Self-Preferencing and Data Portability Questions of the Turkish Competition Authority Were Addressed by the Commitments Proposed by Trendyol

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(1) Introduction

Turkish Competition Board ("***Board***") issued its decision ("***Decision***") regarding the investigation against DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. ("***Trendyol***") that was launched based on the allegation that Trendyol has abused its dominant position and violated Article 6 of Law No. 4054 on the Protection of Competition ("***Law No. 4054***") by way of sharing customer data with its subsidiary, Dolapcom Elektronik Hizmet ve Ticaret A.Ş. ("***Dolap***"), which is an online intermediary platform for second hand shopping and preventing data portability[1]. The investigation was terminated upon the commitment package proposed by Trendyol.

Trendyol is a prominent e-commerce platform in Turkiye and is the first Turkish technology firm to become a "decacorn"[2]. The Decision is significant in the sense that it is one of the first decisions, where the Board assessed self-preferencing and data portability questions from a competition law perspective.

(2) Background and Competitive Concerns

The investigation against Trendyol was initiated upon the complaint of Modacruz Elektronik Hizmetler ve Ticaret A.Ş. ("***Modacruz***"), an online intermediary platform for second hand shopping, which is a competitor of Dolap. As per the complaint, Trendyol allegedly engaged in self-preferencing by way of sharing consumer data with Dolap that it sourced from its online platform services and prevented the transfer of data that is used by the sellers on Dolap to Modacruz platform.

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[1] Decision of the Board dated 27.02.2023 and numbered 23-11/177-54.
[2] Please see: https://www.invest.gov.tr/en/news/news-from-turkey/pages/trendyol-becomes-turkeys-first-decacorn.aspx#:~:text=%E2%80%8B%E2%80%8B%E2%80%8B%E2%80%8BTrendyol,in%20a%20new%20investment%20round, last date of access January 3, 2024.

Based on its assessment of the allegations, the Board remarked that the potential competition law questions related to Trendyol's conducts are as following:

(i) whether the utilization of user data sourced from Trendyol's multi-category e-marketplace in favour of Dolap's services has excluded Dolap's competitors from the online second hand product sales market by way of self-preferencing.

(ii) whether Dolap's prevention of the data or photographs of the sellers active on its platform from being transferred to competing platforms has excluded its competitors from the online second hand product sales market.

(iii) whether Trendyol has excluded its competitors in the online second hand product sales market by way of cross-subsidization, leveraging its financial power in the multi-category e-marketplace services market.

(iv) whether Trendyol has excluded its competitors in the online second hand product sales market by way of placing Dolap services in its Trendyol mobile application, thereby creating a competitive advantage.

While the Board did not make a conclusive analysis on the questions identified above, it assessed whether the commitments proposed by Trendyol were sufficient to address such potential competition law questions.

(3) Trendyol's Commitment Package

After approximately three months as of the commencement of the Board's full-fledged investigation, Trendyol made an application to commence the commitment process on August 29, 2022. The Board deemed that the potential competition law questions subject to Board's assessment could not fall under the category of "hard-core violations" and accepted Trendyol's application. The final commitments offered by Trendyol comprise of the following:

a. *Meeting the Data Requests of the Sellers on Dolap Platform*

First commitment offered by Trendyol is to meet the request of the sellers that are active on Dolap platform for the product data that is uploaded to the platform under suitable format, at sellers' request. Trendyol further committed that the following type of data would be covered

by the commitment: (i) product visuals, (ii) product heading, (iii) product description, (iv) category, (v) brand, (vi) colour, (vii) cargo dimensions (for cargo fee calculation purposes), (viii) product usage status (such as slightly used, brand new or brand new and labelled), (ix) payer of the cargo fee (such as consignee payment), (x) product fee (optional for the seller), (xi) price and (xii) whether proposed sale is requested (in case of proposed sale, seller could receive offers from different potential buyers).

b. *Ceasing to Share Data with Dolap Platform*

Second commitment proposed by Trendyol is not to share certain data with its Dolap business unit, such as:

- navigation data relating to Trendyol marketplace (page views, visibility data and clicking data),

  o Page views: data on users' product visits, boutique visits and visits through search word,

  o Visibility data: data on which products, which banners and which comments have been viewed by users,

  o Clicking data: data on clinking activity of users regarding adding to chart, adding to favourites, following and sharing products,

- data on whether users have shopped on Trendyol marketplace,

- data on the contents of users' shopping on Trendyol marketplace.

