

NEWSLETTER

COMPETITION LAW | TURKEY

MARCH 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**").

COMPETITION MARKET OVERVIEW

ANNOUNCEMENTS

A- Investigation Announcements:

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

- Cosmetics and Personal Care: The Board's investigation against NAOS İstanbul Kozmetik Sanayi ve Limited Şirketi, a manufacturer of personal care products, was concluded through a settlement procedure.¹ The Board reduced the administrative fine by 25% to TRY 4,965,727.30 (approximately EUR 47,428,149²). Following the Board's preliminary investigation into Biota Bitkisel İlaç ve Kozmetik Laboratuvarları AŞ, Colastin Sağlık Ürünleri AŞ, Gerçek Kozmetik San. ve Tic. Ltd. Şti., Kozmoklinik Kozmetik ve Medikal Ürünler Paz. ve Tic. AŞ and MOT Grup Bilişim Ltd. Şti, in relation to allegations of anti-competitive practices of determining resale prices and restricting online sales, the Board found the evidence collected during the preliminary inquiry was sufficient for a full investigation and launched an investigation into these five undertakings on 22 December 2022.
- Technology: The Board's investigation to evaluate whether Hiksanteknoloji Sanayi ve Ticaret Ltd. Şti. violated Article 4 of the Law by determining the resale price of its products ended on 20 December 2022.³ The Board concluded the investigation through a settlement procedure and reduced the administrative fine by 25% to TRY 45,329.05 (approximately EUR 4,330).
- Private Educational Institutions: On 12 January 2023, the Board announced its decision to launch an investigation into eight primary and secondary level private schools operating in Ankara Province, to



¹ Decision of the Board dated 12.01.2023 and numbered 23-03/29-12.

² The Euro rate is calculated as EUR 1 = TRY 10.47, which is the average of the foreign exchange buying rate of the Central Bank of the Republic of Turkey for the year 2021.

³ Decision of the Board dated 22.12.2022 and numbered 22-56/882-365.

determine whether they violated Article 4 of the Law. On the same date, the Board announced an investigation into five private French high schools in Istanbul – namely Saint-Joseph French High School, Saint Benoît French High School, Notre-Dame de Sion French High School, Saint Michel French High School and Sainte Pulchérie French High School. Following a preliminary inquiry into allegations of anti-competitive practices, the Board concluded that the evidence gathered was significant enough to warrant a full investigation.

- Packaging: After completing its preliminary inquiry into allegations that Tetra Laval Holding & Finance SA had engaged in exclusionary practices against its competitors, potentially breaching Article 6 of the Law by abusing its dominant position, on 19 January 2023, the Board decided to launch a full investigation.
- General Search Services: The Board's preliminary investigation to determine whether the capital group consisting of Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited and Google Reklamcılık ve Pazarlama Ltd. Şti. violated Article 6 of the Law by abusing its dominant position in the general search services market reached a conclusion. Accordingly, on 2 February 2023, the Board announced its decision to launch an investigation against this group.
- Automotive: The Board has completed a preliminary inquiry regarding allegations that companies producing and marketing tractors have breached Article 4 of the Law. Based on the evidence gathered, on 5 January 2023, the Board announced a full investigation against the following companies: AGCO Tarım Makineleri Tic. Ltd. Şti., Argo Tractors Turkey Traktör San. ve Tic. Ltd. Şti., Başak Satış Pazarlama ve Yatırım AŞ, Erkunt Traktör Sanayi AŞ, Hattat Traktör Sanayi ve Ticaret AŞ, IPSO Tarım AŞ, Kubota Turkey Makine Ticaret Ltd. Şti., Same Deutz Fahr Traktör Sanayi ve Ticaret AŞ, Tümosan Motor ve Traktör Sanayi AŞ, and Türk Traktör ve Ziraat Makinaları AŞ. The Board also conducted a preliminary inquiry into Iveco Araç Sanayi ve Ticaret Anonim Şirketi to determine whether the company violated Article 4 of the Law by imposing regional and customer restrictions, including restrictions on internet sales. The evidence collected was deemed sufficient and a full investigation has been launched.
- Engineering: An investigation carried out to determine whether a group of electrical engineers from the Alanya Branch of the Turkish Chamber of Electrical Engineers violated Article 4 of Law by determining minimum prices has been completed. After the electrical engineers submitted a settlement letter on 5 January 2023, the Board has concluded its investigation.⁴
- Food: The Board has launched an investigation against Nestle Türkiye Gıda Sanayi AŞ regarding the allegations of violating the Article 4 of the Law by determining the resale price and imposing regional and customer restrictions on its dealers. Another food sector related investigation has been launched against Danone Tıkveşli Gıda ve İçecek San. ve Tic. AŞ, Eti Gıda San. ve Tic. AŞ, Horizon Hızlı Tüketim AŞ and Nestle Türkiye Gıda Sanayi AŞ. The investigation is focused on allegations of violating Article 4 of the Law through the exchange of competitively sensitive information. Further, the Board concluded its investigation into the food products producer Panek Ziraat Aletleri Dayanıklı



