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The Turkish Competition Authority grants exemption to an electronic refuel and information system bringing together fuel distributors and end-users in a two-sided market *(Platform Aracılık / Danışmanlık)*

ANTICOMPETITIVE PRACTICES, AGREEMENT (NOTION), EXCHANGE OF INFORMATION, ENERGY, FINANCIAL SERVICES, REGULATED SERVICES, PRICE COORDINATION, INFORMATION TECHNOLOGY, TURKEY, EXEMPTION (INDIVIDUAL), ANTICOMPETITIVE OBJECT / EFFECT

Turkish Competition Authority, *Platform Aracılık / Danışmanlık*, 19-22/324-143, 20 June 2019 (Turkish)

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Background

The Turkish Competition Board (“**Board**”) has recently published its reasoned decision on an exemption application by Platform Aracılık ve Danışmanlık Ltd. Şti. (“**Platform Aracılık**”) regarding its sample agreements (hereinafter referred to as the “**Agreement**”) with five fuel distributors (“**Fuel Distributors**”). The Agreement concerned a two-sided market, comprising the supply of electronic refuel and information systems to fuel distributors and the sale of fuel to end-users.

The Board’s Analysis

Platform Aracılık offers intermediary and consultancy services to natural and legal persons engaged in trading of petroleum and petroleum products. The Agreement concerns Platform Aracılık’s provision of its electronic refuel and information system (“**System**”) to distributors, which is a network that electronically sends certain information regarding the fuel customers to both Platform Aracılık and Fuel Distributors, and allows them to sell fuel to end-users through a single system. The System has two main functions:

- Platform Aracılık provides the System and all the necessary infrastructure, whereas the Fuel Distributors use this system to sell fuel to individual/corporate customers,
- Platform Aracılık helps Fuel Distributors access new customers via the System by engaging in sales and marketing activities throughout Turkey.

By using the System, Fuel Distributors are able to sell fuel to customers with a certain discount and manage their customer services through (i) vehicle identification, (ii) mobile payment, (iii) fuel card, and (iv) loyalty cards. The Board concluded that, under the Agreement, Platform Aracılık operated in a two-sided market: (i) services to the Fuel Distributors; (ii) services to the end-customers. Accordingly, the Board defined the relevant product markets as "*installation of electronic refuel and information systems for fuel distribution*" and "*marketing of electronic refuel and information systems for fuel distribution,*" as well as "*fuel distribution*" in Turkey.

The Board identified competitive concerns with respect to the System, regarding the potential (i) information exchange among Fuel Distributors via the System, and (ii) price coordination among Fuel Distributors. As regards the latter, the Board was concerned in particular with respect to the fixed discount percentage that the System aimed to offer to end-customers at all of the Fuel Distributors' dealers. The Board therefore decided against granting a negative clearance for the Agreement.

In the second step of its competitive analysis, the Board assessed whether the Agreement could benefit from the safe harbor of the Block Exemption Communiqué on Vertical Agreements ("**Communiqué No. 2002/2**"). The Board held that, although the Agreement had been concluded between Platform Aracılık and the Fuel Distributors, and thereby created a vertical relationship, it nevertheless contained certain horizontal elements, as the platform combined the services of competing distributors. Taking into account the same horizontal risks that had been considered in the negative clearance analysis (*i.e.*, indirect coordination between distributors and parallel price levels), the Board found that the Agreement would not benefit from a block exemption under the Communiqué No. 2002/2.

As a third and final step, the Board analyzed whether the Agreement met the following four cumulative conditions for an individual exemption, as set out in Article 5 of the Law No. 4054 on the Protection of Competition:

- *New developments and improvements, or an economic or technical development in the production or distribution of goods and in the provision of services*

Based on the Board's findings in the decision, Platform Aracılık provides technological infrastructure, maintenance and marketing services, which require a high level of expertise. The Fuel Distributors lacked such expertise, and they did not separately possess the customer portfolio that is required to enable this system to work efficiently. Given the high investment costs involved, individually establishing an electronic system similar to what Platform Aracılık offers (which aims to include more fuel distributors into the platform in the future), along with a loyalty system, would not be commercially feasible. Further, the System is expected to empower these small fuel distributors to compete more efficiently with the major players in the market with the economies of scale and the technical and infrastructure support that the Platform offers. The Board therefore concluded that the Agreement met the first condition.

- *Consumer benefits*

The Board found that the Agreement provided two main benefits to consumers: (i) a potential increase in the number of distributors and fuel stations resulting from the System would lead to lower prices for end-users, and (ii) a potential decrease in the investment costs of the Fuel Distributors would allow the Fuel Distributors to compete with the major players in the relevant market more efficiently, which would, in turn, benefit consumers. Moreover, the mobile payment system would be expected to offer these services to consumers more quickly, while also ensuring proper data protection.

- *No elimination of competition in a significant part of the relevant market*

In its analysis, the Board held that the market shares of both the Fuel Distributors and Platform Aracılık were significantly low. Further, the Board noted that there were several major providers both in the fuel distribution market and the electronic sale of fuel market. Given the lack of barriers to entry (on top of these market conditions), the Board ultimately decided that it was unlikely for the Agreement to eliminate competition in a significant part of the relevant markets.

- *No limitation of competition more than required to achieve the goals in paragraphs (i) and (ii)*

As explained above, the Board had two main competitive concerns with respect to the Agreement: (a) potential information exchange, and (b) price coordination between the Fuel Distributors.

As regards the first concern, the Board emphasized that it is crucial to consider where the sales data are stored and with whom such sales data are shared The Board found that the System did not allow distributors to access the commercial information of other distributors, and blocked such access by putting in place sufficient mechanisms to prevent the possibility of information exchange.

As regards the second risk, the Board found that, while a customer would be given the same discount by all of the Fuel Distributors, this discount would only be a percentage of the fuel price that each distributor was free to set independently. Further, each customer would receive an individualized discount rate based on the customer's individual agreement with the platform. The Board therefore held that the fuel prices in the System would not be similar for each customer.

Based on the foregoing considerations, the Board decided to grant the Agreement an individual exemption for three years.

Conclusion

This decision stands out as the first case in which the Board has analyzed electronic refuel and information systems in the fuel distribution sector.

It is also worth noting that the Board had a different view than the investigation team in this case, as it limited the term of the individual exemption to three years (even though some of the Fuel Distributors' agreements were contemplated for five years), contrary to the case handlers' suggestion that a five-year exemption could be granted to the Agreement. Therefore, without providing a clear explanation for its reasoning, the Board seems to have considered that a five-year exemption could raise further competitive concerns, which could not have been outweighed, in the Board's view, by the expected efficiencies resulting from the Agreement.

More interestingly, there were two dissenting votes from the Board members with respect to this decision. According to the dissenting opinion, the expected cost efficiencies of the Agreement would not lead to any objective improvement given the low market shares of the Fuel Distributors. The dissent further stated that a similar system could be established by fuel distributors individually, and thus the majority decision of the Board had failed to explain how the Agreement would contribute to improving the production or distribution of goods, or to promoting technical or economic progress.