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The Turkish Competition Authority
accepts commitments from a battery
distributor to address concerns over
sales restrictions and non-compete
clauses (*Duracell*)

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Gönenç Gürkaynak

gonenc.gurkaynak@elig.com
Founding Partner
ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Kağan Uçar

kagan.ucar@elig.com
Lawyer (Counsel)
ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Ceren Özkanlı Samlı

ceren.ozkanli@elig.com
Counsel
ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Uzay Görkem Yıldız

uzay.yildiz@elig.com
Senior Associate
ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Umut Koç

umut.koc@elig.com
Trainee Lawyer
ELIG Gürkaynak Attorneys-at-Law (Istanbul)

The Turkish Competition Board ("**Board**") initiated an investigation against Duracell Satış ve Dağıtım Ltd. Şti. ("**Duracell**"), a leading distributor of portable accumulators and batteries in Türkiye, for the allegations of infringement of Article 4 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**"), on September 7, 2023.¹ The investigation focused on the claim that Duracell restricted distributors' active and passive sales and imposed non-compete obligations that created barriers to competition.

The Board examined Duracell's activities in the portable accumulator and battery market and noted that Duracell operates in five key sales channels: wholesale, modern retail (e.g., supermarkets), export, alternative (e.g., e-commerce), and distributor networks. The Board found that the "Distribution Agreements" executed with the distributors in question assigned non-exclusive territories to Duracell's distributors.

The investigation into Duracell focused on two main competitive concerns, namely (i) active and passive sales restrictions and (ii) non-compete clauses.

(i) Duracell's agreements prohibited the distributors from engaging in active sales outside their designated territories and restricted internet sales unless prior approval is obtained from Duracell. According to Communiqué No: 2002/2 Block Exemption Communiqué on Vertical Agreements ("**Communiqué No: 2002/2**"), for the restrictions on active sales outside the designated territory to benefit from the exemption, Duracell should have exclusively allocated the territories to a distributor or Duracell itself. However, Duracell's standard agreement explicitly emphasized that the territories were not exclusively allocated to its distributors. Therefore, since Duracell's distributorship system did not feature territorial exclusivity and the agreements prohibited not only active sales outside the designated territory but also passive sales (internet sales), the relevant agreements were considered to be outside the scope of the block exemption granted by Communiqué No. 2002/2.

(ii) Duracell's agreements also imposed non-compete obligations for an indefinite period, restricting distributors from engaging in competing businesses during the agreement term and six months/one year after the expiration of the agreement.

Article 5(a) of Communiqué No. 2002/2 stipulates that a non-compete obligation imposed on the purchaser, which is for an indefinite period or the duration of which exceeds five years cannot benefit from the group exemption. The same article also provides that "*in case it is decided that the non-compete obligation can be tacitly renewed so as to exceed the duration specified above, the non-compete obligation is considered to be of indeterminate duration*". However, the additional protocol to Duracell's distributor agreements provided an automatic renewal at the end of each year. The Board considered that the relevant agreements might be deemed effective for an indefinite period, due to the relevant protocol.

The same provision also provides that "*But, a non-compete obligation may be imposed on the purchaser provided that it does not exceed one year as of the expiry of the agreement, with the conditions that the prohibition relates to goods and services in competition with the goods or services which are the subject of the agreement, it is limited to the facility or land where the purchaser operates during the agreement, and it is compulsory for protecting the know-how transferred by the provider to the purchaser*". However, the relevant agreements did not involve transfer of know-how; therefore, the Board held that the non-compete obligation after the expiration of the agreement fell outside such exception.

Thus, the Board considered that the relevant distribution agreements lead to competition concerns according to Article 4 of Law No. 4054 and do not benefit from the relevant block exemption.

1. Decision of the Board dated 04.04.2024 and numbered 24-16/359-139.

Commitments Offered and Assessment

Duracell provided its commitments to the Authority after the submission of its first written defense. The Board evaluated Duracell's proposed commitments in light of the competitive concerns identified during the investigation.

Duracell offered to engage with distributors by assigning exclusive territories and to restrict their active sales within the framework of this exclusivity system, but not to restrict their passive sales. Furthermore, it offered to revise the non-compete obligations within the agreements in terms of duration and scope. The draft provisions suggested by Duracell limited the non-compete obligation imposed on distributors to the agreement term and products competing with those of Duracell and set the agreement term as five years with the option to renew for another five years upon both parties'

mutual agreement.

The Board concluded that the proposed commitments are proportionate and sufficient to address the competitive concerns because Duracell revised the provisions in its standard agreements that restricted distributors' sales territories and online sales, as well as the clauses imposing non-compete obligations during the contract term and for a certain period after its termination. The Board did not impose monetary fine on Duracell.

Conclusion

The Duracell Decision is an important example to see the Board's approach on resale price maintenance and online sales bans. Accepting Duracell's commitments, the Board demonstrated its willingness to focus on restoring competition without resorting to punitive measures. This decision highlights the Board's proactive approach to ensuring compliance in competitive markets.

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