**The Turkish Competition Board's Microsoft Decision: The Board Clears the Allegations of Tying and Unfair Commercial Conditions**

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## Introduction

The Turkish Competition Board ("***Board***"), upon its preliminary investigation against Microsoft Corporation, Microsoft Bilgisayar Yazılım Hizmetleri Limited Şirketi (together referred to as "***Microsoft***"), and ETG Bilgisayar Danışmanlık Eğitim Hizmetleri ve Yayıncılık Sanayi Ticaret Limited Şirketi ("***ETG***"), decided that there is no need to launch a full-fledged investigation ("***Decision***")[2] regarding the allegations that Microsoft abused its dominant position in the enterprise resource planning ("***ERP***") software market through tying practices and unfair commercial terms.

This article examines the key points of the Board's assessment on the abusive conduct with regards to alleged "tying" practices and imposition of "unfair commercial terms".

## I. Background and Scope of the Preliminary Investigation

The preliminary investigation was initiated upon the complaint of Albil Merkezi Hizmetler ve Ticaret A.Ş. ("***Albil***"). Albil's allegations concerns its contracts with Microsoft regarding the provision of ERP software, which is used by enterprises to manage their day-to-day businesses

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[2] The Board's *Microsoft* decision dated 12.12.2024 and numbered 24-53/1166-502.

such as accounting, purchasing, project management, risk management, compliance with legislation and supply chain operations.

Based on Albil's complaint, the Board assessed the following allegations:

- The allegation that Microsoft tied its cloud computing services to its cloud-based ERP system,
- Microsoft forced its customers to buy additional products (i.e. infrastructure requirements for ERP system such as server, database etc.) along with its on-premises ERP system,
- Microsoft imposed unfair commercial terms by making it mandatory for customers to buy its cloud-based ERP product (i.e. cloud based version of Dynamics 365),
- Microsoft imposed unfair commercial terms by forcing its customers to buy new products by way of providing short-term support services in relation to its ERP products,
- Microsoft unilaterally changed the ERP license conditions, which led to increased costs for customers.

## II. The Board's Assessment of Relevant Markets

Based on the caselaw of the Board and the European Commission, the Board defined the relevant product market as the market for "*ERP software*" and evaluated whether the ERP software market can be further sub-segmented.

In this sense, the Board evaluated, among others, whether ERP software can be sub-segmented into (i) on-premise ERP software and (ii) cloud-based ERP software. The Board noted that the ERP software is hosted in the local servers of enterprises in the on-premise model, whereas it is hosted in a cloud platform and can be accessed online in the cloud-based ERP software.

The Board stated that the on-premise ERP software provides businesses with more flexibility in terms of data security and control, and allows customization based on the specific needs of the customers, while it has disadvantages such as high initial costs, operational difficulties due to maintenance and updates, difficulty to change the system. On the other hand, cloud-based

ERP software reduced the costs by lower initial cost, easy access and updates by the service provider. In this respect, the Board noted that the total costs of both models are close to each other in the long-term. However, in the cloud-based model, data security issues and dependency on internet access may lead to technical problems.

The Board concluded that (i) although on-premise and cloud-based ERP software have some differences in terms of technological infrastructure, cost structure and usage, they essentially offer solutions that fulfil the same functionalities, (ii) service providers can offer and easily integrate both the on-premises and cloud-based ERP software. The Board noted that despite some customers' preferences for on-premise ERP systems, particularly due to data security concerns and sector-specific restrictions such as in the defense industry, most ERP providers offer both deployment models, and customers have the ability to switch between them. Accordingly, the Board considered these differences insufficient to define a separate market definition, and chose not to conduct a distinct competitive analysis for on-premise ERP software, except for a hypothetical assessment limited to cloud-based ERP.

## III. The Board's Assessment of Dominant Position

In assessing Microsoft's market position, the Board referred to information obtained during on-site inspections, responses to information requests from market players, and public sources such as the Gartner 2023 ERP report.

In its dominant position assessment, the Board found that there are numerous players in ERP software market both globally and in Turkiye, and that Microsoft's market share is estimated to be below 10% in ERP software market in Turkiye. Accordingly, the Board concluded that considering the existence of numerous players in the market and Microsoft's low market share, Microsoft is not in dominant position in the ERP software market. In addition, the Board assessed whether Microsoft is dominant in a hypothetical "*cloud-based ERP software*" market and decided that Microsoft is not dominant in this narrower market either.

Nevertheless, the Board further evaluated whether the alleged conduct of Microsoft constitute abuse of dominance while the assessment on dominant position concluded that Microsoft was not dominant in ERM software market in Turkiye.

## IV. The Board's Assessment of the Tying Practices

The Decision evaluated Microsoft's alleged tying practices under two headings: (i) whether Microsoft tied its cloud computing services to its cloud-based ERP system, and (ii) whether Microsoft forced its customers to buy additional products (i.e. infrastructure requirements for ERP system) along with its on-premises ERP system.

