NEWSLETTER

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:

Google's Allegedly Anti-Competitive Advertisement Practice Has Led to an Investigation

The Board concluded its preliminary investigation into the allegation that Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited and Google Reklamcılık ve Pazarlama Ltd. Şti. violated Article 6 of the Law by engaging in tying and favouritism behaviours regarding online visual advertising and advertising technology services activities.

The Board evaluated the findings obtained in the preliminary investigation and found sufficient evidence to initiate an investigation against the economic integrity consisting of Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited and Google Reklamcılık ve Pazarlama Ltd. Şti. to further examine whether Article 6 of the Law was violated.

The Board has Fined TRENDYOL and Set Out Stringent Measures Due to its Practice of Intervening in Algorithms and Using Third-Party Sellers' Data to Gain an Unfair Advantage

The Board has determined that DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ ("TRENDYOL") (operating via www.trendyol.com) holds a dominant position in the multi-category online marketplace sector. The company has been found to gain an unfair advantage in its retail operations by intervening in algorithms and using data from third-party sellers. These actions have been deemed to hinder the operations of competitors and have been determined to violate Article 6 of the Law.

As a result, TRENDYOL has been fined TRY 61,342,847.73 (approximately EUR 2,128,000[1]), based on its annual gross revenues as at the end of the 2021 fiscal year.

Furthermore, it has been decided to impose certain obligations on TRENDYOL to cease the violation of the Law and establish effective competition on the market. Abstaining from interventions made via algorithms and coding, avoiding the use of third-party sellers' data for their branded products, retaining all codes related to algorithm changes and algorithms used for product ranking and brand filtering for three years, retaining user access and authorisation records for the software used in operational processes for three years are among these obligations. TRENDYOL is required to fulfil these obligations within three months and apply to the Board at the end of the three-year period to determine whether the duration will be extended. Additionally, the obligation to submit these compliance measures to the Board and to report periodically once a year for five years has been included in the decision.

The Board Concluded its Investigation in relation to the Labour Markets

The investigation conducted by the Board against certain undertakings in order to determine whether there has been a violation of Article 4 of the Law by entering into gentlemen's agreements promising not to recruit employees from each other in the labour market has been concluded.

During the investigation process, it was examined whether the undertakings subject to the investigation had entered into employee no-poaching agreements, aimed at preventing the employment of each other's employees and restricting employee mobility. These agreements are based on the mutual renunciation of the employers from competing on labour, which is one of the most important inputs. In addition to reducing the mobility of the labour factor between undertakings, employee non-distortion agreements may also artificially deprive wages of their real value. As a result, inefficiency in the allocation of employees may arise and the competitive structure in labour markets may be damaged.

As a result of the investigation, 16 undertakings were given administrative fines, amongst which LC Waikiki Mağazacılık Hizmetleri Ticaret A.Ş. and Türk Telekomünikasyon A.Ş. faced the highest fines, TRY 59,590,457.10 and TRY 41,022,658.16 respectively (approximately EUR 2,067,000 and EUR 1,423,000[2]). Based on the collected evidence, the written defences and the statements made at the oral hearings, the Board concluded that the 16 undertakings mentioned in the decision had violated Article 4 of the Law by becoming a party to anti-competitive agreements, and that these actions cannot benefit from individual exemption under Article 5 of the Law. Consequently, administrative fines were imposed on these undertakings. A further 21 undertakings were cleared from the initial allegations towards themselves.

[1] Based on the foreign exchange rate of EUR 1 = TRY 28.83 as of 29 August 2023.
[2] Based on the foreign exchange rate of EUR 1 = TRY 28.83 as of 29 August 2023.

Pasta Producer Cleared From Accusations of Anti-Competitive Behaviour

According to the investigation report prepared pursuant to the Board's decision dated 07.07.2022 and numbered 22-32/518-M, the collected evidence, written defences and explanations made at the oral hearings, the Board concluded that Nuh'un Ankara Makarnası Sanayi ve Ticaret AŞ and İs-Ra Gıda ve İhtiyaç Maddeleri Pazarlama Sanayi ve Ticaret AŞ did not violate Article 4 of the Law, and therefore there is no need to apply administrative fines.

