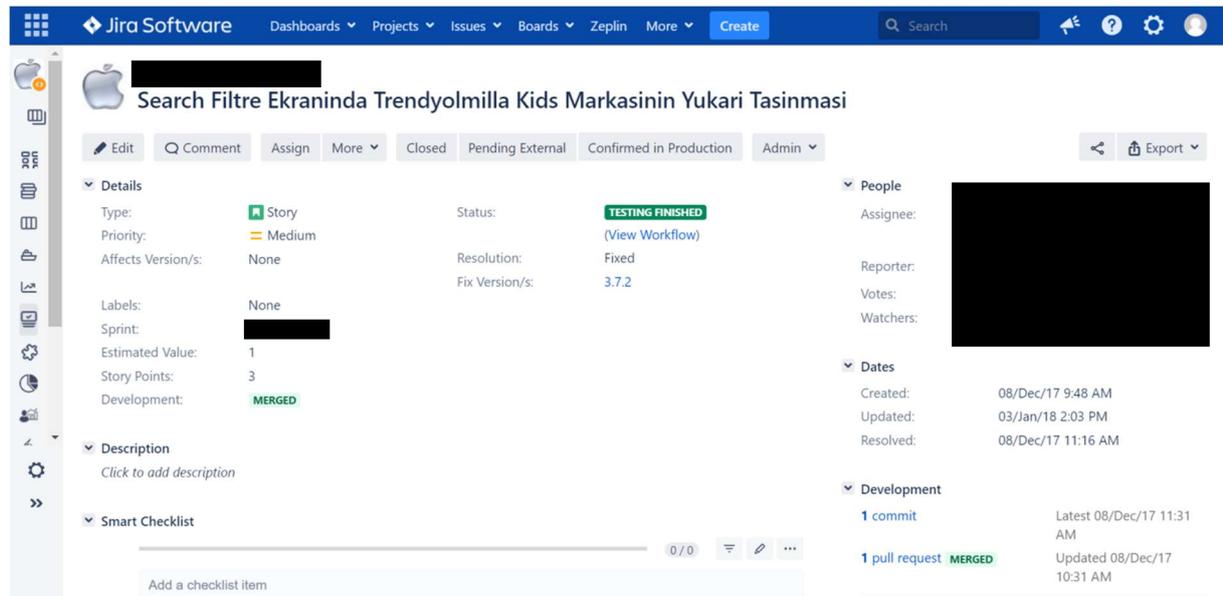
⁴ KRÄMER, J., et al., "Internet Platforms and Non-Discrimination Project Report", CERRE, (2017), p.51-52.

⁵ CREMER, J., et al., (2019), Competition Policy for the Digital Era, p.7.

H.1.1.1. Trendyol’s Self-Preferencing Conduct through Interventions to the Algorithm

- (11) The documents given below show that Trendyol favors its retailing activities in its platform where it operates both as an intermediary and retailer by means of unilateral interventions to its algorithm. In other words, it provides advantages to its retailing activities to the disadvantage of the sellers who are competitors and users of the platform at the same time:

Figure 1: Screenshot obtained during the on-site inspection

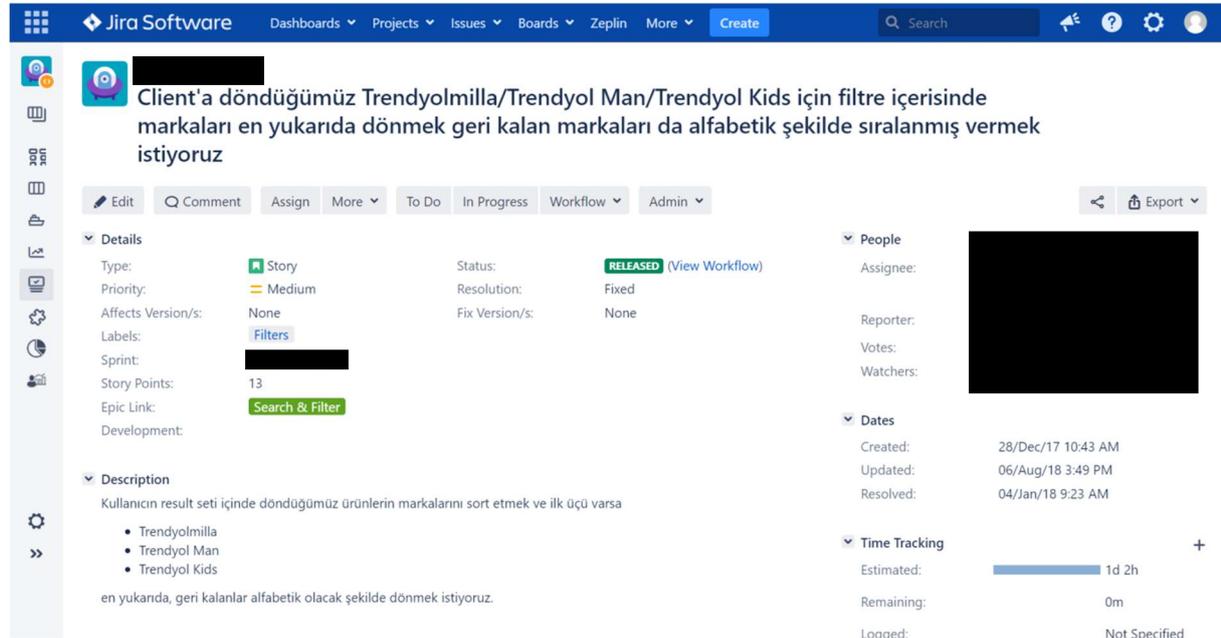


Source: Documents obtained during the on-site inspection

- (12) The document above is obtained during the on-site inspection made in the software called Jira⁶. It shows that (.....) made a task called *carrying Trendyolmilla Kids brand upwards in Search Filter screen* in the (.....) project on December 8, 2017 at 09:48 and this task was assigned to (.....). The task was finished and brought to *testing finished* status at 11:16 by (.....) and the amendment to the code was saved in the system at 11:31 (commit).

⁶ Jira is a project and process management tool. (...TRADE SECRET...)

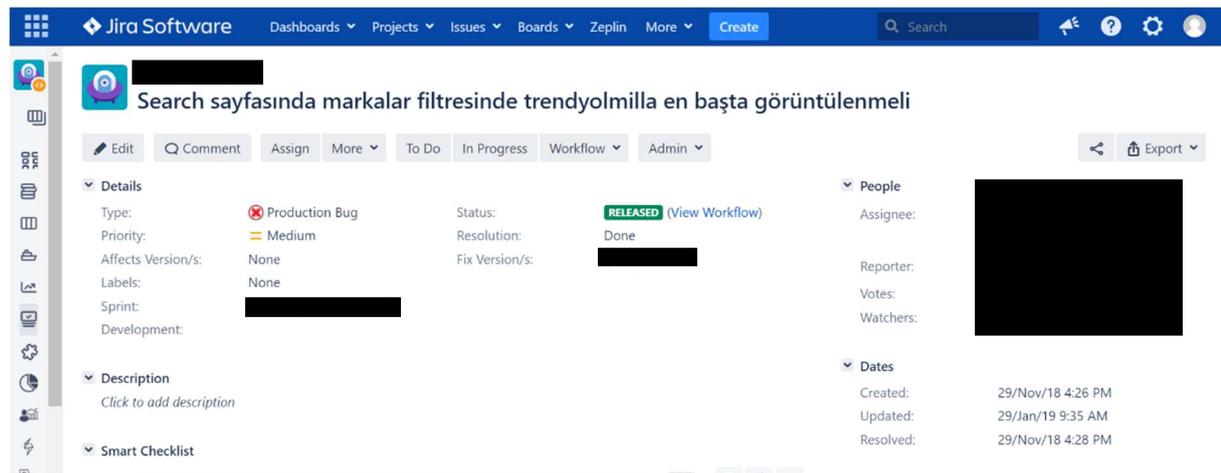
Figure 2: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (13) Figure 2 shows that on December 28, 2017 at 10:43 (.....) created a task titled *we want to turn the brands at the top in the filter for Trendyolmilla/Trendyol Man/Trendyol Kids, which we turn to Client⁷ and list the other remaining brands in alphabetical order in (.....) project.* (.....), (.....), (.....) made studies on the relevant task and (.....) marked the task as *done* on January 4, 2018 at 09:23. On August 6, 2018 at 15:49, (.....) marked that the amendments were published/launched (*released*).

