

## Quarterly Competition Law Bulletin – 2021 Second Quarter

July 2021

The Preliminary Report on E-marketplace Platforms Sector Inquiry (the "Preliminary Report") published by the Turkish Competition Authority (the "TCA") was the most significant competition law development during the second quarter of 2021. On 7 May 2021, the Preliminary Report, which contains the Competition Board's (the "Board") initial findings of the sector inquiry initiated on 11 June 2020 and policy suggestions, was published on the TCA's website for public consideration. The Preliminary Report explores competition law concerns associated with the e-commerce sector and e-marketplaces, and offers various solutions for these concerns.

Another significant development of the period was the investigation concerning the labor market. The investigation was launched due to the allegations that several undertakings were restricting competition in the labor market by preventing employee transfers among each other through "gentlemen's agreements." The investigated undertakings include leading e-commerce firms, such as Yemeksepeti, Çiçeksepeti, Getir, and Trendyol. In this period, the Board also initiated an investigation against 13 undertakings operating as suppliers and distributors in the fast-moving consumer goods (the "FMCG") sector, due to allegations that they were facilitating exchange of competitively sensitive information among retail supermarket chains.

The second quarter of 2021 also witnessed the conclusion of yet another investigation launched against Google. The allegation was that Google abused its dominant position in the local search services and accommodation price comparison service markets. With its decision dated 8 April 2021, the Board imposed an administrative fine of TRY 296,084,899.49 on the grounds that Google abused its dominant position in the relevant market by leveraging its local search and accommodation price comparison services in its general search results and obstructing the activities of competitor local search sites. The decision marks the fourth time Google has received an administrative monetary fine, following the Board's "Google Android," "Google Shopping," and "Google General Search Services" decisions.

This bulletin sets out the details of the developments specified above.

### 1. E-Marketplace Preliminary Report has been published

In recent years, e-marketplace platforms, especially, have become an essential driving force behind the development of retail trade in Turkey. These platforms bring with them various innovations in terms of customer service quality, as well as facilitating the creation of technical infrastructure required, especially for small and medium-sized sellers. On 7 May 2021, the Preliminary Report, which is the initial step of the TCA's sector inquiry on e-marketplaces, was published for public consideration.

The Preliminary Report states that (i) e-marketplaces have crucial benefits for both consumers and sellers that are active in retail trade and (ii) intervention in the competitive concerns in e-marketplace

platforms by traditional competition law tools may be problematic. The Preliminary Report's findings are as follows:

- The market has an oligopolistic structure.
- The market is in the early stages of growth in Turkey, yet the market concentration is expected to increase in the future through mergers/acquisitions or organic growth.
- Consumers' tendency to use few e-marketplaces to shop increases market concentration levels and supports monopolization.

- As e-marketplaces also act as sellers, they are competing with third-party sellers, and such conflict of interest strengthens competitive concerns.
- E-marketplaces have begun to create their own ecosystems by operating in related markets such as logistics and payment systems.
- E-marketplaces have asymmetric bargaining power against third-party sellers; thus, they can unilaterally determine the commercial terms.

The Preliminary Report also sets out three key policy recommendations to preserve the competitive structure of e-marketplace platforms. These are **(i)** strengthening the secondary competition law legislation, **(ii)** drafting a "Platform Code of Conduct" to balance the asymmetric market power among sellers and e-marketplace platforms, and **(iii)** to give the undertakings a "gatekeeper" role and establish *ex-ante* regulations on them.

The gatekeeper regulation proposed in the Preliminary Report implies several obligations on e-marketplaces that meet specific criteria, e.g. **(i)** not to gain any advantages by using third-party sellers' data, **(ii)** not to favor marketplaces' own products in the listing/ranking phase, and **(iii)** to provide data access and data portability for sellers. In this respect, the Preliminary Report assumes similarities with the European Union's "Digital Markets Law" proposal. The Preliminary Report also signals that a legislative study to determine gatekeeper platforms and their obligations is on-going.

The TCA president, Mr. Birol Küle, stated that the TCA's legislative study on digital markets is expected to be concluded within 2022.

In addition, on 6 July 2021, the TCA held a workshop to address the findings, evaluations, and policy recommendations in the Preliminary Report. It was also announced that all stakeholders may submit their opinions regarding the Preliminary Report's findings and policy recommendations by 9 July 2021. Following the workshop and collection of stakeholders' opinions, the TCA is expected to complete its final report on the e-marketplace platforms sector inquiry and announce its final recommendations concerning e-marketplaces.

