

# Antitrust/Competition

## The Trendyol Decision: A Landmark for Competition in the Online Retail Sector

On May 24, 2024, The Turkish Competition Authority ("Authority") published the Competition Board's ("Board") reasoned decision on its recently concluded investigation concerning self-preferencing allegations against DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ ("Trendyol"), a leading online retail platform in Türkiye (July 26, 2023, 23-33/633-213) ("Decision").

As a result of its investigation, the Board concluded that Trendyol (i) is dominant in the multi-category e-marketplace market, and (ii) has abused its dominant position by taking unfair advantage over its competitors, through interventions to the algorithm and using data of third-party sellers on its e-marketplace. In addition, the Board imposed an administrative fine of TRY 61,342,847.73 (approx. 2 million USD) and certain remedies.

During the investigation stage, the Board imposed interim measures to prevent Trendyol from (i) favoring its private label products as part of its retail activities, through algorithms and coding (ii) using and transferring data obtained through its e-marketplace activities in a way to advantage its own products and services over their competitors, (iii) discrimination among sellers on the marketplace through algorithm and lack of transparency regarding sponsored products.

The Decision indicates that the Authority received several complaints during the investigation, concerning the allegations about (i) predatory pricing/ complicating competitors' activities, (ii) exclusivity, (iii) unfair contract terms, (iv) self-preferencing and (v) discrimination. In this light, Trendyol applied for the commitment mechanism to eliminate the Authority's concerns. While the Board accepted Trendyol's commitments addressing the allegations concerning predatory pricing, complicating competitors' activities, exclusivity and unfair contract terms, it rejected the commitments regarding self-preferencing and discrimination allegations and decided to continue the investigation in terms of these behaviors. Therefore, the investigation mainly focused on the self-preferencing allegations, which is a rather new concept as it was only introduced with the development of the digital markets.

The Decision defines self-preferencing as the dominant undertaking's conduct to favor its products or services compared to the rivals competing with those products and services on the basis of the same platform service. The Decision indicates that the reason self-preferencing



Dr. Gönenç Gürkaynak  
[gonenc.gurkaynak@elig.com](mailto:gonenc.gurkaynak@elig.com)



Harun Gündüz  
[harun.gunduz@elig.com](mailto:harun.gunduz@elig.com)



Can Yıldırım  
[can.yildirim@elig.com](mailto:can.yildirim@elig.com)

constitutes a competition concern is that undertakings that hold a dominant position in a platform service gain an unfair competitive advantage by projecting their market power to another related market. The Board further emphasizes that with the development of digital platforms self-preferencing became more visible due to the network effects, economies of scale, ease of vertical integration, possibility to project market power in a much shorter time and much more easily and at no cost in these markets. The Decision also includes detailed explanations on different types of self-preferencing, including self-preferencing through algorithms/ranking and data, and refers to the Board's and European Commission's decisional practice on self-preferencing allegations.

The Decision also includes a detailed effect analysis on both the actual and potential effects on the retail market, as well as the potential effects on the market for e-marketplaces. As a result, the Board concludes that although the Board did not find that Trendyol acts discriminatorily by intervening in algorithms, the Board found that Trendyol favored its own retail activity through algorithms and data, which result in actual and potential effects on the retail market and potential effects on the market for e-marketplaces.

Given the growing focus on digital markets, the Decision is important as it sheds light on the Board's approach to this relatively new type of abuse theory.





## Practice Area News

**Amendment of the Law No. 4054.** Published in the Official Gazette on **May 29, 2024**, the amendments to Law No. 4054 entirely removed the first written defense (responding to the investigation notice). In addition, a third written defense may only be submitted if the investigation committee has changed its opinion previously notified within the scope of the investigation report. These changes reflect an effort to ensure procedural efficiency by simplifying the Authority's investigation procedures.

**Apple Faces Scrutiny for App Store Policies.** Based on its finding during the Mobile Ecosystems Sector Inquiry, **the Turkish Competition Authority** decided to launch an investigation against Apple to decide whether Apple prevents application developers on the App Store from using competing payment systems through certain restrictions, including prohibiting them from informing users about alternative channels and mandating use of Apple's payment system for in-app purchases, thus potentially limiting consumer choice and hindering the entry of alternative payment systems into the Apple ecosystem.

**Block Exemption for Recommendation of Base Salaries.** **The Turkish Competition Board** decided that Doğuş Otomotiv's practice that involves making recommendations to authorized dealers about their employees' base salaries can benefit from the block exemption under Block Exemption Communiqué on Vertical Agreements (Communiqué No: 2002/2). The decision includes remarks on the vertical aspect of competition law concerns in labor markets and reminds that competition law concerns in labor markets are not limited to horizontal practices.

**Sahibinden is Free from Fines.** The Turkish Competition Board's investigation against Sahibinden, an online real estate and vehicle sale/rent platform, resulted in no fine. Although the Turkish Competition Board found that Sahibinden is in a dominant position in multiple markets relating to online platforms for sale and renting of real estate and vehicles both for individual and corporate customers, it decided that Sahibinden did not violate Article 6 of Law No.4054 through excessive pricing.

## In the Firm

- ELIG Gürkaynak represents corporations, business associations, investment banks, partnerships, and individuals in a wide variety of competition law matters. We also collaborate with international law firms on Turkish competition law matters.

In addition to our strong Turkish competition law practice, our international experience provides us with a high capability in multinational competition law issues.