

Recent Developments under Turkish Competition Law

2024 Spring Issue

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Introduction

In this Spring Edition, we delve into a variety of intriguing topics, ranging from the Turkish Competition Authority's ("TCA") vigilant scrutiny of several sectors to significant actions taken by regulatory bodies across the globe.

We commence with a close examination of TCA's focused attention on the tech sector, providing insights into a brand new interim measure imposed on Meta, accompanied by an exploration of the company's ongoing struggle with compliance issues. In a similar vein, we unravel the TCA's recent imposition of fines on Nesine.com, an online betting platform, to better understand the broader implications for players in the digital marketplace.

Shifting our focus to the international arena, we scrutinize the European Commission's rigorous examination of tech giants Apple, Google, and Meta for potential breaches of the Digital Markets Act ("DMA"). This landmark investigation marks a significant step towards curbing anti-competitive practices and fostering innovation in the digital realm.

Aside from the tech industry, we observe the TCA's active involvement in several other industries including cosmetics, logistics, and packaging. We analyse the TCA's crackdown on resale price maintenance and the restriction of internet sales in the cosmetics industry, highlighting its efforts to foster fair competition and protect consumer interests within the sector. Subsequently, we explore the increasing number of settlement cases through the latest egg viol decision of the TCA, where companies operating in the egg carton production swiftly opted for the settlement procedure. Lastly, we explore the TCA's stance on the logistics sector with a specific focus on the DHL/MNG case.

In sum, this Spring Issue aims to offer a comprehensive overview of the latest developments and pivotal cases reshaping the competitive landscape. We hope you find this Spring Issue helpful.

Togan Turan





No Escape in the Digital Markets: Interim Measure and Daily Administrative Monetary Fine to Meta

by Gülçin Dere, Sabiha Ulusoy

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Within scope of the full-fledged investigation initiated by the Turkish Competition Board (the “**Board**”) decision dated 23 November 2023 and numbered 23-54/1031-M against Meta Platforms Inc. (“**Meta**”), the Board decided to impose an interim measure – until it renders the final decision- which prevents Meta merging the data populated by Threads and Instagram application pursuant to Article 9(4) of Law No. 4054 on Protection of Competition (“**Law No. 4054**”) in order to avoid the competition law violations in the relevant product market subject to the investigation, and the irreparable damages which are likely to occur. This interim measure also flagged that Meta will face administrative monetary fine if it fails to fulfil the obligations.

Background

The Board initiated a full-fledged investigation against Meta due to the allegations that it violated Article 6 of Law No. 4054 by way of linking its brand new application namely Threads with Instagram. While the investigation is still ongoing, the Board decided to apply an interim measure on Meta in order to avoid damage in the market pursuant to Article 9(4) of Law No. 4054. In this regard, the Board put the following two practices of Meta under the microscope as part of its analysis: (i) Linking

Threads with Instagram, and (ii) merging data of each Threads and Instagram.

Meta launched Threads in July 2023 in Türkiye. In November 2023, while the investigation process related to linking behaviour was ongoing, Meta made certain updates enabling users to delete their Thread profiles without deleting the related Instagram account. In this regard, the Board decided that it is no longer necessary to adopt any interim measure regarding the linking behaviour due to the said update. However, during the preliminary investigation process, the TCA found that Meta would merge the data obtained through Threads with certain data obtained from Instagram.

The Board considers that merging the user data obtained from Instagram and Threads is a significant indication that Meta has violated Article 6 of Law No. 4054 despite the remedies imposed in its *Meta* decision dated 20 October 2022 and numbered 22-48/706-299.¹ In its *Meta* decision, the Board decided that (i) Meta restricted the competition by way of complicating the activities of its competitors operating in personal social networking services and online display advertising markets, and creating barriers to entry to the market by means of merging the data collected from the core services of Meta, (ii) Meta violated Article 6 of Law No. 4054, and (iii) Meta must submit the necessary measures to the TCA within the specified period in order to establish the effective competition in the market.

