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Competition Board scrutinises digital markets for excessive pricing

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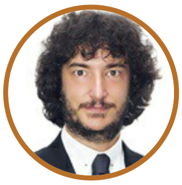

GÖNENÇ GÜRKAYNAK

ALI KAĞAN UÇAR

UZAY GÖRKEM YILDIZ

NILÜFER FIRIK

The Turkish Competition Authority has continued its investigations into alleged anti-competitive practices in digital markets. This time, the Competition Board (the Authority's decision-making body) has launched a fully fledged investigation against Sahibinden Bilgi Teknolojileri Paz ve Tic AŞ, an e-marketplace that enables third parties to market and sell goods, particularly vehicles and real estate, for allegedly abusing its dominant position by engaging in excessive pricing.[(1)]

Facts

The Sahibinden investigation dates back to 2020, after allegations emerged regarding excessive commission rates imposed on business subscribers, which allegedly left no room for subscribing to competing platforms. It was alleged that the excessive commission rates eventually harmed both businesses and consumers.[(2)]

Relevant product markets

The Board held that the market in which Sahibinden operates was a "two-sided market", as it provides services to both individuals and businesses promoting their products, and visitors wishing to purchase or rent products. Two-sided markets are markets where an undertaking acts as a platform and where the demand from the consumer group depends on the demand from the other group, or vice versa, while the undertaking in question sells two different products to two user groups.

As an e-marketplace, Sahibinden brings together buyers and sellers. In this respect, the Board considered whether there was substitutability between business and individual subscribers posting advertisements on Sahibinden. The Board established that:

- the tariffs applied for businesses were below the tariffs applied for individual subscribers; and
- services offered to businesses and individual subscribers also differed in terms of quality.

Therefore, given that the services offered to individual subscribers were not a substitute for those offered to business subscribers, the Board defined the relevant product markets as online platform services for:

- real estate sale and rental activities of business subscribers;
- vehicle sales activities of business subscribers;
- real estate sales and rental activities of individual subscribers; and
- vehicle sales activities of individual subscribers.

The Board delineated the relevant geographical market as Turkey.

Decision

The Board held that the extent to which Sahibinden could act independently from competitive pressure was the parameter for concluding whether it had a dominant position. In this respect, the Board evaluated:

- market shares;
- barriers to entry and expansion; and
- the buyer power in the market.

Market shares

The Board emphasised that market shares exceeding a certain level indicate dominant position and undertakings with less than 40% market share would unlikely hold a dominant position in the relevant market. With a market share well above 40% in business subscribers, business subscriber income and page displays, the Board concluded that Sahibinden's competitors could not impose a significant competitive pressure on Sahibinden in the markets concerned.

Barriers to entry and expansion

The Board considered the network effects that arose from the large user base and advertisers feeding each other as a material barrier to market entry. More specifically, in online markets, consumers want to see more types of advertisements, and advertisers are driven to reach more consumers. These indirect network effects indicated that an increase in the number of users on one side of the platform made it more attractive to those on the other side.

In this regard, the Board determined that Sahibinden had a dominant position in the relevant markets, as it had a high and disproportionate market share against its competitors and maintains this market share over time. Moreover, there are significant network effects and market entry barriers in place.

Buyer power

The Board noted that even Sahibinden's most significant subscriber represented only a small portion of Sahibinden's revenues. Therefore, the subscribers lacked the ability to develop strategies against Sahibinden and did not enjoy any bargaining power.

Abuse of dominance through excessive pricing

The Board assessed that Sahibinden operated based on two main business models:

- an e-commerce model; and
- an announcement or advertisement model.

Within the scope of advertisement model, Sahibinden applied a "value-based model" in which those who wanted to advertise were divided into two categories (individual and business subscribers), and different pricing policies were applied for the intermediary services provided for each subscriber group. In particular, advertisements made by individual subscribers in the real estate and vehicle categories were not charged for a period of 30 days, and a fixed fee per post was offered at the end of this initial 30-day period. Business subscribers, on the other hand, consisted of undertakings whose commercial activity was the purchase, sale and rental of real estate and/or vehicles and the tariffs applied to these subscribers differ according to the advertisement package. Online advertisement package prices varied according to the number of advertisements and the advertisement area.