The Decision first laid down the conditions to establish abuse of dominance through tying: (i) the tying and tied products are two separate products; (ii) the undertaking concerned is dominant in the market for the tying product; (iii) the undertaking concerned does not give customers a choice to obtain the tying product without the tied product; (iv) the practice in question forecloses competition; and (v) the tying in question is not objectively justified or does not produce efficiency gains.

In relation to the allegation that Microsoft tied its cloud computing services (i.e. Microsoft Azure) to its cloud-based ERP system, the Board found that (i) ERP system and cloud computing services are not priced separately, but cloud-based ERP system is priced as a single product, (ii) the working principles of cloud-based ERP systems blurs the line between ERP systems and cloud computing systems, and (iii) these systems are dependent on each other and by their nature, thus cloud-based ERP systems is an integrated single service. Additionally, the Board noted that customers of cloud-based ERP systems only benefit from the cloud computing services related to ERP, and for other solutions such as storage and data sharing, they can work with another cloud computing service provider. In this sense, the Board concluded that the cloud-based ERP systems is not likely to result in exclusionary effect in the hypothetical market for "*cloud computing services*".

With regards to the allegation that Microsoft forced its customers to buy additional products (i.e. infrastructure requirements for ERP systems) along with its on-premises ERP systems, the Board stated that (i) the integration between the ERP software and infrastructure is of critical importance to ensure proper functioning of ERP systems, and (ii) ERP systems providers therefore require certain infrastructure requirements and the customers are informed of these requirements before purchasing the ERM products. In addition, the Board noted that (i) ERP systems can technically work on different infrastructure, but customers generally follow the advice of service provider for the most efficient usage and (ii) the infrastructure and hardware investments by customers for on-premises ERP systems do not constitute a switching barrier. The Board noted that while Microsoft's ERP systems can technically operate on different infrastructures, customers generally follow the service provider's recommendations for efficiency. It also observed that Microsoft's ERP systems may require integration with other Microsoft products, such as Life Cycle Services, but found that these requirements did not prevent customers from choosing alternative ERP providers or infrastructures.

Therefore, the Board concluded it is not possible to conclude that Microsoft forces its customers to buy two separate products, and that Microsoft conduct in question does not have the potential to result in exclusionary effects in the ERP systems market and the hypothetical market for infrastructure for ERP systems.

## V. The Board's Assessment of the Unfair Commercial Terms

The Decision evaluated the alleged unfair commercial terms under three headings: (i) whether Microsoft make it mandatory for customers to buy its cloud-based ERP product (i.e. cloud-based version of Dynamics 365), (ii) whether Microsoft forced its customers to buy new products by way of providing short-term support services in relation to its ERP products, and (iii) whether Microsoft unilaterally changed the ERP license conditions, which led to increased costs for customers.

First, the Board set out the legal framework for the abuse of dominance through imposition of unfair commercial terms. Accordingly, the Board stated that such conduct should be initially evaluated in terms of contract law and unfair competition provisions, and it may only result in a competition law concern if such conduct is derived from the market power, and result in an anticompetitive effect in the market.

In terms of the allegation that Microsoft make it mandatory for customers to buy its cloud-based ERP product, the Board stated that (i) it is not possible to conclude that Microsoft encouraged its customers to buy its cloud-based ERP system rather than its on-premises product, (ii) Microsoft informed its potential customers about both products and leave the decision to them, (iii) customers' switching to cloud-based ERP systems are not due to Microsoft's guidance and/or pressure, but due to the advantages of the cloud-based ERP systems and the fact that it is a newly launched and wide spreading product and (iv) Microsoft's customers are free to use

Microsoft’s or other service providers’ on-premises ERP systems. Accordingly, the Board concluded that the conduct in question does not amount to an exploitative abuse of dominance.

Regarding the allegation that Microsoft forced its customers to buy new products by way of providing short-term support services in relation to its ERP products, the Board found that Microsoft provides a 5-year main support service, and 5-year extended support service for its ERP products, and that it continues to offer support services for former products even if it launches new products. Accordingly, the Board decided to reject the complainant’s allegations regarding the short-term support services.

The last allegation evaluated in the Decision is that while Microsoft had been using a licensing model that would allow simultaneous access of a certain number of users, Microsoft decided to switch to a model where each user account is licensed separately. The Board found that Microsoft’s decision to change its licensing model is in line with the sectoral practice, and that it allows companies to optimize their ERP costs. Accordingly, the Board concluded that considering Microsoft’s position in the market and the fact that there are alternative ERP providers, the conduct in question does not constitute an abuse of dominance.

## VI. Conclusion

The Decision is of particular importance since it includes the Board's approach in an area where there are only a few decisions in which abuse of a dominant position by imposing unfair commercial terms has been assessed due to the fact that unfair terms have no necessary connection with harm to competition and abuse of dominance concept is primarily concerned with the need to protect competition in the market as a means of enhancing consumer welfare. The Decision is also important as it explores the competition law aspects of tying practices in relation to integrated products in technology-related markets.

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