## 2. Investigation launched against 32 undertakings due to gentlemen's agreements in the labor market

The Board launched an investigation against 32 undertakings to examine the allegations that they were restricting competition in the labor market by preventing employee transfers among each other through "gentlemen's agreements." The investigated parties include undertakings operating in different sectors, such as e-commerce companies, fast-food restaurants, supermarket chains and software developers.

Although the Board's interest in competition law restrictions in the labor market is hardly a new issue, this investigation is the most comprehensive one to date.

In some of its previous decisions, the Board reviewed agreements including non-solicitation and salary fixing provisions. For example, in its decision dated 2 January 2020 and numbered 20-01/3-2, the Board investigated the allegations that highway container transport companies in Izmir and its surrounding areas agreed to fix drivers' salaries and prevented driver transfers among each other. As a result, the Board decided that correspondence between the investigated undertakings aiming to prevent employee transfers among each other constituted a competition law violation. However, instead of imposing administrative monetary fines, the Board issued warnings to the investigated undertakings. The Board is also currently

conducting another investigation regarding allegations that several private hospitals in Bursa prevented employee transfers among each other through gentlemen's agreements.

The TCA's announcement of the investigation states that employers that are competing for labor force are able to prevent employee transfers among each other through direct/indirect agreements, which deprives employees from taking job opportunities that offer higher salaries and better conditions. The TCA's announcement further states that the labor market's competitive structure must be preserved especially in such a digital age where creativity and innovative intelligence come to the fore.

In his statement regarding the investigation, the TCA President, Mr. Birol Küle, concluded that these gentlemen's agreements prevent the improvement of work quality and harm economic growth. Mr. Küle also signaled that the Board may start to draft guidelines on competition law issues in labor markets.

## 3. Investigation launched against 13 manufacturers and suppliers operating in the FMCG sector

On 3 June 2021, the TCA announced that it has launched an investigation against various food manufacturers and suppliers for facilitating indirect exchange of competitively sensitive information among supermarket chains. The allegedly exchanged information includes future prices, price transition dates, seasonal campaigns, and special offers. The investigation will review the allegations of whether the supermarket chains' prices and price transitions have been coordinated through the investigated manufacturers and suppliers, and whether the retailer supermarket chains have acted, in concert, to determine the resale prices. The investigated undertakings include large-scale suppliers, such as GlaxoSmithKline, Pepsi Cola, and Red Bull.

The TCA has recently scrutinized the FMCG retail sector. In this regard, on 5 February 2021, the TCA published its preliminary report on the FMCG retail sector inquiry, which sets out the competition law concerns and solutions associated with the FMCG retail sector. In addition, on 7 May 2020, the Board announced that it has launched an investigation against 29 undertakings that include supermarket chains and FMCG suppliers due to the price gouging allegations of food and cleaning products after the COVID-19 outbreak. Indeed, the TCA's announcement on 3 June 2021 implies that this investigation was initiated based on the information and documents obtained through the price gouging investigation.

## 4. Administrative fine imposed on Google for abuse of dominance

The Board conducted an investigation based on the allegation that the economic unit in which Google is involved (i.e., Google Reklamcılık ve Pazarlama Limited Şirketi, Google International LLC, Google LLC, Google Ireland Limited, and Alphabet Inc.) abused its dominant position in the general search services market by way of leveraging its local search and accommodation price comparison services in a manner that excluded its competitors.

On 8 April 2021 the Board decided that Google **(i)** is in a dominant position in the general search services market, **(ii)** leverages its own local search and accommodation price comparison services on its general search results page in terms of location and impressions, **(iii)** obstructs its' competitors' activities by preventing competitor local search sites from entering the Local Unit (i.e., Google's local search unit) and; therefore **(iv)** has restricted competition in the local search service and accommodation price comparison services markets. Accordingly, the Board imposed an administrative fine of TRY 296,084,899.49 on Google's economic unit.

# KOLCUOĞLU DEMİRKAN KOÇAKLI

HUKUK BÜROSU • ATTORNEYS AT LAW

In addition, the Board required Google to **(i)** take measures within six months from receipt of the reasoned decision to ensure that competitor local search and accommodation price comparison services will not be disadvantageous to the Google general search

results page, and **(ii)** submit yearly periodical reports to the TCA for five years starting from the implementation of this measure.

The decision marks the fourth time that the Board has imposed an administrative fine on Google in recent years.

## CONTACT



Competition Law Counsel  
Neyzar Ünübol

[nunubol@kolcuoglu.av.tr](mailto:nunubol@kolcuoglu.av.tr)



Associate  
Ali Tunçsav

[atuncsav@kolcuoglu.av.tr](mailto:atuncsav@kolcuoglu.av.tr)