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COMPETITION BOARD'S INTERIM MEASURE DECISION ON TRENDYOL

The Competition Board has initiated an investigation and adopted an interim measure decision against DSM Grup Danışmanlık İletişim ve Satış Ticaret Anonim Şirketi ("**Trendyol**"), a subsidiary of the Chinese e-commerce giant, Alibaba Group, as a result of the preliminary investigation initiated to determine whether Trendyol violated Articles 4 and 6 of Law No. 4054 on the Protection of Competition (the "**Competition Law**").

On 30 September 2021, the Turkish Competition Authority announced on its official website that Trendyol **(i)** interferes with its listing algorithm to provide unfair advantage to its own products, **(ii)** uses the data obtained through marketplace activities to create marketing strategies for its own brands and **(iii)** discriminates between the sellers in its marketplace via interfering with the algorithm on its platform (i.e., trendyol.com), where it circumvents third-party sellers' sales and advertises its own branded products, such as TrendyolMilla, TrendyolMan and TrendyolKids. In this regard, the Competition Board decided to apply interim measures as per Article 9 of the Competition Law since Trendyol, which is an important player in the multi-category marketplace platforms market, is likely to cause serious and irreparable damage in the market with its practices.

In essence, the interim measure decision stipulates various obligations on Trendyol regarding data usage and non-discrimination between sellers. These obligations require Trendyol **(i)** to cease the practices that will provide an advantage for its own products and services over its competitors, and to cease all practices that will lead to discrimination between the sellers in its marketplace, both including the interventions carried out through algorithms and coding, **(ii)** not to share or use any data obtained from marketplace activities to favor its own products and services, and **(iii)** to store the parametrical and structural changes made through algorithms used for product searching, seller listing, seller point calculation, etc.; source codes of software that are developed specifically for internal use and user access logs, user authorization logs and administrator supervision logs used in business processes, with versions having undeniable integrity, with no possibility for data that is incorrect for a period of at least

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eight years. Accordingly, the decision stipulates that Trendyol should refrain from providing a competitive advantage to its own products, discriminating between sellers and using data obtained from marketplace activities to favor its own products.

Considering that the Competition Board has only adopted one interim measure decision in the past, the Trendyol decision stands out due to the implementation of interim measures for the second time. In its previous decisions, the Competition Board had only imposed interim measures on Facebook Inc. and its affiliated companies ("**Facebook**") with its decision dated 11 January 2021 and numbered 21-02/25-10, by stating that Facebook's terms regarding the use of WhatsApp user data for other services may have exploitative and exclusionary effects in terms of competition law.¹ Another specific aspect of the interim measure decision is its rather long duration and the broad range of obligations imposed on Trendyol.

Although the decisions on Trendyol and Facebook concern different markets, the fact that some of the interim measures in both decisions are related to the use of data obtained from the platforms demonstrates the Turkish Competition Authority's sensitivity regarding competition concerns related to data ownership. In addition, the decision is a reflection of the Turkish Competition Authority's objective to timely intervene with the competition concerns regarding e-marketplaces which is explicitly stated in its sector inquiry on e-marketplaces, and hints that the Turkish Competition Authority's tendency to implement interim measures in digital markets has increased.

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¹ Our bulletin including detailed information on this decision may be accessed via the following link: https://www.kolcuoglu.av.tr/Uploads/Publication/quarterly_competition_law_bulletin_2021_first_quarter.pdf