

NEWSLETTER

COMPETITION LAW | TURKEY

JANUARY 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**").

ANNOUNCEMENTS


A- Investigation Announcements:

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

- Fast Moving Consumer Goods: In its decision dated 15 December 2022¹, the Board concluded its investigation into certain undertakings operating as manufacturers/suppliers and retailers in the fast-moving consumer goods sector including Turkey's largest supermarkets such as Carrefour SA, Migros, Sok, A101, BIM. The investigation focused on allegations of mediating the indirect exchange of price-sensitive information among retail supermarket chains and determining the true prices of these retailers and The Board imposed an administrative fine of EUR 44,402,421.58. Considering that prior to this decision, the Board also determined in an earlier investigation that 12 suppliers and supermarket chains had formed a hub-spoke type cartel, and the chain markets established a cartel over the suppliers, the Board decided not to levy administrative fines on the supermarket chains that had been fined under the first decision. The undertakings which were subject to the administrative fines are: Coca-Cola Satış Dağıtım A.Ş., Doğanay Gıda Tarım ve Hayvancılık San. Tic. A.Ş., Eti Gıda San. ve Tic. A.Ş., Frito Lay Gıda Sanayi ve Ticaret A.Ş., Haribo Şekerleme Sanayi ve Ticaret Ltd. Şti., Kent Gıda Maddeleri Sanayi ve Ticaret A.Ş., Pasifik Tüketim Ürünleri Satış ve Ticaret A.Ş., Unmaş Unlu Mamuller Gıda Sanayi ve Ticaret A.Ş. and Pepsi Cola Servis ve Dağıtım Ltd. Şt.
- Ready Mixed Concrete: On 8 December 2022, the Board decided to launch an investigation into 17 undertakings operating in the manufacture of ready-mixed concrete within the geographical scope of Ankara and Kırıkkale Provinces, to determine whether they violated Article 4 of the Law.



¹ Decision of the Board dated 15.12.2022 and numbered 22-55/863-357.

- Fire Alarm Systems: Following the preliminary investigation launched by the Board against Mavili Elektronik Tic. ve San. A.Ş., Filiz Güvenlik Sistemleri Proje Sanayi ve Ticaret A.Ş. and Yıldız Yangın Söndürme Sistemleri San. Tic. A.Ş., in relation to allegations of anti-competitive practices such as colluding on a technical service fee and resale prices of spare parts and manufactured goods through the conclusion of operation agreements resulting in customer sharing, on 27 December 2022, the Board determined that the findings generated during the preliminary investigation were serious enough to launch an investigation against these three undertakings.
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- Household Appliances: The Board's investigation against Aslan Ticaret Dayanıklı Tüketim Malları ve Limited Şirketi, a manufacturer of household appliances, was concluded through settlements.² The investigation was looking at whether the company restricts competition by interfering with the resale price of its dealers and by prohibiting online sales unless the dealers comply with the resale prices. The Board applied a 25% discount on the administrative fine due to the resolution of the investigation through settlement and imposed an administrative fine of EUR 152,166.34

B- M&A Notifications:

In December 2022, a total number of 13 merger and acquisition notifications were made to the Board, the sectoral distribution of these is as follows;

- Energy:
 - o Akfen Holding A.Ş. acquiring sole control of Akfen Yenilenebilir Enerji A.Ş.
 - o İş Enerji Yatırımları A.Ş. (or one of its newly established subsidiary) and Aldo Enerji San. ve Tic. A.Ş. to establish a joint control over Soli GES A.Ş. and its fully-owned subsidiaries.
 - o Torunlar Enerji Sanayi ve Ticaret A.Ş. and Başkent Doğalgaz Dağıtım Gayrimenkul Yatırım Ortaklığı A.Ş. acquiring the shares held by CEZ A.Ş. in AKCEZ Enerji Yatırımları Sanayi ve Ticaret A.Ş. and its subsidiaries, jointly controlled by CEZ A.S. and Akkök Holding A.Ş., and subsequently including a new partner to the joint venture (alongside Akkök Holding A.Ş.).
- Ready-Made Clothing:
 - o Kuzu Hazır Giyim Perakende A.Ş. acquiring sole control of Panço Giyim San. ve Tic. A.Ş.



