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The Turkish Competition Authority rejects allegation that an online food order/delivery company has abused its dominant position by way of MFC practices and *de facto* exclusivity (*Yemek Sepeti*)

UNILATERAL PRACTICES, DOMINANCE (ABUSE), DOMINANCE (NOTION), DISTRIBUTION/RETAIL, SERVICES, TURKEY, INTERNET, MFC CLAUSE

Turkish Competition Authority, *Yemek Sepeti*, NCA Decision, 18 May 2022 (Turkish)

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This case summary aims to offer insight on the Turkish Competition Board's ("**Board**") *Yemek Sepeti* Decision [7] ("**Decision**"), whereby the Board examined the allegation that *Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş.* ("**Yemek Sepeti**") had abused its dominant position, violating Article 6 of the Law No. 4054 on the Protection of the Competition ("**Law No. 4054**") by means of exclusionary practices. The preliminary investigation against *Yemek Sepeti* has been launched based on the complaint submitted by *Getir Perakende Lojistik Anonim Şirketi* ("**Getir**"), which is a competitor of *Yemek Sepeti*. The allegations assessed by the Board within the scope of the Decision relates to (i) most favoured customer ("**MFC**") practices and *de facto* exclusivity as well as (ii) hindering the activities of competitors in online food order/delivery platform services market. The Board decided to reject the complaint and not to launch a full-fledged investigation against *Yemek Sepeti* on the grounds that the allegations against *Yemek Sepeti* were unfounded.

Relevant Market and Dominant Position Analysis

The Board left the exact relevant market definition open, remarking that relevant market definition would not have an effect on the outcome of the preliminary investigation. That being said, the Board indicated that the food delivery services provided through phone, web-sites or mobile applications by the restaurants and the third party web-sites and platform services to display restaurant and menu information are not within the same relevant product market as the services provided by online food order/delivery platforms.

As for the dominant position analysis, the Board first remarked that it did not deem a precise dominant position analysis necessary for the case at hand. That being said, the Board analysed the market position of the undertakings in the online food order/delivery platform services market, especially considering the newcomers such as Getir, Trendyol Yemek and Fuudy that have entered into the market in the last two or three years. To that end, the Board evaluated the market shares of the undertakings active in the market, in Turkey and in certain cities of Turkey (i.e. İstanbul, Ankara, İzmir and Balıkesir). Furthermore, the Board focused on the parameters that could illustrate the scale of online platforms' customer base (i.e. restaurants and restaurant chains) such as active user numbers, the number of restaurants under contract and the number of restaurant chain branches under contract.

In terms of the assessment concerning the market shares, the Board remarked that new entrants such as Getir, Trendyol Yemek and Fuudy have gained ground in the market, while there have been some other undertakings entered into, then exited the market. Additionally, the Board found that Yemek Sepeti have not been exposed to competitive pressure between 2015 and 2020 and maintained or even increased its high market share, however from 2019 onwards, this market structure has changed with the new entries into the market. Lastly, the Board indicated that the undertakings which could survive in the market after their entry have been able to compete with Yemek Sepeti.

The Board's Assessment on MFC Practices and *De Facto* Exclusivity

The Board's assessment concerning MFC practices and *de facto* exclusivity relates to the allegations that Yemek Sepeti had penalized the associated restaurants that work with competing platforms or offer competing platforms more favourable conditions by (i) lowering the visibility of the restaurants on the search results page or dropped the restaurants to lower levels on the list, (ii) decreasing the ratings of the restaurants or not reflecting their high ratings to the platform page and (iii) refusing the access of restaurants to advertisement fields (banners) or accepting to deal on the condition of imposing high prices.