Figure 3: Screenshot obtained during the on-site inspection



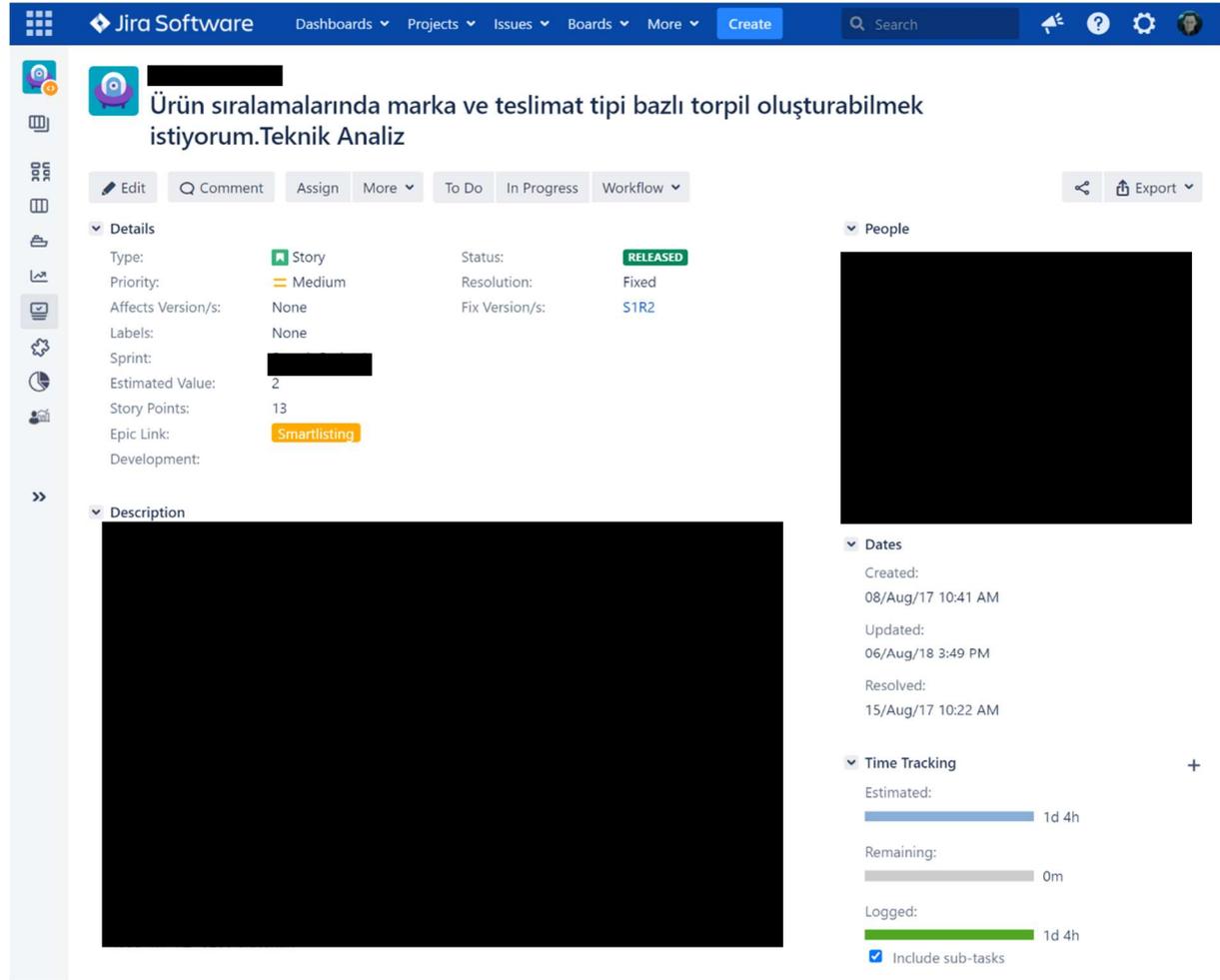
Source: Documents obtained during the on-site inspection

- (14) Figure 3 shows that on November 29, 2018 at 16:26 (.....) created a task called *trendyolmilla should be displayed at the top in brand filter in the search page* and the task type was written as a *production bug* in the (.....) project. As understood from the title and task type, TrendyolMilla was made to be displayed at the top in the brand filter on Trendyol's search page previously but it was not displayed at the top because of a systematical error. It is understood that the said task was made to correct the mistake

⁷ Client means Trendyol application and website users.

and to display TrendyolMilla at the top in the brands filter on the search page. The task is marked *done* by (.....) at 16:28 on the same day and the amendment was marked as *released* by (.....) at 09:35 on January 29, 2019.

Figure 4: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (15) Figure 4 shows that on August 08, 2017 at 10:41 that (.....) created a task called *I want to make "torpil" based on brand and delivery type in product ranking. Technical analysis* in the (.....) project. As understood from the task title and explanation, the aim was to increase the score and ranking in the listing by multiplying the raw scores provided by Trendyol's smartlisting algorithm with a high coefficient for a desired brand and delivery type. After the task coding was finished, on August 15, 2017 at 10:22 (.....) marked as testing finished. It is seen that on October 12, 2017 at 13:40 (.....) published the desired structure (*released*).

Figure 5: Screenshot obtained during the on-site inspection

Source: Documents obtained during the on-site inspection

- (16) Figure 5 shows that on August 02, 2017 at 11:50 (.....) created a task called *I want to multiply the raw score created by the smartlisting algorithm with certain brand-based coefficient* in the (.....) project. This task was intended to multiply the specified brands with a high coefficient and intervene in the raw score created by smartlisting algorithm. This intervention aimed that the desired brands would be listed in upper ranks. The said task was completed by (.....) on April 26, 2018 at 20:57 by adding the note that the requested process was made previously.

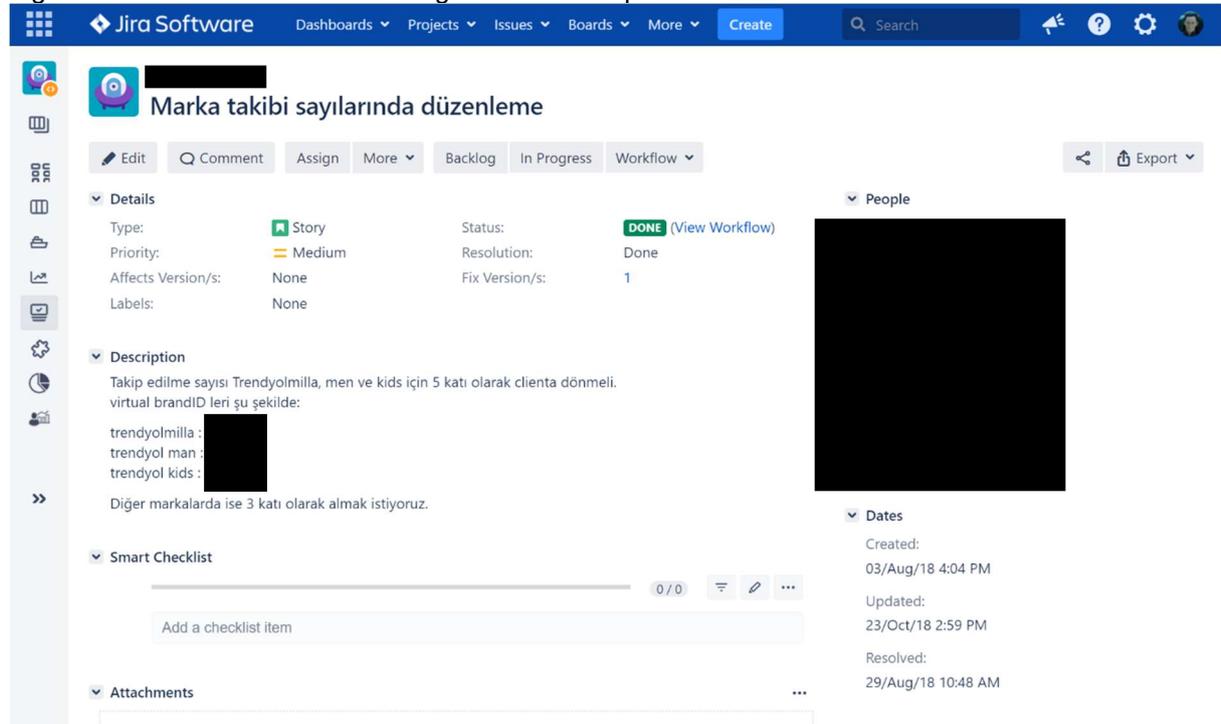
Figure 6: Screenshot obtained during the on-site inspection

Source: Documents obtained during the on-site inspection

- (17) Figure 6 shows that on August 15, 2017 at 12:47 (.....) created a task called *I want to multiply the raw score created by the smartlisting algorithm with a certain delivery type-*

based coefficient in the (.....) project. As understood from the task title and the explanation, the aim was carrying fast delivery products to higher ranks by multiplying their listing scores with high coefficients. The task was completed by (.....) on April 26, 2018 at 20:59⁸.

Figure 7: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (18) Figure 7 shows that on August 3, 2018 at 16:04, the task titled *arrangement in brand monitoring numbers* created by (.....) in the (.....) project was assigned to (.....). It is seen from the title and explanation of the task that the intention was to show the number of Trendyolmilla, Trendyol Man and Trendyol Kids followers five times more than the real number and the number of other brands' followers three times more than the real number. The task was marked as done by (.....) on August 29, 2018 at 10:48. This intervention to the number of followers showed Trendyol brands as if they were more popular than they deserved and provided an advantage compared to competitors. Moreover, the intervention manipulated the real data by showing the number of other brands' followers three times more than the real number and indicating that Trendyol application/the competing brands were used/took interactions/liked more than they should be and in this way misled both the sellers and users in the platform.

⁸ It is thought that the reason why the task was closed without coding/publishing is that it was understood that the desired infrastructure was made previously with a task (figure 4).