² Decision of the Board dated 08.12.2022 and numbered 22-54/834-344.

- Health Technology:

- o IVD Holdings acquiring sole control of Werfen S.A.

- Chemicals:

- o Clariant AG and Wilmar International Limited acquiring joint control of the Clariant Group's Quaternary Ammonium Compounds business.
- o SABIC Agri-Nutrients Company acquiring 49% of the shares and joint control of ETG Inputs Holdco Limited from ETC Group.

- Maritime Services:

- o Abu Dhabi Ports Company PJSC acquiring sole control of Noatum Holdings S.L.U.
- o Ocean Network Express Pte indirectly acquiring a minority stake in Atlas Corp.

- Finance:

- o The acquisition of the joint control of Figo Ticari Bilgi ve Uygulama Platformu A.Ş., currently under the joint control of (A) Group and IFC, by L2G Ventures and Fiba alongside the joint control of (A) Group and IFC.

- Infrastructure Management:

- o Investment funds, vehicles and/or accounts advised and managed by various affiliates of Global Infrastructure Management, LLC KKR & Co. Inc. and Vodafone Group Plc. acquiring joint control over Vantage Towers AG.

- Steel:

- o Nippon Steel Corporation acquiring sole control of Nippon Steel Trading Corporation.

SUMMARY OF KEY DECISIONS

The Board rendered two decisions in December 2022:

- 1 decision regarding a false/misleading response to an information request;
- 1 decision regarding an unnotified merger.

Martı Decisions³

On 5 December 2022, the Board issued a decision imposing an administrative fine on Martı İleri Teknoloji A.Ş. ("**Martı**"), a micro-mobility services provider, on the grounds that it had submitted false and misleading information within the scope of the preliminary investigation launched against it.

After a complaint was filed against Martı to the Board on 11 September 2022, alleging that Martı had a dominant position in the relevant market and was misusing



³ Decision of the Board dated 21.07.2022 and numbered 22-33/527-214 and Decision of the Board dated 21.07.2022 and numbered 22-33/527-213

its dominant position through its exclusionary behaviour, the Board determined that no further action was required. However, a lawsuit was Court with a motion to annul the Board's decision. The court annulled the Board's decision for non-compliance with the procedure stipulated under the Law, stating that the Board should have conducted a preliminary investigation before deciding not to take any action. Following the court's decision, the Board opted to launch a preliminary investigation against Martı.

As part of the preliminary investigation, the Board asked Martı to submit information on the starting and per-minute fees of e-scooters, as well as the campaigns used in İstanbul, Ankara, and İzmir. In response, Martı submitted its base prices, stating that prices had varied between 2019 and 2022. However, after comparing user data including campaign messages sent from the application within the relevant periods and the information submitted by Martı, the Board concluded that Martı had provided incomplete, inaccurate and misleading information to the Board. Therefore, it decided to impose an administrative fine in the amount of one-thousandth of the company's 2021 turnover, as per subparagraph (c) of the first paragraph of Article 16 of the Law.

In a second decision, the Board ruled on a claim regarding an alleged unnotified merger between Martı and Mobilite A.Ş ("Mobilite"), the Turkish affiliates of US-based Martı Technologies Inc. because such a merger would result in the exclusion of competitors in the e-scooter sector.

