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Competition Authority imposes administrative fine on Groupe SEB and İlk Adım for resale price maintenance and online sales restriction practices

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Introduction

Article 4 of Law No. 4054 on the Protection of Competition prohibits the fixing of:

- the purchase or sale price of goods or services;
- elements such as cost and profit that form price; and
- any other terms of purchase or sale.

On 24 August 2021, the Competition Authority announced its decision to impose an administrative fine on both Groupe SEB İstanbul Ev Aletleri Ticaret AŞ and İlk Adım Dayanıklı Tüketim Malları Elektronik Tekstil İnşaat ve İletişim Hiz San Tic Ltd Şti, after concluding that Groupe SEB and İlk Adım had violated article 4 of Law No. 4054 by determining the resale prices and restricting the online sales of their distributors and other resellers. The Competition Board assessed the activities of Groupe SEB and İlk Adım, which included:

- interfering with distributors' pricing strategies;
- imposing sanctions on distributors that disrupt the pricing strategy, such as prohibiting the online sales; and
- notifying distributors to increase their prices.

The *Groupe SEB* decision is remarkable as it evaluates allegations concerning the practices of Groupe SEB and İlk Adım, with regard to resale price maintenance and online sales restrictions.

Facts

In its decision, the Board described Groupe SEB as an undertaking active in the small house appliances market with a product range that included:

- steam irons;
- vacuum cleaners;
- personal and laundry care product;
- food and drink preparation accessories; and
- electronic cooking appliances.

Groupe SEB is active in the distribution of these product segments under various brands (eg, Tefal, Rowenta, Moulinex and Krups) and through various sales channels, such as:

- exclusive shops;
- own shops;
- business-to-business transactions;
- business-to-consumer transactions;
- internet shops;
- corner dealers;
- premium dealers;
- chain store;
- technology superstores; and
- shop-in-shops.

İlk Adım, on the other hand, is another sales channel of Groupe SEB that acts as its distributor for traditional stores and local dealers.

The Board determined the relevant market to be "small house appliances" and the geographic market as Turkey. The Board also highlighted that the market consisted of many different undertakings that operated through six main sales channels:

- distributors and exclusive shops;

- traditional shops and local dealers;
- local chain stores;
- e-commerce platforms;
- technology superstores; and
- hypermarkets.

Decision

Assessment of resale price maintenance allegations

First, the Board evaluated the practices conducted by Groupe SEB and stated that the main sales channels for products distributed by Groupe SEB are the Tefal shops (ie, exclusive shops) and corner shops. Additionally, the Board pointed out that due to e-commerce becoming more popular and online sales having increased, internet sales constitute another important sales channel for Groupe SEB.

After examining the documents collected during the on-site inspection on 8 January 2020, the Board reached the conclusion that Groupe SEB mainly aims to keep the final sales prices of the products at the recommended level. The Board also found the following details, which led it to the conclusion that Groupe SEB's objective and sales strategy was to ensure resale price maintenance:

- Groupe SEB requested its dealers to increase their prices to the recommended sale price when the sale price was below the recommended level.
- Groupe SEB had been constantly monitoring prices, especially on sales made through online channels.
- Employees from different sales channels had been constantly reporting the prices to each other.
- Based on the data on sales prices, Groupe SEB issued warnings to its distributors who applies lower sales prices.

Further, the Board stated that Groupe SEB's interference in the sales prices was observed in various ways:

- Groupe SEB was shown to have interfered directly with the prices applied by its dealers under its own sales channels.
- It had interfered with the prices applied by dealers of its distributor, İlk Adım, by issuing warnings to İlk Adım.
- Its activities on resale price maintenance concerned mainly online sales, as it was easier to determine any inconsistency between the recommended sales price and the prices applied by the dealers within the scope of online sales.
- In addition to online sales, its resale price maintenance practices also included other sales channels, based on its policy to ensure price consistency throughout all of its sales channels.
- It had implemented certain measures against those undertakings that did not comply with its recommended sales prices.

Based on these findings, the Board stated that Groupe SEB and İlk Adım had interfered with the sales prices and applied sanctions, including the restriction and prohibition of online sales, to those that did not comply with the price maintenance. Consequently, it has been observed that some sellers had increased their prices after having faced these sanctions. These practices amounted to resale price maintenance, a vertical restraint as per article 4 of the Law No. 4054, which lists the competitive restrictions that are prohibited under competition law.

The Board later evaluated İlk Adım's practices and found that when Groupe SEB determined that the prices applied by a dealer belonging to İlk Adım's sales channel were lower than they should be, Groupe SEB would first inform İlk Adım of the matter and ask that they warn the dealer to increase the prices or terminate the sales of the products. In this regard, the Board concluded that Groupe SEB's resale price maintenance practices concerning İlk Adım's dealers had been executed through İlk Adım, rather than directly by Groupe SEB, which highlighted Groupe SEB's interference with İlk Adım's commercial practices.

The Board further focused on the relationship between these two undertakings and stated that İlk Adım was an undertaking capable of taking decisions independently within the meaning of the general preamble of Law No. 4054. Referring to the preamble, the Board emphasised that competition law applies to all undertakings which conduct economic activities. As for the resale price maintenance practices in question, the Board found that İlk Adım was responsible for these practices, as it was an economically independent undertaking and a separate legal entity that resold the products supplied from Groupe SEB. Although the lists, including the resale prices of the products were determined by Groupe SEB, İlk Adım was deemed liable for forcing its dealers to comply with those price lists and for interfering with their resale prices. Consequently, the Board concluded that these practices constituted resale price maintenance within the scope of article 4 of Law No. 4054.

