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## The Turkish Competition Authority concludes an investigation into resale price maintenance practices by a company in the cosmetics sector with a settlement procedure (*Avon*)

**UNILATERAL PRACTICES, DOMINANCE (ABUSE), DISTRIBUTION/RETAIL, AGREEMENT (NOTION), RESALE PRICE MAINTENANCE, VERTICAL RESTRICTIONS, SETTLEMENT, HEALTHCARE, AGENCY AGREEMENT, TURKEY, DAWN RAIDS**

Turkish Competition Authority, *Avon*, Case No. 23-13/223-72, Decision, 9 March 2023 (Turkish)

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### Introduction

This case summary aims to offer insight regarding the Turkish Competition Board's ("**Board**") Avon [1] decision ("**Decision**"), where the Board assessed whether Avon Kozmetik Ürünleri Sanayi ve Ticaret A.Ş. ("**Avon**"), an importer, exporter and wholesaler of cosmetic products, has violated Article 4 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") by way of resale price maintenance and restricting the online sales of its resellers. The Board concluded that Avon interfered resale prices of its resellers. The investigation ("**Investigation**") concluded with settlement procedure for the resale price maintenance allegations.

### The Board's Assessment on the Nature of Relationship between Avon and its Sales Representatives

Before delving into assessment regarding Article 4 of Law No. 4054, the Board initially made an assessment to determine the scope of the relationship between Avon and its sales representatives. In determining whether the sales representatives of Avon could be identified as undertakings the Board referred to the Turkish Commercial Code, numbered 6102 ("**TCC**") and the Guidelines on Vertical Agreements ("**Guidelines**"). Initially, the Board noted as per Article 3 of the Law No. 4054 undertaking concept is mainly composed of two elements: (i) economic activity and (ii) economic independence. Accordingly, it was emphasised that, in principle, agencies do not fall within the scope of Article 4 of Law No. 4054, provided that the agent does not bear any financial or commercial risks in relation to the activities carried out on behalf of the principal.

In terms of assessment on whether the agent bears economic or commercial risks, the Board referred to Guidelines set forth certain criteria to determine whether the agent bears economic or commercial risks. Therefore, it is stated

that to the extent that the agency relationship involves one or more of the situations listed below, the relationship would fall within the scope of Article 4 of Law No. 4054:

- a contribution by the agency to the costs related to the purchase and sale of goods or services, including transportation costs;
- forcing the agency to contribute, directly or indirectly, to activities aimed at increasing sales;
- the agency assuming risks, such as the funding of contracted goods kept at storage or the cost of lost goods, and the agency being unable to return unsold goods to the client;
- placing an obligation on the agency for the provision of after-sales service, maintenance or warranty services;
- forcing the agency to make investments that may be necessary for operation in relevant market and that can be used exclusively in that market;
- holding the agency responsible to third parties for any damages caused by the products sold; and
- the agency assuming responsibility other than failing to get a commission owing to customers' failure to fulfil the terms of the contract.

In light of the above-mentioned criteria, the Board has examined the relationship in between Avon and its sales representatives. Accordingly, it was determined by the Board that there is no employer-employee relationship between Avon and its sales representatives based on the terms stipulated in the Sales Agency Contract concluded in between sales representatives and Avon. Moreover, the Board observed that sales representatives are solely responsible for setting sales prices, managing customer payments, and bearing the risks associated with product sales, including potential stock losses or damages.

The Board noted that Avon has stated that representatives have an unconditional right to return products to Avon within 40 days. The Board remarked that this policy, while not explicitly stated in the Sales Agency Contract, is communicated through the FAQ section of the sales representatives' website. However, the Board highlighted that while product returns require a reason code for exchange or deduction of the value of the product from subsequent invoices, there is no provision for unconditional refunds to representatives.