The Board has Fined Samsung, LG and SVS in One Decision and Arçelik in Another Decision for Their Resale Price Maintenance Practice

The Board has unanimously decided to impose administrative fines on Samsung Electronics İstanbul Pazarlama ve Ticaret Limited Şirketi, LG Electronics Ticaret AŞ and SVS Dayanıklı Tüketim Malları Pazarlama ve Ticaret Limited Şirketi due to their violations of Article 4 of the Law by interfering in the resale price of its authorised resellers. They were respectively imposed an administrative fines of TRY 227,161,142.04, TRY 33,870,305.21 and TRY 1,984,907 (approximately EUR 7,880,000, EUR 1,175,000 and EUR 68,850[3]).

In another investigation against Arçelik Pazarlama A.Ş., it was found to have violated Article 4 of the Law by determining the resale price of its resellers, and subsequently the Board imposed an administrative fine of TRY 365,379,161.06 (approximately EUR 12,674,000[4]).

B- M&A Notifications:

During this period, a total of 16 merger and acquisition notifications were made to the Board, the sectoral distribution of these is as follows;

- *Technology:*
  - Novo Holdings A/S to acquire the sole control of Ellab A/S.
  - The Goldman Sachs Group, Inc. to acquire ultimate sole control of Kahoot! ASA
  - Karel Elektronik San. ve Tic. AŞ to acquire the sole control of the software assets of GlobalPbx
- *Chemicals:*
  - Ravago S.A. to acquire sole control of Eurokim Endüstriyel ve Gıda Kimyasalları Sanayi ve Ticaret AŞ and Eurokim Deterjan ve Kozmetik Kimyasalları Sanayi ve Ticaret AŞ.

[3] Based on the foreign exchange rate of EUR 1 = TRY 28.83 as of 29 August 2023.
[4] Based on the foreign exchange rate of EUR 1 = TRY 28.83 as of 29 August 2023.

- *Pharmaceuticals:*
    - Pfizer to acquire 100% of the shares in Seagen Inc., an American company concentrating its studies on curing cancer.
- *Energy:*
    - Abu Dhabi National Oil Company P.J.S.C. to acquire 24.9% of the shares of OMV Aktiengesellschaft and its direct and indirect subsidiaries to establish a joint venture.
- *Food:*
    - Mitsui & Co., Ltd.to acquire shares which grant a controlling interest in the food ingredient business unit of Celanese Corporation.
- *Metal Industry:*
    - Beyçelik Holding AŞ to acquire 50% of the shares in Gescrap Turkey Metal Sanayi ve Ticaret Ltd.
    - A fully functional joint-venture to be established between Baoshan Iron & Steel Co., Ltd., Saudi Arabian Oil Company and Public Investment Fund.
    - Borusan Holding A.Ş. to acquire sole control of Borusan Mannesmann Boru Yatırım Holding A.Ş. after the one of the joint controllers, Salzgitter Mannesmann GmbH, exits from the company
- *Medical:*
    - Transfer of 51% of the shares in Proklinik Sağlık Hizmetleri Sanayi ve Dış Ticaret Anonim Şirketi to Otto Bock Medikal Hizmetleri Limited Şirketi
    - Otto Bock Medikal Hizmetleri Limited Şirketi to acquire a majority stake (70%) of shares in Bilimop Ortopedi Anonim Şirketi
    - İhlas Girişim Sermayesi Yatırım Ortaklığı A.Ş. to become a shareholder of Livemedy Sağlık Platformu A.Ş. by acquiring shares through a capital increase
- *Equity:*
    - Fortress Management to acquire joint control of Fortress Investment Group through the subsidiaries – Mubadala Capital and FIG Buyer GP
    - DHI Investments BV to acquire control of DG INVEST B.V.
- *Logistics:*
    - MNG Kargo Yurtiçi ve Yurtdışı Taşımacılık Anonim Şirketi to be acquired by Deutsche Post Beteiligungen Holding GmbH (*DHL Group*)

SUMMARY OF KEY DECISIONS

A- BREACH OF LAW DECISIONS:

Korkmaz Decision[5]

On 10 November 2022, the Board rendered its decision concerning Korkmaz Mutfak Eşyaları San. ve Tic. AŞ ("Korkmaz"), Gençler Ev Araç ve Gereçleri Pazarlama Tic. AŞ ("Gençler") and Punto Dayanıklı Tüketim Malları İth. İhr. Tic. Ltd. Şti. ("Punto"). The decision holds significant importance as the inquiry ended through settlement procedures for each involved undertaking.

