



When Settling Closes the Door: Settling Undertakings' Re-evaluation Requests After the Turkish Competition Board's Labour Market Decision

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I. Introduction

The Turkish Competition Board (“**Board**”) concluded its landmark investigation against 48 undertakings active across diverse sectors ranging from IT and software to digital platforms, media, and food and beverages for allegedly engaging in gentlemen’s agreements not to hire each other’s employees. Following the investigation, the Board found that the 16 undertakings, for which the investigation continued, had violated Article 4 of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”) by way of being a party to an anti-competitive no-poaching agreement and accordingly imposed an administrative monetary fine². During the same process, the investigation was concluded through settlement for 11 undertakings, including Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş. (“**Yemek Sepeti**”), Getir Perakende Lojistik A.Ş. (“**Getir**”), DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. (“**Trendyol**”) and Bitaksi Mobil Teknoloji A.Ş. (“**Bitaksi**”) which admitted the infringement and benefited from reductions in fines under the settlement mechanism.

Among the undertakings that applied for the settlement procedure, Yemek Sepeti, Getir, Trendyol and Bitaksi later applied to the Turkish Competition Authority (“**Authority**”) and requested for re-evaluation of the settlement decisions and the monetary fine imposed pursuant to Article 11 of the Law No. 2577 on the Procedure of Administrative Justice (“**Law No 2577**”).³

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² The Board’s *Labour Market* decision dated 26.07.2023 and numbered 23-34/649-218

³ The Board’s *Bitaksi Re-evaluation* decision dated 07.12.2023 and numbered 23-56/1110-393, The Board’s *Yemek Sepeti Re- evaluation* decision dated 21.09.2023 and numbered 23-45/842-297, The Board’s *Getir Re- evaluation* decision dated 07.12.2023 and numbered 23-56/1110-394, The Board’s *Trendyol Re- evaluation* decision dated 31.08.2023 and numbered 23-40/772-271

This article examines the key aspects of the Board’s re-evaluation decisions collectively, with reference to the Labour Market decision, particularly regarding the classification of the infringement and the methodology adopted for calculating administrative monetary fines.

II. Background Information

Pursuant to its decisions dated 01.04.2021 and numbered 21-18/213-M, dated 05.08.2021 and numbered 21-37/527-M, and dated 16.12.2021 and numbered 21-61/875-M, the Board conducted the investigation against 48 undertakings to evaluate whether they had violated Article 4 of Law No. 4054 by entering into no-poaching agreements preventing the employment of each other’s personnel and restricting employee mobility, as well as exchanged competitively sensitive information. Accordingly, the Board concluded that the relevant conduct constituted actions aimed at sharing labour input and amounted to agreements between competitors involving market, regional, or customer allocation, thus qualifying as a cartel. Therefore, the Board determined that 16 undertakings for which the investigation continued had violated Article 4 of Law No. 4054 by participating in anti-competitive agreements. As a result, the Board imposed administrative monetary fines on these undertakings based on their annual gross revenues.

While calculating the base fine for the administrative monetary fine, the Board acknowledged that the violation constituted a cartel, therefore applied the base fine between the 2% and 4% of the undertaking’s gross revenues, as regulated under the Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuses of Dominant Position Regulation on Fines (*“Regulation on Fines”*).⁴

While calculating the monetary fines, the Board adopted a calculation method whereby the base amount for applying the fine rate was determined based on the ratio of employee costs to total turnover, instead of net sales.

Moreover, in the dissenting opinion attached to the Labour Market decision, it was emphasized that even though there are a few exceptional decisions, the Board’s established practice has

⁴ For completeness, the Regulation on Fines was amended and entered into force on the same date with the Official Gazette dated December 27, 2024 and numbered 32765. The amendment removed the distinction between violations categorized as “cartel” and “other violations,” under which the base fine had previously been set between 2–4% and 0.5–3% of the undertaking’s turnover, respectively.

been to calculate administrative monetary fines based on net sales figures. The dissenting opinion further referred to various court rulings⁵ which, by considering the undertaking's market power, held that net sales should be used as the basis for calculating administrative monetary fines.