Furthermore, while assessing the relationship in between Avon and its sales representatives the Board remarked that there is competition in between sales representatives in the distribution system and prevailing sales representatives in this competitive environment may achieve better discounts and more favourable payment terms from Avon, enabling them to offer discounted prices to end customers in a bid in order to increase sales.

In conclusion, the Board has determined that the relationship between Avon and its sales representatives is evaluated under Article 4 of Law No. 4054 because the sales representatives bear some of the above risks, particularly the risk of collecting from customers.

## **The Board's Assessment on the on the Findings**

In terms of assessment of the findings regarding resale price maintenance practices, it was found that Findings 1, 2, and 3, show that Avon closely monitors resellers engaged in direct product sales channels (such as retail points/kiosks or mobile sales) and ceases product supply to sellers operating on e-commerce platforms. Therefore,

the Board noted that findings in the case indicate that, aside from Ucuzavar Bilgi Teknoloji Turizm Gıda Pazarlama Ltd. Şti. (“**Ucuzavar**”), sales made on e-commerce platforms are considered a significant risk for Avon, prompting the adoption of necessary precautions to mitigate this situation.

Moreover, the Board noted in Finding-1 that communications containing phrases such as “*abnormal pricing*” and “*problems with pricing*” indicate Avon’s intent to prevent direct channel resellers from participating in e-commerce sales to maintain control over resale prices. It was further stated that, the correspondence titled “*Abnormal price activity*” in Finding-3 demonstrate that Ucuzavar’s owner informed Avon officials regarding an Avon representative’s sale on Trendyol (a prominent e-commerce platform in Türkiye), leading Avon to take necessary actions.

In addition, the Board highlighted that Finding-4 provided documentation in which the owner of Ucuzavar listed suggested prices, retail prices, promotional prices, and prices on an e-commerce platform for Avon products. This correspondence was interpreted by the Board as a request for validation by Avon.

In terms of Finding-5 which is an internal correspondence of Avon the acknowledgment of non-designated sellers, those distinct from Avon’s recognized direct and online sales representative, engaging in internet sales through various marketplaces is highlighted. The Board assessed the correspondence reveals Avon’s efforts to prevent its sellers from stockpiling products before price transitions, aiming to deter subsequent sales at reduced rates.

Furthermore, the Board concluded that Finding-6, an internal communication among Avon company executives, expresses concern that selling products at competitive prices in certain areas negatively impacts Avon’s direct sales channels. These exchanges are interpreted as an indicator that Avon’s primary objectives within its distribution system are to prevent products from being sold at discounted prices through multiple channels.

Lastly, the Board highlights Finding-7 as an instance of illustration of Avon’s direct intervention in adjusting prices set by resellers termed as “showcase representatives” selling Avon products in retail outlets (stores, kiosks, etc.), as it contains phrases such as “fixing the prices on the price list”.

In conclusion, based on the evidence obtained regarding Avon’s conduct, it is concluded that Avon’s activities constitute anticompetitive practices in the way of resale price maintenance activities within the scope of Article 4 of Law 4054.

## Assessment on Administrative Monetary Fine and Settlement Mechanism

While the investigation was ongoing, Avon requested to initiate settlement procedure as per Article 43 of the Law No. 4054. This request was accepted by the Board and the Board decided to conclude the investigation for resale price maintenance allegations on February 23, 2023.

The Board determined that the violation in this case fell under the category of “Other Violations” as per Article 7 of the Regulation on Fines and reduced the administrative monetary fine ratio of the Avon by 40% taking a mitigating factor into account. As a result of the settlement, the administrative fine imposed on Avon was reduced by 25%.

## Conclusion

The Board’s decision not only provides an understanding of the criteria for determining agencies as independent undertakings, but also provides an up-to-date insight into the Turkish Competition Authority’s approach to resale price maintenance, the ban on online sales as well as the settlement procedure. Therefore, the nuanced and recent

assessments conducted by the Board position this decision among the significant rulings.

[1] Decision of the Board dated 09.03.2023 and numbered 23-13/223-72.