Korkmaz operates as a supplier, overseeing some of its wholesale and retail activities through distributors Gençler and Punto. Based on the provided documents and findings from dawn raids, the Board determined that Korkmaz influenced its dealers' resale prices to raise their retail prices. Dealers faced penalties such as unfavourable delivery terms, online sales restrictions, and contract termination for not adhering to set prices. The decision's rationale primarily centres around evidence of intervention in online pricing during dawn raids.

Furthermore, the Board examined Korkmaz's actions involving online sales and customer limitations. Specifically, Korkmaz demanded from dealers the authorisation certificates for online sales, granting this privilege only to those following the price policy. Wholesale bans were also imposed on dealers to prevent price distortions. It was determined that Korkmaz's practices constituted resale price maintenance. The inspection of obtained documents revealed notifications and warnings to regional managers to ensure sales prices adhered to a certain level. Thus, Korkmaz, Gençler, and Punto's practices were deemed in violation of Article 4 of the Law.

The Board concluded that Article 4 of the Law was violated as alleged and imposed an administrative fine, deciding to apply a 25% discount on the administrative fine to be imposed on the undertaking as a result of the settlement procedure.

Hiksan Decision[6]

On 22 December 2022, the investigation initiated by the Board upon the allegation that Hiksan Teknoloji Sanayi ve Ticaret Ltd. Şti. ("Hiksan") violated Article 4 of the Law by participating in resale price maintenance in respect of its resellers was concluded.

Based on the settlement interim decision dated 09.12.2022 and numbered 22-55/852-MUA, it was decided to terminate the investigation as a result of the settlement offer sent by Hiksan.

Hiksan is an undertaking in the manual breast pump market that conducts online sales of its products through its own website (https://mochibabies.com.tr) and online marketplaces (Trendyol, N11, Gittigidiyor, etc.), and that also has dealers selling on online marketplaces. Within the scope of the investigation, it was determined that Hiksan had the expectation of uniform prices in the dealer channel, and sometimes intervened in the sales prices on the downstream market at its own initiative or at the request of its

[5] Decision of the Board dated 10.11.2022 and numbered 22-51/754-313.
[6] Decision of the Board dated 22.12.2022 and numbered 22-56/882-365.

dealers. According to the relevant findings, it was concluded that the sales made by the dealers were generally monitored, and in cases where the sales price of a dealer was lower than the general price level, the relevant dealer was contacted in order to ensure control and correction.

The Board concluded that Article 4 of the Law was violated by resale price maintenance as alleged, in light of the findings of the investigation, and imposed an administrative fine, deciding to apply a 25% discount on the administrative fine to be imposed on the undertaking as a result of the settlement procedure.

Schafer Decision[7]

On 8 December 2022, the investigation conducted against Aslan Ticaret Dayanıklı Tüketim Malları ve Limited Şirketi ("Schafer") based on the Board's decision to investigate whether it violated Article 4 of the Law with its practices towards its dealers was ended as a result of a settlement offer by Schafer.

The investigation was initiated upon the allegation that Schafer interfered with the sales prices of dealers who set the retail prices of Schafer branded products other than the list prices, and restricted competition on the market by prohibiting internet sales of dealers if they did not comply with the list prices. Within the scope of the inspections, messages were found between the authorised personnel of the undertaking and the dealers, consisting of explicit requests to change the prices. It was concluded that resale price fixing agreements were prominent in the findings obtained within the scope of the investigation and that the relevant agreement was among the agreements restricting competition due to its nature. Therefore, the restrictions in question constituted a violation within the scope of Article 4 of Law. Pursuant to the findings of the investigation, an administrative fine was imposed on the undertaking, but as a result of the settlement procedure, the administrative fine to be imposed was reduced by 25%.

Golf Decision[8]

On 23 November 2022, the Board concluded its investigation to determine whether Natura Gıda Sanayi ve Ticaret AŞ ("Golf"), an undertaking operating as a manufacturer/supplier in the fast-moving consumer goods sector, violated Article 4 of the Law.

