



Internet Sale Restrictions under Turkish Competition Law and Insights from the Turkish Competition Board’s Pierre Fabre and Avon Decisions

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I. Introduction

Article 4 of Law No. 4054 on Protection of Competition (“**Law No. 4054**”) prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices that have (or may have) as their object or effect the prevention, restriction or distortion of competition within a particular market for goods or services. Agreements restricting competition may be in the form of vertical or horizontal agreements.

Vertical agreements falling within the scope of Article 4 may benefit from block exemption or individual exemption if they meet certain criteria. According to Article 5 (4) of Law No. 4054, the Board may issue communiqués which ensure block exemptions certain types of agreements as a whole. These communiqués would indicate the terms of the exemption. The block exemption communique for vertical agreements is Block Exemption Communique on Vertical Agreements No. 2002/2 (“*Communiqué*”). The Communiqué has been amended in 2021. With the amendments, the market share threshold required for vertical agreements to benefit from the block exemption has been reduced from 40% to 30%. Therefore, provided that the market share of the supplier is below 30% in the relevant market and the vertical agreement does not contain any restrictions listed under Article 4 of the Communiqué, it may benefit from the block exemption. In case of exclusive supply obligations in vertical agreements, the exemption will apply only if the market share of the buyer in the relevant market where it purchases the goods and services comprising the subject matter of the agreement does not exceed 30%.

On the other hand, the fact that a vertical agreement does not qualify for a block exemption does not automatically constitute a violation of Article 4. If the relevant agreement meets with the cumulative conditions set in Article 5 of Law No. 4054, it may benefit from individual exemption.¹

II. Assessment of Internet Sale Restrictions under Communiqué and Guidelines

The development of the internet as a new distribution channel offers consumers easy access to a wide range of information, price comparisons, and greater access to products and sellers, while also providing suppliers with the opportunity to market their goods to broader geographic areas at lower costs. However, suppliers may be inclined to restrict distributors/dealers/buyers’ online sales for reasons such as protecting brand image, addressing the free-riding problem and mitigating the risk of counterfeiting.²

Article 4.1(b)(1) of the Communiqué relates to the restrictions placed upon buyers concerning the region or customers the contracted goods or services may be sold to. The Communiqué indicates that the scope of the exemption does not extend towards the prohibition of passive sales, in the sense that the Communiqué only allows the restriction of active sales conducted to a specific customer group or region within a distributorship system that includes territorial and customer exclusivity. Under Turkish competition law, fulfilling demands of customers from the region or customer group of another buyer which are not a result of active efforts by the buyer constitutes “passive sales,” even when the buyer delivers the goods to the customer’s address. Similarly, advertisements or promotions of a general nature—not targeting specific customers—are considered passive sales.³ As in EU legislation, sales conducted through internet platforms are considered as passive sales.

Paragraph 25 of the Guidelines on Vertical Agreements (“**Guidelines**”) underlines that each dealer must have the right to make sales over the internet and provide a non-exhaustive list of which internet restriction should be considered under passive sales. The relevant paragraph highlights that prohibiting distributors, dealers or buyer from conducting sales on their own internet platforms is classified as passive sales and qualifies as a limitation that excludes the applicability of block exemption. Additionally, the following restrictions imposed on the internet sales are considered as hard-core restrictions and thus, exclude the vertical agreement from the scope of the block exemption in accordance with the Communiqué: (i) limiting access to a distributor’s website for customers in the exclusive territory of another distributor or redirecting such customers to the manufacturer’s or another distributor’s website, (ii) cancelling transactions based on the customer’s address (e.g. delivery, postal or credit card) being outside the distributor’s exclusive region, (iii) imposing restrictions on the ratio of internet sales to total sales, and (iv) requiring the distributor pay a higher price for products intended for resale online compared to those offered through traditional sales channels.