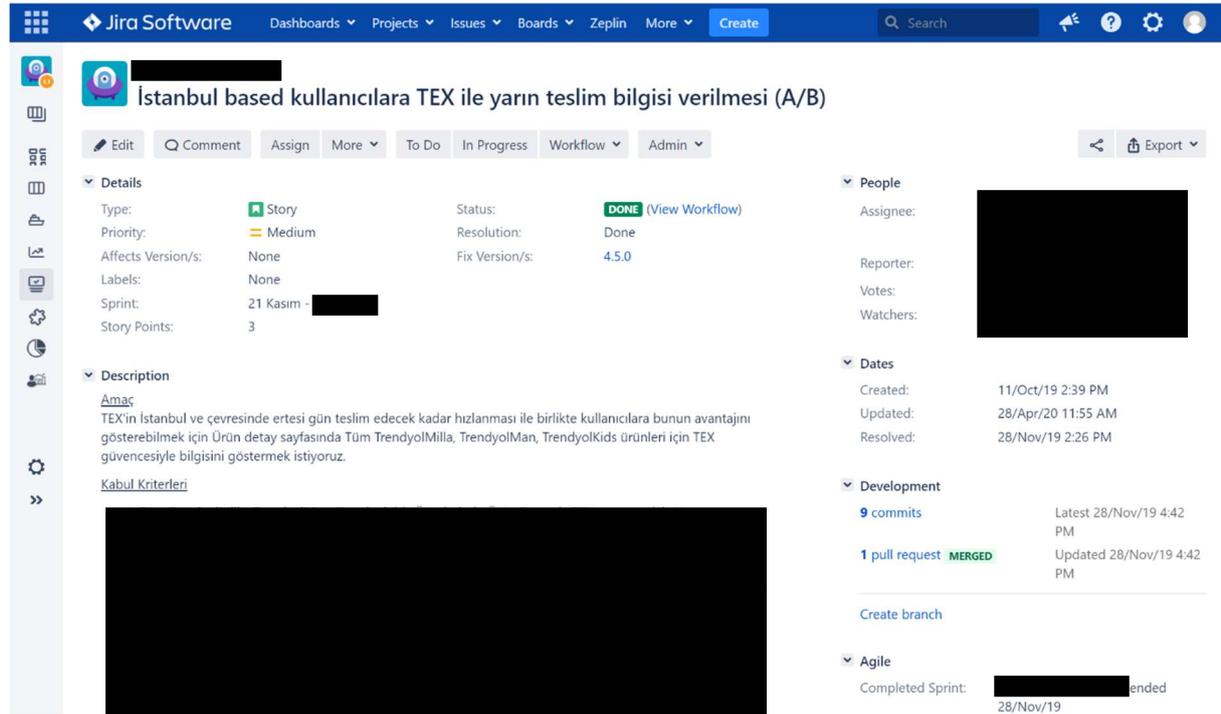
Figure 8: Screenshot obtained during the on-site inspection

The screenshot shows a Jira issue page for a user named [REDACTED]. The issue title is "Checkout - TY milla ve man için döndüğümüz sellerscore bilgisini dönmememe". The issue is of type "Story" with a status of "DONE". The priority is "Low". The description states: "Kapsam: Sepette Satıcı: Trendyol gösterdiğimiz alanda seller score bilgisini göstermemek gerekiyor." The issue was created on 07/Sep/21 at 1:11 PM and updated on 1 week ago. The assignee is [REDACTED].

Source: Documents obtained during the on-site inspection

- (19) Figure 8 shows that on September 07, 2021 at 13:11 (.....) created a task called *not turning sellerscore information that we turn for Checkout- TY milla and man* in the (.....) project. As understood from the details of the task, the request was not to show seller score for Trendyolmilla and Trendyol Man. The task was marked as done by (.....) on September 16, 2021 at 09:20. This intervention enabled Trendyol to manage consumer perception and gain advantage compared to other brands by hiding low scores given by users for its brands.

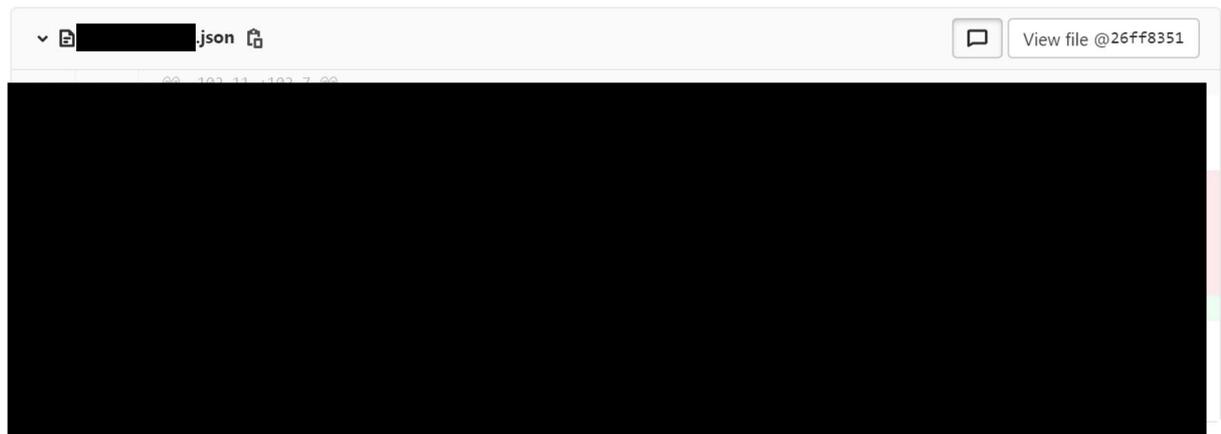
Figure 9: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (20) Figure 9 shows that on October 11, 2019 at 14:39 (.....) created a task called *giving İstanbul based users delivery the next day with TEX⁹ information (A/B)* in the (.....) project. As understood from the requests in the task details, the aim was to show next day delivery information only for TrendyolMilla, TrendyolMan and TrendyolKids products among the products to be delivered to İstanbul. It is understood that brands with equal status (those that use Trendyol Express and are able to deliver products in İstanbul) could not benefit from this change and Trendyol favored its own products.

Figure 10: Screenshot obtained during the on-site inspection



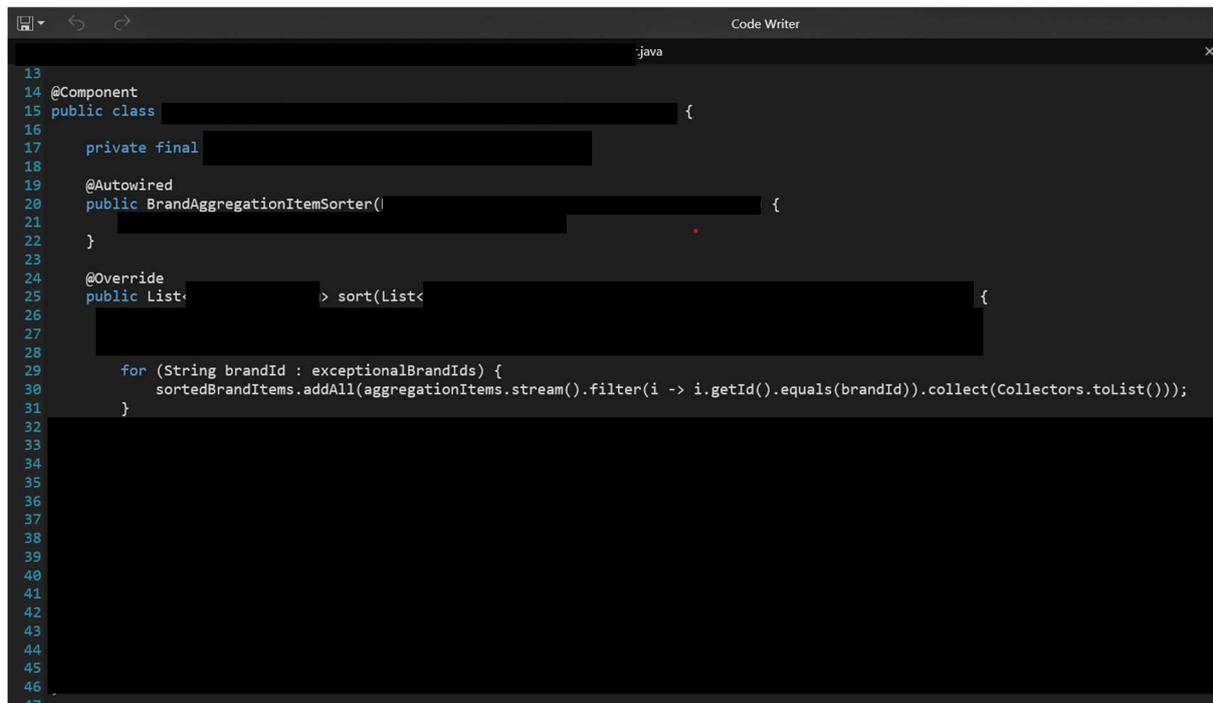
Source: Documents obtained during the on-site inspection

- (21) The document dated 2021 shows that there is an area called *exceptionalSortingListForBrands* in (.....).json file, which is the adjustment file of the search module used in Trendyol application. The numbers entered in this area belonged to TrendyolMilla, Trendyol Man and Trendyol Kids. The aim of

⁹ TEX means Trendyol Express

exceptionalSortingListForBrands area in the (.....) file is to keep the ids of the brands to be excluded while listing and to access and process those easily in the software.