⁴ Decision of the Board dated 20.10.2022 and numbered 22-48/699-M.

Tüketim Malzemeleri Otomotiv Yakıt Petrol Ürünleri Tarım Ticaret AŞ, in relation to allegations of interfering in the resale prices of its retailers.⁵ The Board concluded the investigation through settlements and applied a 25% reduction on the administrative fine to TRY 27,304,867.30 (approximately EUR 2,600,000).

- **Domestic Appliances:** Back in 12 November 2019, upon completion of the preliminary inquiry, the Board concluded that there was no need to launch an investigation in relation to allegations that Whirlpool Ev Aletleri Pazarlama ve Ticaret AŞ and Whirlpool Beyaz Eşya Sanayi ve Ticaret AŞ had transferred their authorised repairer activities to Vestel Ticaret AŞ through a confidential agreement. However, this decision of the Board was overturned by the Ankara Regional Administrative Court.⁶ The Board re-examined the allegation and, on 5 January 2023, decided to launch an investigation into Whirlpool Beyaz Eşya Sanayi ve Ticaret A.Ş. and Vestel Ticaret A.Ş.



- **E&E:** Ankara's 7th Administrative Court has overturned the Board's decision⁷ regarding allegations that Elektrik Asansör Endüstrisi İnşaat Sanayi ve Ticaret AŞ made misleading and denigrating statements about the complainant's products, aimed at persuading customers to buy the products of Elektrik Asansör Endüstrisi İnşaat Sanayi ve Ticaret AŞ. After the court's decision, the Board completed the investigation and concluded that the allegations in the case do not fall within the scope of the Law, and therefore no further action in respect of the Law could be taken.

B- **M&A Notifications:**

Between January and February 2023, 19 merger and acquisition notifications were made to the Board, the sectoral distribution of these are as follows;

- **Insurance:** The acquisition of 100% of the shares in Groupama Investment Bosphorus Holding A.Ş. by AXA Mediterranean Holding S.A.U.
- **Energy:** Caisse des Dépôts et Consignations, La Poste S.A., Électricité de France S.A., ENGIE S.A. and Imprimerie Nationale S.A. to establish a joint control over Archipels SAS.
- **Online Platforms:**
 - o The acquisition of joint control over Onedio Bilişim Yazılım Medya Teknoloji Sanayi ve Ticaret A.Ş. by Mediki Yeni Medya ve Teknoloji Yatırımları A.Ş., while the current shareholder of Onedio will retain have negative control.

⁵ Decision of the Board dated 29.12.2022 and numbered 22-57/899-369.

⁶ Decision of Ankara Regional Administrative Court, 8th Administrative Chamber dated 02.11.2022 and numbered 2022/148 E. 2022/1272.