Within that scope, the Board first evaluated the allegation that Yemek Sepeti had favoured chain restaurants in terms of customer comments and ratings on the platform, and used customer comments and ratings as a deterrent for individual restaurants in order to *prevent* them from working with competing platforms or offering competing platforms more favourable conditions. The Board remarked that during the on-site inspections, no documents indicating that Yemek Sepeti had incentivized exclusivity or MFC practices through restaurant ratings and customer comments have been found. Additionally, a report by Information Technologies Department of the Competition Authority ("**Authority**") regarding the algorithms and codes used by Yemek Sepeti indicated that customers could only rate and comment on the restaurants if the order is valid and not cancelled and customer comments are keyword filtered before going live and this filter aims to eliminate profanity, meaningless expressions and political comments. The Board also examined Yemek Sepeti policies regarding the approval and filtering process of customer comments and found that the criteria for publishing comments on the platform apply to all users and restaurants indiscriminately.

In terms of the allegation regarding customer ratings, the Board remarked that the findings of the preliminary investigation have confirmed that restaurant ratings reflected the arithmetic mean of the ratings made by 150 individual platform users. Additionally, the Board emphasized that a correspondence that was seized within the scope of the on-site inspection between Yemek Sepeti employees refutes the allegation as the correspondence shows that these employees were approached with an offer to artificially increase the customer ratings by a restaurant and turned that offer down, noting that such an increase would be noticed by Yemek Sepeti. Lastly, the Authority requested information from the complainant to identify the restaurants that had been exposed to

the alleged conduct and inquired these restaurants whether Yemek Sepeti had indeed penalized them through customer ratings when they had worked with or offered more favourable terms to the competing platforms. These restaurants, which have been simultaneously procuring platform services from Yemek Sepeti and Getir, responded that Yemek Sepeti had not penalized them through customer ratings when they had worked with or offered more favourable terms to the competing platforms. Consequently, the Board concluded that the allegations regarding customer comments and ratings were unfounded.

In terms of the allegation regarding advertisement fields (banners), the Board also requested information from the restaurants that were identified as the targets of the alleged conduct on whether Yemek Sepeti had used banner pricing to penalize them for offering favourable terms on competing platforms. The restaurants rejected such an allegation. Upon the concern expressed by the complainant that Yemek Sepeti might have increased the banner prices for a chain restaurant after it became aware that the same chain is working with Getir, the Board examined the number of chain restaurant branches that Getir and Yemek Sepeti are working with as of March 2022. The Board found that Getir was in collaboration with a higher number of branches compared to Yemek Sepeti. The Board concluded that there was no indication that practices of Yemek Sepeti had foreclosed the market to Getir by way of preventing Getir from dealing with chain restaurants.

Lastly, in terms of the allegation concerning restaurant visibility and listing, the algorithms and codes of Yemek Sepeti were examined by the Information Technologies Department of the Authority. According to the Information Technologies Department's report, there was no indication of a manipulation that would boost in favour of a particular restaurant name, search term or restaurant. Furthermore, the Board also inquired the restaurants that were identified as the targets of the alleged conduct on whether Yemek Sepeti had penalized them for working with other platforms by means of hindering orders for technical or system-related causes or dropping them to lower levels on the listing results. All of the mentioned restaurants responded negatively. Against the foregoing, the Board concluded that the allegation regarding restaurant visibility and listing was unfounded as well.

The Board's Assessments on Hindering Competitors' Activities

The Board also examined whether two special offers/discount campaigns of Yemek Sepeti aimed at hindering competitor activities. To assess whether this allegation reflects the facts, the Board examined the change in Getir's number and volume of orders, number of associated restaurants and number of active users in the periods, when these special offers were active and found that Getir has improved its position in all of these parameters. Additionally, the Board remarked that within the scope of the preliminary investigation no information and documents were found supporting the allegation. Consequently, the Board concluded that the special offers/discount campaigns of Yemek Sepeti had not aimed at excluding competitors or give rise to such an effect.

Conclusion

Yemek Sepeti Decision of the Board illustrates the change of market dynamics in online food order/delivery platform services market. Additionally, the Decision marks the fact that the relevant market now hosts competitors such as Getir, Trendyol Yemek and Fuudy that can effectively exert competitive pressure on Yemek Sepeti. While the Authority's future investigations remain to be seen, with the increasing number of undertakings in the market, the likelihood of abuse of dominance investigations regarding the online food order/delivery platform services market may reduce.

[1] Decision of the Board dated 18.05.2022 and numbered 22-23/366-155.