Figure 11: Screenshot obtained during the on-site inspection

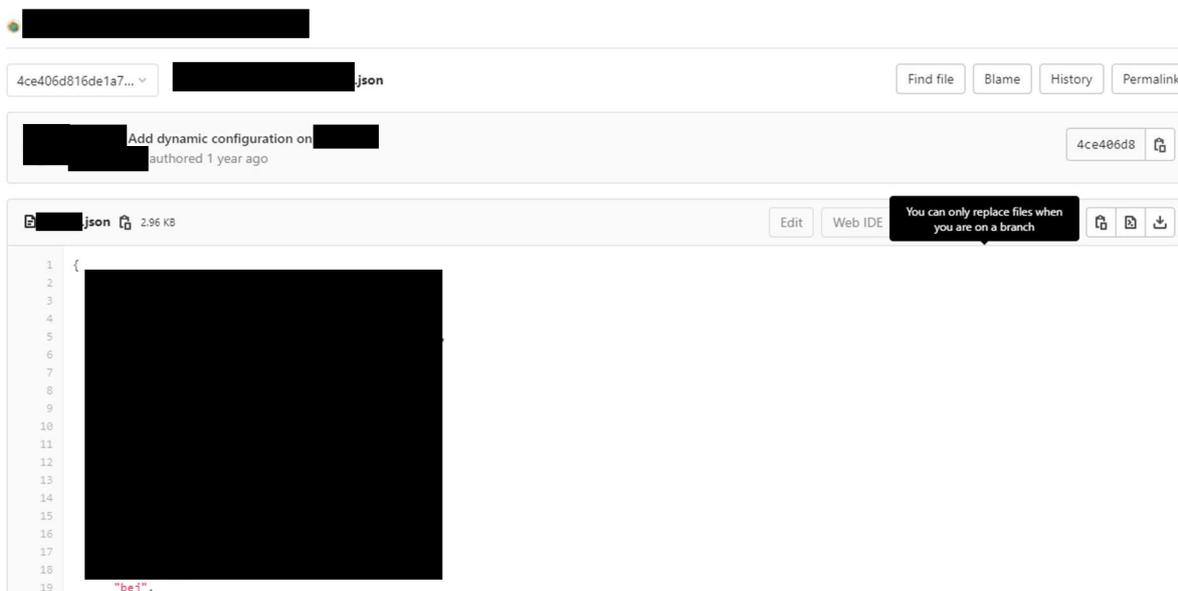


```
13
14 @Component
15 public class [REDACTED] {
16
17     private final [REDACTED]
18
19     @Autowired
20     public BrandAggregationItemSorter([REDACTED]) {
21     }
22
23
24     @Override
25     public List<[REDACTED]> sort(List<[REDACTED]> [REDACTED]) {
26
27         [REDACTED]
28
29         for (String brandId : exceptionalBrandIds) {
30             sortedBrandItems.addAll(
31                 aggregationItems.stream().filter(i -> i.getId().equals(brandId)).collect(Collectors.toList()));
32         }
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
```

Source: Documents obtained during the on-site inspection

- (22) The area where *exceptionalSortingListForBrands* ids in the (.....) file mentioned in Figure 10 are used in the listing algorithm is identified in Figure 11. When it comes to the values written in *exceptionalSortingListForBrands* (brand ids), the “sort” function places the relevant brands at the top of the list without subjecting them to the scoring on which the algorithm is based whereas other brands are listed according to the algorithm.

Figure 12: Screenshot obtained during the on-site inspection

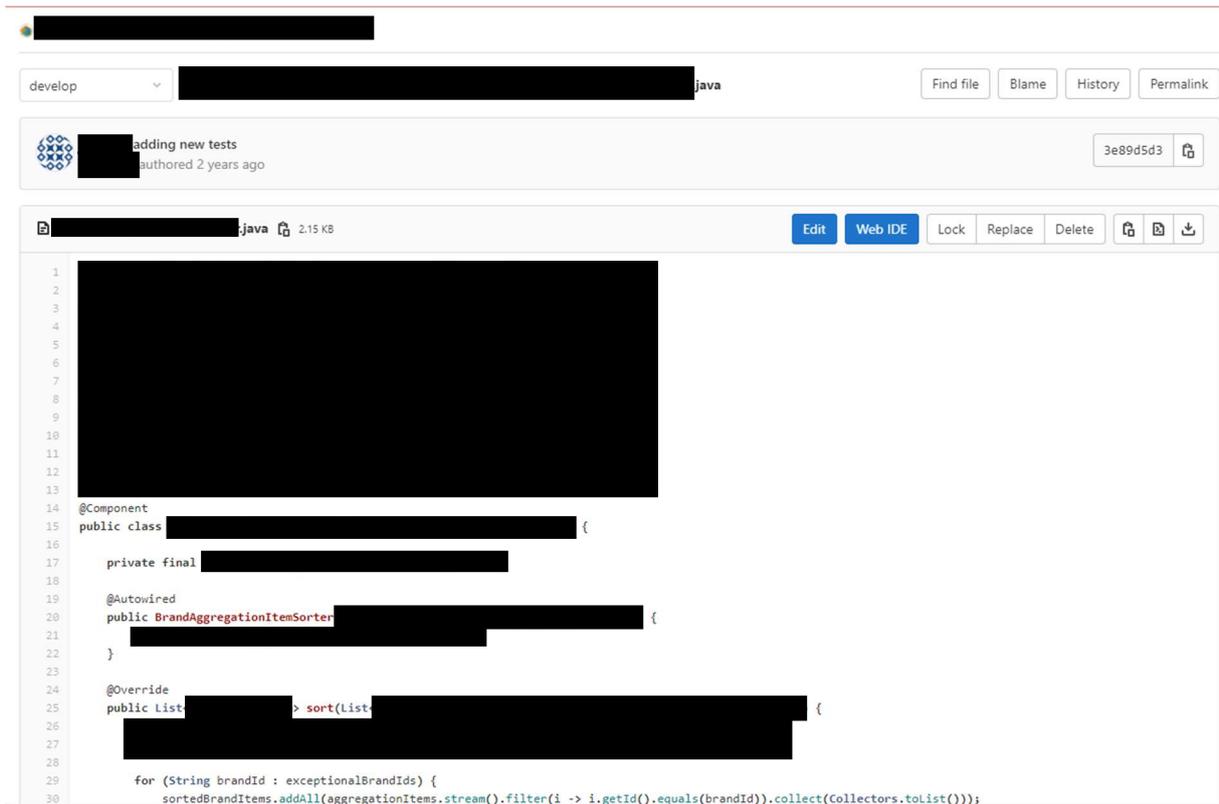


Source: Documents obtained during the on-site inspection

- (23) Figure 12 is the history of the search settings file shown in Figure 10 and it shows that exceptional brands were Trendyolmilla, Trendyol Man and Trendyol Kids from the date when they were uploaded to gitlab¹⁰ first until May 25, 2021. In this way, Trendyol’s own brands were shown in the highest rank in the listing. (.....) file was uploaded to gitlab in 2020 but taking into account the possibility that a different program might have been used before, the file may have been uploaded before.

¹⁰ Gitlab is a version control system which facilitates working with many people simultaneously, keeps codes, keeps past registration of those codes with versions, and keeps registration of who made which changes on the code. (...TRADE SECRET...)

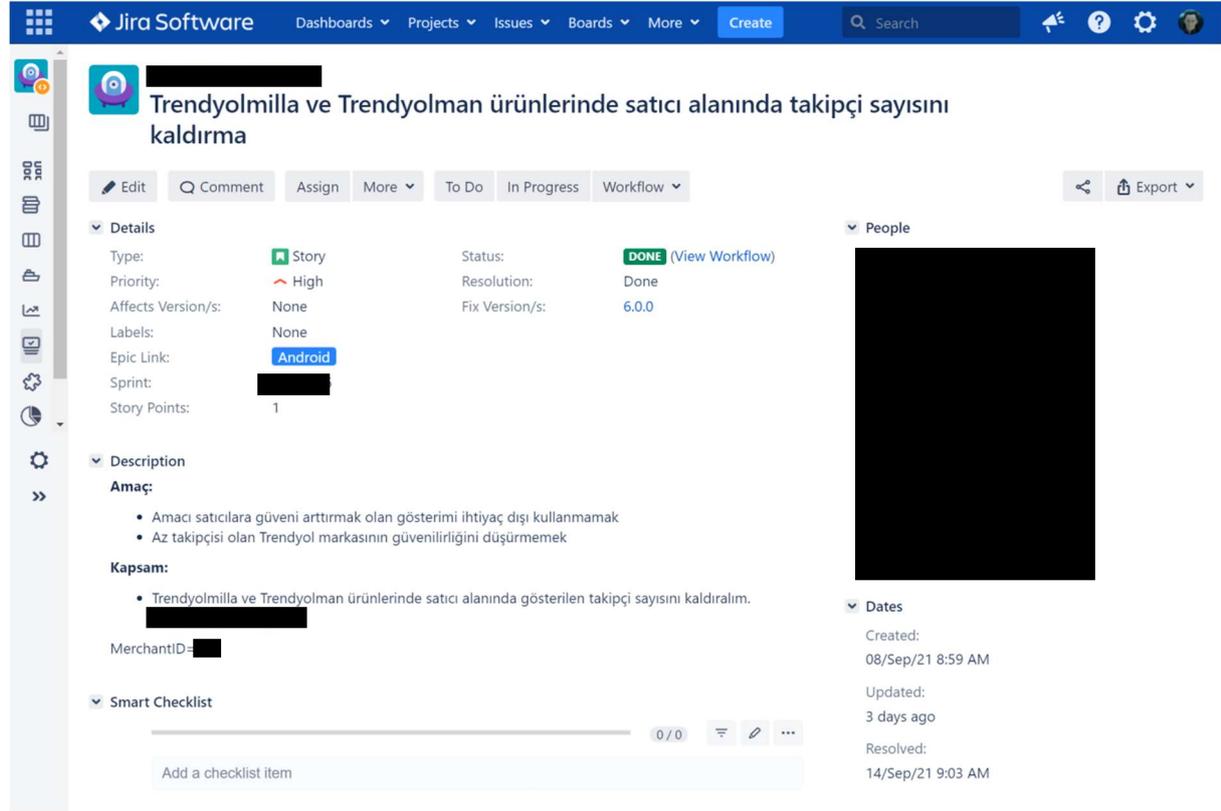
Figure 13: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (24) The document dated 2019 shown in Figure 13 above includes the history of a code block that displays how the excluded brands in Figure 11 were ranked. It is inferred from Figure 13 that the infrastructure which ensured that the desired brands were listed at the top was created at least two years before.