⁷ Decision of the Board dated 12.11.2019 and numbered 19-39/603-257

- The acquisition by Google LLC of sole control of Photomath Inc., a provider of online homework and study help tools.
- The acquisition of joint control of Meltwater N.V. and its subsidiaries by Marlin Equity Partners
- Retail:
 - The acquisition of the lease rights and fixed assets of seven stores of Y B Online Mağazacılık Hizmetleri Gıda Sanayi ve Ticaret A.Ş. by Migros Ticaret A.Ş.
 - The acquisition of the lease rights and fixed assets of seven stores of Yunus Market İşletmeleri Ticaret A.Ş. by Migros Ticaret A.Ş.
- Medical Technologies: The acquisition of sole control of Apollo Endosurgery, Inc. by Boston Scientific Corporation.
- Beverages: The acquisition of 80% of the shares and control over Anadolu Etap Penkon Gıda ve İçecek Ürünleri Sanayi ve Ticaret A.Ş. by CocaCola İçecek A.Ş.
- Steel: The acquisition of sole control of Sinosteel Group Corporation Limited by China Baowu Steel Group Corporation Limited.
- Chemicals:
 - The acquisition of sole control over Kale Kimya Kimyevi Maddeler Sanayi ve Ticaret A.Ş. by Univar Solutions, Inc.
 - The acquisition of joint control over Sino-Korea Green New Material (Jiangsu) Limited by SK Geo Centric China Limited and Jiaying Satellite Holding Co. Ltd.
- Pharmaceuticals:
 - The acquisition of sole control over Amryt Pharma Plc'nin by Chiesi Farmaceutici S.p.A.
 - The acquisition of sole control over Alvogen Malta (Out-Licensing) Holding Ltd by Letterone Investment Holdings S.A. through L1 Health GP S.à r.l.
 - The acquisition by Sandoz AG, a subsidiary of Novartis AG, of the global rights and assets relating to the medicinal products for human use Mycamine (brand name outside of Japan) and Funguard (brand name in Japan) and all other medicinal products based on the active ingredient "micafungin" marketed worldwide by Astellas Pharma Inc.
- Health: The acquisition by Acıbadem Sağlık Hizmetleri ve Ticaret AŞ of Özel Kent Sağlık Hizmetleri ve Malzemeleri Sanayi Ticaret AŞ and its beneficial rights in Alsancak Özel Kent Tıp Merkezi A.Ş. and Özel Kent Radyoloji Görüntüleme ve Ticaret A.Ş.
- Engineering: Aéroports de Paris S.A. and Air Liquide S.A. acquiring joint control of a newly established and fully operational joint venture that will operate in the engineering and technical studies sector.
- Transportation: Establishment of joint control over Iskolden Taşımacılık ve Ticaret A.Ş. by Oyak Denizcilik ve Liman İşletmeleri A.Ş. and Iskolden Gmbh & Co. Kg.
- Real-estate: Acquisition of the sole control over Akgirişim Müteahhitlik Müşavirlik ve Çevre Teknolojileri Sanayi ve Ticaret A.Ş. by Akkök Holding A.Ş.

SUMMARY OF KEY DECISIONS

The Board rendered 79 decisions between January and February 2023:

- 14 decisions regarding breach of competition law
- 49 decisions regarding merger and acquisition notifications.
- 2 decisions regarding negative clearance and exemptions.
- 14 decisions regarding other matters

COMPETITION LAW BREACH DECISIONS

Olka/Marlin Decision⁸



On 3 January 2023, the Board published its reasoned decision regarding the investigation into anti-competitive practices by Olka Spor Malzemeleri Ticaret A.Ş. and Marlin Spor Malzemeleri Ticaret A.Ş. against their dealers in the branded sports shoes market, branded sportswear market and sports accessories and equipment market. The Board launched an investigation in 24 February 2022 to evaluate whether these undertakings determined the resale price and/or restricted the online sales of their dealers.

According to the Board's evaluations, restrictions on internet sales qualify as a kind of restriction of passive sales and may be considered a hardcore restriction of competition if it prevents sales to end users.

The Board decided that the companies had breached Article 4 of the Law by determining resale prices and restricting the sale of goods on online marketplaces. The investigation was concluded through a settlement procedure, whereby the applicable administrative fine was reduced by 25% to TRY 7,992,210.68 (approximately EUR 763,400).

After the settlement negotiations, the Board decided on an interim settlement decision, including the minimum and maximum rate of the administrative monetary fine, which was set between 0.5% and 3%. The companies accepted all elements of the interim settlement, but asked for the applicable fine rate to be reduced. Although Article 7(4) of the Settlement Regulation states that an interim settlement decision cannot be subjected to further negotiations, the Board further reduced the applicable fine rate. Three members of the Board gave dissenting opinions, since this further reduction constitutes a breach of Article 7(4) of the Settlement Regulation.