In line with the foregoing, the Board concluded that Meta’s practice on merging data of the users creating Threads profiles linked to their Instagram accounts without taking their consent would lead to irreparable harms until the completion of the investigation based on the following grounds:

- Meta has comprehensive and detailed data accumulation, as it has been active in the market for long years.
- Meta has a large and diverse user base, which makes it attractive for advertisers.

¹ In its *Meta* decision, the Board evaluated the alleged data merging as an exclusionary abuse and analysed its impact in both the social networking and online display advertising services markets. Please see Paksoy’s Newsletter 2024 Winter Issue for remedies imposed on Meta: <https://www.paksoy.av.tr/Files/Publications/Paksoy%20Publication%20-%20Turkish%20Competition%20Law%20Newsletter%20Winter%202024.pdf>

- This situation enables Meta to allocate more resources to improve its services, and makes it difficult for competitors to access advertisers and thus financial resources. Accordingly, Meta's practices creates an entry barrier in the market.
- Furthermore, Meta operates as an ecosystem along with its core services and related services, which enables Meta to supplement the power and accumulation it obtains from each service to another service, and increase its market power.

The Board considers the fact that Meta has a dominant position as determined within the scope of the ongoing investigation also strengthens the grounds regarding the anti-competitive effects in the market arising from the data merging. As such, the Board concludes that merging the data obtained from Threads and Instagram application during the investigation process will serve to maintain and strengthen Meta's current position in the market. In addition, the Board highlights that this practice may raise concerns related to exclusion, as well as issues such as eliminating the consumer's capability of making free choice.

Interim Measure and Daily Administrative Monetary Fine

In light of the foregoing, the Board concluded that delay in intervening to the competitive issues observed in the digital markets would most likely cause to harm the competitive environment in the market, and arise the irreversible consequences. In this regard, pursuant to Article 9(4) of Law No. 4054, the Board members unanimously decided to apply an interim measure to prevent Meta to merge the data obtained from Threads with the data obtained from Instagram application until the final decision to be rendered at the end of the ongoing investigation. Furthermore, if Meta fails to fulfil this obligation to cease the data merger, it would face an administrative monetary fine as well.

In this regard, according to the recent announcement of the TCA published on 6 May 2024, the Board imposed daily administrative monetary fine of TRY 4,796,152.96 (EUR 138,617)² starting from

20 February 2024 until Meta fulfils the compliance requirements. In the ongoing process, Meta submitted certain proposals implemented for the users in European Union within the scope of "use without a profile". However, the Board did not approve those proposals since (i) an Instagram account (active or inactive) is required to use Threads, (ii) the data merging activity continues for users who currently use Threads with their existing accounts, and (iii) use without a profile causes a lower service quality compared to use with a profile, and therefore it forces users to consent to data merging by intervening in their will and navigating them to use with a profile.

Later, Meta announced that Threads service would be officially ceased in Türkiye, and users in Türkiye would not be able to use Threads as of 29 April 2024. Meta stated that there will be no data sharing between Threads and Instagram following the shut down. The petition submitted by Meta also states that Meta deactivated the profiles of all Threads users in Türkiye as of 30 April 2024, and Turkish users would not be able to use Threads starting from that date.

In light of the foregoing, the Board decided that ceasing the activities of Threads in Türkiye resulted in a legal irrelevance in terms of the interim measure. Therefore, the Board terminated to impose daily administrative monetary fine as of 29 April 2024, and determined the total amount imposed on Meta as TRY 335,730,707.20 (approx. EUR 9,703,199) for 70 days starting from 20 February 2024.

This case is the most recent example of the Board's prudent approach towards the competitive landscape in the digital markets. The Board has once again demonstrated that it is quite too much aware of the importance of data by emphasizing that "*the data obtained by such large platforms that can track every movement of consumer on these applications gives those undertakings enormous power.*" In this regard, it seems that the Board would keep closely pursuing especially the key actors in the digital markets, and adopt the necessary preventative measures even at the slightest suspicion of risk in the digital markets.

