

## Quarterly Competition Law Bulletin – 2023 Last Quarter

January 2024

2023 was an active year in the field of competition law. One of the most important developments in 2023 was the increase in the number of investigations concluded with settlement and commitment. According to the decision statistics published by the Turkish Competition Authority (the "TCA"), the Competition Board (the "Board") concluded 35 investigations with settlement in the first half of 2023, out of 56 investigations in which it detected competition law infringements.<sup>1</sup> In comparison, according to the TCA's 2022 statistics, 34 investigations were concluded with settlement in 2022.<sup>2</sup> The majority of the investigations concluded with settlement relate to resale price maintenance allegations. On the other hand, in 2022, the Board concluded seven investigations with commitments, while this number was eight in the first half of 2023.

In 2023, the TCA focused on no-poach agreements preventing undertakings to hire each other's employees and thus restricting employee mobility in the labor market. In a decision, the Board imposed monetary fines on 27 companies which agreed not to employ each other's employees.<sup>3</sup> There are also other ongoing investigations concerning such non-solicitation agreements.

According to the TCA's 2023 Mergers and Acquisitions Overview Report<sup>4</sup>, the Board reviewed a total of 217 mergers and acquisitions in 2023. The total value of these transactions was approximately TRY 57.5 million. The Board decided to launch a Phase II review only in one of these transactions.<sup>5</sup>

Amendments to the competition legislation were also introduced in 2023. In this regard, the New Regulation on Active Cooperation for the Purpose of Uncovering Cartels was published in the Official Gazette dated 16 December 2023 and entered into force on the same day.<sup>6</sup> In this regard, the existing legislation on active cooperation with the TCA was updated in line with the new developments in practice and recent amendments to the competition legislation. In addition, the TCA opened its draft amendments to the Law No. 4054 on the Protection of Competition for public consultation to establish effective competition in digital markets and implement the necessary regulations concerning digital markets.

This bulletin will cover some of the Board's notable decisions in the last quarter of 2023. In this regard, the below includes explanations on (i) the accepted commitments regarding the exclusive agreements of the audiobook platform Storytel, (ii) the Board's Phase II review regarding an acquisition in the automotive sector, and (iii) the Board's assessment of commitments regarding data access and portability restrictions in the e-commerce sector.

### 1. Audiobook Platform Storytel's Exclusive Agreements: The Board's Storytel Commitment Decision

The Board had initiated an investigation against Storytel Turkey Yayıncılık Hizmetleri Anonim Şirketi ("**Storytel**") on the grounds that Storytel's exclusive agreements with publishers and authors prevented its competitors in the online audiobook streaming services market from entering and expanding in the market.<sup>7</sup> On 14 December

2023, the Board announced that it concluded the investigation by accepting Storytel's commitments.<sup>8</sup>

In its announcement, the TCA stated that the accepted commitments mainly related to the removal of exclusivity clauses in Storytel's existing vocalization licensing agreements with publishers and authors, as well as not including such exclusivity clauses in its future agreements. Accordingly, the commitments mainly include (i)

<sup>1</sup> Please visit the following link to access the relevant statistics: <https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf>

<sup>2</sup> Please visit the following link to access the relevant statistics: <https://www.rekabet.gov.tr/Dosya/2022-yillik-web-20230110153239393.pdf>

<sup>3</sup> Please visit the following link to access the announcement regarding the decision: <https://www.rekabet.gov.tr/Guncel/isqucu-piyasasina-yonelik-centilmenlik-a-eabd47edff30ee118ec500505685da39>

<sup>4</sup> Please visit the following link to access the relevant report: <https://www.rekabet.gov.tr/Dosya/bd-gorunum-raporu-2023.pdf>

<sup>5</sup> You may access our bulletin including details on the TCA's 2023 Mergers and Acquisitions Overview Report through the following link: <https://www.kolcuoglu.av.tr/Uploads/Publication/overview-of-the-turkish-competition-authoritys-merger-i1XHe3o6.pdf>

<sup>6</sup> You may access our bulletin including details on the New Regulation on Active Cooperation for the Purpose of Uncovering Cartels through the following link: [https://www.kolcuoglu.av.tr/Uploads/Publication/new\\_regulation\\_on\\_active\\_cooperation\\_to\\_uncover\\_cartels\\_enters\\_into\\_force.pdf](https://www.kolcuoglu.av.tr/Uploads/Publication/new_regulation_on_active_cooperation_to_uncover_cartels_enters_into_force.pdf)

<sup>7</sup> The Board's decision dated 6 April 2023 and numbered 23-17/301-M

<sup>8</sup> Please visit the following link to access the relevant announcement: <https://www.rekabet.gov.tr/Guncel/storytel-turkey-yayincilik-hizmetleri-as-fea43090b599ee118eca00505685da39>

removing Storytel's exclusivity rights to convert books into audiobooks from the existing vocalization licensing agreements that have been in force for one year or more, **(ii)** removing such exclusivity rights from the existing vocalization licensing agreements that have been in force for less than a year, after one year following the agreement date, and **(iii)** not including such exclusivity clauses in its future vocalization licensing agreements. In addition, the Board also accepted the commitments that Storytel will **(i)** not grant itself exclusive distribution rights for the audiobook content distributed under the content distribution agreements and **(ii)** not oblige vocal artists to provide vocalization services exclusively to itself under the vocalization licensing agreements.

