

## NEWSLETTER

COMPETITION LAW | TÜRKİYE

APRIL 2024

This competition law newsletter provides information on the latest developments in relation to the Turkish competition market and the implementation of Law No 4054 on the Protection of Competition (the "**Law**") in light of recent announcements and publications by the Competition Authority (the "**Authority**") and decisions of the competition board (the "**Board**") published in February 2024.

## COMPETITION MARKET OVERVIEW

### ANNOUNCEMENTS

#### A- Investigation Announcements:

##### *Recently Initiated Investigations*

- At its meeting dated 11.01.2024, the Board decided to initiate an investigation with its decisions numbered 24-03/30-M and 24-03/31-M against Bıçakcılar Tıbbi Cihazlar Sanayi ve Ticaret A.Ş., Gazi Kimya Sanayi ve Ticaret A.Ş. and Rectus Medikal Ürünler ve Sağlık Hizmetleri Sanayi ve Ticaret Ltd. Şti. to find out whether they violated Article 4 of the Law.
- At its meeting dated 24.01.2024, the Board decided to initiate an investigation with its decision numbered 24-06/93-M against ABC Deterjan Sanayi ve Ticaret A.Ş. to find out if it violated Article 4 of the Law by implementing resale prices maintenance ("**RPM**") of its buyers.

##### *Completed Investigations*

The Board concluded its investigations against Neolife İthalat İhracat A.Ş. and Nestle Türkiye Gıda Sanayi A.Ş. for violations of Article 4 of the Law by practicing RPM and territorial and customer restrictions for its distributors.

The table below shows the name of the undertaking, the type of violation of the Law and the amount of the administrative fine imposed by the Board within the scope of those investigations.

Name of the Undertaking	Violation	Administrative Fine (TRY)
Neolife İthalat İhracat A.Ş.	RPM	209,063.78 (concluded with settlement)
Nestle Türkiye Gıda Sanayi A.Ş.	RPM Territorial and customer restrictions for its distributors	346,911,505.44

**B- M&A Notifications:**

During February, a total of 10 merger and acquisition notifications were made to the Board; the sectoral distribution of these is as follows;

**- Pharmaceutical, Biotech and Medical Devices Industries**

- The acquisition of sole control and all the shares in TecInvest S.à r.l., directly or indirectly, by Bruker Invest AG, a Swiss incorporated company and a subsidiary of Bruker Corporation, and consequently ELITechGroup, a group of companies active in the fields of molecular diagnostics, microbiology and biomedical testing equipment.
- The acquisition of sole control over Axonics, Inc. by Boston Scientific Corporation.
- The acquisition of all the shares in Rompharm İlaç San. ve Tic. Ltd. Şti. by Ruşen Kalender and Orkhan Aliyev.

**- Travel Retail Industry**

- The acquisition of joint control over Duffle Travel Retail Platform GmbH by GHARAGE Ventures GmbH, Dufry International AG and Takeaway.com Central Core B.V.

**- Real Estate Industry**

- The acquisition of joint control over GGV Group GmbH by Permira Holdings Limited and Hg Poollet Management Limited.

**- Construction & Iron and Steel Industries**

- The acquisition of control over Türk Ytong Sanayi A.Ş. by Xella Baustoffe GmbH and Demiren Holding A.Ş.
- The acquisition of MAT Metal B.V.'s shares by ATA Steel Investments B.V.

**- IT Management & Software Industry**

- The acquisition of all the shares in Arteno Bilgi Teknolojileri ve Danışmanlık Hizmetleri Anonim Şirketi by Adesso SE.
- The acquisition of the intellectual property rights of KoçSistem Bilgi ve İletişim Hizmetleri A.Ş. related to e-transformation software by Logo Yazılım Sanayi ve Ticaret A.Ş.

**- Other Industries**

- The acquisition of joint control over Holdco and ultimately NZNSS by bp and Equinor, through their respective subsidiaries.

**C- Other**

*The 2nd issue of the Authority's "Competition Newsletter" has been published.*

The newsletter highlighting the main activities of the Authority focuses on investigations concluded and new investigations initiated in the last three months. It also covers legislative studies, final examinations, sector research and important news from the Authority.

According to the newsletter, a total of 58 investigations were concluded in 2023. As a result of the investigations, 46 of the undertakings that were found to be in violation or reached an agreement with the Authority were fined a total of TRY 2.3 billion.