Within the scope of the investigation, documents were obtained that raised suspicion that Golf intervened in the resale prices of retailers. As the documents included conversations showing that the point of sales were warned by Golf employees not to make changes in the prices of the products, such resellers were requested to check such prices and the points of sale employees responded that the prices would be updated the day after the correspondence. Based on this evidence, it was concluded that the infringement occurred due to the conduct of resale price maintenance aimed at organised retailers.

On 10 November 2022, the settlement interim decision was rendered and the Board decided to terminate the investigation as a result of a settlement offer sent by Golf. In accordance with the settlement procedure, it was decided to apply a 25% discount on the administrative fine to be applied to the undertaking.

[7] Decision of the Board dated 08.12.2022 and numbered 22-54/834-344.
[8] Decision of the Board dated 23.11.2022 and numbered 22-52/771-317.

Feed Products Decision[9]

On 21 July 2023, the Board rendered its decision concerning the inquiry initiated based on the allegation that specific undertakings and dealers within the animal feed industry colluded on pricing through agreements. Following the preliminary investigation, which focused on seven undertakings, the Board opted to proceed with a full investigation to ascertain potential violations of the Law.

The Board scrutinised exchanges of sensitive information among the undertakings. While on-site inspections indicated discrepancies between the publication and implementation dates of price lists, internal correspondences unveiled that these undertakings communicated when devising their market strategies. The Board detected direct price discussions among the undertakings as a transgression, downplaying the market's price fluctuations as evidence of an absence of price fixing. Despite the undertakings' low collective market share in the pertinent market, the Board emphasised that this did not negate the existence of a violation. The Board highlighted that such information exchanges among competitors reduce "strategic uncertainty," a fundamental aspect of competitive dynamics, and that merely eliminating this uncertainty constitutes a breach of competition law.

Ultimately, the Board found that four undertakings had breached the Law by exchanging sensitive information and jointly determining feed sales prices. Accordingly, administrative fines were imposed on the relevant undertakings.

B- M&A DECISIONS

Technology undertakings

Acquisition of negative sole control of HERE by Mitsubishi Corporation[10]

The decision dated 1 December 2022 concerns the acquisition of the negative sole control of HERE International B.V. ("HERE") by Mitsubishi Corporation ("MC"). The Board examined the applicant's request for approval of the acquisition within the framework of the Law. The applicant states that there will be no change in the shareholding structure of HERE as a result of this transaction. On the other hand, the second paragraph of Article 7 of Communiqué No. 2010/4 regulates acquisitions in the field of technology and states that the thresholds sought in other fields will not be sought in acquisitions in the field of technology. In line with this information, it has been concluded that this transaction is subject to approval. With reference to the review conducted by the Board, it was concluded that there was no horizontal overlap and/or vertical relationship between MC and HERE's operations globally or in Turkey. As a result of the transaction, it was decided that effective competition was not significantly reduced and therefore the transaction was authorised by the unanimous decision of the Board.

[9] Decision of the Board dated 25.04.2022 and numbered 22-19/310-135.
[10] Decision of the Board dated 01.12.2022 and numbered 22-53/796-326.

Acquisition of sole control of Rabobank by Liberyum Danışmanlık Bilgi Teknolojileri Ticaret A.Ş. and others[11]

On 22 December 2022, the Board rendered the decision in which the acquisition of sole control of Rabobank AŞ ("RABOBANK") by Liberyum Danışmanlık Bilgi Teknolojileri Ticaret AŞ ("LİBERYUM") was submitted for approval within the framework of Law and Communiqué No. 2010/4. According to Article 7 of Communiqué No. 2010/4, mergers concerning undertakings operating in technology industries are subject to application to the Board, regardless of their market shares. Considering the fact that RABOBANK operates in the technology industry, the Board decided that the transaction was subject to permission under Article 7 of Law and Communiqué No. 2010/4. As a result of the examinations and evaluations made by the Board, it also concluded that the transaction does not significantly reduce effective competition in any goods or service market throughout the country or in part under Article 7 of the Law. It was assessed that there is no horizontal overlap between the activities of the parties, and the vertical overlap will not produce any anti-competitive outcome. In this context, permission was granted unanimously for the acquisition of RABOBANK shares by LIBERYUM and other individuals on the grounds that it would not significantly reduce effective competition. It was assessed that the market shares of the parties are quite limited and that the vertical overlap will not produce any anti-competitive outcome.