Figure 14: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (25) Figure 14 shows that on September 08, 2021 at 08:59 (.....) created a task called *removing follower number in seller area for TrendyolMilla and Trendyolman products* in the (.....) project. It is stated in the task details that this amendment was intended not to impair the reliability of Trendyol's brands that had few followers. The task was marked as done by (.....) on September 14, 2021 at 09:03. It is understood that Trendyol favors its own brands compared to other brands with this intervention.

H.1.1.2. Trendyol's Self-Preferencing Conduct towards its Retailing Activities by Benefiting from the Data of Sellers and Consumers Who Use Its Marketplace

- (26) The documents obtained during the on-site inspection show that Trendyol favored its retailing activities by benefiting from the data of sellers and consumers who use its marketplace in addition to the interventions made to the algorithm. Using third party data is considered anticompetitive as a type of self-preferencing conduct. This anticompetitive conduct is seen when dominant undertakings use the data they obtain and collect within the scope of the platform service they offer to their advantage. The data collected by such undertakings within the scope of the platform services they offer are important competitive factors in terms of volume and nature. The data are provided voluntarily by commercial users who use the platform services or collected by the undertaking that offers the service in relation with the transactions made by final users/third parties who use the platform services. Those data are very sensitive and provide information from a very large perspective such as product/service prices, price elasticity, supply conditions and consumer opinion. The dominant undertaking having those data can start to sell/offer the same product/service or produce/develop the same product/service without bearing any commercial risk or entry costs by taking actions

only with the advantage of having those data.¹¹ In fact, this concern is based on the risk that products that are profitable and popular among consumers are identified and copied (copy cat) thanks to the data providing much insight into consumer behavior and choice. The undertaking concerned takes credit for¹² the innovations made by undertakings that are dependent on it for reaching end users with data advantage as well as its ability to benefit from economies of scale and scope.¹³ Under these circumstances, dominant undertakings may offer lower prices than third party commercial users in the said products/services¹⁴.

- (27) Self-preferencing conduct based on data (it is also called forced free-riding in the literature) lead to more than one competitive concern. Since the undertaking in question benefits from its competitors' innovations without risks, competitors' incentive to innovate weakens, new products and services are prevented and consumer welfare is damaged.¹⁵ On the other hand, the collected data leads to information asymmetry in case of third party commercial users cannot reach similar data and competition will be affected negatively.¹⁶ Moreover, commercial users may be even excluded out of the market depending on the concentration levels in the market. Another innovation-based concern is that incentive to innovate and offer innovative products/services is lost when the dominant undertaking can benefit from its competitors' innovative results.¹⁷ As a result, innovation and accordingly product/service variety will decrease, which, in the medium and long term, will increase prices and lower consumer welfare.
- (28) In line with those explanations, the documents below which show that Trendyol benefited from third party sellers' and consumers' data for designing/marketing its own brands raised serious suspicions and constituted evidence related to Trendyol's data-based self-preferencing conduct.

¹¹ KAHN, L.M., (2017), "Amazon's Antitrust Paradox" The Yale Law Journal, p. 781-782.

¹² FARRELL, J., KATZ, M.L., "Innovation, rent extraction, and integration in systems markets", 48(4) Journal of Industrial Economics 413, (2000); JIANG, B., et al. , "Firm strategies in the "mid tail" of platform-based retailing", 30(5) Marketing Science 757, (2011); PARKER, G., ALSTYNE, M.W., "Innovation, openness, and platform control", 64(7) Management Science 3015, (2017), DHL, Onlinehändler im Spannungsfeld von Wachstum und Marktkonzentration, 2018, <https://www.dpdhl.com/content/dam/dpdhl/de/media-center/media-relations/documents/2018/dhl-e-commerce-studie-ifh-koeln-onlinehaendler-102018.pdf>, Accessed: 20.08.2020.

¹³ AYHAN B., (2020), Rekabet Hukuku Perspektifinden Çevrim içi Platformlarda Kendini Kayırma Sorunu ve Çözüm Önerileri, Competition Authority, Unpublished Expert Thesis, p. 7-8.

¹⁴ SARIÇİÇEK C., (2020), "Me, Myself and Amazon", p. 22.

¹⁵ Ibid., p.31.

¹⁶ *Investigation of Competition in Digital Markets*, (2020), Subcommittee on Antitrust, Commercial and Administrative Law of The Committee on The Judiciary https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519, Accessed: 02.02.2021, p. 283-284.

¹⁷ SARIÇİÇEK C., (2020), "Me, Myself and Amazon", p.31.

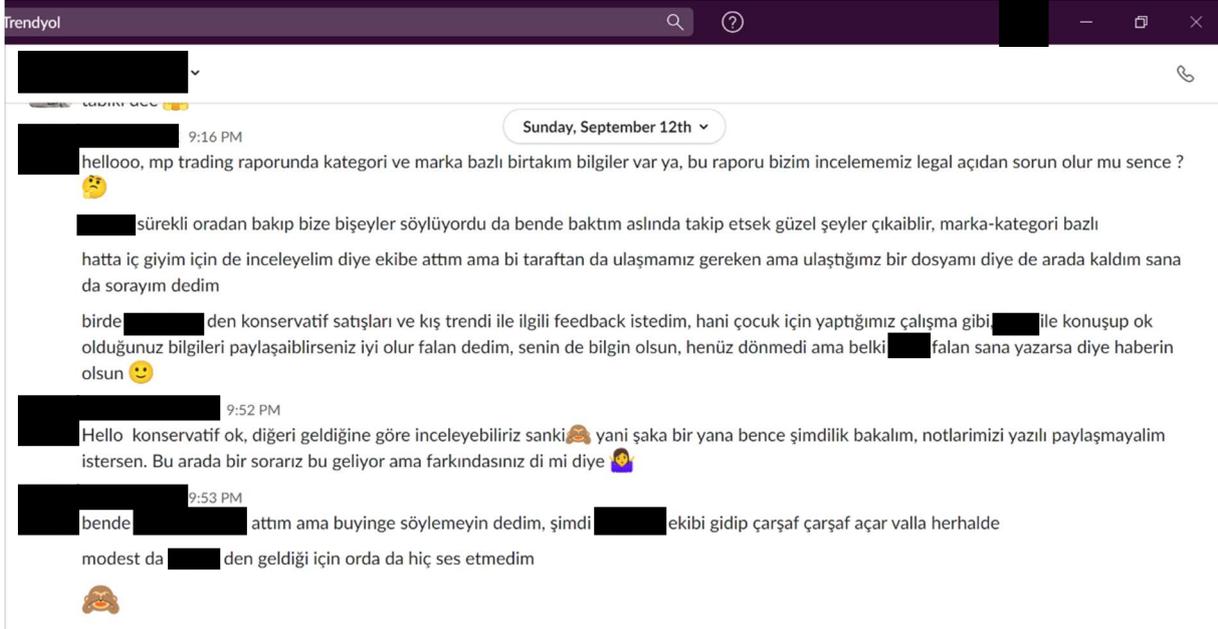
Figure 15: Screenshot obtained during the on-site inspection



Source: Documents obtained during the on-site inspection

- (29) Figure 15 shows a conversation between (.....) and (.....) that took place around three months before the on-site inspection, revealing that they could access data such as the sales of competing brands and similar products and used these data in order to forecast TrendyolMilla products.

Figure 16: Screenshot Obtained during the On-Site Inspection



Source: Documents Obtained during the On-Site Inspection

- (30) Figure 16 reveals that, on September 12, 2021, (.....) and (.....) had a *slack*¹⁸ conversation in which they talked about the fact that they accessed a report titled *mp trading* that included some brand-dependent information and that they discussed whether they could use the report to their benefit. This conversation also noted that this

¹⁸ Slack is a messaging tool.

brand-based information was previously used by the employee (.....). The employee (.....) mentioned in the conversation seems to be (.....), who is responsible for the modest fashion line of TrendyolMilla.

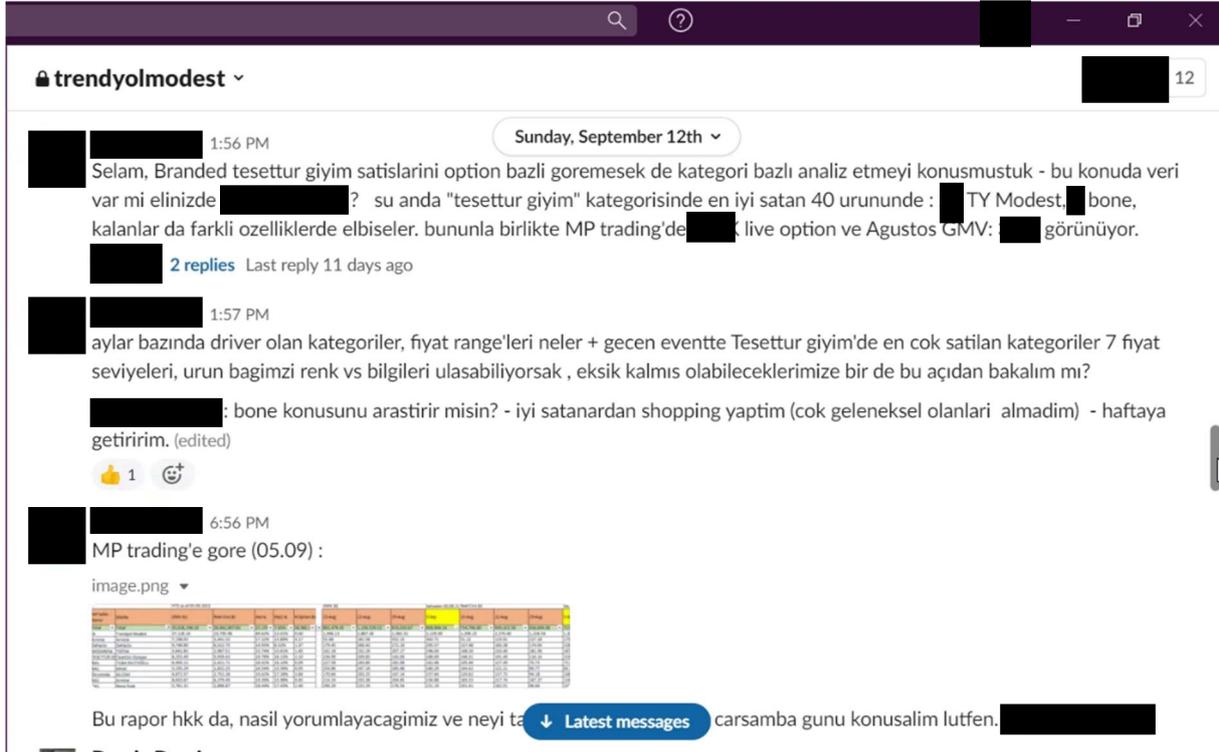
Figure 17: Screenshot Obtained during the On-Site Inspection



Source: Documents Obtained during the On-Site Inspection

- (31) The e-mail above reveals that the reports prepared for the Trendyol marketplace (MP) ecosystem was sent to employees working for Trendyol brands, including Dolap, which is Trendyol's second-hand sales platform.