The Authority is currently working on 45 investigations, 35 of which were initiated in 2023.

**SUMMARY OF KEY DECISIONS**

The Board rendered 26 decisions in February:

- 5 decisions regarding breaches of competition law
- 7 decisions regarding merger and acquisition notifications
- 14 decisions regarding other matters

**A- Breach of Law Decisions:**

The investigations conducted against companies operating in the search-based online advertising tender market and heavy commercial vehicles market to determine whether they violated Article 4 of the Law have been finalised. The investigations have been concluded as follows:

***LETGO OTOPLUS<sup>1</sup> & ARABAM.COM<sup>2</sup> Decisions***

Within the scope of the investigation conducted to determine whether Arabam Com İnternet ve Bilgi Hizmetleri A.Ş. ("ARABAM.COM"), Vava Cars Turkey Otomotiv A.Ş., Letgo Mobil İnternet Servisleri ve Ticaret A.Ş. ("LETGO OTOPLUS") ve Araba Sepeti Otomotiv Bilişim Danışmanlık Hizmetleri Sanayi ve Ticaret A.Ş., involved in the purchase and sale of second-hand passenger cars (automobiles) through online platforms, violated Article 4 of the Law by signing Google text ad negotiation agreements, the Board decided to terminate the investigation against ARABAM.COM and LETGO OTOPLUS as a result of the reconciliation text submitted by the concerned undertakings.



<sup>1</sup> Decision of the Board dated 20.07.2023 and numbered 23-32/629-211

<sup>2</sup> Decision of the Board dated 20.07.2023 and numbered 23-32/629-212

Negative keyword matching via Google Ads essentially aims to prevent the advertisement popping up from unwanted Google searches that are outside the area of activity. Nevertheless, as a result of the investigation conducted against the entities, the mutual negativisation practices of the parties involved in the investigation by blocking the display of certain advertisements were considered as anti-competitive and against the nature of advertising. It was also emphasised that this is a practice that exceeds the protection of the trademark right.



It was evaluated that the undertakings party to the investigation caused a decrease in the diversity of advertisements in the search-based online advertising market and also prevented users from benefiting from the price and service differences between competitors through the negotiation agreements for Google text ads. Accordingly, it was concluded that the undertakings had violated Article 4 of the Law.

In the settlement texts sent by ARABAM.COM and LETGO OTOPLUS, the parties acknowledged the existence of the violation. As a result, the Parties were ordered to pay a discounted administrative fine and to pay a certain percentage of their gross revenues and thus the investigation conducted against ARABAM.COM and LETGO OTOPLUS was concluded by conciliation.

### *Heavy Commercial Vehicles Decision*<sup>3</sup>

The grounds underlying the decision to launch the preliminary investigation were documents obtained in on-site examinations in 2022, indicating that some undertakings operating in the heavy-duty commercial vehicle sector possess vehicle stock numbers of their competitors and competing price offers made to customers by their competitors.



The Board conducted examinations in order to determine whether this competitively sensitive information was obtained through direct communication between competitors. It was determined that price information can be obtained via customer visits, through dealers or through field studies of the undertakings. Considering the functioning of the sector subject to the preliminary investigation, it was concluded that the information shared is not likely to have the purpose and effect of restricting competition and that there is no statement that gives the impression that the competitor price offers obtained were used for an anti-competitive purpose.

Since there was no evidence of a violation of Article 4 of the Law among the documents obtained within the scope of the preliminary investigation, it was decided that there was no need to initiate an investigation against concerned undertakings.

### *PANEK Decision*<sup>4</sup>

Panek Ziraat Aletleri Dayanıklı Tüketim Malzemeleri Otomotiv Yakıt Petrol Ürünleri Tarım Ticaret A.Ş. ("PANEK") purchases products from producers that are affiliated to Anadolu Birlik and engages in the sales

<sup>3</sup> Decision of the Board dated 17.08.2023 and numbered : 23-39/723-247

<sup>4</sup> Decision of the Board dated 29.12.2022 and numbered : 22-57/899-369

and marketing of these products. With the decision of the Board dated 06.10.2022 and numbered 22-45/656-M, the findings of the investigation conducted to determine whether PANEK violated Article 4 of the Law determined that PANEK has practices aimed at determining the resale price of retailers. The findings revealed that PANEK used the suspension of product delivery as an element of pressure/threat to interfere with the resale prices of the buyers, and also that the undertaking considered the monitoring and prevention of distorted prices as a criterion for measuring and penalising the performance of its employees. In this context, it was determined that PANEK had violated Article 4 of the Law and, upon PANEK's request for a settlement, it was decided to terminate the investigation by imposing a reduced administrative fine on PANEK.