Acquisition of sole control of IVD Holdings, Inc. by Werfen S.A.[12]

On 22 December 2022, the Board evaluated the submission for the approval of the acquisition of all the shares in IVD Holdings, Inc. ("Immucor") by Werfen S.A. ("Werfen"). The related transaction will be carried out through the reverse triangular merger method, and Immucor will become a subsidiary solely controlled by Werfen. Immucor provides products aimed at ensuring patient-donor compatibility and products for organ or bone marrow transplantation. On the other hand, Werfen develops, manufactures, and distributes specialised diagnostic products, related reagents, automation work cells and data management solutions for use in hospitals and independent clinical laboratories. According to Article 7 of Communiqué No. 2010/4, mergers concerning undertakings operating in technology industries are subject to application to the Authority, regardless of their market shares. Upon examination, it was understood that there is no horizontal or vertical overlap between Werfen and Immucor. The transaction was deemed not to produce a result that would significantly reduce effective competition under Article 7 of Law and was granted approval with unanimity of the Board.

Acquisition of sole control of Nitro Software Limited by Cascade Parent Limited[13]

On 5 January 2023, the Board rendered its decision on the transaction pertaining to the acquisition of sole control of Nitro Software Limited ("NITRO") by Cascade Parent Limited indirectly through Rocket BidCo Pty Ltd ("BIDCO"). Cascade Parent Limited ("ALLUDO") plans to indirectly acquire a certain percentage of NITRO through BIDCO for the transfer process. BIDCO is a special purpose transfer entity that will be indirectly controlled by ALLUDO. The Application Agreement underlying the transaction was

[11] Decision of the Board dated 22.12.2022 and numbered 22-56/876-361.
[12] Decision of the Board dated 22.12.2022 and numbered 22-56/874-360.
[13] Decision of the Board dated 05.01.2023 and numbered 23-01/22-9.

signed on 15 November 2022. According to the Application Agreement, ALLUDO will acquire all the shares of NITRO in accordance with an arrangement plan subject to Australian law. As a result, NITRO will become a subsidiary fully owned by BIDCO, where ALLUDO indirectly owns everything. NITRO is a software company that provides integrated PDF productivity and e-signature tools while ALLUDO offers professional-quality graphics, virtualisation, and productivity solutions for a remote digital workforce. Both parties are technology undertakings which constitutes the reason why this transaction is subject to application by the Authority, pursuant to Article 7 of the Communiqué No. 2010/4.

Upon examining the activities of the transaction parties in Turkey, a potential horizontal overlap has emerged between ALLUDO and NITRO, as both parties offer products with PDF and e-signature features. However, considering the low market shares of the parties in the relevant markets, it has been assessed that a concentration that could adversely affect competition will not occur. Despite both sides offering similar products in the market, the features of these products, their market shares, customer targeting and other factors support the conclusion that the transaction will not have a negative impact on competition. The approval was granted unanimously for the transaction as it was not expected to significantly reduce effective competition in the market.

Acquisition of the business of "Zen Match" game and a part of assets of Good Job Games Bilişim Yazılım ve Pazarlama A.Ş. by Moon Active Ltd.[14]

The decision regarding the acquisition of the business of "Zen Match" Mobile Game ("ZEN MATCH"), developed by Good Job Games Bilişim Yazılım ve Pazarlama AŞ ("GOOD JOB GAMES") and a part of its assets by Moon Active Ltd ("MOON ACTIVE") has been rendered by the Board on 22 December 2022.

In principle, in order for such a transaction to be considered as a concentration, all or part of the turnover of the relevant undertaking must be attributed to the relevant assets. It is possible to attribute turnover to the mobile game named ZEN MATCH since it is a revenue-generating unit. It has been observed that the turnovers of the parties did not exceed the specified thresholds. However, it was understood that ZEN MATCH operates in the mobile game field and is considered as an asset of a technology undertaking. In this context, the transaction has been evaluated in terms of the acquisition of technology undertakings and therefore subject to application due to Article 7 of Communiqué No. 2010/4.