Car Rental Services Decision⁹

On 21 July 2023, the Board decided on a preliminary inquiry into twelve undertakings on the long-term car rental services market. In its ruling, the Board concluded that there was insufficient evidence to prove that information was exchanged between the undertakings in order to restrict competition and decided to not launch an investigation. Although, the documents obtained during the on-site inspections indicated that customers commonly shared price offers obtained from competitors, which was then used by car leasing companies to reduce their price offers, the Board



⁸ Decision of the Board dated 30.06.2022 and numbered 22-29/488-197.

⁹ Decision of the Board dated 21.07.2022 and numbered 22-33/526-212.

determined that this exchange of price offers had increased competition between the undertakings, as they attempted to offer reduced prices in order to acquire new customers and retain existing customers, which resulted in competitive friendly actions.

Numil Gıda Decision¹⁰



The Board decided to conclude its investigation regarding the resale prices of Numil Gıda Ürünleri San. ve Tic. A.Ş., an undertaking in the baby foods market, following the submission of a settlement letter by the party subject to the investigation. As part of its ruling, the Board reduced the applicable fine by 15%. A lower ratio of reduction could have been applied, given that the company's settlement application was submitted after ten months into the investigation. Additionally, two members of the Board gave dissenting opinions concerning the method of calculating the administrative fine, explaining that it is not accurate to exclude exports figures and that the fine should be calculated over the total turnover.

Duru Bulgur Decision¹¹

Following a preliminary inquiry into allegations that Duru Bulgur determined the resale price for retail stores in Konya and Karaman, the Board decided not to launch an investigation.¹² This decision was overturned by a decision of the 13th Administrative Court of Ankara,¹³ and the subsequent appeal was rejected.¹⁴

Following an investigation conducted against Duru Bulgur, the Board found that the practices of Duru Bulgur determining the sales prices of retailers in an organised retail channel were widespread since 2011, and continue today. In this regard, the Board decided that the practices of Duru Bulgur violated Article 4 of the Law, that the relevant activities could not benefit from the exemption provided under Article 5 of the Law, and imposed an administrative fine of TRY 4,407,979.26 (approximately EUR 548,900¹⁵).



¹⁰ Decision of the Board dated 30.06.2022 and numbered 22-29/483-192.

¹¹ Decision of the Board dated 17.02.2022 and numbered 22-09/130-50.

¹² Decision of the Board dated 08.03.2018 and numbered 18-07/112-59.

¹³ Decision of the 13th Administrative Court of Ankara dated 17.09.2020 and numbered 2020/1569.

¹⁴ Decision of Ankara Regional Administrative Court, 8th Administrative Chamber dated 17.03.2021 and numbered 2021/580.

¹⁵ The Euro rate is calculated as EUR 1 = TRY 8.03, which is the average of the foreign exchange buying rate of the Central Bank of the Republic of Turkey for the year 2020.

Tadım Decision¹⁶

The Board's decision regarding the conclusion of the investigation into allegations of abuse of a dominant position by Tadım Gıda Maddeleri San. ve Tic. A.Ş. ("**Tadım**") in the packaged dry nut market by using anti-competitive practices to impede the activities of competitors and setting the resale price by intervening in the price of its dealers was published on 17 January 2023.

In its ruling, the Board evaluated the final commitment letter submitted by Tadım. The final letter included certain commitments, including that Tadım and its distributors will not establish an exclusivity relationship with the sales points in the customary channel, Tadım and its distributors will not apply additional discount, premiums, free products etc. to retailers that purchase all of the packaged products from Tadım etc. The Board deemed the commitments submitted by Tadım suitable for resolving the competition law issues, and decided that they can be implemented quickly and effectively. Therefore, the Board has decided to conclude the investigation.

Biopharma Decision¹⁷

The Board concluded an investigation into three undertakings providing local and international door-to-door transportation services within the healthcare logistic sector, on the grounds that they breached the Law by entering into agreements for customer sharing and implementing a non-competition obligation towards such customers for an indefinite period. Transorient Uluslararası Taşımacılık ve Ticaret A.Ş. and Tunaset Biofarma Lojistik Hizmetleri A.Ş. were found to have violated the Law and were imposed a fine of TRY 2,918,622.95 and TRY 242,136.45 (approximately EUR 279,000 and EUR 23,100) respectively. On the other hand, Biopharma received full immunity from the fine under the Regulation on Active Cooperation for Detecting Cartels.