Exemption analysis

The Board stated that these resale price maintenance practices could not benefit from the block exemption that is set out under the Block Exemption Communiqué No. 2002/2 on Vertical Agreements (Communiqué No. 2002/2), as they constituted a restriction within the meaning of article 4(a) of Communiqué No. 2002/2.

Subsequently, the Board evaluated whether the cumulative conditions for individual exemption within the scope of article 5 of Law No. 4054 had been fulfilled. It reached the following conclusions:

- As for the first condition, the Board found that the resale price maintenance practices did not ensure any new developments or improvements. On the contrary, the Board emphasised that the high dealer prices would limit the intra-brand competition among the dealers and reduce their incentives to invest and minimise costs. On this point, the Board rejected Groupe SEB's brand image defences, as increasing the products' prices artificially would not preserve the brand image before the consumers, as they had claimed. Further, this would not lead to any efficiency gains.
- As for the second condition, resale price maintenance was a form of restriction intended to reduce intra-brand competition, which led to the increase of the prices for consumers and, therefore, there was no benefit from the condition for the customers.
- As for the third and fourth conditions, the Board concluded that due to the fact that despite the many undertakings active in the small house appliances market, Groupe SEB had significant market power in many of the product segments and resale price maintenance led to the reduction of intra-brand competition.

Accordingly, the Board found that none of the conditions for individual exemption had been satisfied.

The decision also included the Board's by-object and effects-based analyses. The Board stated that resale price maintenance was a by-object infringement, and in light of the evidence collected during the on-site inspection, it was sufficient to determine the existence of the object to interfere with the resale prices of the dealers, to conclude there was a violation. As a result, evaluation of the effects of the practices in the market was not an essential factor in order to decide whether a violation had taken place.

Assessment of online sales restrictions allegations

The Board stated that Groupe SEB was also involved in practices leading to the restriction of online sales, alongside its resale price maintenance practices. The Board found that Groupe SEB's practices of restricting online sales had taken place in certain cases, in which Groupe SEB had interfered directly with the internet sales of the dealers, and in other cases. The Board conducted these practices indirectly, through İlk Adım. After evaluating the evidence collected during the onsite inspection, the Board stated that Groupe SEB constantly monitors the market and shapes its strategies concerning resale price maintenance based on the developments in the market.

The Board found out that Groupe SEB's practices related to the restriction or prohibition of internet sales were price-based. Accordingly, it found that whenever Groupe SEB had determined that the prices on the Internet were in line with the price lists or the recommended prices issued, it would interfere with the prices and request a revision. In cases of non-compliance, Groupe SEB restricted the internet sales, sometimes even directly preventing the online activities of the infringers, to ensure that they revised their prices. The Board concluded the restriction and prevention of internet sales appeared both as a sanction to ensure resale price maintenance and as a practice to directly restrict competition.

Exemption analysis

Although it was determined that the request mostly originated from Groupe SEB, there were also cases that demonstrated İlk Adım's interference with its dealers' internet sales. In this respect, İlk Adım's practices could be considered as the restriction of passive sales within the scope of article 4 of Law No. 4054. The Board did not consider İlk Adım's distribution network as a selective distribution network and, therefore, it decided that the restrictions imposed on the internet sales of the dealers could be evaluated within the scope of article 4(b) of Communiqué No. 2002/2. Therefore, the Board stated that the vertical relationship between Groupe SEB and İlk Adım's dealers could not benefit from the group exemption within the scope of Communiqué No. 2002/2. The Board also analysed the conditions set out under article 5 of Law No. 4054 for individual exemption for this practice; however, it concluded that none of the conditions were fulfilled.

Comment

In the past few years, the Board has focused on vertical agreements, especially on resale price maintenance and restrictions of online sales practices. The following are some of the Board's recent decisions that have clarified its current approach to resale price maintenance:

- The *BP/Opet/PO/Shell* decision⁽¹⁾ in the fuel and the liquefied petroleum gas sector – after investigating the practices of five undertakings, the Board decided that the investigated undertakings had interfered with their dealers' pump prices by having their dealers comply with the recommended prices.
- The *Yataş* decision⁽²⁾ – the Board decided that practices of fixing discount rates and limiting the payment methods of their distributors amount to resale price maintenance.
- The *Maysan Mando* decision⁽³⁾ – the Board decided that practices of determining the resale prices of shock absorbers through the supply agreements with the dealers and by doing so, directly or indirectly prohibiting the distributors from freely determining their sales prices was as a restraint that aimed to restrict competition. Any agreement that contained such restrictions could not benefit from the block exemption.

As for the Board's approach concerning by-object restrictions and effects-based analysis, in each of the above decisions, the Board stated that resale price maintenance constituted a by-object restriction. The Board continued and confirmed this approach once again in its *Groupe SEB* decision.

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Endnotes

(1) Competition Board's *BP/Opet/PO/Shell* decision dated 12 March 2020 and numbered 20-14/192-98. Ankara 7th Administrative Court issued a stay of execution for the monetary fine imposed against Opet Petrolcülük A.Ş. (14 January 2021; E 2021/60) and the administrative judicial process concerning this decision is still ongoing.

(2) Competition Board's *Yataş* decision dated 6 February 2020 and numbered 20-08/83-50.

(3) Competition Board's *Maysan Mando* decision dated 20 June 2019 and numbered 19-22/353-159.