Concluding investigations with commitments is an effective procedure in the developing markets that has not yet been examined in detail by the Board, such as the online audiobook market.

## 2. Phase II Review: Stellantis – Tofaş Acquisition

The Board launched a Phase II review regarding Türk Otomobil Fabrikası Anonim Şirketi's ("**Tofaş**") acquisition of the sole control over Stellantis Otomotiv Pazarlama Anonim Şirketi ("**Stellantis**"). With the transaction, Tofaş, which is ultimately controlled by Koç Holding Anonim Şirketi ("**Koç Holding**"), plans to acquire the distribution rights of Peugeot, Citroën, Opel and DS Automobiles branded automobiles which are currently distributed by Stellantis in Turkey.

This is the second transaction that the Board initiated a Phase II review in the automotive sector in recent years. In 2020, the Board had initiated a Phase II review regarding the merger between Tofaş's shareholder Fiat Chrysler Automobiles N.V. ("**FCA**") and Peugeot S.A. ("**PSA**"), planned through the acquisition of all of PSA's assets under FCA.<sup>9</sup> In its Phase II review, the Board had determined that the transaction may lead to coordinated effects due to structural links between FCA and Ford Otomotiv Sanayi Anonim Şirketi ("**Ford**"), on the grounds that **(i)** Koç Holding has joint control rights over both Tofaş and Ford and **(ii)** a Koç Holding executive is the chairman of the board of directors of both Tofaş and Ford. Accordingly, the Board had conditionally cleared the transaction with commitments.

In this regard, **(i)** FCA had committed that Ford would keep Tofaş's competitively sensitive information confidential, and **(ii)** Koç Holding had committed that Tofaş and Ford's common board member will cease his role in one of these companies following the transaction.

## 3. Commitments on Data Access and Data Transfer Restrictions in the E-Commerce Sector: The Board's Trendyol Decision

On 27 February 2023, the Board had concluded its investigation on DSM Grup Danışmanlık İletişim ve Satış Ticaret Anonim Şirketi ("**Trendyol**") with commitments.<sup>10</sup> The investigation was initiated on the allegations that Trendyol engaged in self-preferencing practices through data sharing and preventing data transfer. On 4 October 2023, the TCA published its reasoned decision regarding the investigation, which details the relevant competition concerns and commitments submitted by Trendyol.

The main competition concerns detailed in the reasoned decision were that **(i)** Trendyol shares the user data obtained from its multi-category e-marketplace with its subsidiary Dolapcom Elektronik Hizmet ve Ticaret Anonim Şirketi ("**Dolap**"), which is an online platform for second-hand product sales, and thus excludes Dolap's

competitors from the market through self-preferencing, **(ii)** Dolap prevents the sellers on its platform from transferring their data to competing platforms that are also active in the online sales of second-hand products, **(iii)** Trendyol excludes Dolap's competitors from the market through cross-subsidization and using its financial power in the multi-category e-marketplace market within the market for platform services to mediate online sales of second-hand products; and **(iv)** Trendyol provided Dolap a competitive advantage over its competitors by incorporating the Dolap platform into the Trendyol mobile application.

In this regard, the Board concluded the investigation by accepting the following commitments submitted by Trendyol:

- (i)** the product data uploaded by the sellers on the Dolap platform (e.g., product name, description, image) will be provided to the sellers in Excel format upon their request,
- (ii)** consumers' browsing data such as page views, clicking, page visits, and Trendyol users' purchase data will not be shared with Dolap or used in the Dolap platform,
- (iii)** Trendyol's seller and user data will not be used in certain algorithms of the Dolap platform,
- (iv)** Trendyol's domestic revenues generated through the services of Dolap platform (i.e., net commission, shipping, and other revenues) will cover the shipping, advertising and POS expenses of these services within certain annual periods, and
- (v)** Trendyol will provide regular competition law trainings to its employees (including that of Dolap) regarding the offered commitments and the competition concerns relevant for the investigation.

Accordingly, the Board determined that Trendyol's commitments are acceptable and sufficient to address the relevant competition concerns, since they ensure data transfer for the sellers that wish to sell their products on alternative platforms other than Dolap.

On the other hand, concerning the allegation that incorporating the Dolap platform into the Trendyol mobile application provides a competitive advantage for Dolap, the Board decided that such integration will not have an anti-competitive effect as it does not lead to data sharing between Trendyol's own services, self-preferencing, the limitation of third parties' interoperability or the transfer of financial power. The Board's recent decisions regarding similar allegations<sup>11</sup> demonstrate that online platforms' restrictive practices on data portability and data transfer will be strictly monitored by the TCA in 2024.

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<sup>9</sup> The Board's decision dated 30 December 2020 and numbered 20-57/794-354

<sup>10</sup> The Board's decision dated 27 February 2023 and numbered 23-11/177-54

<sup>11</sup> For example, the Board's **(i)** *Nadirkitap* decision dated 7 April 2022 and numbered 22-16/273-122, **(ii)** *Meta* decision dated 20 October 2022 and numbered 22-48/706-299 and **(iii)** *Trendyol* decision dated 5 January 2023 and numbered 23-01/2-2