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The Turkish Competition Authority accepts a leading beverage company's commitments to remedy the competition concerns raised concerning its abuse of dominance in the carbonated drinks, cola drinks and aromatic carbonated drinks markets *(Coca Cola)*

UNILATERAL PRACTICES, DOMINANCE (ABUSE), DOMINANCE (NOTION), DISTRIBUTION/RETAIL, EXCLUSIVE DISTRIBUTION, AGRICULTURE / FOOD PRODUCTS , OTHER SERVICES, REMEDIES (ANTITRUST), TURKEY

Turkish Competition Authority, *Coca Cola*, 21-41/610-297, 2 September 2021 (Turkish)

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e-Competitions News Issue Preview

The changes to the Law No. 4054 on Protection of Competition ("**Law No. 4045**") introducing the new commitment and settlement mechanisms, entered into force on 24 June 2020 with the Amendment Law, aiming to achieve efficiency gains and allow the competition investigations to close at an earlier phase without going through the whole process. Since their introduction, there has been a surge in interest among the undertakings regarding these new mechanisms, and Coca Cola Satış ve Dağıtım A.Ş. ("**Coca Cola**") became one of the first firms to benefit from the commitment mechanism in the interim period applicable for the enactment of the relevant rules governing the mechanism under the Amendment Law.

The Turkish Competition Board (the "**Board**") had launched an investigation against Coca Cola upon a confidential complaint [***1***], which alleged that the company infringed Article 4 and Article 6 of the Law No. 4054 by adopting *de facto* exclusivity practices and restricting competitor sales to end sales points.

During the investigation, the Turkish Competition Authority (the "**Authority**") found that Coca Cola held a dominant position in the "carbonated drinks", "cola drinks" and "aromatic carbonated drinks" markets, and its rebate system and refrigerator policies restricted competitor activities in the relevant market. Within the same investigation, the Authority also made certain observations in relation to the "non-carbonated drinks" market and Coca Cola's activities therein.

Within the scope of the Investigation, the Authority highlighted that the following matters raised competition concerns:

- Coca Cola's current agreements addressed the entire product portfolio of Coca Cola and included interchangeable and interdependent terms and conditions (*i.e.,* rebate policy) for different product categories, tying all drinks under a single distribution agreement,
- Transitional amount based calculations took into account all product categories under "carbonated drinks" and "non-carbonated drinks" which riveted Coca Cola's portfolio effect,
- Exclusivity terms were applied to "non-carbonated drinks" and the quantity-based and duration-restricted agreements amounted to *de facto* exclusivity practices (*i.e.*, restricting the opt-out rights or termination of the agreement by the sales points) which increased Coca Cola's portfolio effect,
- The refrigerator policies currently adopted by Coca Cola *vis a vis* the sales points hindered competitor access to the sales points and thus to the consumers,
- Regular and continuous purchase terms under the agreements created competitive concerns.

Accordingly, the Authority's assessments in the Investigation Report, which included matters related to previously granted exemptions, constituted the following:

- The exemption previously granted to Coca Cola for the "non-carbonated drinks" must be withdrawn [*2*] (certain exceptions apply – *i.e.,* in the exclusivity agreements entered in light of public and private tenders which can be attended by all entities and are carried out in a competitive and transparent manner based on objective conditions non-compete terms must be limited to 2 years),
- In refrigerators, 40% of the space should be accessible to the competitors [*3*],
- The sales agreements and refrigerator *commodatum* (loan for use) agreements entered by Coca Cola and/or its distributors must be amended within 4 months, in accordance with the above considerations. In response to these assessments and concerns raised by the Authority in the Investigation Report, Coca Cola served its second written defence and, at the same time, it also officially requested to submit a commitment package.

Upon Coca Cola's request, the Authority initiated the official talks for discussion of the said commitments with Coca Cola and other third parties. Consequently, the Board accepted an amended draft of the commitments initially proposed by Coca Cola, which had been reworked based on the input of the Authority as well as other stakeholders in the relevant sector.

Generally speaking, the commitments proposed by Coca Cola in order to address competition concerns raised during the course of the Investigation included, *inter alia*, the following:

- Amending the general agreements entered with sales points (such as, grocery stores and markets) which govern Coca Cola's entire product portfolio, and executing separate agreements for "carbonated drinks" (with the further distinction of "cola drinks" and "other carbonated drinks" made up of "flavoured" and "non-flavoured" drinks) and "non-carbonated drinks" (with recognition of sub-segmentation of "non-carbonated drinks" (*i.e.*, water and soda, juices, iced tea, energy drinks, sports drinks)) in order to address the relevant distribution relationships individually and under a tailored approach.
- Within this scope, transitional terms and conditions across different product categories will be terminated (*i.e.,* sales amount calculations, relevant promotions).

- Termination of single brand agreements for "non-carbonated drinks" and non-entry to exclusive relationship for "non-carbonated drinks" (certain exceptional circumstances apply).

- Limiting the duration of agreements to two years, and for (quantity) agreements which exceed two years, including a provision for the right to terminate the agreement without any penalties (certain exceptional circumstances apply).

- Change in the refrigerator policies adopted by Coca Cola whereby the space made accessible to competitors are increased and 25% of the space in Coca Cola's refrigerators are allocated for competitors without refrigerators in certain sales points (*i.e.*, sales points with an area below 100 m2 in the traditional channel and points in the on-premise consumption channel).

- Changes to agreements including "regular and continuous purchase terms" and accordingly removal of the term from agreements including provisions governing rebate-discount-promotions other than cash investments.

- Obligation to inform consumers and sale points within the scope of the accepted commitment regarding the refrigerator accessibility rule.

- Obligation to inform sale points whose contracts are still in effect within the scope of the accepted commitments.

- Putting these commitments into effect for those agreements currently in force via amendments within one year as of the notification of the reasoned decision and in any case implementing the remaining commitments by the end of 2021 (December 31, 2021).

- Upholding Coca Cola's obligations stemming from previous Board decisions [*4*] for any actions which are not addressed by these commitments.

All in all, the commitments offered and subsequently agreed by Coca Cola were deemed to address the concerns raised by the Authority, and hence, the Board accepted the revised commitments proposal. On this note, it must be noted that Coca Cola has remarked that it reserves its right to apply for a renewed assessment in case of changes to market conditions. Accordingly, we are yet to see whether or not the dynamics for the different drinks markets will change with the assistance of the relevant commitments, and if so, how such changes will manifest, in the upcoming years.

[*1*] The Board decision dated 02.04.2020 and numbered 20-18/244-M.

[*2*] The Board decision dated 16.10.2008 and numbered 08-58/930-376.

[*3*] As opposed to the current figure of 20% for spaces to be allocated for competitor access in Coca Cola refrigerators at sales points with an area below 100 m2 in the traditional channel and points in the on-premise consumption channel, as per the Board decision dated 10.09.2007 and numbered 07-70/864-327.

[4] The Board decision dated 10.09.2007 and numbered 07-70/864-327.