² EUR equivalents of TRY amounts are calculated based on the buying exchange rate announced on 8 May 2024: EUR 1 = TRY 34.60.



Unprecedented Daily Administrative Monetary Fine Imposed on Meta due to Non-Compliance

by Gülçin Dere, Sabiha Ulusoy

The Board has recently imposed a daily administrative monetary fine on the economic unity comprising Meta Platforms, Inc., Meta Platforms Ireland Limited and WhatsApp LLC (together referred to as “**Meta’s Economic Unity**” or “**Meta**”) to be implemented each day starting from 12 December 2023 until the submission of the compliance remedies by Meta to the records of the TCA. This action was taken as Meta failed to comply with obligations previously rendered due to its abuse of dominant position.

In its decision dated 20 October 2022 and numbered 22-48/706-299 (the “**Final Decision**”), the Board unanimously found that Meta holds a dominant position in the markets for personal social networking services, consumer communication services, and online display advertising. Additionally, the Board decided that Meta restricted the competition by way of complicating the activities of its competitors operating in personal social networking services and online display advertising markets, and creating barriers to entry to the market by means of merging the data collected from the so-called core services of Facebook, Instagram, and WhatsApp and therefore, it concluded that Meta has violated Article 6 of Law No. 4054.

In addition to the administrative monetary fine of TRY 346,717,193.40 (approx. EUR 10,078,988)³

imposed on Meta, the Board required Meta to submit the necessary remedies to the Authority within the specified period in order to establish the effective competition in the market.

On 10 January 2024, the TCA published its announcement regarding Meta’s non-compliance with the remedies imposed by the Final Decision. According to the announcement, the deadline for the fulfilment of the relevant obligations expired on 9 December 2023. Having said that, the Board found that the proposals submitted by Meta were not sufficient. Accordingly, the Board decided to implement daily administrative monetary fine on Meta of TRY 4,796,152.96 (approx. EUR 138,617) following the expiration of the deadline.

The TCA revealed further details on the reasons underlying Meta’s failure to fulfil the compliance obligation with its official announcements dated 18 March and 8 May 2024. According to the announcements, the Board required Meta to re-obtain consent from the users who previously gave their consent on merging the data among Facebook, Instagram and WhatsApp services, before it imposed the said obligation within the scope of the compliance remedy.

The announcement dated 18 March 2024 demonstrates that Meta proposed displaying a screen to re-obtain the consent of users. However, the Board concluded that such screen notification (planned to be displayed to users for their choices on merging the data among Facebook, Instagram and WhatsApp) is not adequate to eliminate the anti-competitive concerns addressed in the full-fledged investigation. According to the announcement dated 8 May 2024, the Board assessed that (i) the screen in question is designed in a way that navigates users to consent to data merging, (ii) it is not sufficiently transparent, (iii) it does not inform users that they can use the app even if they refuse data merging between their accounts, and (iv) the proposed remedies do not provide a screen with the same convenience for users who do not want to consent to the data merging and for those who wish to consent.

In the ongoing process, Meta submitted its final compliance remedy proposals on 5 April 2024. The Board concluded that such proposals are sufficient to cease violation and establish effective competition. Therefore, the Board terminated to impose daily

³ EUR equivalents of TRY amounts are calculated based on the

buying exchange rate announced on 8 May 2024: EUR 1 = TRY 34.60.

administrative monetary fine as of 4 April 2024, and determined the total amount imposed on Meta as TRY 551,557,589.86 (approx. EUR 15,940,971) for 115 days starting from 12 December 2023.

According to the final remedy proposals submitted by Meta, it will not be able to merge users' personal data unless the users merge their accounts in Facebook and Instagram through the "Accounts Center". Users who have already merged their accounts will see a new "Consent Screen" as of June. Thus, users will be able to separate the previously merged accounts in a simple way as they wish. In addition to this option, this screen will inform users in detail about which data will be merged and how. In case users change their minds, they will have the opportunity to merge the data related to the accounts they want through the "Accounts Center".



