

SECTOR INQUIRY PRELIMINARY REPORT ON FAST-MOVING CONSUMER GOODS RETAIL PUBLISHED

The Turkish Competition Authority (the “**TCA**”) published its preliminary report introducing the results of its inquiry regarding the fast-moving consumer goods (**FMCG**) retail sector. The preliminary report identifies the FMCG retail sector’s problems and sets out policy recommendations.

Content of the Preliminary Report

The report establishes that FMCG retail sector players’ market shares and their buyer power have increased significantly. This increase in the buyer power originated from **(i)** the increase in the total market shares of the top four FMCG retailers and **(ii)** the growth of private label products’ sales within retailers’ total sales. The report concluded that, while the top four FMCG retailers’ market shares increased, local and small retailers lost market shares. The report further sets out that depending on their buyer power, FMCG retailers request fees from suppliers under various names, demand long payment terms and unilaterally amend supplier contract terms. These practices are identified as “unfair commercial practices” originating from buyer power and caused by the imbalance between the retailers’ and suppliers’ bargaining powers. The report introduces several suggestions to solve these problems by emphasizing the need for a new regulation to prevent the abuse of buyer power.

The most notable suggestion of the report is introducing a new regulation to prevent the abuse of buyer power and establishing an autonomous administrative authority responsible for the enforcement of such regulation. The TCA proposed a regulation prohibiting FMCG retailers’ certain practices such as **(i)** payment terms exceeding 30 days for perishable agricultural food products

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and 60 days for other agricultural products, **(ii)** transfer of the risk of lost or rotten goods to suppliers, **(iii)** fee requests which are irrelevant to the purchase and **(iv)** unilateral contractual changes imposed by the buyer. The TCA's proposal is prepared in line with the European Commission Directive on Unfair Commercial Practices and the Supermarket Ombudsman system in the United Kingdom.

With regard to the implementation of Law No. 4054 on the Protection of Competition in the FMCG retail sector, the report sets out that **(i)** the presumption of concerted practice under Article 4 could be used more effectively and **(ii)** the concept of joint dominance under Article 6 could also be taken into consideration. The report further states that **(i)** M&A transactions concerning the FMCG retail sector could be subject to greater scrutiny, **(ii)** the TCA could define narrower geographical markets and **(iii)** specific monetary thresholds could be applied for the FCMG retail sector. Furthermore, the report states that local retailers could be encouraged to engage in joint purchasing and joint private label production, to purchase products at more affordable prices and such collaborations could be exempted from the prohibition under Article 4.

In conclusion, if the TCA's policy recommendations and regulation proposal are adopted, a new era could begin in retailer-supplier relations.

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