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The Board Conditionally Clears a Horizontal Transaction in the Online Comparative Ticket Sales Market

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The Turkish Competition Authority (the "**Authority**") published its Obilet/Biletal decision where it conditionally approved the acquisition of Biletal İç ve Dış Ticaret A.Ş.'s ("**Biletal**") sole control by Obilet Bilişim Sistemleri A.Ş. ("**Obilet**") and decided that the proposed transaction would not result in significant impediment of effective competition under Article 7 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**")¹ subject to commitments proposed by the parties.

By way of some background information, Obilet is primarily active in the field of comparison and sale of online bus and flight tickets through its own web site and mobile applications, providing excursion search, comparison, live support and ticket purchase services under a single platform. Biletal primarily supplies online excursion tickets, acting as a marketplace by way of electronically listing the services of local and foreign airlines and more than 150 local bus companies. Moreover, Biletal provides infrastructure services in relation to online price comparison and sales platforms.

The decision of the Board plays an important role in the realm of online ticket services as it concerns a horizontal transaction between an acquirer, which had the highest market share in the relevant market as of 2008, and a target, which was considered the fourth undertaking holding the highest market share in relevant the market for online comparative ticket sales services whereby the first five entities are regarded to constitute majority of the market. Accordingly, the decision provides insights on assessment of the relevant market as well as foresights on consideration of behavioral commitments under significant impediment to effective competition test.

I. Consideration of Online Activities of the Parties and Market Definition

As noted, the parties primarily provide bus and flight ticket related services. Having said that, the parties have/had negligible sales in relation to other transportation means (i.e. railway and

¹ The decision of the Board dated 01.07.2021 and numbered 21-33/449-224.

seaway passenger transportation) and indeed, their sales are evaluated to be considerably insignificant when compared to bus and flight ticket related activities of the parties. Accordingly, in the decision, the Board placed emphasis on consideration of the parties' bus and flight tickets services.

In assessment of the relevant services, the Board primarily considered the demand-side and supply-side substitutability of online bus tickets and online flight tickets.

The parties submitted, inter alia, that considering the convergence of prices between bus tickets and flight tickets in recent years, availability of both means of transportation especially in busy destinations, similar overall transportation periods between two means of transportation (i.e. taking into consideration transportation time to/from the stops, waiting durations and time spent on checks, traffic etc.), bus and air travels must be considered substitutable to one and another, and taking into consideration seasonal effects, capacity restrictions, timings, ticket flexibilities, passengers often compare these two transportation means and can freely decide between these two services.

In addition to the foregoing, the Board, inter alia, also considered other factors such as the ease and low cost of transferability between suppliers' provision of goods and services by taking account the fact that due to the low investment costs and transformation needs, the substitutability of parties activities' in terms of supply-side is relatively high. The Board also assessed that the competitors provide the same bus and flight ticket services in the same market in which parties have activities, therefore the market for online flight and bus ticket sales should be defined under a single relevant product market.

Moreover, Obilet argued, inter alia, that transportation operators (i.e. THY, PEGASUS, KAMİL KOÇ) have competitive advantage and significant market share in the relevant market, besides brick and mortar ticketing services they provide online ticketing services via their web-sites, mobile applications and even by means of advertising its services in search engines such as Google which is considered to have a considerably high traffic in the relevant industry, thereby they have better positioning in search engines and they can indeed offer cheaper prices to their customers. Therefore such transportation companies should be also considered when defining the market. Indeed, based on the diversity of product/brand approach in the relevant market, Obilet argued that although the operator firms provide services related only to their own brands, online platforms are also limited to three to four different options and since there is no significant diversity on the products between the two service providers they should be deemed as competitors in the relevant market. However few operator firms raised their objection to this assessment. For example, Turkish Airlines and Pegasus stressed that airline operators provide services subject to special regulations and require different organizational and capital needs as opposed to travel agencies. The operator firms also indicated that both Biletal and Obilet offered reservation services and ticket sales via their own web-sites as a result of the protocol between the operator companies and the transaction parties, that conferred them the ability to provide such services, therefore no competitor relationship exists among the operators and respected undertakings.

All in all the Board took into consideration the above-mentioned explanations and concluded, inter alia, that since both Obilet and Biletal lists many transportation operators and provides online price comparison and sales services in return of a commission, and thus offer various services within varying fees, their sale channel should be distinguished from the sales channels of operator firms which indeed only provide tickets for their own brands. In its consideration, the Board also drew attention to change in consumer habits and increased use of price comparison platforms by consumers in recent years and by way of an example highlighted that top five hits for “bus ticket” related search on Google search engine (organic results based on hit numbers) concerned online comparative ticket sales providers.

The decision of the Board is significant in terms of the definition of relevant product markets under the scope of online sale platforms which has been under the radar of the Competition Board in recent years. In fact, following a detailed examination, the Board defined the upstream market as travel ticket sale services and segmented it into downstream markets such as “ticket sale services provided through traditional channels” and “online ticket sale platform services”. The Board further sub-divided the market into “online comparative bus and flight ticket sale”. Having said that, the Board left the exact definition of the market open as per paragraph 20 of the Guidelines on the Definition of Relevant Market, yet indicated that parties’ activities horizontally overlap in the market for online comparative bus and flight ticket sale.

II. Competitive Assessment and Consideration of Behavioural Commitments under SIEC Test

The Board examined the relevant market by stating that although the market has a multiplayer structure, the majority of the market shares are concentrated to five undertakings, restricting the competitive pressure in the market. Against this background, the Board highlighted that with the proposed transaction, Obilet, which is considered to be the market leader would be acquiring sole control of Biletal, which is considered to be the fourth undertaking holding the highest market share in the market.

Accordingly, within scope of the proposed transaction, the Board assessed concerns related to potential foreclosure of the relevant market to the competitors and negative impact of the proposed transaction on the number of the players in the markets. In its assessment, the Board took into consideration concerns of other sector players such as concerns raised in relation to transfer of great portion of sales in the market to the merged entity, decreased competitors and competitive pressure in the market, potential increase in commissions in the market, advantageous position of parties vis a vis other players in the market in relation to infrastructure services.

In consideration of the relevant concerns, the parties offered behavioural commitments to remedy relevant concerns. The commitments involved the following:

- Biletal will continue its provision of infrastructure services for online price comparison and sales platforms in a way that is akin to its current services, for three years following the consummation of the transaction,

- Parties will not engage any in practice, as is now, which will result with exclusivity by way of entering into contracts with undertakings which provide passenger transportation with airlines and busses or *de facto* practices which will prevent the excursions of such undertakings to be listed on competitors' online platforms.

Overall, the Board had noted that the proposed transaction, as is, can potentially cause significant impediment to effective competition. However, subject to the behavioral commitments proposed by the parties, the Board conditionally approved the merger indicating that the concerns about the significant impediment to effective competition as regards to the market for online comparative flight and bus ticket sales where the parties' activities horizontally overlap would be eliminated as a result of parties' commitments.

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