MERGERS AND ACQUISITIONS**Berkshire/Alleghany Decision¹⁸**

On 24 January 2023, the Board released its reasoned decision regarding the acquisition of sole control over Alleghany Corporation by Berkshire Hathaway Inc. In its decision, the Board applied the new merger control regime for technology undertakings¹⁹ and clarified its scope of application. As a reminder, the turnover threshold requirement set out in Communiqué No 2010/4 does not apply in determining whether a transaction is subject to the authorisation of the Board in respect of undertakings operating in "*digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies.*"

The main area of activity of the target company – Alleghany Corporation – is reinsurance. More specifically, it manages investments in property and casualty reinsurance and insurance businesses and

¹⁶ Decision of the Board dated 07.07.2022 and numbered 22-32/505-20.

¹⁷ Decision of the Board dated 26.05.2022 and numbered 22-24/390-161.

¹⁸ Decision of the Board dated 15.09.2022 and numbered 22-42/625-261.

¹⁹ Please see our previous client alert titled "New turnover thresholds and rules for M&A notifications in Turkey" dated 23.03.2022. <https://www.gide.com/en/actualites/new-turnover-thresholds-and-rules-for-ma-notifications-in-turkey>

supports its subsidiaries active in these fields. In addition, Alleghany Corporation produces and sells software for managing reinsurance companies, which is regarded as within the scope of the definition of a technology undertaking. Alleghany Corporation does not have any subsidiaries or affiliated entities in Türkiye, but is active through its subsidiaries in non-life reinsurance and the manufacturing of trailers.

In its decision the Board determined that as Alleghany Corporation is also active in the field of financial technologies, it is exempted from the turnover threshold of TRY 250 million set out in Communiqué No 2010/4. The Board confirmed that a target company does not need to operate in the exempted sectors in Türkiye in order for the sectoral threshold exception to be applied, so long as it generates turnover abroad in those sectors and conducts any activity in Türkiye.

In this context, it was concluded that the turnover threshold requirement set out in Communiqué No 2010/4 will not be sought in determining whether a transaction is subject to the authorisation of the Board in respect of undertakings operating in the exempted fields of activities in any geographical market and carrying out any activity in Türkiye, or has assets related to them.

Google/Mandiant Decision²⁰



The Board has authorised Google LLC to acquire the sole control of Mandiant Inc., a cyber-security company that provides corporate cyber security consultancy, especially in connection with incident response.

The Google/Mandiant Decision is an another example of the application of the specific M&A notification rules for technology undertakings. The Board evaluated that the software services provided by Mandiant classifies it as a technology undertaking within the scope of Communiqué No 2010/4 and applied the sectoral threshold exemption for the target company according to the Article 7(2) of Communiqué No 2010/4.

Tech Data Türkiye Decision²¹

The Board granted approval for Tech Data Türkiye Holding A.Ş. to acquire sole control of Tech Data Bilgisayar Sistemleri A.Ş. ("**Tech Data Türkiye**") which is currently controlled by Tech Data Turkey Holding A.Ş. and Sanko Holding A.Ş. Tech Data Türkiye provides solutions in the areas of data security, data storage, virtualisation, network solutions and next-generation information technologies to its customers, and Tech Data Türkiye Holding A.Ş. provides cloud, cybersecurity, and big data/ analytics services to its customers. The Board determined that the transaction was subject to approval of the Board, due to the fact that the turnovers of the transaction parties' surpass the thresholds set out in Communiqué No 2010/4. Of note, even though the Board assessed the field of activities of the undertakings that may be considered falling within the scope of the exemption for the specific merger control regime for "technology undertakings", the Board did not make its assessment on whether the transaction is subject to the approval of the Board on the sectoral threshold exemption of Article 7 of Communiqué 2010/4.

²⁰ Decision of the Board dated 09.06.2022 and numbered 22-26/425-174.

²¹ Decision of the Board dated 30.06.2022 and numbered 22-29/468-188.