Figure 18: Screenshot Obtained during the On-Site Inspection



Source: Documents Obtained during the On-Site Inspection

Figure 19: Screenshot Obtained during the On-Site Inspection

Product BU	MP Seller Name	Marka	YTD as of 05.09.2021				GMV (k)					between 30.08.21 Reel Ciro (k)					
			GMV (k)	Reel Ciro (k)	PM %	PM2 %	# Option (k)	15-Aug	22-Aug	29-Aug	5-Sep	15-Aug	22-Aug	29-Aug	5-Sep		
Total	Total	Total															
PL	IA	Trendyol Modest															
Konservatif	Armine	Armine															
Konservatif	Defacto	Defacto															
Konservatif	MODANISA	TOPISA															
Konservatif	TESETTUR D	Tesettür Dünyası															
Konservatif	NA1	TUBA MUTLÜĞÜ															
Konservatif	NA1	Minel															
Konservatif	Ekrumoda	ALLDAY															
Konservatif	NA1	Armine															
Konservatif	NA1	Neva Style															

Source: Documents Obtained during the On-Site Inspection

- (32) The correspondence included above in Figures 18 and 19 were sent to the *trendyolmodest* group by (.....), who is responsible for TrendyolMilla modest fashion line, and they reveal that data in the *MP trading* reports belonging to third party sellers, such as *best-selling 40 products, price levels in the best-selling categories, color information, etc.* were used by Trendyol in the marketing of their own brands.

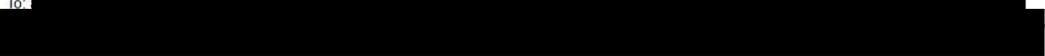
Figure 20: Screenshot Obtained during the On-Site Inspection

9/23/21, 12:45 PM DSM Grup Danışmanlık İletişim ve Satış Tic. A.Ş Mail - Trending Search Terms

trendyol 

Trending Search Terms
1 message

Analytics Reports  Thu, Sep 23, 2021 at 8:18 AM

To: 

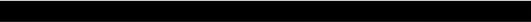
Merhaba,

Son 7 gün en çok aranan top 250 keyword listelenmiştir.

Tüm liste için ekteki excel'i kullanabilirsiniz.

Rapor her gün refresh edilir.

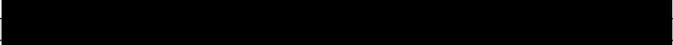
-Total Search Count (L7D): Son 7 gün toplam search edilme sayısı
-Total Search Count (prev. 3 weeks): Son 7 günden önceki 3 haftalık periyotta toplam search edilme sayısı
-Search Change: Daily serch count (L7D)/ daily search count (prev. 3 weeks)-1

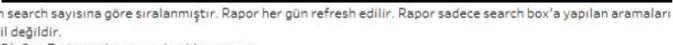


Trending Search Terms - Top 250

Search term	Total Search Count (L7D)	Daily Search Count (L7D)	Total Search Count (prev. 3 weeks)	Daily Search Count (prev. 3 weeks)	Search Change
sweatshirt					
trendyolmilla					
elbise					
bot					
mont					
hirka					
ceket					
pantolon					
kardin					

https://mail.google.com/mail/u/0/?ik=hr6e3f67a619a6-n6-search-all&emthid=thread_PC3A1711668738471980761&siml=mc_PC3A1711668738471980761 1/0

Uznes: 

toka 

Rapor, son 7 gün toplam search sayısına göre sıralanmıştır. Rapor her gün refresh edilir. Rapor sadece search box'a yapılan aramaları kapsar, navigasyon dahil değildir.

- Total Search Count (L7D): Son 7 gün toplam search edilme sayısı
- Total Search Count (prev. 3 weeks): Son 7 günden önceki 3 haftalık periyotta toplam search edilme sayısı
- Search Change: Daily serch count (L7D)/ daily search count (prev. 3 weeks)-1

Source: Documents Obtained during the On-Site Inspection

- (33) The e-mail in Figure 20, dated September 23, 2021, shows that the most searched 250 words in Trendyol were reported to departments such as *marketing*, *planning* and *product*, which were responsible for the strategy and product design of the company. It is also noted that the keywords in this report were those most frequently searched in the last seven days, and the data on the words concerned were updated every day. Thus, it is clear that the reporting was made periodically.
- (34) In light of this information, it becomes apparent that information provided by third party sellers as part of their operations on the relevant platform, which was created as a result of these sellers' interaction with the consumers were used by Trendyol to develop its own commercial operations and compete with the third party sellers in question. Since these information were not accessible by competing third party sellers, Trendyol's self-preferencing conduct would be very likely to distort competition in the market.

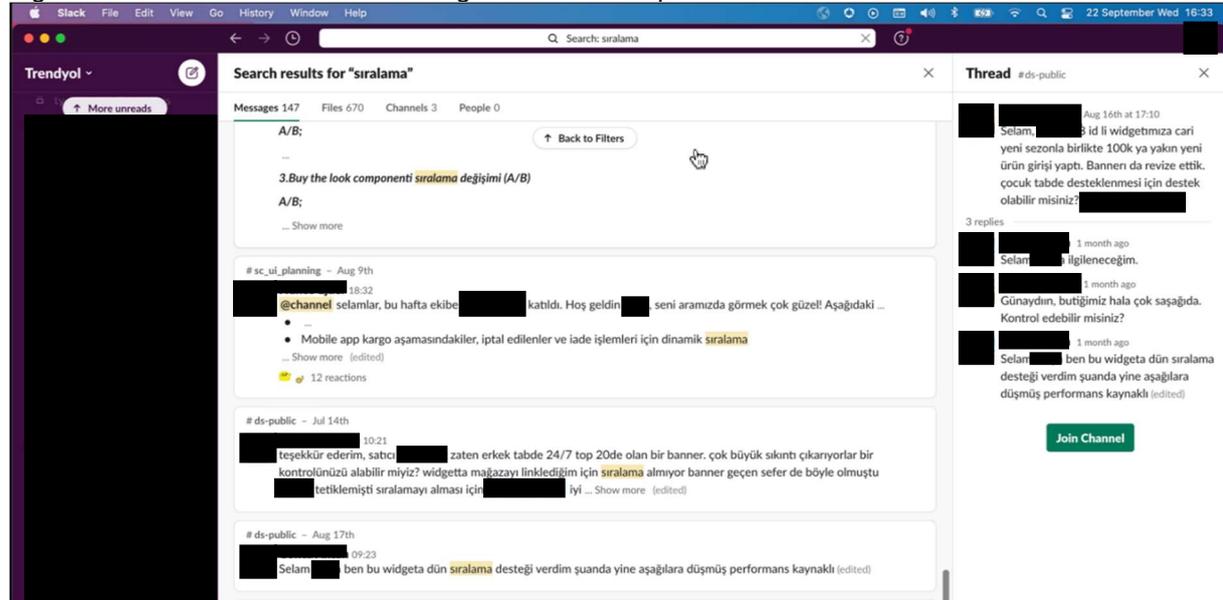
H.1.2 Trendyol Changing the Algorithm to Discriminate between Sellers Using the Trendyol Platform

- (35) As known, Article 6(b) of the Act no 4054 prohibits dominant undertakings from "*making direct or indirect discrimination between purchasers with equal status by offering different terms for the same and equal rights, obligations and acts.*" Information

Obtained during the on-site inspection showed that Trendyol discriminated between sellers by interfering with the algorithm, in violation of this provision.

- (36) As seen in Figures 4, 5 and 6 given above, which were also used as evidence of Trendyol's self-preferencing, it is possible to interfere with the raw score created by the ranking algorithm to place preferred brands higher.
- (37) The following documents also show Trendyol's interference in the rankings.

