

NEWSLETTER

COMPETITION LAW | TURKEY |

DECEMBER 2022

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**").

COMPETITION MARKET OVERVIEW

The Board rendered five decisions in November 2022. The distribution of these decisions was as follows:

- 3 decisions regarding merger and acquisition notifications;
- 1 decision regarding a breach of competition law;
- 1 decision regarding a request for commencing the commitment negotiations.

The decision concerning the breach of competition law was an investigation decision. The companies involved in this investigation were hospitals active in the health services sector. As a result of the Board's decision, administrative fines totalling TRY 57,958,835.19 (approximately EUR 2,950,000) were imposed on the companies that were found to be in breach of the Law.

ANNOUNCEMENTS

A- Investigation Announcements:

The Board has continued its series of investigations into various sectors as follows:

- Food:

- Following the preliminary investigation launched by the Board against Ferrero Fındık İthalat İhracat ve Ticaret AŞ and its affiliates on 3 November 2022, in relation to allegations of an infringement of competition involving anti-competitive practices in the manufacturing, purchasing, shelling and exportation processes in the hazelnut market, the Board determined that the findings during the preliminary investigation were serious enough to launch an investigation against Ferrero Fındık İthalat İhracat ve Ticaret AŞ.
- The Board's investigation into Natura Gıda Sanayi ve Ticaret AŞ, a manufacturer/supplier in the fast-moving consumer goods sector, to determine whether the company restricts competition by determining the resale price of its products, has been completed. The investigation was concluded with the acceptance of commitments submitted by the parties pursuant to the decision of the Board dated 23 November 2022. The Board applied a 25% discount and imposed an administrative fine of approximately EUR 278.



- Cosmetics and Personal Care Products: In light of the preliminary investigation conducted by the Board in relation to an alleged infringement of competition by fixing the resale prices and restricting online sales, the Board launched an investigation against six undertakings operating in the cosmetics and personal care products industry. The undertakings are: Avon Kozmetik Ürünleri Sanayi ve Ticaret AŞ, Farmasi Enternasyonel Ticaret AŞ, Kosan Kozmetik Pazarlama ve Tic. AŞ, NAOS İstanbul Kozmetik San ve Tic. Ltd. Şti., Pierre Fabre Dermo Kozmetik Ltd. Şti. and Yöntem Profesyonel Kozmetik Ürünleri San. ve Tic. Ltd. Şti.



- Technology: On 29 November 2022, the Board launched an investigation into Hiksın Teknoloji Sanayi ve Ticaret Ltd. Şti., an e-commerce platform selling a wide range of products, on the grounds that the company restricted the competition by determining resale prices for its resellers.
- Household Appliances:
 - The Board concluded the investigation against the manufacturers of household appliances, namely Korkmaz Mutfak Eşyaları San. ve Tic. AŞ, Gençler Ev Araç ve Gereçleri Pazarlama Tic. AŞ and Punto Dayanıklı Tüketim Malları İth. İhr. Tic. Ltd. Şti., after accepting their commitments. The Board imposed a total administrative fine of approximately EUR 666,288 on these companies, as reduced by a 25% discount.
 - The Board concluded the investigation against the Turkish subsidiary of a German manufacturer of domestic appliances, Miele Elektrikli Aletler Dış Ticaret ve Pazarlama Ltd. Şti., after accepting its commitments. The Board imposed a total administrative fine of approximately EUR 57,690 for the company, as reduced by a 25% discount.

B- M&A Notifications:

The Board has been notified as follows:

- Automotive: A fully functional joint venture to be established between Saudi Aramco Development Co Ltd and Honeywell Automation and Control Products Ltd
Sole control of Altra Industrial Motion Corp to be acquired by Regal Rexnord Corporation
- Banking: The acquisition of 100% of the shares in TEB Finansman Anonim Şirketi by Türk Ekonomi Bankası Anonim Şirketi
Re-Pie Portföy Yönetimi A.Ş. Fibabanka Yıldız Girişim Sermayesi Yatırım Fonu to become a shareholder of Birleşik Ödeme Hizmetleri ve Elektronik Para A.Ş. by way of a share transfer
- Construction: A new joint venture to be established between ITOCHU Corporation, Tokyo Century Corporation and Hitachi Construction Machinery Co., Ltd.

- **Energy:** The Federal Ministry of Finance of Germany to acquire 98.6% of the shares and sole control of Uniper SE from Fortum Oyj
- **Healthcare and Insurance:** 49% of the shares in Good Life Design Co., Ltd. to be acquired by Toyota Tsusho Corporation
HDI Sigorta Anonim Şirketi to acquire sole control of Fiba Emeklilik ve Hayat Anonim Şirketi and subsequently establish a joint venture between HDI Sigorta Anonim Şirketi and Fibabanka Anonim Şirketi

SUMMARY OF KEY DECISIONS

MERGERS AND ACQUISITIONS

Smart Transportation Systems

- On 31 March 2022, the Board authorised Atlantia S.p.A. to acquire sole control of Yunex GmbH,¹ a global manufacturer and supplier of infrastructure and mobility services such as AI-powered applications, connected mobility and infrastructure communication solutions, as well as smart urban and peri-urban traffic solutions. By identifying the relevant product market within the scope of the M&A notification as a smart transportation systems market, the Board evaluated that taking the Turkish market into consideration, since Atlantia has no operations in Turkey, there is no existing horizontal or vertical overlap between the parties' activities. On the other hand, the Board stated that, even though there is an overlap on a global scale regarding the electronic toll collection systems, given that the turnover is very low, this overlap is strictly limited.