As explained in detail below, 11 undertakings including Bitaksi, Yemek Sepeti, Getir, and Trendyol, on the other hand, concluded the investigation process through the settlement mechanism.

III. The Scope of the Board's Settlement Decisions

While 36 undertakings continued the investigation procedure, Bitaksi, Yemek Sepeti, Getir, and Trendyol, and other seven undertakings applied to the Board, requesting to conclude the investigation through the settlement procedure. Upon conducting the settlement negotiations, Bitaksi, Yemek Sepeti, Getir, and Trendyol acknowledged the existence and scope of the infringement as well as the rate and amount of the administrative monetary fine set forth in the respective settlement decisions⁶.

As seen in the Board's relevant settlement decisions, the Board extensively reviewed the documents and information obtained during the course of the investigation and calculated the base fine by acknowledging that the violation in question constituted a cartel, thereby imposing a base fine between 2% and 4% of the undertakings' turnover, consistent with its approach in the Labour Market decision. Moreover, the Board decided to apply a 25% reduction, which is the maximum rate allowed under the Regulation on the Settlement Procedures to be Applied during Investigations Regarding Anticompetitive Agreements, Concerted Practices and Decisions as well as Abuse of Dominance ("**Settlement Regulation**"), over the administrative fine determined to be imposed on these settling undertakings.

⁵ Council of State 13th Chamber's decision dated 09.05.2012 and numbered 2008/8485 E., 2012/968 K., *Hes Hacilar Elektrik Sanayi ve Ticaret A.Ş.*; and Council of State 10th Chamber's decision dated 02.04.2013, and numbered 2009/2586 E., 2013/898 K., *Toprak Seramik ve Turizm İşletmeleri Sanayi ve Ticaret A.Ş.*

⁶ The Board's *Yemek Sepeti Settlement* decision dated 31.03.2022 and numbered 22-15/254-112; the Board's *Getir Settlement* decision dated 30.12.2021 and numbered 21-67/923-448; the Board's *Bitaksi Settlement* decision dated 30.12.2021 and numbered 21-67/924-449; the Board's *Trendyol Settlement* decision dated 30.12.2021 and numbered 21-67/922-447.

In determining the base fine, the Board also addressed a significant consideration in its reasoning. Referring to its established practice concerning no-poaching agreements, the Board observed that such agreements had been examined in several of its previous decisions, which included detailed analyses regarding both the labour markets and the anti-competitive nature of no-poaching agreements. Nevertheless, the Board emphasized that this investigation constituted one of the first instances in which no-poaching agreements could be clearly demonstrated, and that the imposition of administrative monetary fines in connection with such conduct had only recently emerged in its decisional practice. In this regard, the Board interpreted this circumstance in favour of the undertakings and considered it as a mitigating factor in the determination of the base fine, thereby applying a reduction to the base fine amount.

IV. The Scope of the Undertakings' Re-evaluation Requests and the Board's Assessment of the Undertakings' Arguments

Further to the Board's Labour Market decision, Bitaksi, Yemek Sepeti, Trendyol, and Getir applied to the Authority within the scope of Article 11 of Law No. 2577 on Administrative Procedure ("*Law No. 2577*").⁷

As stated in the respective re-evaluation decisions of the Board, all four undertakings submitted substantively similar requests to the Authority, contending that:

- (i) the administrative monetary fines imposed under the settlement mechanism were calculated on the basis of the undertakings' annual gross revenues.
- (ii) the fines imposed on the undertakings that remained under investigation appeared, in fact, to rely on a lower or more favorable turnover base compared to those imposed on the settling undertakings.
- (iii) for the undertakings that remained under investigation, the Board appeared to have applied a different turnover calculation method compared to that adopted for the settling undertakings, in line with its discretionary power.