Turkish Competition Authority's Vigilance in Regulating Digital Markets: Nesine.com

by Büşra Aktüre, Ece Bezmez

Similar to the European Commission (the "Commission"), the TCA has begun to closely monitor digital markets in the past few years. As part of its recent scrutiny towards technology companies, the Board rendered consecutive administrative fines against players operating in different digital markets.

Compared to conventional markets, digital markets are accepted to be more prone to abuse of dominance cases, particularly due to the network effects and significant entry barriers that the market characteristics bring along. Due to the nature of

digital markets, the Board considers a strict approach necessary to prevent irreparable damages. The TCA has issued numerous decisions in this regard over the past years.

One of the most recent decisions concerning digital markets involves D Elektronik Şans Oyunları ve Yayıncılık AŞ ("Nesine.com"), known as Nesine.com, which is a prominent online platform in Türkiye which primarily focuses on sports betting and other forms of online gaming including virtual betting and lottery. In March 2024, the TCA published its announcement regarding the conclusion of the Board's investigation concerning Nesine.com's use of exclusivity clauses in agreements, potentially violating Turkish competition law by abuse of dominance position. According to the pronouncement of the decision, Nesine.com was found to hold a dominant position in the market for fixed odds betting by virtual dealers. The Board determined that Nesine.com abused its dominant position by signing exclusive agreements for advertisement, promotion, and sponsorship with sports clubs, as well as signing exclusive agreements with undertakings for stadium advertisements, and with Maçkolik İnternet Hizmetleri Ticaret A.Ş. to procure ad services. Consequently, Nesine.com was fined approximately TRY 77.7 million (approx. EUR 2.2 million) and instructed to remove exclusivity clauses from existing agreements and refrain from including them in future ones.

This decision came in line with many fines given to digital platforms within the scope of abuse of dominance and can be considered one of the landmark decisions as it involves another digital platform and a major administrative fine. Similar to this case, in August 2023, the TCA imposed a significant fine of TRY 40.1 million (approx. EUR 1.2 million) on Sahibinden, an online shopping platform in which people and businesses buy and sell real estate, cars, and a broad variety of goods and services for abusing its dominant position through contractual exclusivity and non-compete clauses⁴. Furthermore, the TCA had imposed another record-breaking fine of TRY 346.7 million (approx. EUR 10.5 million) on Meta in October 2022, concluding that it abused its dominance by way of hindering the activities of its competitors operating in the personal social networking services and online

⁴ The TCA's announcement is available at the following link: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.rekabet.gov.tr/Dosya/sahibinden-nihai-kararr-20230823105730619.pdf](https://www.rekabet.gov.tr/Dosya/sahibinden-nihai-kararr-20230823105730619.pdf)

display advertising markets and by establishing a barrier to entry therein, and had imposed certain obligations on Meta to terminate its anti-competitive behaviour⁵. Moreover, in January 2024, the Board posed a daily administrative monetary fine on Meta to be implemented each day starting from 12 December 2023 due to Meta's failure to comply with obligations previously rendered in the October 2022 decision⁶.

Although the reasoned decision will shed light on the details of the Nesine.com decision, it certainly reinforces the TCA's unwavering focus and non-tolerant approach on abuse of dominance violations involving online platforms for the last couple of years. Reflecting on prior decisions, it becomes evident that the TCA maintained a stringent stance towards digital platforms operating in the digital market. With this decision, it is evident that this approach persists, suggesting the likelihood of encountering analogous decisions in the future.

Tech Giants under EU's Radar for Potential Breaches of the DMA: Apple, Google, and Meta under Investigations

by Selen Toma, İrem Deyneli

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Last September, the Commission identified six gatekeepers under the DMA, which entered into force to “ensure open and contestable digital markets” Alphabet (Google), Amazon, Apple, ByteDance (TikTok), Meta, Microsoft. The grace period granted to these gatekeepers ended on 7 March 2024. Sooner rather than later, on 25 March 2024, the Commission initiated an investigation regarding non-compliance with the obligations imposed under the DMA by tech giants Alphabet (Google), Apple, and Meta (Facebook). These investigations focus on potential breaches related to steering rules and self-preferencing activities, specifically within Google Play, Google Search, the App Store, and Safari.

