

## **Three Smoking Guns at Two Different Levels of Distribution: Turkish Competition Board Settled with Small Home Appliances Suppliers in a Resale Price Maintenance Case**

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### **I. Introduction**

On May 5, 2023, the Competition Board (“**Board**”) published its reasoned decision<sup>1</sup> (“**Decision**”) rendered upon the full-fledged investigation initiated against Korkmaz Mutfak Eşyaları San. ve Tic. A.Ş. (“**Korkmaz**”), Punto Dayanıklı Tüketim Malları İth. İhr. Tic. Ltd.Şti. (“**Punto**”) and Gençler Ev Araç ve Gereçleri Pazarlama Ticaret A.Ş. (“**Gençler**”) (the “**Investigation**”). The Investigation was initiated upon a complaint that Korkmaz has violated Article 4 of the Law No. 4054 on Protection of Competition (“**Law No. 4054**”) by way of preventing resellers from operating with low profit margins and imposing measures for ensuring such a resale pricing policy.

Upon the complaint, Turkish Competition Authority (“**Authority**”) has conducted on-site inspections at the premises of Korkmaz and its distributors, Punto, Gençler and MaxevDay. Tük. End. Mutfak Gıda Zücc. İth. İhr. Tic. Ltd. Şti. (“**Maxevday**”) and requested information to be reviewed within the scope of its preliminary investigation and the Investigation. The Board found that Korkmaz, Punto and Gençler have violated Article 4 of the Law No. 4054 by way of resale price maintenance, predominantly targeting online sales activity of the resellers.

Upon the settlement applications of Korkmaz, Punto and Gençler, the Board decided to terminate the Investigation by way of settlement for the respective parties. The Decision is one of many examples<sup>2</sup>, where the Board closed an investigation by way of settlement in a case that resale price maintenance is the main competitive concern since the enactment of settlement procedure in 2020 by way of the amendment of Law No. 4054<sup>3</sup>.

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<sup>1</sup> Decision of the Board dated 10.11.2022 and numbered 22-51/754-313.

<sup>2</sup> In the following decisions the Board dealt with resale price maintenance practices and terminated the cases by way of settlement: Philips (05.08.2021; 21-37/524-258), Arnica (30.09.2021; 21-46/671-335), Hayırlı El (21.07.2022; 22-33/523-210), DyDo Drinco (07.07.2022; 22-32/508-205), Olka/Marlin (30.06.2022; 22-29/488-197), Numil (30.06.2022; 22-29/483-192) and Miele (10.11.2022; 22-51/753-312).

<sup>3</sup> The Amendment Law was published on the Official Gazette dated June 24, 2020 and numbered 31165.

## **II. Findings regarding the Supplier: Korkmaz**

Korkmaz is a supplier of small home appliances and kitchenware, whose products are sold through the following channels at retail level: (i) traditional stores and local dealers (including franchise dealers), (ii) local chain stores and (iii) e-commerce platforms. Gençler and Punto are distributors of Korkmaz in Black Sea and Central Anatolia regions respectively.

Before the assessment regarding the resale price maintenance allegation against Korkmaz, the Decision first drew a theoretical framework for resale price maintenance. In that context, the Decision remarked that resale price maintenance is considered to restrict competition by its object per the decisional practice of the Board. The Decision thus noted that resale price maintenance practices may be considered to violate Article 4 of Law No. 4054, even if such practices do not give rise to effects restricting competition.

In terms of its analysis regarding Korkmaz's activities, the Decision first delved into the authorized dealership agreements entered into between Korkmaz and its distributors between 2016 and 2022. The Decision noted that dealers and distributors of Korkmaz were prevented from selling Korkmaz's products at a price deviating from retail prices determined by Korkmaz per the authorized dealership agreement. Furthermore, the Decision remarked that the authorized dealership agreement prevented dealers of Korkmaz from determining retail prices on the online sales channel, as well. The Decision also emphasized that the respective agreement envisages measures to be implemented against dealers by way of a penalty clause, in case of non-compliance to the provisions regarding resale prices. The Decision concluded that three types of agreements entered into between Korkmaz and its resellers between 2016 and 2022 have violated Article 4 of Law No. 4054 by its object due to the clauses enabling resale price maintenance.

Following the analysis regarding distribution agreements, the Decision provided an assessment regarding Korkmaz's practices in light of the documents obtained during on-site inspections. The Decision noted that Korkmaz has implemented its resale price maintenance practices through its distributors, namely, Gençler and Punto as well as its regional managers and the e-mail correspondences sent to Korkmaz's regional staff and resellers showed that Korkmaz has requested resale prices to be increased or to be "corrected" in several instances. Furthermore, the findings indicated that Korkmaz has monitored the prices charged by its

dealers in online channel and compared such prices with the resale prices determined by itself and warned dealers that did not comply with the determined resale price level.