It has been found that there is a horizontal overlap in the "mobile game market" between MOON ACTIVE and the relevant asset. The Board concluded that the market shares of the parties are quite low since the mobile game market in Turkey is rapidly developing with numerous games and competitors. In this regard, considering the low market shares of the transaction parties in the relevant market, the existence of numerous competing enterprises, and the transaction leading to a negligible increase in concentration, it has been assessed that a concentration that could adversely affect competition will not occur. In conclusion, approval was granted for the transaction unanimously as it was not expected to significantly reduce effective competition.

[14] Decision of the Board dated 22.12.2022 and numbered 22-56/881-364.

Acquisition of sole control of C.B.K. Soft Yazılım by Iron Mountain Incorporated[15]

On 23 November 2022, the Board rendered its decision regarding the acquisition of the sole control of C.B.K Soft Yazılım Donanım Elektronik ve Bilgisayar Sistemleri Sanayi Ticaret A.Ş. by Iron Mountain Incorporated through Information Fort LLC, which is currently the joint controlling shareholder.

Even though the Board stated in its decision that there is no need to make a definite market definition, it was assessed that the relevant market can be considered as electronic record management services and physical record management services, as two separate markets. The Board also mentions that, in a decision by the Competition and Markets Authority of the UK examining a similar transaction, it was determined that physical record management services and electronic record management services should be considered as two separate markets. Accordingly, the Board handled electronic record management services as a separate market and determined that the transaction parties have overlapping activities only in the electronic record management services market.

In 2021, the estimated market shares of the parties and competitors in the electronic record management services market in Turkey were examined, and it was understood that the post-transaction market share of the undertakings are low. It has been assessed that the transaction will not result in any concentration that may raise competitive concerns in the market. It is assumed that the transaction parties create a horizontal overlap in terms of the electronic record management services market, but due to their low total market shares, there are no adverse effects on competition. In conclusion, it has been decided that the transaction is subject to approval and the approval was granted by the Board unanimously, as the transaction was not expected to significantly reduce effective competition.

Pharmaceuticals

Acquisition of sole control of Gensenta by Eczabaşı[16]

The Board has rendered its decision in relation to a clearance application for the acquisition of the sole control of Gensenta İlaç Sanayi ve Ticaret AŞ ("GENSENTA") by EİS Eczacıbaşı İlaç Sınai ve Finansal Yatırımlar Sanayi ve Ticaret AŞ ("EİS"), in accordance with the "GENSENTA Share Purchase and Sale Agreement". As a result of the transaction, EİS will acquire sole control of GENSENTA and this will result in a permanent change in the control structure of GENSENTA. The transaction is subject to approval as the applicable legislation requires that the transactions carried out by undertakings that operate in the field of "pharmacology" must be notified to the Board. Following a detailed review of the medicinal products, the Board unanimously decided to approve the

[15] Decision of the Board dated 23.11.2022 and numbered 22-52/788-324.
[16] Decision of the Board dated 13.10.2022 and numbered 22-47/679-289.

transaction on the grounds that there is no significant reduction of effective competition as a result of the transaction.

Novartis to acquire global rights and assets in relation to certain products of Astellas Pharma Inc.[17]

The Board's decision dated 23 February 2023, relates to the acquisition by Novartis AG ("Novartis"), through its subsidiary Sandoz AG ("Sandoz"), of the global rights and assets including licences, patents, trademarks, domain names, know-how and all other intellectual property rights, medical information, marketing authorizations, marketable inventories and related data and information currently produced and commercialised by Astellas Pharma Inc. ("Astellas") for the medical products for human use, Mycamine and Funguard, and all other medical products based on the active substance "micafungin".

The Asset Purchase Agreement sets out that Novartis will take over the target assets owned by Astellas through Sandoz. The transaction is accepted to be subject to approval as the transactions carried out by undertakings that operate in the field of "pharmacology" must be notified to the Board. As a result of the examination and inspection, the Board unanimously decided that there is no significant lessening of effective competition and that granted the approval.

Acquisition of Alvogen Malta (Out-Licensing) Holding Ltd by Letterone Investment Holdings S.A.[18]

The Board has granted approval for the acquisition of the sole control of Alvogen Malta (Out-Licensing) Holding LTD ("Adalvo") by Letterone Investment Holdings S.A. ("Letterone") through L1 Health GP S.a.r.l. ("L1 Health").