⁵ The Board's decision dated 20 October 2022 and numbered 22-48/706-299

⁶ The TCA's announcement is available at the following link: <https://www.rekabet.gov.tr/tr/Guncel/meta-hakkinda-yukumlulukleri-yerine-geti-a64c6f01a9afee118ecc00505685da39>



The key concerns within the scope of the investigation are summarised below:

Alphabet's and Apple's Steering Rules. Article 5(4) of the DMA mandates gatekeepers to allow app developers to “steer” consumers to offers outside the gatekeepers' app stores at no cost. The Commission has concerns that Alphabet's and Apple's measures may not be fully compliant, as they impose various restrictions and limitations within their app stores (GooglePlay and the App Store, respectively). These limitations include restricts developers' ability to communicate and promote offers and to directly conclude contracts often imposed by various charges.

Alphabet's Measures Against Self-Preferencing. Alphabet, particularly Google, faces scrutiny over its display of search results. The Commission is under the assumption that Alphabet is favouring its own vertical search services – such as Google Hotels, Google Shopping, or Google Flights - over its competitors', such as Skyscanner and Booking.com. The Commission is assessing whether these practices prioritise the services provided by Alphabet and hinder fair treatment of third-party services, as mandated by Article 6(5) of the DMA.

Apple's Compliance with User Choice Obligations. Apple was expected to streamline the process for end-users to uninstall software applications on iOS and adjust default settings, such as preferred web browsers or search engines. The Commission is concerned whether Apple's measures, including the design of the web browser choice screen, are

hindering the device users from genuinely exercising their service preferences within the Apple ecosystem, potentially violating Article 6(3) of the DMA.

Meta’s “Pay or Consent” Model. According to Article 5(2) of the DMA, the gatekeepers are obliged to obtain explicit consent from users if they intend to combine personal data across various platforms of the same gatekeeper, such as Meta’s Facebook and Instagram. In adherence to this regulation, Meta introduced a new policy where users who do not consent to their data being collected are required to pay a fee for ad-free versions of the apps. The Commission is investigating whether this binary choice approach fully complies with the user consent requirements specified in the DMA.

Furthermore, the Commission is pursuing additional investigatory steps to gather relevant facts and details aimed at determining whether Amazon could be self-preferencing its own brand products within the Amazon Store, potentially infringing upon Article 6(5) of the DMA; and whether Apple’s recent fee structure and other terms related to alternative app stores and the distribution of apps via the web (sideloading) might be undermining the intent of its obligations outlined in Article 6(4) of the DMA.

To support these efforts, the Commission has issued retention orders to Alphabet, Amazon, Apple, Meta, and Microsoft, requesting them to preserve relevant documents for DMA compliance assessment.

The Commission aims to finalize the ongoing proceedings within a 12-month period. If deemed necessary after the investigation, the Commission will communicate its preliminary findings to the relevant gatekeepers and outline the actions they should take to effectively address the Commission’s concerns.

If the Commission decides on the existence of a violation of the DMA, the tech giants may be imposed fines up to 10% of the company’s total global revenue, which would indeed represent heavy amounts. For recurring violations, these fines may escalate to 20%. Additionally, in cases of systematic breaches, the Commission may implement further measures such as requiring the company to divest the business or its components or prohibit the gatekeeper from acquiring additional services associated with systematic non-compliance.



Turkish Competition Authority’s Probing Gaze into the Cosmetics Sector

by Deniz Benli

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In recent years, the TCA has sharpened its focus on the cosmetics sector, with four investigations initiated within a two-year span against a large number of undertakings operating in the cosmetics, personal care, and hygiene sectors. The investigations have in common the alleged anti-competitive practices whereby the TCA’s inquiries delve deep into the complexities of resale price maintenance and restriction of online sales in all four probes. In addition to offering insights into the challenges posed by the investigated practices in the relevant sectors, the investigations provide perspectives on several procedural aspects of an antitrust probe including the efficacy of procedural economy mechanisms such as the settlement and commitment tools, undertakings’ cooperation obligation, and scope of the attorney-client privilege.