Chemical Substances

- The acquisition of sole control of Tunçkaya Kimyevi Maddeler Tic. Ve San. AŞ, an undertaking operating in the distribution of specialty chemicals such as food ingredients and additives, by Azelis SA, a financial investment fund, was approved by the Board on 7 April 2022.² After identifying the relevant product market as "wholesale distribution of chemical substances market" within the scope of Turkey, the Board evaluated that even though there is no vertical overlap pertaining to the M&A Notification, the acquirer's and the target's commercial operations overlap horizontally. The Board concluded that, given the merged undertakings' considerably low total market share, the lack of market entry barriers, and the presence of significant competitors on the market, the acquisition subject to the notification would not result in a significant reduction in effective competition. Therefore, the Board approved the acquisition.



Management Consultancy Services

- On 16 June 2022, the Board authorised Sagard SAS and Bpifrance to acquire joint control over AUDIT Group, which is an undertaking providing management consultancy services and aviation maintenance, repair, and refurbishment services.³ The Board evaluated that the joint venture

¹ Decision of the Board dated 31.03.2022 and numbered 22-15/251-110

² Decision of the Board dated 07.04.2022 and numbered 22-16/276-125

³ Decision of the Board dated 16.06.2022 and numbered 22-27/441-179

subject to the notification met the cumulative conditions of "common control" and "full functionality (independent economic entity) and therefore, it is considered an acquisition within the scope of Communiqué No 2010/4. As a result of the scope of the activities of the JV's parties and JV, the Board determined that there is no vertical nor horizontal overlap in Turkey, and to this extent, the Board concluded that the transaction will not significantly reduce the effective competition and so authorised the transaction.

INVESTIGATIONS

Hospitals Decision⁴



On 1 November 2022, the Board published the reasoned decision regarding the hiring practices of 29 medical institutions. The Board launched an investigation to determine whether certain health institutions jointly determined the operating room service fees demanded from freelancer physicians and so restricted the transfer of personnel between hospitals with a gentleman's agreement.

After finding out that the hospitals in Bursa and Balıkesir provinces were also conducting the anti-competitive practices, the Board initiated another investigation against these institutions and then combined the latter with the above mentioned investigation.

In its ruling, the Board concluded that the evidence shows that certain institutions conspired to refrain from hiring staff from one another. Additionally, several hospitals shared information on the salaries being paid to their staff, leading to the joint determination of healthcare workers' salaries. Some of these institutions also determined the prices that patients would pay for certain medical procedures. In addition, the Board concluded that hospitals shared competitively sensitive information and on February 24, 2022, it punished 21 out of 29 medical institutions.



RECENT DEVELOPMENTS IN EUROPEAN COMPETITION LAW

The EU Digital Markets Act has entered into force

On 1 November 2022, the EU Digital Markets Act (DMA) went into force. The DMA is intended to address the challenges posed by digital markets, providing the European Commission with a new *ex ante* tool kit in addition to traditional competition law enforcement. The DMA will be applicable to designated "gatekeepers" offering a variety of "core platform services". It should be noted that the DMA starts to apply six months after it comes into force – 2 May 2023. After this date, potential "gatekeepers" – companies that meet the thresholds designated in the DMA – will have two months in which to notify the

⁴ Decision of the Board dated 24.02.2022 and numbered 22-10/152-62

Commission about their core platform services (by 3 July 2023). The Commission will then determine whether the undertaking in question meets the thresholds within 45 working days and will appoint gatekeepers by 6 September 2023, at the latest. Afterwards, the gatekeepers will have six months from their designation to comply with the DMA's requirements. Therefore, the real effect of the DMA will be seen by early 2024.

The French milk leaders targeted by an investigation

The French Competition Authority announced on 18 November 2022 that, prior to the authorisation from a judge of freedoms and detention, it had raided four major French dairy players the day before, including Lactalis, Savencia and Danone, on the grounds of implementing anti-competitive practices "in cow milk collection."



The EU opens an 'in-depth investigation' into Microsoft's Activision Blizzard acquisition



The European Commission has launched a "in-depth investigation" into Microsoft's proposed acquisition of Activision Blizzard for \$68.7 billion. On 8 November 2022, the European Commission decided to look further into the acquisition and its possible impacts on competition with the concern of this transaction may hinder competition in the markets for the distribution of console and PC video games and cloud game streaming services.



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 Turkey.

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