## B- M&A Decisions

### - Production of Automotive Cables Market

The Board, in its decision dated 1 June 2023,<sup>5</sup> decided to authorise the acquisition of all of the shares in Leoni AG, a global provider of products, solutions and services for energy and data management in the automotive industry, by L2-Beteiligungs GmbH, since the transaction will not significantly reduce effective competition.



### - Oil & Gas Supply Chain Market

The Board, in its decision dated 7 September 2023, authorised the acquisition of a certain part of the shares held by OMV Aktiengesellschaft together with its direct and indirect subsidiaries by Abu Dhabi National Oil Company P.J.S.C., with the aim of entering into new geographical markets and accelerating the growth in the chemical sector, since the transaction subject to the notification meets the common control condition as well as the full functionality condition.

### - Electronic Production Services

In its decision dated 22 June 2023,<sup>6</sup> the Board evaluated the application of Invest Unternehmensbeteiligungs AG and Raiffeisen OÖ Invest GmbH&Co OG to establish joint control over MELECS EWS GmbH, a 100% subsidiary of MELECS Holding GmbH. The Board authorised the acquisition given that the transaction is not likely to significantly lessen effective competition in any goods or services market by creating a dominant position or strengthening an existing dominant position.

### - Production and Sales of Smart Cards Market

With its decision dated 26 July 2023,<sup>7</sup> the Board authorised the acquisition of sole control over E-Kart Elektronik Kart Sistemleri Sanayi ve Ticaret Anonim Şirketi, which is under joint control of Giesecke+Devrient Mobile Security GmbH and ECZACIBAŞI GROUP, by Giesecke+Devrient GmbH through a share transfer, considering the fact that the transaction is not likely to cause any horizontal or vertical competitive concerns in the relevant markets.

<sup>5</sup> Decision of the Board dated 01.06.2023 and numbered 23-25/481-164

<sup>6</sup> Decision of the Board dated 22.06.2023 and numbered 23-28/556-188

<sup>7</sup> Decision of the Board dated 26.07.2023 and numbered 23-34/640-214

The Board decided on two transactions that were considered as **technology undertakings**:

- Biotechnology, Pharmaceuticals, ATC-3/4

In its decision,<sup>8</sup> the Board authorised the acquisition of sole control over Seagen Inc. by Pfizer Inc. through its indirect wholly-owned subsidiary Aris Merger Sub, Inc. The Board stated that undertakings operating in areas such as biotechnology, pharmacology and health technologies will be considered as technology undertakings, and therefore, the thresholds specified in the Communiqué will not be applied for merger and acquisition examination. In addition, it was emphasised that Seagen Inc. operates in the field of biotechnology and Pfizer Inc. engages in the pharmaceutical sector and thus the transaction is subject to authorisation regardless of the thresholds.



- Health Technologies

The Board authorised the acquisition<sup>9</sup> of joint control over Syneos Health Inc. ("SYNEOS") by Veritas Capital Fund Management L.L.C., Elliott Investment Management L.P. and Patient Square Capital Holdings LLC. The transaction is being carried out through a change of control of the managed funds and/or investment instruments, SYNEOS' shares and voting rights. Since SYNEOS operates in the field of health technologies, the Board indicated that SYNEOS is a technology undertaking and therefore the transaction is subject to authorisation regardless of the turnover thresholds.



### C- Other Decisions

The Board's findings and fines imposed on companies in connection with preliminary investigations and inquiries regarding the prevention and obstruction of on-site inspections at the companies in question were concluded as follows:

Name of Undertakings	Sector	Violation Manner	Administrative Fine (TRY)
Teknosa İç ve Dış Tic. A.Ş. <sup>10</sup>	Consumer electronics, small home appliances	Deletion of Microsoft Teams messages	A fine of 0.5% (half a percent) of the gross income for 2021.
Wahl Elektrikli Aletler Tic. Ltd. Şti. <sup>11</sup>	Electric personal care appliances	Manual deletion of WhatsApp messages excluding disappearing messages mode	105,688