Overview of the recent investigations in the cosmetics sector

In 2022, the Board initiated an investigation against Avon, Farmasi, Kosan Kozmetik, NAOS, Pierre Fabre, and Yöntem Profesyonel regarding allegations of resale price maintenance and restriction of online sales. All six undertakings irrevocably accepted the allegations regarding resale price maintenance and benefited from the settlement regime. Moreover, five of them offered commitments to the TCA to eliminate concerns regarding the restriction of online sales,

whereby the undertakings undertook not to interfere in the online sales of their products and include such freedom within their contracts with distributors. It should be noted that L'Oréal was part of the preliminary inquiry leading up to the investigation but ultimately evaded a full-fledged investigation.

In 2023, the Board initiated an investigation against Biota, Colastin, Gerçek Kozmetik, Kozmokinik, and MOT Grup regarding allegations of resale price maintenance and restriction of online sales. While four of them irrevocably accepted the allegations regarding resale price maintenance and benefited from the settlement regime, two of them offered commitments to the TCA to eliminate concerns regarding restriction of online sales, whereby the undertakings undertook not to interfere in the online sales of their products and include such freedom within their contracts with distributors.

In the same year, the Board initiated another investigation against CHI Kozmetik, Ayaz Ege Teknoloji, SB Grup, Easyvit, ELCA, Farmatek, Cevher Kozmetik, Glohe, Kozmopol, Hamzaoğlu, L'Oréal, Neolife, Rebul, and Sistem Kozmetik regarding allegations of resale price maintenance, restriction of online sales, and participation in a hub-and-spoke cartel. Ten undertakings benefited from the settlement regime regarding resale price maintenance allegations, and seven of them proposed commitments to the TCA to eliminate concerns regarding restriction of online sales. Ayaz, SB Grup, Cevher Kozmetik, Glohe, and Kozmopol, which were investigated for their alleged participation in a hub-and-spoke cartel, also benefited from the settlement regime in this respect.

Lastly, in 2023, an investigation was initiated against Amway, Ersağ, Hunca, Life, Oriflame, and Tiens regarding allegations of resale price maintenance and restriction of online sales. In March 2024, the investigation was concluded in respect of Oriflame, which benefited from the settlement regime regarding allegations of resale price maintenance and offered commitments to remedy internet sales restriction concerns. The investigation is ongoing in respect of the remaining four undertakings.

Insights into procedural rules

The investigations gave way to a number of fines on procedural grounds, providing valuable insight



into the undertakings' cooperation obligation and the scope of attorney-client privilege in competition law investigations. These fines also highlight the importance of proper training and legal consultancy in preparing company personnel for procedural aspects of a competition law probe.

L'Oréal and NAOS were fined at a rate of 0.5% of their respective annual gross revenues in 2021 for hindering and complicating the TCA's on-site inspections. It was understood that a L'Oréal employee had deleted Whatsapp messages during the course of the on-site inspection. In the same vein, a NAOS employee falsely claimed not to have used Whatsapp in a long time. It should be noted that e-mails and Whatsapp messages can be retrieved by the TCA using forensic IT tools going back many years. The TCA also cooperates with the Information Technologies Board of Turkey to detect hardware and GSM line usage. As the TCA usually conducts on-site inspections in accounts of multiple employees within the same company as well as in multiple companies as part of an investigation, e-mails and messages can also be retrieved from other individuals' data within or outside the organisation. These decisions therefore highlight the importance of training personnel to avoid such fines resulting from improper conduct during on-site inspections.

In addition, Farmasi was fined by the Board at the rate of 0.1% of its annual gross revenue in 2021 for providing false and/or misleading information in response to an information request sent by the case team as part of the investigation, which was revealed through comparing information obtained during the on-site inspection with Farmasi's responses.

