

NEWSLETTER

COMPETITION LAW | TÜRKİYE

DECEMBER 2023

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 November 2023.

COMPETITION MARKET OVERVIEW

ANNOUNCEMENTS

A- Investigation Announcements:

Recently Initiated Investigations

The Board initiated the following investigations against;

- undertakings operating in the pharmaceutical sector for the violation of the Law, but the announcement lacks information on the allegations.
- undertakings operating in the market for the production and sale of ready-mixed concrete for the violation of Article 4 of the Law through jointly fixing prices, allocating territories/customers and resale price maintenance ("**RPM**").
- 18 undertakings operating in the production and sale of cement and ready-mixed concrete in Hatay and Malatya provinces for a violation of Article 4 of the Law through jointly determining prices and allocating territories/customers.
- 17 ready-mixed concrete producers operating in Ankara province for a violation of Article 4 of the Law through competition-restricting agreement/concerted practice in labour market.
- Epson Italia S.P.A., Epson Italia S.P.A. Merkezi İtalya Türkiye İstanbul Şubesi and Kadioğlu Kırtasiye Pazarlama Ticaret A.Ş. for a violation of Article 4 of the Law through limiting customers and territories, resale price maintenance and restricting internet sales.
- D-Market Elektronik Hizmetler ve Ticaret A.Ş., DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. and Amazon Turkey Perakende Hizmetleri Limited Şirketi for a violation of the Law.



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Completed Investigations

The Board concluded its investigations against undertakings active in the cosmetics and personal care products sector for violations of Article 4 of the Law by determining the resale price, restricting internet sales and joining a hub and spoke cartel.

Please see the table below regarding 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)
Ayaz ve Ortakları Ltd. Şti.	Hub and spoke cartel	1,083,338.41
SB Grup Kozmetik A.Ş.	Hub and spoke cartel	184,675.76
Easyvit Sağlık Ürünleri San. A.Ş.	RPM and restricting internet sales	1,217,437.18
ELCA Kozmetik Ltd. Şti.	RPM and restricting internet sales	7,909,453.64
Farmatek İç ve Dış Tic. A.Ş.	RPM and restricting internet sales	2,716,256.69
Glohe Bitkisel Ürünler San. ve Tic. A.Ş.	RPM and restricting internet sales	925,805.74
L'Oreal Türkiye Kozmetik San. ve Tic. A.Ş.	RPM and restricting internet sales	87,387,007.53
Rebul JCR Kozmetik Paz. A.Ş.	RPM	5,357,950.92
Sistem Kozmetik San. ve Tic Ltd. Şti.	RPM and restricting internet sales	1,784,584.28

B- M&A Notifications:

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

- Generator systems
 - o The creation of a joint venture by Mitsubishi Heavy Industries Ltd. and Mitsubishi Electric Corporation on the power generator business lines of Mitsubishi Heavy Industries Ltd. and Mitsubishi Electric Corporation.
- Chemical Transportation
 - o The acquisition of shares in Fairfield Chemical Carriers Pte. Ltd. by MOL Chemical Tankers Pte. Ltd. which is controlled by Mitsui O.S.K. Lines Ltd.

- Steel Industry

- The acquisition of joint control of Zhejiang Bao-Mit Precision Steel Technology Co. Ltd by Shanghai Baosteel International Economic & Trading Co. Ltd and Mitsui & Co. Ltd.
- The acquisition of sole control of various assets belonging to AST Turkey Metal Sanayi ve Ticaret Anonim Şirketi by Sarıtaş Çelik Sanayi ve Ticaret Anonim Şirketi.
- The establishment of a fully operational joint venture between JFE Steel Corporation and JSW Steel Limited to manufacture electrical steel products in India and sell primarily in India.
- The acquisition of joint control of Saudi Iron and Steel Company and Al Rajhi Steel Industries Company by The Public Investment Fund and Mohammed Bin Abdulaziz Al Rajhi & Sons Investment Company

- Fuel Industry

- the establishment of a joint venture between TotalEnergies Marketing Services and The Hydrogen Company.
- The acquisition of Altınbaş Petrol ve Ticaret Anonim Şirketi by Zeren Group Yatırım Holding Anonim Şirketi.

- Healthcare

- The acquisition of sole control of Mirati Therapeutics Inc. by Bristol-Myers Squibb Company.

SUMMARY OF KEY DECISIONS

The Board rendered eight decisions from 1 to 30 November 2023:

- one decision regarding breaches of competition law
- four decisions regarding merger and acquisition notifications
- three decisions regarding other matters

A- BREACH OF LAW DECISIONS:

In the Avon decision¹ dated 9 March 2023, the Board concluded its investigation initiated against Avon Kozmetik Ürünleri Sanayi ve Ticaret A.Ş. ("**AVON**") regarding allegations of a violation of Article 4 of the Law by resale price maintenance and restriction on internet sales. The Board has scrutinised whether AVON sale representatives (resale undertakings) are affiliated with AVON, i.e. whether they are its employees, representatives or agents in order for the relevant act to be evaluated within the scope of Article 4. Since Avon sale representatives (i) sell to third parties on their own behalf and account, (ii) decide their own economic policies, and (iii) assume commercial risks, it was determined that the relevant situation is within the scope of Article 4. From the evidence, it was understood that AVON monitored its sellers closely and prevented sales on e-commerce platforms in order to maintain control over the resale price. As a matter of fact, the investigation was concluded within the framework of the settlement text submitted by AVON. When calculating the administrative fine, the Board applied a 40% discount to the base fine, considering the small share of products related to the violation in



¹ Decision of the Board dated 09.03.2023 and numbered 23-13/223-72.