While it is stated in the decision that different assessments can be made on an incident-by-incident basis when defining the relevant product market in competition law investigations in the pharmaceutical sector, within this decision the ATC-3 classification is taken as the starting point, but it may be narrower or wider than this. Letterone intends to invest in this market in which Adalvo operates, and if the transaction is approved, Adalvo will be controlled by L1 Health. After its examinations, the Board has concluded that there is no horizontal or vertical overlap between the activities of Adalvo and Letterone Investment Holdings as per the information and documents submitted. In addition, it was decided that the transaction subject to the notification does not create a dominant position in a market or strengthen a dominant position, thereby significantly reducing competition in any part of the country, and consequently, the transaction was approved by the Board.

[17] Decision of the Board dated 23.02.2023 and numbered 23-10/150-45.
[18] Decision of the Board dated 02.03.2023 and numbered 23-12/184-60.

C- Exemption Decisions

Türkiye Finans and Bereket Emeklilik Decision[19]

On 8 December 2022, the Board concluded its assessment of the request by Türkiye Finans Katılım Bankası AŞ ("TFKB") and Bereket Emeklilik ve Hayat AŞ ("Bereket") for a negative clearance for the Life Participation Insurance Agency Agreement ("Agreement") to be concluded between them, pursuant to Article 8 of the Law or an individual exemption under Article 5 of the Law. In the decision, the relevant markets were identified as the market for agency services in participation-based life insurance and the market for agency services in participation-based private pension products. It was stated that the agreement between TFKB and Bereket, which was concluded on 18 March 2022, was an exclusive agency agreement with an exclusivity clause.

According to paragraph 10 of the Guidelines on Vertical Agreements, the restrictions imposed on the agent in the agreements are generally not within the scope of Article 4 of the Law, but since the agent takes a commercial or financial risk in relation to the activities assigned by the principal, the Life Participation Insurance Agency Agreement concluded between Bereket and TKFB is within the scope of Article 4 of the Law. Due to the commercial and financial risk taken by the agent, the Agreement cannot be granted a negative certification within the framework of Article 8 of the same Law.

Further, since non-competition obligations that can be tacitly renewed for a period exceeding five years are not within the scope of group exemption and exceed certain thresholds, it was concluded that the relevant Agreement cannot benefit from group exemption within the scope of Communiqué on an Amendment to the Block Exemption Communiqué on Vertical Agreements No. 2002/2 ("Communiqué No. 2002/2"), considering both the market share of the provider and the duration of the non-competition obligation. For this reason, the Life Participation Insurance Agency Agreement will not benefit from group exemption within the scope of the Communiqué No. 2002/2.

Although the Board did not issue a negative clearance decision and did not grant a group exemption, it was stated in the decision that the "Life Participation Insurance Agency Agreement" may be granted individual exemption until 01.01.2032 during the term of the Agreement, provided that a maximum period of five years is foreseen for the non-promotion obligation starting as of the termination of the Agreement.

Türkiye Finans and HDI Sigorta Decision[20]

On 10 November 2022, the Board evaluated the request for negative clearance/exemption for the Non-Life Participation Insurance Agency Agreement ("Agreement") concluded between HDI Sigorta AŞ and HDI Katılım Sigorta AŞ and TFKB.

[19] Decision of the Board dated 08.12.2022 and numbered 22-54/832-342.
[20] Decision of the Board dated 10.11.2022 and numbered 22-51/752-311.

Even though the market shares of the parties are low, within the market dynamics in general, the stipulation of non-competition obligations in the agency relationships established by insurance companies with banks may make it difficult for new entities entering the market to access an effective agency network and may create a partial closure effect in the market in this respect. Therefore, it was decided that the Agreement concluded between HDI Sigorta AŞ and HDI Katılım Sigorta AŞ and TKFB cannot be evaluated independently from the general situation of the market and that, like such agreements in the market, it may have the effect of making it difficult for insurance companies to enter the market, and therefore, it will fall within the scope of Article 4 of the Law.

The Board concluded that the Agreement cannot be granted a negative clearance pursuant to Article 8 of Law and that the Agreement cannot benefit from group exemption considering the duration of the non-competition obligation, which is 10 years.