The precedents of the Board and jurisprudence to date indicate that excessive prices should only be intervened under competition law if certain conditions are met. For example, in *Port Akdeniz – Onur Marble Co*,[(3)] the Board ruled that the comparison between price and cost would not yield definite results, as the cost items for certain services could not be clearly determined. On the other hand, in *Havaş*,[(4)] the Board stated that due to Havaş being a monopoly its market, it could impose excessive prices. As a result, the Board determined that Havaş abused its dominant position in the market by gaining unfair advantages as a result of selling services above reasonable limits of the economic value of the service. In view of the Board's precedents, while the concept of economic value could be taken as a basis to determine excessive prices, excessive price determination by comparison with the prices of products and services of similar nature is an evaluation method that is used more than price-cost comparison.

In the *Sahibinden* decision, the Board evaluated the excessive pricing allegations by comparing the company's:

- profitability with its competitors;
- prices with the prices of its competitors; and
- current prices with its previous prices and competitive prices in different geographies or similar market prices that could be considered competitive in all of the relevant product markets in the same region.

Comparison of Sahibinden's profitability and prices with its competitors

The Board pointed out the fact that, when its competitors were suffering from losses Sahibinden continued to make profit. Further, the Board decided that from 2018 and 2020, the list and actual prices of Sahibinden were not significantly higher than its competitors in the market for real estate sale or rental services for business subscribers. However, the Board determined that there were price disparities compared to its competitors in the market for vehicle sales.

Comparison of Sahibinden's prices with the undertakings operating in different regions

When comparing the prices of Sahibinden and the foreign players, the Board found that as the number of advertisements in the content of Sahibinden's package decreased, their prices began to align with those of foreign players. In addition, as the number of advertisements offered by Sahibinden in a package increases, the prices of Sahibinden were higher than the prices of the players abroad. Therefore, the Board conducted a comprehensive analysis while not limiting itself to the Turkish context, considering the prices for the same services offered in numerous countries.

Comment

The Board examined whether Sahibinden's price hikes harmed consumers seeking to make purchases through the platform. In this context, the Board evaluated whether the hikes in subscription tariffs were followed by prices of products listed on Sahibinden. However, the Board eventually did not consider the outcome of this analysis, as it did not yield an objective, reasonable and accurate result based on the information gathered.

Moreover, in stressing that prices are not the only parameter of consumer welfare, the Board evaluated whether Sahibinden's tariffs resulted in a decrease in the options available to consumers by diminishing the number of advertisements. In this respect, the Board acquired data by engaging in consultation with the business subscribers of Sahibinden, real estate agents and auto dealers. Of those, 97.9% indicated that the advertisement tariffs offered by Sahibinden were expensive, although 76.4% of them reported no pass-on to consumers. The business subscribers also declared that, if Sahibinden had increased its prices by 15 to 20%, they would likely have reduced the number of advertisements on Sahibinden and used the competing platforms. The business subscribers also noted that if there had been an increase in prices by 50% or more, they would have terminated their subscription to Sahibinden.

Further, the Board established that, while Sahibinden's prices increased between 2018 and 2020, the number of advertisements published by business subscribers also rose. Most of the real estate agents and auto dealers also stated that they use alternative platforms in addition to Sahibinden. Consequently, the Board decided that Sahibinden's price hikes had no impact on the business subscribers' activities. However, even a fall in the number of advertisements posted by business subscribers on Sahibinden would not translate into fewer advertisements for consumers and a consequent loss in consumer welfare, as the real estate agents and auto dealers hold portfolios on the competing platforms.

The Board concluded that Sahibinden's pricing strategy did not restrict competition within the meaning of article 6 of Law No. 4054.

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Endnotes

(1) Board decision No. 21-37/540-263**,** dated 5 August 2021.

(2) The Authority had previously probed Sahibinden in two cases for the same type of allegations, but none of these cases eventually resulted in a violation decision. The preliminary investigation in 2015 involving allegations of abuse of dominant position through excessive pricing resulted in a no-go decision (15-08/109-45 of 19 February 2015). Although Sahibinden was fined as a result of the

second investigation for abusing its dominant position through excessive pricing in 2018, the decision was later annulled by the Administrative Court of Ankara on the grounds that excessive pricing is an exceptional case that must be proven with clear and indisputable evidences (E 2019/946 and K 2019/2625 of 18 December 2019). Upon the regional administrative court's decision upholding the Administrative Court of Ankara, the Board ultimately decided that there had been no competition law violation.

(3) Board decision No. 11-53/1358-483, dated 18 October 2011.

(4) Board decision No. 08-01/5-4, dated 3 January 2008.