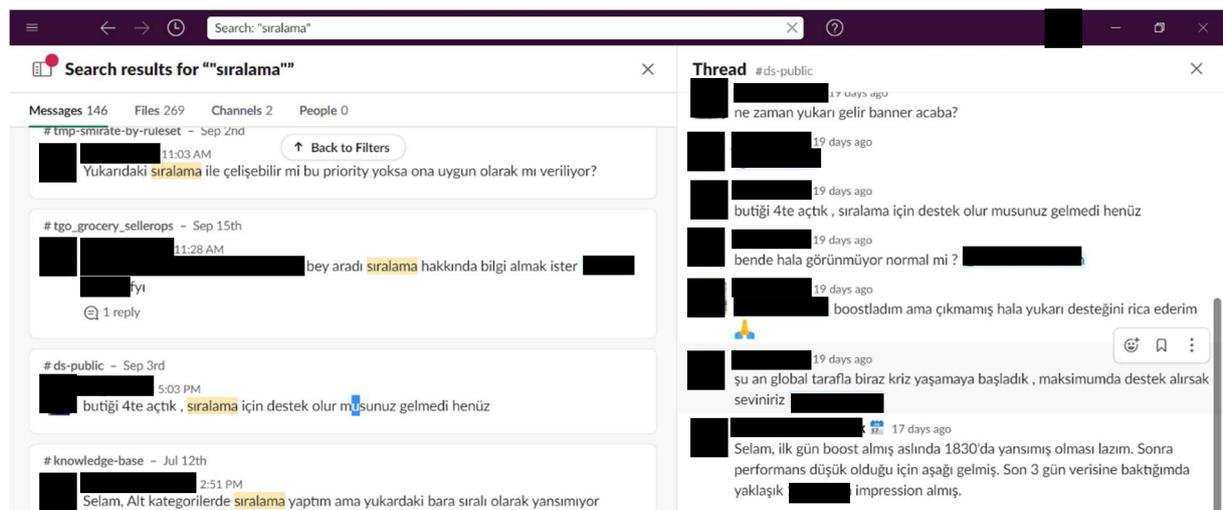
Figure 21: Screenshot Obtained during the On-Site Inspection



Source: Documents Obtained during the On-Site Inspection

- (38) The document above notes that, in the slack chat between (.....) and (.....) which started at 17:10 on August 16, 2021, it was stated that a brand selling in the childrenswear category had fallen behind in the organic rankings despite receiving ranking assistance, and this brand was requested to be placed higher in the listings.

Figure 22: Screenshot Obtained during the On-Site Inspection



Source: Documents Obtained during the On-Site Inspection

- (39) Figure 22 includes a *slack* chat between (.....), (.....) and (.....) from September 3, 2021, requesting ranking assistance for a newly-opened boutique. The chat suggests that the relevant boutique failed to rise up to the desired rankings despite the assistance provided and thus requested additional support.
- (40) Similarly, documents in Figure 10 and 11 shown above not only provide proof for self-preferencing, but also reveal that certain sellers were granted some advantages in rankings; in other words, Trendyol discriminated between sellers. As mentioned before, it is evident from the relevant documents that the settings file of the search module used by the Trendyol app, (.....).json, has a field called *exceptionalSortingListForBrands*, and the brands included in this field can be exempted from the listing process, the relevant brands can be placed at the top of the rankings, while other brands are ranked according to the results of the search algorithm.
- (41) Another evidence of discrimination is the video recording of the advertisement algorithm training Trendyol provided to technical personnel, which was acquired during the on-site inspection. The recording in question states “*advertising brands are listed at the top in the organic rankings even after the advertisement period is over.*” This recording shows that there is discrimination between the sellers in the marketplace, which is implemented through the lack of transparency concerning the rules of takings ads for sponsored products.

H.2. Assessment on the Application of Interim Measures

- (42) Article 9.4 of the Act no 4054 provides that interim measures may be taken “*where the occurrence of serious and irreparable damages is likely until the final decision is taken, in order to maintain the situation before the infringement.*”
- (43) The documents included above, which were acquired during the on-site inspection and which prove that Trendyol favored its own retail products/services and discriminated between sellers constitute serious findings that show that there was a violation of Article 6 of the Act no 4054. This is because it is assessed that, due to the self-preferencing behavior evidenced by the documents, Trendyol did not compete under equal terms with rival sellers and that this unfairness would result in the exclusion of the sellers from the market or complicating their operations within the market. Rival sellers benefiting from Trendyol’s platform services would be unable to rank high in consumer searches, even if they offer products/services at the same or higher quality as compared to Trendyol branded ones.
- (44) At this juncture, it is important to make note of Trendyol’s position in the market in order to identify its dominant position and abuse conduct, and to better understand the severity of the potential harm to the consumer. Chart 1 below shows the market share of the platforms operating in the “*multi-category e-marketplace market,*” based on transaction volume:

Chart 1: Market Share Trends of Undertakings Based on Total Transaction Volume (2015 – First 8 Months of 2021)

TRADE SECRET

Source: Documents Obtained from the Undertakings

- (45) As shown in the chart above, Trendyol is the market leader in multi-category e-marketplaces since 2019, raising its market share to (.....)% with a speed unmatched by

its rivals (a growth of (.....)%) in 2020, to reach (.....)% by 2021. Looking at the market shares of Trendyol and its closest rival Hepsiburada, Trendyol seems to be steadily increasing its market share in 2020 and 2021 while Hepsiburada lost market share, with the market share difference between Hepsiburada and Trendyol reaching (.....) in 2021. In the last three years, N11 and Gittigidiyor, which are among the important players in the market, also consistently lost market share. Thus, Trendyol does not seem to face any competitive pressure in terms of market share.

- (46) This outlook is also supported by an examination of the growth rates of the undertakings in terms of total transaction volumes, which shows that the relevant market grew between 2015 and 2020, however, Trendyol took the largest share of the growing market when compared to its rivals.

Chart 2: Growth Rate Trends of Undertakings Based on Total Transaction Volume (2015 – First 8 Months of 2021)

TRADE SECRET

Source: Documents Obtained from the Undertakings

- (47) According to the data above, Trendyol displayed a growth rate of (.....)% in transaction volume in 2019, which is (.....) times larger than Hepsiburada, which showed the closest growth. The chart below shows that Trendyol's dominance in the market was largely due to its sales in the fashion category. In the fashion category, Trendyol is the leader with a market share of (.....)%, followed by its closest rival Morhipo with a market share of (.....)%.

Chart 3: Market Share Trends of Undertakings in the Fashion category (2015 – First 8 Months of 2021)

TRADE SECRET

Source: Documents Obtained from the Undertakings

- (48) To emphasize this development in Trendyol's fashion category more clearly, a look at the amount spent directly in the fashion category shows that the total amount spent in the fashion category by the end of 2020 was (.....) billion TL for the multi-category e-marketplace field, with (.....) billion TL of that total having been spent through Trendyol. As seen in the chart below, the fashion category has grown throughout the years, and Trendyol took the largest share of this growing market while its rivals failed to achieve appreciable growth.

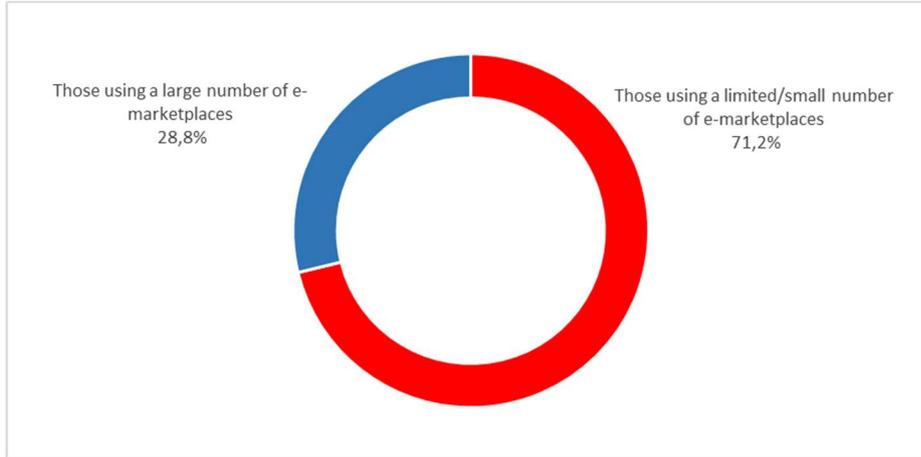
Chart 4: Transaction Volume and Growth Rate Trends of the Fashion Category

TRADE SECRET

Source: Documents Obtained from the Undertakings

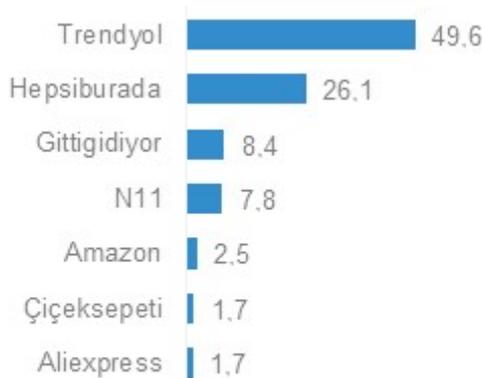
- (49) As a result, Trendyol is assessed to be the first undertaking the consumers think of in the fashion category, and therefore has a decisive role to play in determining market dynamics.
- (50) Another factor supporting Trendyol's development in the market based on the expenditure amounts is consumer choice. That is to say, according to the data gathered from the consumer survey carried out within the framework of the E-Marketplace Platforms Sector Inquiry, 71.2% of the consumers use a limited/low number of e-marketplace platforms, Trendyol being the most frequently used e-marketplace by the consumers with a ratio of 49.6%.