⁷ Article 11 of Law No. 2577 introduces a mechanism that allows administrative authorities to re-examine their own decisions before a lawsuit is filed before administrative courts, aiming to resolve disputes without immediately resorting to judicial proceedings. The re-evaluation is carried out by a higher administrative authority within the public body that rendered the initial decision, or by the same authority if there is no superior body. For the Board's decisions, the re-evaluation applications are examined by the Board itself.

- (iv) the settlement mechanism is expected not only to serve procedural economy but also to provide economic benefits to the undertakings; and
- (v) this situation apparently placed the undertakings continued investigation in a more favorable position than those that opted for settlement with the expectation of saving time and costs.

In light of the foregoing, all four undertakings briefly requested (i) the re-evaluation of their respective settlement decisions pursuant to Article 11 of the Law No. 2577, (ii) re-calculation of the fines in accordance with the methodology applied to other undertakings under investigation and (iii) refund of any overpaid amounts together with interest.

As can be understood from the undertakings' request, the primary reason for applying to the Board for a re-evaluation of the settlement decision concerned the administrative monetary fine, based on the allegations that the fine had been calculated using a different method than the one applied in the Labour Market decision. The dissenting opinion in the Labour Market decision also determined that the base amount for applying the administrative monetary fine rate was determined by reference to the ratio of employee costs to total turnover, instead of being calculated based on net sales, which consequently led to a different fine amount compared to a calculation based on net sales. In this context, all four undertakings similarly argued that such a divergence in the fine calculation method created an inconsistency in the treatment of undertakings involved in the same investigation.

In its assessment of the re-evaluation requests of Getir, Trendyol, Bitaksi and Yemek Sepeti, referring to Article 43(8) of Law No. 4054⁸, the Board held that, since the administrative monetary fine determined at the end of the settlement process and the matters agreed upon in the settlement text cannot be subject to judicial review, it was not possible, within the scope of Article 11 of the Law No. 2577, to request the annulment, withdrawal, amendment, or issuance of a new administrative act by the Authority. Accordingly, the Board concluded that the undertakings' requests were inadmissible.

Therefore, through these recent decisions, the Board reaffirmed that the settlement procedure leaves no room for undertakings to seek judicial review of the final settlement decision. On the

⁸ Article 43(8) of Law No. 4054, provides that "in case the process is concluded with a settlement, the parties to the settlement may not take the administrative fine and the provisions of the settlement text to court."

other hand, as argued in these undertakings' requests, the absolute preclusion of judicial review may pose a practical challenge for undertakings opting for the settlement mechanism, as the outcome of the process may not always meet their expectations or reflect the anticipated benefits of procedural efficiency and legal certainty.

V. Conclusion

The re-evaluation decisions concerning the settlement procedure in the Labour Market investigation illustrate the Board's approach to the scope and legal boundaries of settlement decisions. In their re-evaluation requests, the undertakings argued that, while the fines imposed on the undertakings that remained under investigation had been calculated by reference to employee costs in proportion to total turnover, the fines imposed on the settling undertakings had been based on their annual gross revenues. The Board, however, did not engage in any substantive assessment of these allegations and dismissed the requests solely on the ground that settlement decisions cannot be subject to judicial or administrative review. At the same time, the rejection of the undertakings' re-evaluation requests reaffirmed the final and binding nature of settlement decisions, leaving no procedural avenue for reconsideration once an undertaking has accepted infringement and the fine amount under the settlement mechanism.

These decisions are noteworthy in that they reflect the Board's current stance on the irrevocability of settlement outcomes, while also bringing to light the concerns raised by four undertakings that applied for re-evaluation whether the settlement mechanism has in practice delivered the expected benefits of procedural efficiency. In this sense, these decisions not only set out the Board's approach to the legal framework governing settlement procedures but also stand as an important reference point likely to be taken into account in the future implementation and assessment of the settlement mechanism.

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