Additionally, the Decision remarked that Korkmaz has imposed certain measures against its dealers that did not comply with the resale price level set by itself. These measures included termination of dealership, refusal to supply goods and exclusion from sales campaigns. The Decision also noted that these measures have not only been imposed by Korkmaz itself, but Korkmaz has also mandated its distributors to impose such measures against non-compliant dealers.

Despite acting as intermediaries of Korkmaz's measures, distributors of Korkmaz have also faced similar measures if they did not comply with the retail price level determined by Korkmaz. Certain findings referred to in the Decision revealed that Korkmaz has warned its distributors and also its regional managers that it would cease working with them, if they fail to comply with Korkmaz's resale price terms. Along these lines, it was detected that Korkmaz mainly interfered with the sales made by its resellers through online channels. That being said, the Decision noted that Korkmaz's resale price maintenance practices have also spread to the brick-and-mortar sales channel. Furthermore, the Decision noted that Korkmaz have adopted certain practices in order to systematize its monitoring of online sales such as issuing authorization letters for operating in online channel.

In light of the foregoing, the Board concluded that Korkmaz has violated Article 4 of Law No. 4054 by way of resale price maintenance practices.

### **III. Findings regarding the Distributors: Gençler and Punto**

Following the analysis regarding Korkmaz's practices, the Decision provided an analysis based on the findings against Gençler and Punto. In that context, the Decision noted that Korkmaz has sent notices to Gençler and Punto to ensure a certain level of retail price, noting that Gençler and Punto have not replied these notices and it could not be established that Gençler and Punto have taken steps in line with the notice after receiving it. The Decision remarked that this rendered it obscure whether Gençler and Punto had the intent of involving in resale price maintenance.

That being said, the Decision established that Korkmaz's resale price maintenance policy has also affected Gençler and Punto based on numerous findings indicating that Gençler and

Punto have interfered with the resale prices of dealers by way of warning dealers that did not comply with Korkmaz's resale prices, threatening such dealers to implement measures and actually implementing such measures. The Decision further remarked that Gençler and Punto were also liable from Korkmaz's resale price maintenance policy considering the actions revealed by the findings.

Against the foregoing, the Board determined that Gençler and Punto had violated Article 4 of Law No. 4054 separately, by way of determining the resale prices of their resellers.

#### **IV. The Board's Assessment and Settlement Decision**

Korkmaz, Gençler and Punto have applied for settlement within the investigation phase. The Board has accepted the settlement applications and determined to reduce the amount of administrative monetary fine by 25% for all three undertakings, which is the highest applicable ratio pursuant to the Regulation on the Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position ("*Settlement Regulation*").

That being said, the ratio of base fine has been increased by 100% for Korkmaz, as the period of violation was determined to last more than five years. Additionally, for Gençler and Punto, the ratio of base fine has been increased by half, since it was determined that the period of violation for these undertakings has lasted more than a year but less than five years.

Moreover, the Board considered the fact that Gençler and Punto have been generating their entire turnover from sales of Korkmaz's products and they could not operate independent from Korkmaz's instructions as a mitigating factor. Accordingly, the Board reduced the ratio of base fine calculated for each of them. The Board remarked that for Gençler and Punto, acting in compliance with Korkmaz's instructions might have become a mandatory requirement for sustaining their economic activities and this might have forced them to determine resale prices of dealers in accordance with Korkmaz's policies.

#### **V. Conclusion**

The Decision is illustrative of the elements that may as well be used as textbook examples of resale price maintenance cases, such as warnings, widespread interference mechanism to resale prices, sanctions and agreement clauses. The Decision is noteworthy in the sense that the Board laid out these elements for three different undertakings, which operate at two



different levels of the distribution system. In that context, although the Board considered the fact that the distributors (i.e. Gençler and Punto) have been obliged to comply with the supplier's (i.e. Korkmaz) resale price maintenance policy as a mitigating factor in terms of determination of the base administrative monetary fine ratio, this did not strip the distributors off the liability for involving in resale price maintenance practices.

Lastly, the Decision is yet another example signalling the notable increase in settlement mechanism applications. Indeed, in 2022 the Board have rendered thirty four decisions, where the investigation was terminated by way of settlement out of a total of seventy eight decisions.<sup>4</sup>

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<sup>4</sup> Decision Statistics of the Turkish Competition Authority for 2022, pg. 2. Please see: <https://www.rekabet.gov.tr/Dosya/2022-yillik-web-20230110153239393.pdf>. Last date of access, May 15, 2023.