However, the Board decided to grant an individual exemption for the non-promotion obligation stipulated by the relevant agreement until 1 January 2023 for the duration of the agreement within the framework of Article 5 of the Law, provided that a maximum period of five years is foreseen for the non-promotion obligation starting as of the expiry of the Agreement in order to ensure that the non-promotion obligation does not restrict competition more than necessary.

D- Other Decisions

Hepsiburada Decision[21]

The decision dated 29 December 2022 regards the request for re-assessment by the Board of the previous decision of the dated 13 January 2022 that concluded D-Market Elektronik Hizmetleri ve Ticaret A.Ş. ("Hepsiburada") had made difficult/obstructed the on-site inspection, within the scope of the Administrative Judicial Procedure Law No. 2577 ("IYUK"). Hepsiburada argued that the company instructed the employees subject to the inspection not to delete the data, however, the deleted correspondence that caused the previous judgement took place in the Whatsapp application on the personal phones of the employees, and that the company had no right to interfere with the personal phones of the employees. Hepsib urada also claimed that a similar decision was made for another company "Sahibinden", which was later annulled by the administrative court.

[21] Decision of the Board dated 29.12.2022 and numbered 22-57/895-368.

Following Board's examination, it was found that there was no concrete evidence regarding the claim of not deleting the correspondence, on the contrary, there was evidence that the human resources officer encouraged the company employees to delete correspondence. Therefore, the undertaking's claim that it is not responsible for the deletions cannot not be justified. When comparing the case with the "Sahibinden" decision, the Board emphasised the differences between these two situations. At the same time, it states that the decision is not finalised, therefore it does not set a precedent. In the examination of mobile devices, the Board did not consider the ownership of the device, but whether the device contained data belonging to the undertaking. A quick review and the presence of data belonging to the undertaking is sufficient for the examination of that device. In the case of Hepsiburada, it was determined that it contained data belonging to the undertaking with a quick review. In light of these explanations, the Board decided unanimously that the issues raised within the scope of IYUK are not relevant and that there is no requirement for the Board's decision to be removed, withdrawn, amended or a new action to be taken.

Ceyhan Hazır Beton Decision[22]

On 26 January 2023, the Board rendered its decision regarding whether or not the on-site inspection conducted by the Authority at the facilities of Ceyhan Hazır Beton İnşaat Nakliye Madencilik Petrol Ürünleri Pazarlama San. ve Tic. Ltd. Şti. ("Ceyhan") on 28 April 2022 had been obstructed. The on-site inspection conducted at Ceyhan Hazır Beton İnşaat Nakliye Madencilik Petrol Ürünleri Pazarlama San. ve Tic. Ltd. Şti. was prevented by not allowing the examination of the two mobile devices which were said to be allocated for personal use. As a result of Ceyhan not allowing to apply fast-track review on these mobile devices, access to potential evidence and findings during the examination was prevented and as a result, the Board imposed an administrative fine on the relevant undertaking.

Nesine Decision[23]

On 5 July 2023, the Board issued an interim injunction decision regarding the removal of any clauses pertaining to exclusivity in the Advertisement Sales Service Agreement ("Agreement") executed between D Elektronik Şans Oyun ve Yayıncılık AŞ ("NESİNE") and Mackolik İnternet Hizmetleri AŞ ("MAÇKOLİK"). Prior to this, the Board had carried out a preliminary investigation into allegations of a violation of the Law stemming from exclusivity agreements between NESİNE and MAÇKOLİK, subsequently launching a formal investigation. The Board concluded the necessity for interim measures. Within the scope of the Agreement, MAÇKOLİK is prohibited from featuring advertisements of other betting firms engaged in similar activities to NESİNE on its active channels, MAÇKOLİK has committed to generating a certain annual click count on NESİNE advertisements on its websites. A failure to meet this target incurs penalty clauses and if MAÇKOLİK establishes an advertising partnership with any other company in the same sector as NESİNE, NESİNE retains the right to immediately terminate the

[22] Decision of the Board dated 26.01.2023 and numbered 23-06/73-22.
[23] Decision of the Board dated 15.06.2023 and numbered 23-27/520-176.

agreement and request a penalty from MAÇKOLİK. The Board, as a conclusion, issued an interim injunction invalidating the provisions containing exclusivity clauses within the Agreement due to the potential for "serious and irreparable harm" as well as the risk of market closure as a result of these exclusivity provisions. This injunction stands until a final decision is reached.

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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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