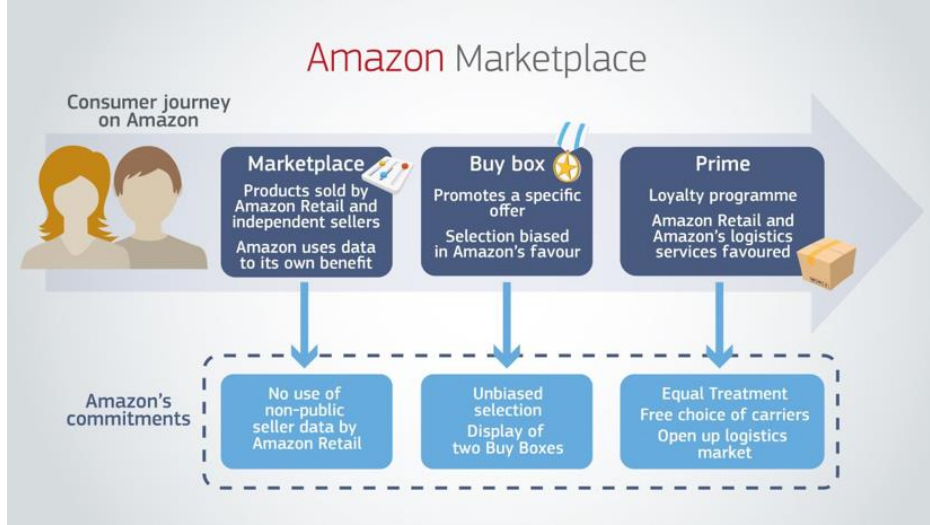
In its decision, the Board focussed on the fact that both of the undertakings are ultimately controlled by Martı Technologies Inc., and that Mobilite was operated in İstanbul to test consumer approaches or preferences for different brands of scooters, ending its activities for consumers after just a few months. In light of these facts, the Board concluded that both the undertakings belong to the same group of companies and these undertakings are not required to seek the Board's approval for the planned transaction, as there is no identified merger. Therefore, the Board did not impose a fine.



RECENT DEVELOPMENTS IN EUROPEAN COMPETITION LAW

Commission accepts the revised commitments of Amazon

The European Commission (the "**Commission**") has concluded its investigations against Amazon by accepting commitments offered by Amazon and making them legally binding under EU antitrust rules. The Commission evaluated the commitments as meeting expectations and alleviating the Commission's competition concerns in terms of Amazon's use of non-public data of its marketplace sellers to distort fair competition on its platform and abuse its dominant position on the French, German and Spanish markets.



In July 2019, the Commission launched a formal investigation into Amazon's use of non-public data of its marketplace sellers. In November 2020, the Commission launched a second investigation and preliminarily concluded that Amazon had abused its dominant position on the French, German and Spanish markets for the provision of online marketplace services to third-party sellers. In response, Amazon proposed the first set of commitments to the Commission, which the Commission found to be insufficient to address the concerns. In a second attempt, Amazon reviewed and updated its commitment package. The commitments ensure that Amazon Retail will not use non-public marketplace seller data, that there is an unbiased selection of the winner of the Buy Box and that Prime sellers can freely choose and negotiate directly with carriers. Amazon will also introduce a second competing Buy Box offer on its product display pages, which will enhance consumer choice and increase the exposure of sellers active on the marketplace.

The final commitments will remain in force for seven years concerning Prime and the display of the second competing Buy Box offer, and for five years for the remaining commitments. The Commission will monitor the implementation of these commitments through an independent trustee. It should also be noted that if Amazon fails to comply with its commitments, the Commission can impose a fine of up to 10% of its total annual turnover, without having to find an infringement of EU antitrust rules, or a periodic penalty payment of 5% per day of Amazon's daily turnover for every day of non-compliance.

The Commission launched public consultation on Digital Markets Act implementing regulation

Four days after its first Digital Markets Act (the "DMA") workshop on 5 December 2022, the Commission launched a public consultation on the proposed regulation on the implementation of the procedural aspects of DMA enforcement, such as the form, format and details required for notifications under the DMA. The consultation, which allowed reviewing and commenting on the proposed procedure, was open until 9 January 2023. According to the Commission's projected timeline regarding the DMA's implementation, the implementing regulation will enter into force in 2 May 2023.



Advocate General of European Court of Justice, Mr Rantos, delivered his opinion on whether UEFA and FIFA's opposition to the creation of a European Super League in 2021 breached EU competition law



On 15 December 2022, Advocate General of European Court of Justice, Mr Rantos, delivered his non-binding opinion on the case concerning UEFA and FIFA's alleged abuse of a dominant position and a violation of rules on anticompetitive agreements, following the 2021 announcement by several major European football teams of their intention to form a separate and independent European Super League. In his non-binding opinion, Mr Rantos underlined that EU competition law does not prohibit FIFA's and UEFA's rules requiring their prior approval for any new competition, and their threat of sanctions against clubs that participate in a project to create a new competition. In other words, he accepted the objectives pursued by UEFA as legitimate and the means to achieve them as proportionate. He stated that UEFA, as the sole organiser of all major interclub football competitions at the European level, has to "ensure that third parties are not unduly denied access to the market to the point that competition on that market is thereby distorted."



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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