<sup>8</sup> Decision of the Board dated 20.07.2023 and numbered 23-32/618-207

<sup>9</sup> Decision of the Board dated 10.08.2023 and numbered 23-37/707-244

<sup>10</sup> Decision of the Board dated 28.04.2023 and numbered 23-19/364-126

<sup>11</sup> Decision of the Board dated 11.05.2023 and numbered 23-21/410-140

Asbeton Yapı Mühendislik Nakliye İnşaat Sanayi ve Ticaret A.Ş. <sup>12</sup>	Production and sale of ready-mixed concrete	failure to hand over a phone to authority officials, deletion of WhatsApp messages	A fine of 0.5% (half a percent) of the gross income for 2022.
Canon Eurasia Görüntüleme ve Ofis Sistemleri A.Ş. <sup>13</sup>	Display and office equipment/devices	Deletion of emails	A fine of 0.5% (half a percent) of the gross income for 2021.
Ufuk Hazır Beton İnşaat Turizm Ticaret ve Pazarlama Ltd. Şti. <sup>14</sup>	Production and sale of ready-mixed concrete	Deletion of WhatsApp messages	A fine of 0.5% (half a percent) of the gross income for 2022.
DYM Değişim Yapı Market İnşaat Enerji Maden Gıda Tarım Hayvancılık Dayanıklı Tüketim Malları Nakliye Turizm Sanayi ve Ticaret Ltd. Şti. <sup>15</sup>	Production and sale of ready-mixed concrete	Deletion of WhatsApp messages	A fine of 0.5% (half a percent) of the gross income for 2022.
Kösem Yapı Mimarlık Mühendislik Madencilik Taşımacılık İnşaat Makine Pazarlama San. ve Tic. Ltd. Şti. <sup>16</sup>	Production and sale of ready-mixed concrete	Deletion of WhatsApp messages	A fine of 0.5% (half a percent) of the gross income for 2022.

### *Canatanlar İnşaat Decision on Prevention/Obstruction of On-site Inspection<sup>17</sup>*

During the on-site inspection of Canatanlar İnşaat Akaryakıt Tarım Ürünleri Turizm San. ve Tic. Ltd. Şti., operating in the ready-mixed concrete production sector in Aydın province, the phone of a company official was sent to the Information Technologies Directorate for examination, based on the suspicion that a number of WhatsApp messages had been deleted. The technical review opinion from the Directorate stated that the relevant log records were not sufficient to demonstrate that the WhatsApp messages were deleted after the on-site inspection had begun. Therefore, it was decided that there was no act of obstruction. On the other hand, the different reasoning of one of the Board members is worth noticing.

The dissenting reasoning pointed out that, until the administrative jurisdiction establishes case-law, it was of the opinion that the issues regarding on-site examinations should not be discussed. The dissenting reasoning of the Board member revolves around the current status and application of Article 15 of the Law, which governs the power of the Authority regarding on-site examinations in light of the recent Constitutional



<sup>12</sup> Decision of the Board dated 17.08.2023 and numbered 23-39/741-255

<sup>13</sup> Decision of the Board dated 28.04.2023 and numbered 23-19/365-127

<sup>14</sup> Decision of the Board dated 17.08.2023 and numbered 23-39/743-257

<sup>15</sup> Decision of the Board dated 17.08.2023 and numbered 23-39/743-257

<sup>16</sup> Decision of the Board dated 17.08.2023 and numbered 23-39/743-257

<sup>17</sup> Decision of the Board dated 17.08.2023 and numbered 23-39/744-258

Court decision. The Constitutional Court found a violation in an individual application<sup>18</sup> for examination regarding the power of the Authority to carry out on-site examinations without a judicial decision. The Board member acknowledges that Article 15 is active and enforceable, which means that the authority to conduct on-site inspections remains legally valid. However, the Board member raises concerns about the implications of the decision of the Constitutional Court, which introduced a level of controversy and uncertainty regarding how the administrative judiciary will interpret and guide the practice of on-site inspections moving forward. This uncertainty is significant because it affects the clarity of the law and how it should be applied in practice. Given this backdrop of legal ambiguity, the Board member expresses the opinion that any actions that could be construed as obstructing or delaying the exercise of the power of on-site inspections, and any administrative fines that might result from such actions, should not be deliberated upon until there is a clear precedent set by the administrative judiciary.

#### *Mot Grup Bilişim Ltd. Şti. Decision<sup>19</sup>*

In accordance with Article 11 of Administrative Procedure Law, Mot Grup Bilişim Ltd. Şti. applied for the refusal, amendment or renewal of the Board's decision regarding the refusal of the commitment application on the grounds that no explanation regarding the commitment application procedure was made in the notifications made by the Authority to the undertaking and that the undertaking was not notified regarding the three month deadline for the application of commitment procedure. The Board refused the application on the grounds that the commitment process had been initiated at the discretion of the undertaking and was not mandatory for the Board.

#### *Meta Platforms Inc. Threads Decision<sup>20</sup>*

In another earlier decision, the Board had previously decided that Meta Platforms Inc. (“Meta”) had violated Article 6 of the Law by merging data collected from Facebook, Instagram and WhatsApp services, hindering the activities of its competitors and creating barriers to entry to the market. Similarly, in this decision it is indicated that merging data from Threads and Instagram applications belonging to Meta may create barriers to market entry, raise exclusionary competition law concerns and hinder consumers' free choice. Thus, the Board decided to temporarily prevent the merging of data collected from Threads and Instagram applications in order to avert competitive concerns until the investigation is concluded.



#### *Krea İçerik Hizmetleri ve Prodüksiyon A.Ş. Decision<sup>21</sup>*

Within the scope of the broadcasting rights of the Turkish Super League and 1st League football competitions, the Board had issued an interim measure to prevent discrimination by providing highlights and in-match footage to other media organisations in advance for the 2022-2023 season. The respective interim measure was disallowing the broadcasting of the relevant footage before the deadline specified in the terms of reference. In this decision, the Board decided to maintain the same interim measure for the 2023-2024 season.



<sup>18</sup> Please see our article regarding the relevant Constitutional Court decision:

<https://www.mondaq.com/turkey/antitrust-eu-competition-/1354780/the-constitutional-court-decision-on-on-site-inspections-and-its-possible-consequences-for-turkish-competition-law>

<sup>19</sup> Decision of the Board dated 01.06.2023 and numbered 23-25/479-162

<sup>20</sup> Decision of the Board dated 08.02.2024 and numbered 24-07/125-50

<sup>21</sup> Decision of the Board dated 03.08.2023 and numbered 23-36/675-230

## SUMMARY OF IMPORTANT DECISIONS OF THE EU COMMISSION

### *Establishment of a joint venture between Orange and MásMóvil<sup>22</sup>*

On 20 February 2023, The European Commission ("**Commission**") approved, under the EU Merger Regulation, the creation of a joint venture by Orange and MásMóvil. The approval is conditional upon full compliance with commitments package offered by Orange and MásMóvil. During the second phase investigation, the Commission found that the transaction may have led to significant price increases for consumers in Spain and may harm or even eliminate other competitors in the market. Orange and MásMóvil have made commitments to address the Commission's competition concerns.

### *Acquisition of Bolloré Logistics<sup>23</sup>*

The Commission has approved the acquisition of Bolloré Logistics SE by CMA CGM S.A. The approval is conditional upon full compliance with the commitments offered by the parties. The Commission's investigation showed that the merger would have reduced competition in the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe and French Guiana. In particular, the Commission found that the transaction would have created important vertical links between: (i) CMA CGM's upstream container lining shipping activities on routes connecting Europe with Martinique, Guadeloupe, and French Guiana; and (ii) Bolloré Logistics' downstream sea freight forwarding activities in those territories. To address the Commission's competition concerns, the parties offered to divest: (i) all of Bolloré Logistics' activities in Guadeloupe, Martinique, Saint Martin and French Guiana; and (ii) a number of assets in metropolitan France linked to these activities.



*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Türkiye.*

## CONTACTS

ARPAT ŞENOCAK

senocak@odsavukatlik.com

İKLİM GÜLSÜN AYTEKİN

iklim.aytekin@odsavukatlik.com

MUSTAFA KARADAŞ

mustafa.karadas@odsavukatlik.com

ECEM NUR AKSOY

ecemnur.aksoy@odsavukatlik.com

You can find this legal update on our website in the News & Insights section: [gide.com](https://www.gide.com)

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. You may request access to, rectification of, or deletion of your personal data processed by our Communications department ([privacy@gide.com](mailto:privacy@gide.com)).

<sup>22</sup>Case dated 20.02.2024 numbered M.10896

<sup>23</sup>Case dated 23.02.2024 numbered M.11143