EXEMPTIONS

Monsanto Decision²²

On 30 July 2021, Monsanto Gıda ve Tarım Ticaret Ltd Şti, ("**Monsanto**"), producer of agricultural seeds, applied to the Board to obtain negative clearance/exemption for the additional protocol to be executed with 11 dealers. The additional protocol included clauses regarding recommendations of resale prices and determining the maximum resale price. The Board refused to grant negative clearance to the additional protocol on the grounds that maximum and recommended sale prices provided by Monsanto may pose competitive risks, as such prices may serve as a reference for resellers while determining their sale prices, so the majority or all of resellers may comply with these prices, leading to emergence of a fixed price and providing such prices may lead resellers and providers to cooperate on the sale prices. However, taking into account Monsanto's market share in the relevant product market and the dealers' ability to set the resale prices freely and independently, the additional protocol was granted exemption under the Block Exemption Communiqué on Vertical Agreements No 2002/2.



In its reasoning, the Board first examined the market shares of Monsanto and its competitors in the relevant market, using the new market share threshold, which entered into force after Monsanto's application and during the Board's review period. The Board determined that Monsanto's market share was below the threshold (i.e. 30%) and thus the Board concluded that the additional protocol contained no restraints that would exclude vertical agreements from the scope of the block exemption. However, the Board underlined that granting an exemption would not relieve Monsanto of its legal responsibility to not turn the recommended and maximum resale price practices into price fixing. The decision is noteworthy due to the market share threshold being amended after Monsanto's application, from 40% to 30%, but was still applied to Monsanto.

Novo Nordisk Decision²³



The Board granted an exemption to Novo Nordisk Sağlık Ürünleri Ticaret Ltd. Şti., a provider operating in the pharmaceuticals market, for a Single Supplier Framework Agreement concluded with Özsel Ecza Depoları Ticaret ve Pazarlama A.Ş., an operator at the wholesale distribution level, regarding procurements of the State Material Office.

The agreement in question granted Özsel exclusive rights to monitor, participate, and provide products in DMO procurements and tenders made by e-bidding for Novo products. Additionally, the agreement contains a clause prohibiting Özsel from taking part in tenders containing competing products. Meanwhile, the scope of the prohibition's was determined only to DMO tenders for drugs and medical supplies within Türkiye, and those intended for the healthcare market. Consequently, the exclusivity and anti-competition restriction applies only to the DMO tenders related to the products mentioned in the Agreement.

²² Decision of the Board dated 08.09.2022 and numbered 22-41/567-229.

²³ Decision of the Board dated 22.09.2022 and numbered 22-43/633-264.

In its decision, the Board concluded that, as per the agreement, certain drugs such as Insulatard, Actrapid, Mixtard, Norditropin, Nordiflex, Novoeight, and Novofine benefit from the group exemption as defined in the Vertical Agreements Group Exemption Communiqué 2002/2. However, the Board concluded that certain products (namely Levemir, Novomix, Novorapid, Novoseven, Ryzodeg, and GlucaGen) are not eligible for the group exemption because of the fact that the threshold set by the communiqué are exceeded, but can still benefit from the individual exemption as long as all of the conditions established by Article 5 of the Law are met.

OTHER DECISIONS

Trader Decision²⁴

On 17 January 2020, the Board launched a preliminary investigation to determine whether banks and financial institutions operating in Türkiye, as well as their representatives, have violated the Law in respect of their activities related to deposit, credit, foreign exchange, bond, bill, stock, and brokerage services. In its decision dated 26.08.2021, the Board decided not to launch an investigation though this decision is interesting since it is related to the high volume of data obtained by the Board during the course of preliminary inquiry.

During the preliminary inquiry, on 5 February 2020, the Board asked 21 undertakings for Bloomberg and Reuters chat room records of their top 10 traders with the highest transaction volume in Turkish Lira in the United States and the United Kingdom (separately for each country). Five of the undertakings subject to this request (JP MORGAN, CITIBANK, INGBANK, GOLDMAN SACHS and GARANTİ BANKASI) failed to respond to the Board for various reasons, so a second request was sent together with the threat of a fine.

INGBANK, JP MORGAN, and CITIBANK duly provided the information/document upon the Board's request.

A lawsuit filed by INGBANK to cancel the information request was dismissed by Ankara 3rd Administrative Court on 4 March 2021, No 2020-1303, E. 2021-447 K.

However, the same court cancelled the Board's decision to impose fines on GARANTİ BANKASI, GOLDMAN SACHS, JP MORGAN, and CITIBANK following lawsuits filed by those undertakings.

As a result of these administrative court decisions, CITIBANK and JPMORGAN asked the Board to destroy all highly sensitive and confidential personal data and client/banking secrets obtained within the scope of the information.