Despite these restrictions, paragraph 28 of Guidelines allows for imposing quality standards for the use of internet as a sales channel. As an example, the supplier might set quality standards that are objectively concrete, reasonable and acceptable, concerning the websites where its products are sold, as well as a requirement to deliver specific services to customers shopping online. The relevant paragraph also emphasizes that in a selective distribution system, the supplier may impose an obligation for its authorized distributors to have at least one physical sales point, yet this should not aim to “*foreclose the market to those players who sell exclusively over the internet (pure players) or restrict their sales.*” In this context, the crucial point is that the restrictions should not constitute a general ban on internet sales, and they should be objectively justified.

Furthermore, it must be noted that paragraph 29 of Guidelines acknowledges the fact that the criteria for physical and online sales may differ, but they must serve the same purpose, ensure comparable results and mirror the differences inherent to the nature of each channel (“principle of equivalency”). Therefore, the focal point of assessment is whether conditions imposed by the supplier discourage buyers from using the internet as a distribution channel.

III. Turkish Competition Board’s Pierre Fabre and Avon Decisions

Pierre Fabre and Avon decisions are the two recent decisions of the Turkish Competition Board (“**Board**”) regarding the internet sales restrictions.

In *Pierre Fabre*⁴ decision, the Board assessed whether the agreements concluded between the cosmetics company Pierre Fabre and its authorized distributors violated Article 4 of Law No. 4054. The Board highlighted that the agreements with dealer pharmacies included a clause, allowing them to sell Pierre Fabre's products only in their own pharmacies. In other words, Pierre Fabre banned dealer pharmacies to sell or display its products through any other channel, including the internet and perfumeries.⁵ The Board concluded that the clause constitutes a total ban on internet sales, and hence excluded the agreement from the scope of the block exemption. Ultimately, Pierre Fabre proposed commitments, including the removal of internet sales restrictions and the revision of agreements to exclude such restrictions.⁶ The Board concluded the investigation, as these commitments were deemed sufficient to address the competition concerns reviewed within the scope of the case.

Similarly, in *Avon*⁷ decision, the Board evaluated whether Avon, a cosmetics company, restricted the internet sales of its resellers. The Board found that Avon required its resellers to obtain prior approval before selling its products online. Furthermore, the Board highlighted that obtaining prior approval from Avon constitutes an absolute and general ban on internet sales, and restricts intra-brand competition.⁸ Eventually, Avon proposed commitments⁹, and the Board concluded the investigation. In this context, Avon has committed to include the following clause in its agreements with resellers: "*The seller may sell the products covered by the agreement online, including through online marketplaces.*" Additionally, Avon has committed to provide the following explanatory statement on its B2B platform and in the monthly representative magazine for its resellers: "*Avon representatives may sell products online, including through online marketplaces.*"

IV. Conclusion

Considering the above Communiqué and Board's decisions, direct or indirect restrictions imposed on distributors, buyers or dealers such as including clauses in the agreements preventing internet sales, as in Pierre Fabre decision, or requiring a pre-approval mechanism for conducting sales on internet, as in Avon decision, are considered as hard-core restrictions that may raise competition concerns. Therefore, such restrictions exclude the vertical agreement under examination from the scope of the block exemption under the Communiqué.

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ENDNOTES

¹ Cumulative conditions for individual exemption are as follows: (i) the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress; (ii) the agreement must allow consumers a fair share of the resulting benefit; (iii) the agreement should not eliminate competition in a significant part of the relevant market; and (iv) the agreement should not restrict competition by more than what is necessary for achieving the goals set out in (i) and (ii).

² Göçmen, Hande (2022), *İnternet Satışlarında Dikey Kısıtlamalar*, Rekabet Kurumu Uzmanlık Tezi, pp.12-15.

³ Rekabet Kurumu [Turkish Competition Authority], *Guidelines on Vertical Agreements*, para. 24. <https://www.rekabet.gov.tr/Dosya/guidelines-on-vertical-agreements-20231123140524385.pdf> (Last Accessed: January 8, 2025).

⁴ Decision of the Board dated 23.02.2023 and numbered 23-10/175-43.

⁵ Ibid, para. 13.

⁶ Ibid, para. 24.

⁷ Decision of the Board dated 23.03.2023 and numbered 23-15/252-83.

⁸ Ibid, para. 25.

⁹ Ibid, para. 26.