Lastly, Oriflame's request for certain documents obtained during the on-site inspection to benefit from

attorney-client privilege was rejected by the TCA. The Guidelines on the Examination of Digital Data provide that data obtained during an on-site inspection benefit from attorney-client privilege to the extent it consists of correspondence with an independent attorney that does not have an employment relationship with the undertaking in question, which pertains to the exercise of the undertaking's right of defence. A recent court decision further requires that the date of the correspondence should fall within an ongoing investigation or court proceeding for it to be considered relevant to the exercise of the right of defence. While the documents in question consisted of correspondence with Oriflame's independent attorney, the TCA refused to consider them as privileged as (i) they predated the competition probe against Oriflame, and (ii) Oriflame had not raised any objection as to the privileged nature of the correspondence during the on-site inspection.

A triumph of procedural efficiency tools

It is noteworthy that most of the investigated undertakings in the four investigations mentioned above have opted to benefit from the settlement and commitment mechanisms. Both mechanisms were introduced to Turkish competition law with the legislative amendments of 2020 as procedural efficiency tools. The settlement regime involves an irrevocable admission of violation by the settlement party in exchange for a reduction in the applicable administrative fines by 10 to 25%. Unlike the Board's ordinary infringement decisions, a decision issued as a result of the settlement process is final and cannot be appealed before courts. On the other hand, commitments allow the Board not to initiate or to terminate an on-going investigation in case the undertaking(s) in question offer commitments that effectively remedy the relevant competition concerns.

Both mechanisms have been popular in Turkish competition law since their introduction. Many businesses have opted to benefit from such tools to eliminate competition concerns in an attempt to save time and resources and to avoid the uncertainty of lengthy investigation processes. The investigations in the cosmetics sector demonstrate this fact and reaffirm the triumph of procedural efficiency tools in recent Turkish competition law enforcement, which will certainly remain popular in the future landscape of Turkish competition law.



Egg Viol Cartel: Turkish Competition Board Ends Investigation with Settlement

by Kansu Aydođan, Ece Bezmez

After the enactment of the settlement mechanism in 2021, an increasing number of companies have opted to pursue the settlement procedure when facing investigations initiated by the Board. Indeed, in the last year out of 80 investigations resulting in fines, 68 were resolved through settlement, reaching a very high rate of 85%. Once again, this trend was observed when six companies operating in the egg carton production quickly chose the settlement procedure to expedite the conclusion of the investigation initiated against them.

Background

On April 2023, the Board initiated a full-fledged investigation against six undertakings active in egg carton production, namely Dentaş Kağıt Sanayi AŞ, Güneş Kalıplı Basma Kutu Ambalaj San. ve Tic. AŞ, Güres Tavukçuluk Üretim Pazarlama Ticaret AŞ, Keskinöđlü Tav. ve Dam. İřl. San. Tic. AŞ, Özay Karton Ambalaj Gıda San. ve Tic. Ltd. řti., and Yuva Viyol ve Ambalaj San. ve Tic. Ltd. řti. All of the investigated undertakings applied for settlement before the TCA, admitting to their wrongdoing, and on 6 March 2024, the Board concluded the investigation upon approval of their settlement requests⁷. A total of TRY 55 million (approximately EUR 1.5 million) in fines was imposed

⁷ The TCA's announcement is available at the following link: <https://www.rekabet.gov.tr/en/Guncel/the-investigation-conducted-on-undertaki-14c05ad78fdbee1193c80050568585c9>

on the mentioned undertakings found to be involved in anti-competitive practices.

The Settlement Mechanism

The settlement mechanism was introduced into Turkish competition law with Law No. 7246 on the Amendment of the Law on the Protection of Competition, dated 24 June 2020, and it has since been growing in popularity among companies facing investigation.

The primary objective behind introducing the settlement mechanism was to streamline the investigation process, resulting in reduced time and costs for both the Board and the investigated parties. Under this mechanism, the Board may reach a settlement with the investigated parties as long as they acknowledge the existence and scope of the violation, potentially reducing the administrative fine by ten to twenty-five percent.

