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The Turkish Competition Authority dismisses restrictions of online sales via third party platforms (*BSH*)

ANTICOMPETITIVE PRACTICES, DISTRIBUTION AGREEMENT, INVESTIGATIONS / INQUIRIES, SELECTIVE DISTRIBUTION, VERTICAL RESTRICTIONS, UTILITIES, MANUFACTURING, REMEDIES (ANTITRUST), THIRD PARTIES, TURKEY

Turkish Competition Authority, *BSH*, Decision No. 22-41/579-239, Commitments, 8 September 2022 (Turkish)

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BSH Ev Aletleri Sanayi ve Ticaret A.Ş. (*BSH*), operating in Turkey under the Bosch and Siemens brands, as well as the local brand Profilo and the private brand Gaggenau, is active in the production, import, export, domestic distribution, and marketing of small and large household appliances, along with after-sales services.

In late 2021, the Turkish Competition Board (*Board*) initiated a full-fledged investigation against BSH along with five other sector players for engaging in resale price maintenance and online sales ban on its dealers. Considering the provisions of the agreements between BSH and its authorized dealers, the Board found that the third-party platform bans are incompatible with the selective distribution system BSH carries out.

In its assessment, the Board noted that sales of electronic devices through online channels have increased, and, among these online channels, the most prominent one is e-marketplaces which are consumers' first choice. In this respect, the Board determined that the limitations on online sales through these platforms, which have become essential channels for sales, effectively result in a complete ban on online sales as well as the restriction of passive sales. That said, the Board emphasized that a provider may lay down certain conditions for online sales channels, such as imposing quality conditions for the website where products are offered, as long as they do not aim at direct or indirect restriction of online sales. The justification of the conditions to be introduced must be objectively concrete, reasonable and acceptable in terms of the factors such as increasing the nature and quality of the distribution, brand image and/or potential efficiency. Similarly, the supplier may require the dealer to only sell through "sales platforms/marketplaces" which fulfill certain standards and conditions. However, this restriction should not aim to prevent dealers' online sales or price competition. As such, a ban on sales through platforms should be accompanied by objective and uniform conditions, and the justifications for such conditions should align with the specific characteristics of the product.

Acknowledging that the restrictions of online sales via e-marketplaces do not amount to a naked and hardcore restriction, the Board found that BSH is allowed to address such competitive concerns through commitments according to Article 43 of Law No. 4054. In this regard, to address the Board's competition concerns in relation to the investigation, BSH has offered the following commitments:

- *Authorized dealers must have 'authorized dealer badges' in their platform stores.*
- *The authorized dealers shall only provide the platform with product materials and information (product specifications/images/videos, etc.) that BSH has shared or approved, and shall ensure that no product materials or information other than those provided by BSH are used or displayed on the platform store or product page.*
- *Authorized dealers may sell on platforms that allow and enable them to determine product prices exclusively.*
- *Authorized dealers will provide the end-customer with the opportunity to ask questions on the platform store.*
- *The platform store of the authorized dealers must be in compliance with the institutional standard of relevant BSH brand.*
- *Authorized dealers must not use any pseudonym other than their trade name on the platforms and the authorized dealers' store name must be the same across all online channels.*
- *Damaged, defective or second-hand products shall not be sold.*
- *If the systems are appropriate, consumers should be provided with the opportunity to track the shipment.*
- *Questions asked to the authorized seller on the platform must be answered within two days.*
- *In accordance with the legislation, cancellation can only be made if the consumer uses the right of withdrawal. The authorized seller cannot cancel the order due to lack of stock.*
- *If there is a period or stock limit regarding the validity of the price, this period and stock amount must be clearly stated in the relevant section of the authorised seller's platform store.*

All in all, the Board accepted the commitment package offered by BSH, as it found them sufficient to address the pertinent competitive issues.

The BSH commitments mark an important development in terms of sales made through e- marketplaces in Turkey. The decision will pave the way forward in terms of the standards that can be adopted to ensure quality of the distribution, brand image and/or potential efficiencies, without restricting online sales of a supplier's dealers.

Another point worth noting is that, the Board, with the BSH decision, apparently parts its way from the newly introduced EU VBER and the CJUE's position in the Coty decision, which allow the providers to restrict the buyers' online sales via third-party platforms. However, the Board has not made it clear whether it has factored in luxuriousness of the products in question, as the CJUE has made in its Coty decision.