In its assessment, the Board concluded that there is no court decision ordering the return or destruction of the data obtained, and the appeal process is pending due to conflicting court decisions. Therefore, the Board ruled that the request for the deletion or return of the obtained data should be denied.

In a dissenting opinion, one Board member argued that the data in question should not be used and/or given to anyone until the appeal process is finalised, or until the final judgement.



²⁴ Decision of the Board dated 23.06.2022 and numbered 22-28/455-184.

L'Oréal Decision²⁵

The Board imposed an administrative fine on Türkiye Kozmetik Sanayi ve Ticaret A.Ş. for obstructing and hindering an on-site inspection by employees deleting WhatsApp correspondence on their mobile devices after the start of the on-site inspection. One of the significant aspects of the decision concerns the assessment of the usage of WhatsApp's message retraction feature as evidence of hindering/obstruction. The Board noted that a conversation between colleagues, regardless of its brevity, was unlikely to contain critical information relevant to the investigation and that the action of retraction stated in the minutes regarding WhatsApp could not be considered as an act of deleting a digital record. This assessment indicates that the Board evaluated the retraction of the messages in its context and did not immediately classify it as an act of hindering/obstructing of the on-site inspection.

**Naos Cosmetics Decision²⁶**

Within the scope of the preliminary inquiry into allegations that undertakings in the cosmetics and personal care sector had fixed the resale prices of their resellers and restricted online sales, the Board imposed an administrative fine on Naos İstanbul Kozmetik San. ve Tic. Ltd. Şti. ("NAOS") for obstructing and hindering the on-site inspection.

During the on-site inspection conducted at the headquarters of NAOS, it was determined that the mobile device used by a NAOS employee, who stated that it was his only phone and did not contain Whatsapp, a contact list, call records or any correspondence. Given the fact that this situation aroused suspicion, a second on-site inspection was carried out at the headquarters of NAOS. During the second on-site inspection, Whatsapp messages exchanged with the NAOS employee who stated that he did not

use Whatsapp in the first on-site inspection were detected in the mobile phones of other NAOS employees.

Following the information exchanges with the Information and Communication Technologies Authority regarding the GSM line and IMEI numbers, the Board has detected that the NAOS employee had removed the SIM card from his mobile device with the first IMEI number and put it into an empty mobile device with the second IMEI number.

RECENT DEVELOPMENTS IN EUROPEAN COMPETITION LAW

The French Competition Authority has decided to submit an opinion on its own initiative in order to analyse the competitive functioning of the electric vehicle charging infrastructure sector.

The French Competition Authority has launched an investigation to scrutinise the competitive operations of the electric vehicle charging infrastructure industry. This investigation aims to assess the competitive practices and dynamics followed by the stakeholders in this sector. Additionally, the investigation will explore sustainable development perspectives to address any identified issues. The Authority will engage

²⁵Decision of the Board dated 29.09.2022 and numbered 22-44/646-278.

²⁶ Decision of the Board dated 06.10.2022 and numbered 22-45/659-283.

with the relevant actors in the industry and consult competent authorities to formulate its opinion, which is expected to be released in the first half of 2024 along with recommendations, if necessary.

The Italian Competition Authority adopted a guidance on new “sub-threshold” merger legislation.

On 2 January 2023, the Italian Competition Authority issued a notice outlining new provisions for notifying mergers and acquisitions that do not meet the turnover thresholds set out in Italy. Under the new provision, the Italian Competition Authority may request that undertakings concerned by a relevant transaction notify a concentration, when certain conditions are met, such as only one of the two turnover thresholds being exceeded or the total worldwide turnover of all the undertakings concerned exceeding EUR 5 billion. The Italian Competition Authority may request the notification within six months from the completion of the concentration. These new competencies allow the Italian Competition Authority to scrutinise potentially problematic transactions that, under the current system, would not undergo control. The new legislation intends to limit the burden on undertakings facing the self-assessment of potentially reportable concentrations.

OECD Competition Trends 2023 has been published.

The OECD recently published a note consisting on "Competition Trends 2023".²⁷ The note essentially focuses on the main developments in global competition enforcement in 2021, and contributes to continuously improving competition law and policy around the world based on data from 79 OECD and non-OECD countries.



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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²⁷ <https://www.oecd.org/daf/competition/oecd-competition-trends.htm>

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