Remarks

The decision of all six investigated entities to settle is only one of the decisions among many, highlighting the growing tendency among companies to avoid expensive and protracted investigation processes and receive important fine reductions from the Board. With the implementation of this system, the Board has also gained a tool to expedite decision-making processes, thereby allocating more resources to address other cases. In practice, the settlement mechanism significantly shortened the expected investigation duration from the typically lengthy process lasting up to one and a half years. It is reasonable to suggest that this enhanced the efficiency and contributed to the detection rate and overall effectiveness of enforcement efforts.

That said, we have noted a few decisions somewhat controversial. Indeed, there have become instances where non-settling parties received no fines due to a decision of no violation at the end of the investigation, while the settling party had already been imposed an administrative monetary fine⁸, or where settling parties receive fines based on total revenue while non-settling parties were imposed fines based on a narrower revenue calculation. Therefore, it is crucial to acknowledge that the settlement procedure has room to develop.

⁸ The Board's İGSAŞ decision dated 23.12.2021 and numbered 21-63/882-431.

In any event, it is reasonable to suggest that the settlement mechanism will continue to be a valuable instrument for the TCA and an appealing alternative to costly investigations for businesses under scrutiny.



TCA's take on logistics sector: DHL/MNG

by İrem Uysal

In a recent decision, the TCA has once again demonstrated its commitment to promoting competition and protecting the interests of consumers by reviewing the current dynamics of the logistics sector. The recent clearance decision, which follows a detailed analysis of the logistics sector in light of the proposed transaction concerning the acquisition of all shares and sole control of MNG Kargo Yurtdışı ve Yurtdışı Taşımacılık Anonim Şirketi ("MNG") by Deutsche Post Beteiligungen Holding GmbH, a company of the DHL Group ("DHL"), dated 28 September 2023 and numbered 23-46/863-305 ("Decision"), marks a significant development in the field of Turkish competition law, the main aspects of which are summarised below.

Background

The Decision follows an in-depth analysis of the logistics sector. With its mandate to enforce competition law and prevent market distortions, the Board carefully examined the conduct of the relevant market players and assessed their compliance with



the applicable legislation. Accordingly, the Board reviewed the details of MNG's sales value and shipment distribution for the year 2022, as well as insights into the company's shareholder structure. The Board also provided general information on the logistics sector, highlighted the regulatory framework for the freight transport industry, and shared the European Commission's definition of the postal/freight transport market, together with information on the Board's relevant precedents.

Key Findings

The decision confirms that the logistics market is segmented on the basis of different criteria, with freight transport and contract logistics services being considered as separate submarkets, in accordance with the Board's established case law. Domestic and international small parcel services are recognised as separate submarkets due to different characteristics. Criteria such as parcel size, weight, and delivery location play a decisive role in the classification of sector players.

The Decision states that the domestic small parcel market is characterised by a high degree of competition, with several key players holding

significant market shares. The Decision also highlighted the increasing number of new entrants and the importance of assessing the level of concentration thereto. It also analysed the vertically affected markets, emphasising the importance of input foreclosure and vertical relationships.

The Decision highlighted that MNG's international transport activities are limited and that competition among local freight forwarders is mainly focused on domestic parcel transport. It was considered immaterial that DHL would exchange information with MNG. The Decision also emphasised that international freight transport activities are generally carried out internally, and that local freight operators are rarely used, and that the exchange of sensitive information affecting competition is limited.

On the basis of the above, it was concluded that DHL's acquisition of MNG would potentially change the competitive dynamics in the logistics sector by allowing DHL to offer a wider range of services using MNG's operational network. Although concerns were raised about competitors' access to commercial information, it was concluded that this would not have a negative impact on competition in the market.

Conclusion

In conclusion, this Decision represents an important milestone in the TCA's ongoing efforts to maintain fair competition and protect consumer interests. Overall, the Decision sheds light on the competitive landscape, market dynamics, and regulatory framework in the logistics industry and provides valuable insights into recent developments and the potential impact of strategic acquisitions.

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