AVON's turnover as a mitigating factor and also a maximum rate of 25% reduction was applied in the administrative fine. An administrative fine of TRY 3,610,955.55 was imposed on AVON.

B- M&A DECISIONS

- Automotive components market

- In its decision dated 28 April 2023, the Board approved the acquisition of a certain percentage of shares in UPK İç ve Dış Ticaret Anonim Şirketi and a certain percentage of shares in UPK Otomotiv Yan Sanayi Ticaret Anonim Şirketi, in which Uğur PEHLİVANKÜÇÜK is a shareholder, by Orsan Ticari Araç Fren Sistemleri Anonim Şirketi.²

- Online homework and study help (HSH) tools and Android App Store Services markets

- In its decision dated 28 April 2023, the Board approved the acquisition of sole control of PHOTOMATH Inc. a provider of online HSH tools, by Google LLC.³

- Manufacture and sale of cleaning and hygiene products market

- In its decision dated 5 May 2023, the Board approved the acquisition of sole control of Diversey Holdings Ltd. by Platinum Equity Group through Olympus Water Holdings IV, LP.⁴ Based on the fields of activity of the parties, it is considered that there is a horizontal overlap since both parties have activities in the production and supply of water treatment chemicals used in the food and beverage sector. There is also a vertical overlap in the production and supply of water treatment chemicals used in the food and beverage industry due to the existence of a distribution agreement between the parties. Nevertheless, considering factors such as the limited vertical overlap between the parties' activities, the existing distribution agreement between the parties and the strong position of the competitors, it has been assessed that the transaction will have a limited impact on the market and is unlikely to raise competitive concerns.

- Spinal devices market

- In its decision dated 5 May 2023, the Board approved the acquisition of sole control of NuVasive Inc. by Globus Medical Inc⁵. The transaction consists of merger of Globus Medical Inc. ("Globus Medical"), a subsidiary of Zebra Merger Sub ("Zebra MS") with NuVasive Inc.in ("Nuvasive") through the purchase of shares. Following this transaction, Zebra MS will cease to exist and Nuvasive will continue to exist as a wholly owned subsidiary of Globus Medical. It has been determined that there is an overlap between the activities of Globus Medical and Nuvasive in spinal devices market in Türkiye. However, it is observed that the transaction is unlikely to have an anti-competitive effect in the spinal devices market, as there are many competitors operating on the market, there are undertakings with high market power among these competitors, and the cumulative increase in the market share of the Parties to the transaction is limited (under 20%). Accordingly, it was concluded that it was unlikely to significantly decrease effective competition in



² Decision of the Board dated 06.04.2023 and numbered 23-17/308-103.

³ Decision of the Board dated 28.04.2023 and numbered 23-19/354-121.

⁴ Decision of the Board dated 05.05.2023 and numbered 23-20/385-133.

⁵ Decision of the Board dated 28.04.2023 and numbered 23-19/362-124.

any goods or services market in all or part of the country, in particular by creating a dominant position or strengthening an existing dominant position.

OTHER DECISIONS

Farmasi Enternasyonal Decision⁶

In its decision dated 23 February 2023, the Board looked at the request for a re-evaluation of the Board's decision dated 26.01.2023 and numbered 23-06/69-20, which concerned information provided by Farmasi Enternasyonel Ticaret A.Ş. ("Farmasi"). It was determined that the information was within the scope of false/misleading information, in accordance with the Administrative Procedure Law No. 2577 ("APL").

FARMASI

The Board asked Farmasi about the amount of export resales for the relevant years. It was found that Farmasi sent incorrect information. Farmasi stated that the mistake was made by the independent auditor certified public accountant and that they sent incorrect information unintentionally.

The Board stated that the undertaking's sales information is related to a concrete reality, and therefore, it must be fully accurate. The Board also indicated that a misstatement in all of the information requested multiple times cannot be considered as an error, and that the documents submitted by the certified public accountant are also under the responsibility of Farmasi.

As a result of the re-evaluation; it was decided that there are no grounds to remove, reverse, amend or for new action to be taken on the relevant Board decision within the scope of Article 11 of the APL.

Empa Gayrimenkul Decision⁷

In its decision dated 23 March 2023, the Board decided to impose an administrative fine under Article 17 of the Law for the obstruction of the on-site inspection conducted at the offices of Empa Gayrimenkul Pazarlama A.Ş. Elvankent Representative ("**EMPA**").