Chart 5: Consumers' Use of E-Marketplaces for Shopping



Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

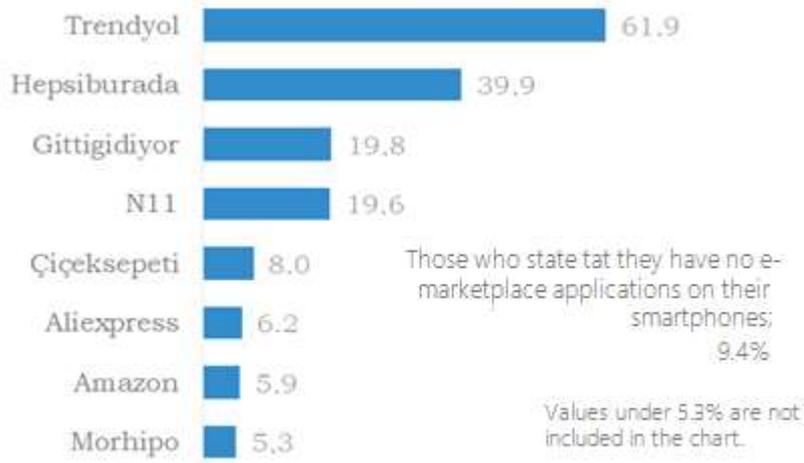
Chart 6: Marketplaces Most Frequently Used by Consumers



Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

- (51) According to data from the same consumer survey, Trendyol's power is also revealed by the fact that, with a ratio of 61.9%, a majority of the consumers chose the Trendyol application as the app they had installed on their smartphones, as seen below.

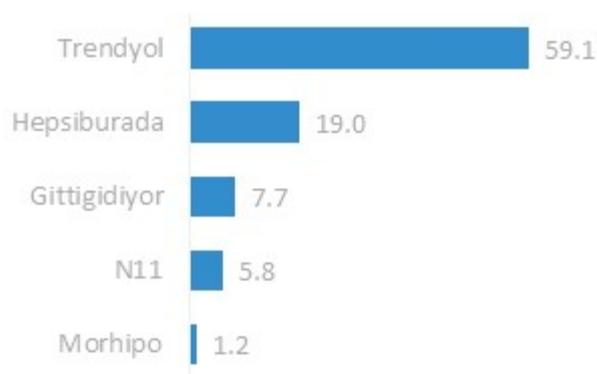
Chart 7: E-Marketplace Applications Installed on Consumers' Smartphones (%)



Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

- (52) Another factor reinforcing this advantage Trendyol enjoys based on consumer choice is the fact that 59.1% of the consumers who only have one app installed on their phones had the Trendyol application. Accordingly, consumers' choice of e-marketplace platforms is shown in the following chart:

Chart 8: E-Marketplace Platforms That Have Their Application on Consumers' Smartphones (%)



Source: E-Marketplace Platforms Sector Inquiry Consumer Survey

- (53) In light of the data concerned, and considering that consumers predominantly prefer Trendyol and 48.7% of the consumers have only one application installed on their smartphones, Trendyol clearly holds a significant advantage in comparison to its rivals.
- (54) The following table includes the progress of market shares on the basis of the number of visits, and an examination of it shows Trendyol's significant advantage in terms of consumer choice, with its (.....)% market share.

Chart 9: Market Share Based on Number of Visits

TRADE SECRET

Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

- (55) According to the data above, Trendyol's being the most frequently visited platform among e-marketplaces increase the value of selling on the Trendyol platform and reinforces its position before the sellers. The following table shows the ratio of sellers which consider the e-marketplace they are on indispensable, serving as the basis of the opinion above.

Table 1: Ratio of Sellers That Consider the E-Marketplace They Are on an Indispensable Trade Partner

Marketplace	Ratio of Sellers That Consider It an Indispensable Trade Partner
Trendyol	48.9
Hepsiburada	27.3
N11	22.8
ÇiçekSepeti	22.2
Morhipo	15.8
GittiGidiyor	14.6
Aliexpress	10.9
Amazon	9.5
EpttAvm	6.7

Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

- (56) According to the table above, around half of the sellers on Trendyol define Trendyol as an indispensable trade partner. Thus, nearly half of the sellers on Trendyol have no incentive to sell through alternative distribution channels other than Trendyol, which grants Trendyol significant negotiating power before the sellers. In addition, an overview of the size of sellers on Trendyol shows that these sellers would be unable to affect Trendyol's negotiating power. In order to demonstrate this, the share of the five sellers with the largest share of Trendyol's transaction volume in 2019 was examined, since this was the year Trendyol's growth gained the most momentum. It was determined that, as a seller in its own right, Trendyol had the largest share in the total sales volume of the e-marketplace, with the closest seller getting a share of (.....)% from the sales in question.

Table 2: The Share of the Top 4 Large Sellers in the Trendyol Marketplace in the Total Marketplace Sales (%)

TRADE SECRET

The data above show that even the share of the largest sellers in the Trendyol e-marketplace in the marketplace sales were very low, in terms of sales volume. As a result, sellers' ability to negotiate against Trendyol policies was significantly impeded, reinforcing Trendyol's dominant position in the market.

- (57) At the same time, the E-Marketplace Platforms Sector Inquiry Preliminary Report found that 63.5% of the consumers shopping in the marketplace thought the identity of the marketplace was more important than the sellers and 54.5% of them would prefer to shop from the marketplace if the marketplace was also a seller on the platform. Both of these findings grant a strong position to hybrid marketplaces such as Trendyol before the sellers, and under these conditions, any anti-competitive conduct by the marketplace could have a more disruptive effect on the sellers.

- (58) In terms of barriers to entry and growth, Amazon Turkey Perakende Hizmetleri Limited Şirketi (Amazon), which entered the market in 2018, could only reach a transaction volume of (.....) billion TL by 2020, showing that even a global giant was unable to easily gain market share and that finding a place in consumer habits and thus creating demand for the platform required significant investments. In addition, advertisement expenses aimed at increasing brand recognition and consumer visits were another significant cost item in order to remain and/or grow in the market. To that end, an examination of the investment expenses in the market shows that Trendyol increased its ad expenditures by (.....)% in 2020, creating an advertising budget that is nearly (.....) times the ad budget of its closest rival Hepsiburada and close to the total ad budgets of all other players in the market. The positive effects of the high ad expenditures in question on the sales volume are proven by the fact that Trendyol has become the leader in many categories starting in 2019.

Chart 10: Ad Expenditures of E-Marketplaces

TRADE SECRET

Source: E-Marketplace Platforms Sector Inquiry Preliminary Report

- (59) This table also shows that competitors were unable to gain market share despite increasing ad budgets and therefore had a limited ability to check Trendyol's growth. According to the table above, in the 2019-2020 period, Hepsiburada spent the largest amount on ads after Trendyol, increasing its expenditure in 2020 by (.....)% compared to the previous year to reach about (.....) TL, but managed only half of the improvement in the market that was achieved by Trendyol.
- (60) In light of the information and findings above, it was found that Trendyol held a dominant position in the multi-category e-marketplaces sector due to its disproportionately high market share, the existence of barriers to entry and the lack of buyer power.
- (61) In light of Trendyol's dominant position and the fact that its retail activities are concentrated in the fashion category, it seems highly likely that Trendyol's dominance in this market is fed by the anti-competitive practices presented, based on the documents acquired. On the other hand, these practices can restrict the sales of sellers operating on the platform made through the relevant e-marketplace and complicate their activities in the market. As a result, it was assessed that the practices in question risked leading to significant and non-compensable damages until the final decision can be taken at the end of the investigation. This is because Trendyol's market share showed a significant increase of around (.....)% in a period as short as a year (in the 2020-2021 period), which confirms that delaying necessary interventions in the digital markets can cause irrevocable harm. Thus, it was concluded that interim measures should be imposed against Trendyol's practices and behavior involving self-preferencing and discrimination.
- (62) In this framework, it was decided that interim measures should be taken as per Article 9.4 of the Act no 4054, in order to prevent the creation of hard or impossible to recover harm until the final decision, resulting from Trendyol's practices and behavior which involve (i) interfering with the algorithm to advantage the products it offers for sale in its retailer role and providing the "next-day delivery" service only for its own products; (ii) using the data of the other sellers on the platform in creating its marketing/design

strategy so as to advantage its retail activities, and (iii) discriminating between the sellers on the marketplace through its interference with the algorithm as well as its lack of transparency concerning sponsored products.

I. CONCLUSION

(63) In accordance with the report prepared and the contents of the file examined, it was decided, UNANIMOUSLY,

- a) To take interim measures under Article 9.4 of the Act no 4054, in order to ensure that DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ
 1. Terminate all types of conduct, practice and behavior related to the other products and services under its corporate umbrella aimed at gaining advantage before its competitors, including any interference via algorithms and coding, and avoid such behavior during the remaining part of the investigation process,
 2. Stop sharing and using all types of data it collects from its marketplace activities to benefit other products and services under its corporate umbrella, and avoid such behavior during the remaining part of the investigation process,
 3. Terminate all types of conduct, practice and behavior that could discriminate between sellers on the marketplace, including any interference via algorithms and coding, and avoid such behavior during the remaining part of the investigation process,
 4. Take all technical, administrative and organizational measures to ensure that the interim measures listed above can be reviewed,
 5. Keep a record of all parametric and structural changes made to all algorithm models used by the DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ for product searches, seller listing, seller rating calculation, etc. for a period of at least 8 (eight) years, including version numbers and with incontestable integrity,
 6. Keep the source codes for all software specially developed for use by DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ for a period of at least 8 (eight) years, including version numbers and with incontestable integrity,
 7. Keep the user access and authorization records as well as administrator audit records for all software used by DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ in order to execute business processes, for a period of at least 8 (eight) years with incontestable integrity,
- b) To implement the obligations numbered 1, 2, 3, 5, 6 and 7 within 30 days following the notification of the reasoned decision to the undertaking, and submit its action plan for the implementation of the obligation numbered 4 within 30 days following the notification of the reasoned decision to the undertaking,
- c) To impose administrative fines under Article 17 of the Act no 4054 on the undertaking concerned in case these obligations are not carried out,

with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision.