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Turkish Competition Board's recent decision on MFC practices

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Introduction

Most-favoured-customer (MFC) clauses applied by online platforms are closely scrutinised by the Turkish Competition Board. In the past, the board rendered various decisions⁽¹⁾ on their assessment and the Turkish Competition Authority (the authority) evaluated MFC practices in its digital markets studies.⁽²⁾ Recently, the board assessed the matter with regards to Getir Perakende Lojistik AŞ's (Getir or Getir Yemek) practices (the *Getir* decision)⁽³⁾ and provided a summary of the assessments it had made so far on MFC practices.

In the *Getir* decision, the board assessed a complaint concerning the allegations that Getir violated articles 4 and 6 of Law No. 4054 on Protection of Competition by imposing MFC practices on the restaurants registered on its online food ordering and delivery platform. The board launched a preliminary investigation based on a complaint, and, within the scope of the preliminary investigation, the authority carried out an on-site inspection at Getir's premises and requested information from various stakeholders in the sectors. Further to its preliminary investigation, the board unanimously decided not to initiate a fully-fledged investigation against Getir based on the assessment that, among other things:

- Getir is not in a dominant position in the relevant market; and
- the concerned practices and the vertical agreements between Getir and the restaurants could be also considered within the scope of the Block Exemption Communiqué on Vertical Agreements ("Communiqué No. 2002/2").

Context for Getir and relevant market factors

Getir is active in various sectors, and, under Getir Yemek, it serves as an online food ordering and delivery platform that brings restaurants together with users who wish to place food orders by offering online food order services and, subject to the request of the restaurant or the consumer, the delivery services. Getir Yemek mainly operates by collecting sales referral commissions from restaurants over the order amounts in return for its services. If delivery services are also required, Getir Yemek collects additional delivery service fees calculated based on the order amount. Overall, the platform has a dual-market nature as it serves two different groups (the order placers are the end-user group and restaurants are the commercial user group).

In its decision, the board noted that, players in the market have similar business models and the board is observed to have adopted assessments similar to the ones it adopted in its past decisions in this sector⁽⁴⁾ whilst evaluating the relevant market.

Since the complaint concerns Getir Yemek's practices in online food ordering services, the board concentrated on these services in its decision. Accordingly, the board considered that, among other things, services provided via telephone, a restaurant's own website or mobile application, are not substitutes for online food ordering platform services, both from the perspective of customers and restaurants. Similarly, it assessed that third-party websites and social media platforms that contain restaurant and menu information do not operate in the same market as online food order and service platforms. For these reasons, the relevant product market for the intermediary services provided was defined as the "online food ordering service platform services market".

As for the geographic market assessment, the board noted that end users can use online food ordering and delivery platforms without any geographical restrictions and experience the same service regardless of the region. In this regard, the board noted that, although there may be some regional effects in the online food ordering and delivery platform services market, the relevant geographic market is Turkey considering the ability of buyers and sellers to access the relevant services across the country.

Getir's MFC practices

In the decision, the allegations raised revolved around the narrow and wide MFC practices of Getir Yemek. Overall, as also defined by the board in the *Getir* decision, MFC practices are fundamentally an assurance by a provider not to offer more advantageous terms to another customer. Narrow MFC arrangements compare terms with the direct channel of the supplier and require the application of the same terms adopted by the supplier. Wide MFC arrangements extend to sales over other platforms or resellers (ie, competing buyers) and required application of the same terms offered by the supplier to other buyers. Accordingly, as also noted in the board's *Getir* decision, under a narrow MFC arrangement, the provider can offer lower prices or more favourable conditions to competitor undertakings but cannot offer these prices and conditions in its own direct sales channel. Conversely, in the case of a wide MFC practice, the provider will not offer a price lower than the price offered to the undertaking benefiting from the MFC practice or more advantageous conditions to competitor undertakings and through its own direct sales channel.

The board concluded that Getir Yemek's agreements with the member restaurants foresaw narrow MFC conditions and required restaurants to adopt prices, campaigns and promotions that they provide via their own sales channels on the Getir Yemek platform. In other words, when member restaurants apply the following, they are required to adopt these prices and conditions on Getir Yemek:



GÖNENÇ
GÜRKAYNAK



DİLARA
YEŞİLYAPRAK



BUĞRAHAN
KÖROĞLU



SUSEN AZRA
YETER

- better prices;
- discounts;
- campaigns; or
- promotions at their physical stores through their sales channel, their own apps or websites.

The board determined that while the relevant provisions were included in the agreements drawn up during the establishment period of Getir Yemek, they were not included in the later agreements drafted and made (after 2019). Accordingly, the authority investigated whether Getir Yemek adopted *de facto* MFC practices.

During the on-site inspections carried out, the authority's case handlers seized documents that indicated that Getir Yemek implemented *de facto* MFC practices regarding its member restaurants. The board found that Getir Yemek restricted restaurants from providing more advantageous offers on their own sales channels and other platforms that compete with Getir Yemek. Overall, the board determined that Getir Yemek closely monitored prices and sales conditions of the restaurants on other sales channels via various practices (eg, fake calls). If it determined that the restaurant offers more favourable prices and conditions on its own sales channels and/or the competitor sales channels, it warned the relevant restaurant manager and closed restaurants for order on the platform and rejected transactions of the relevant restaurants on Getir Yemek.

In the decision, it is understood that Getir Yemek argued that MFC practices help protect its brand image and investments. Moreover, it is understood that Getir Yemek adopted such practices in order to compete in an efficient manner with strong competitors (eg, Yemek Sepeti) in the relevant market and taking into consideration the consumer habits that prevail in the relevant market.

Against this background, the board assessed Getir Yemek's MFC practices within the context of article 6 of Law No. 4054 and under article 4 of Law No.4054, taking into consideration past assessments of the board under these two types of violation.

Board assessment and conclusion

The board initially carried out an assessment under article 6 and considering the positions of other competitors in the market (such as Yemek Sepeti and Trendyol Yemek), concluded that Getir Yemek did not possess market power that would allow it to act independently of its competitors and customers, and therefore, it is not in a dominant position.

Regarding the assessment under article 4, the board analysed Getir Yemek's practices in terms of Communiqué No. 2002/2. Considering that Getir Yemek acted as a platform marketing the food services of restaurants and provides intermediary services between restaurants and consumers, the Board noted that the agreements between Getir Yemek and its member restaurants are vertical agreements and may be evaluated under the scope of Communiqué No. 2002/2.

In principle, as per Communiqué No. 2002/2, MFC practices may benefit from block exemption provided that the market share of the party that is beneficiary of the clause does not exceed 30% and that the other conditions stipulated in the Communiqué No. 2002/2 are met.

As referred to by the board in its *Getir* decision and as also stipulated in the Guidelines on Vertical Agreements, the authority recognises the pro-competitive nature of MFC practices and adopts a "rule of reason" approach in analysis of their anti-competitive effects. Accordingly, the undertakings' and competitors' positions in the relevant market, the object of the MFC practice and the specific characteristics of the market are taken into consideration when assessing these clauses. As noted by the board and as also stipulated in the relevant guidelines, MFC practice can have positive effects on competition, such as:

- protecting brand image;
- preventing free-riding; and
- encouraging investments specific to commercial relationships.

They may also have adverse effects, including:

- price rigidity;
- facilitating coordination;
- creating entry barriers; and
- excluding competitors from the market and that the likelihood of anti-competitive effects is higher if the party benefitting from the MFC practice has market power.

As noted in the board decision, theories of harm on wide and narrow MFC practices are provided in more detail in the relevant digital market studies.

The board assessed Getir Yemek's market share based on sales data from the previous year and its commission revenue, (considering that the actual revenue of the platform derives from commission fees). The assessments revealed that Getir Yemek's market share, both in terms of sales and commission revenue, was below 30%. Moreover, the board concluded that Getir Yemek's practices did not include any further restrictions that would risk a block exemption. Consequently, the board determined that the narrow and wide MFC practices adopted by Getir Yemek fell within the scope of the block exemption, and there is no need to launch an investigation against Getir.

Comment

The board's decisional practice to date and the relevant legislation shows that MFC practices pose risks for competition if the market powers of the undertakings benefiting from such practices are high. An agreement containing MFC practices may benefit from block exemption provided that the market share of the party that is beneficiary of the clause does not exceed 30% and that the other conditions stipulated in the Communiqué No. 2002/2 are met. On this note, the board's *Getir* decision, which stems from a preliminary investigation initiated by the board because of a complaint made in relation to Getir Yemek's MFC practices, sheds light on the evolving dynamics and power distribution among participants of the online food order-delivery sector while also showcasing the board's

established understanding and evaluation of MFC practices. In the decision, the board finds that Getir's MFC practices could benefit from block exemption and that such practices do not violate articles 4 and 6 of Law No. 4054.

For further information on this topic please contact [Gönelç Gürkaynak](#), [Dilara Yeşilyaprak Akay](#), [Buğrahan Köroğlu](#), or [Susen Azra Yeter](#) at ELIG Gürkaynak Attorneys-at-Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@eliglegal.com, X, X or X). The ELIG Gürkaynak Attorneys-at-Law website can be accessed at www.elig.com.

Endnotes

(1) Some examples include the board's *Yemek Sepeti* decision dated 9 June 2016 and numbered 16-20/347-156 and Board's *Kitapyurdu* decision dated 5 November 2020, and numbered 20-48/658-289.

(2) Turkish Competition Authority, Reflections of Digital Transformation on Competition Law, April 2023, Ankara. (Available at: www.rekabet.gov.tr/Dosya/dijital-piyasalar-calisma-metni.pdf; last accessed: 14 June 2023); Turkish Competition Authority; E-marketplace Platforms Sector Inquiry Final Report, April 2022, Ankara. (Available at: [e-pazaryeri-si-raporu-pdf](#) (rekabet.gov.tr); last accessed: 14 June 2023).

(3) The board's decision dated 15 September 2023, and numbered 22-42/606-254.

(4) The board's *Yemek Sepeti* decision dated 9 June 2016, and numbered 16-20/347-156.