Authority experts who came for an on-site inspection were obstructed from entering the office by representative of EMPA, on the grounds that there was no court order. Authority experts, who ordinarily have the authority to search as regulated by the Law, obtained a search warrant from the Ankara West 2nd Criminal Judge of Peace and returned to the office on 16 March to complete the inspection.

EMPA was imposed an administrative fine to be calculated over six days, starting from 10 March 2023, the first working day following the day on which the act of obstruction of the on-site inspection took place, until 16 March 2023, when the inspection was completed.

⁶ Decision of the Board dated 23.02.2023 and numbered 23-10/153-47.

⁷ Decision of the Board dated 23.03.2023 and numbered 23-15/256-86.

Banks and Payment Institutions Decision⁸

In its decision dated 6 April 2023, the Board reviewed a request for the removal, amendment and adoption of a new decision pursuant to Article 11 of the Administrative Procedure Law No. 2577 as a result of the judicial review of its decision numbered 22-16/265-119. In the related complaint, it was explained that banks refuse to enter into agreements with Payment Institutions, through actions such as not providing Point of Sale ("**POS**") to Payment Institutions and closing the POS to transactions with foreign cards. In addition, the banks implement price/margin compression through actions such as working with banks' payment institutions with high merchant commission rates and practiced binding by requiring that single check payments be made from the same POS from which instalment payments are made. In this context, it was requested that the decision be re-evaluated on the grounds that the banks had abused their dominant position. The Board indicated that no bank was in a dominant position, that alternatives were available, and that a refusal to deal was not required. Moreover, it is established that the banks took this action for the detection of illegal payments and compliance with the legislation. Also, no documents were found to show the banks' exclusionary intention regarding payment institutions, so the allegations of refusal to deal was rejected. As a result, the Board has decided to reject the request for the removal, revocation, amendment or new action to be taken.

SUMMARY OF IMPORTANT DECISIONS OF THE EU COMMISSION

Rabobank Decision⁹

The European Commission ("**Commission**") has fined Rabobank €26.6 million for participating in a cartel concerning the trading of certain Euro-denominated bonds, together with Deutsche Bank. Deutsche Bank was not fined as it revealed the cartel to the Commission under the leniency programme. The Commission investigation revealed that, between 2006 and 2016, the two banks, through some of their traders, exchanged commercially sensitive information and coordinated their trading and pricing strategies. Deutsche Bank cooperated with the Commission under the leniency programme (2006 Leniency Notice) and therefore received full immunity from fines for revealing the cartel, thereby avoiding a fine of almost €156 million. Rabobank received a fine of €26.6 million.



Automotive Starter Battery Cartel Decision¹⁰

The European Commission has informed automotive starter batteries manufacturers Banner, Clarios (formerly JC Autobatterie), Exide, FET (and its predecessor Elettra), and Rombat as well as trade association Eurobat and its service provider Kellen of its preliminary view that they have breached EU antitrust rules by colluding to increase the prices of automotive starter batteries sold to car producers in the European Economic Area ("**EEA**"). The Commission has concerns that, between 2004 and 2017, the five starter batteries manufacturers created, published and agreed to use new indices in their price negotiations with car producers (known as the 'Eurobat Premium System'). The Commission is also concerned that Eurobat and its service provider Kellen were aware of the alleged conduct and actively contributed to it by assisting the battery manufacturers in creating and running the Eurobat premium system. If the Commission's preliminary view is confirmed, this conduct would infringe Article 101 of the Treaty on the

⁸ Decision of the Board dated 06.04.2023 and numbered 23-17/304-102.

⁹ Case dated 22.11.2023 numbered AT.40512

¹⁰ Case dated 30.11.2023 numbered AT.40545

Functioning of the European Union and Article 53 of the EEA Agreement, which prohibit cartels and other restrictive business practices. This prohibition includes anticompetitive conduct by associations of companies. The sending of a Statement of Objections does not prejudice the outcome of an investigation.

Acquisition of iRobot by Amazon¹¹

The European Commission has informed Amazon of its preliminary view that its proposed acquisition of iRobot may restrict competition in the market for robot vacuum cleaners ("RVCs"). As a result of this in-depth investigation, the Commission is concerned that Amazon may restrict competition in the European Economic Area and/or in national markets for RVCs, by hampering rival RVC suppliers' ability to effectively compete. In particular, the Commission found that:



- Amazon may have the ability and the incentive to foreclose iRobot's rivals by engaging in several foreclosing strategies aimed at preventing rivals from selling RVCs on Amazon's online marketplace and/or at degrading their access to it;
- Amazon may have the ability to foreclose iRobot's rivals because Amazon's online marketplace is a particularly important channel to sell RVCs in France, Germany, Italy, and Spain. RVC customers in these countries particularly rely on Amazon both in terms of product discovery as well as for their final purchasing decision.

The Commission closely cooperated with other competition authorities during both the initial investigation and the in-depth investigation and will continue such cooperation during the remainder of the in-depth investigation.



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.

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¹¹ Case dated 27.11.2023 numbered M.10920