Trendyol's commitment not to share its user data with Dolap also covers the share of information through e-mail and other communication channels such as Slack and Whatsapp, etc. Lastly, Trendyol clarified that it also commits not to share the weekly top 250 most searched words on Trendyol list with Dolap.

c. *Not Using Trendyol Marketplace Data in Dolap's Algorithms*

Third, Trendyol committed not to use seller and user data of Trendyol marketplace in the algorithms regarding search, under-product suggestion and the wardrobes suggested for users used by Dolap. Mentioned algorithms are used by Dolap for their functions described below:

- Search algorithm is used for ranking the products on Dolap when a search is made by user on Dolap platform.

- Under-product algorithm is used for showing products that are similar to the one that is viewed by the user in the product's detailed page.

- Wardrobe suggested for users is an algorithm used for showing sellers specifically matching users and their products (seller wardrobe) based on users' Dolap activities.

d. *Not Engaging in Cross-Subsidisation*

Fourth, Trendyol committed that its domestic total revenues from Dolap services (net commission, cargo and other revenues) would match the total costs relating to cargo, advertising and POS, within the following periods on an annual total basis: April 2023 – March 2024, April 2024 – March 2025, April 2025 – March 2026.

e. *Conducting Regular Competition Law Trainings for Trendyol Employees*

While noting that all new Trendyol employees receives competition law trainings, Trendyol also committed to conduct regular competition law trainings for Dolap employees.

f. *Expiration of the Commitments and Commitments relating to Implementation of the Commitment Package*

Trendyol committed to put the above commitments into effect within thirty days after the official service of the Board's short-form decision approving the commitment package. Trendyol further introduced several commitments to report the progress of the commitments elaborated above. In that context, Trendyol committed to submit an independent audit report showing that Dolap's domestic total revenues match the total costs incurred in April 2023 – March 2024, April 2024 – March 2025, April 2025 – March 2026 periods, within sixty days after the end of each period.

In terms of the expiry of the commitment package, Trendyol committed to implement the commitments until April 1, 2026 and abide by the assessment to be made by the Board upon the expiry of the commitments.

(4) The Board's Assessment of the Commitment Package

In terms of the first commitment offered by Trendyol, the Board assessed that this commitment would enable sellers that wish to sell their products on platforms other than Dolap to obtain the data related to their products from Dolap, so that they could transfer such data to an alternative platform. The Board also remarked that this commitment would encourage multi-homing among sellers. To that end, the Board concluded that Trendyol's commitment is sufficient.

The Board then delivered its assessment regarding Trendyol's commitments not to share the data sourced from Trendyol marketplace with Dolap and not using such data in Dolap's algorithms. In that context, the Board remarked that these commitments would effectively eliminate all competition law questions related to it. Additionally, the Board noted that the respective commitments are also in line with the third-party opinions, who were consulted during the commitments procedure.

As for the commitment regarding cross-subsidisation, the Board concluded that the commitment was acceptable. The Board also remarked that Dolap has already been operating profitably within the period it was acquired by Trendyol in 2018 until the end of the first half of 2022.

Lastly, considering the rapidly changing nature of digital markets, the Board decided that the period committed by Trendyol for the implementation of the commitments is sufficient and reasonable. Furthermore, the Board noted that no concern has been borne, given that a separate assessment would be made upon the expiry of the commitments and Trendyol has committed to abide by such assessment.

Upon its assessment of the commitment package, the Board decided to terminate the investigation and not to impose any administrative monetary fine against Trendyol, on the grounds that the commitments offered were proportionate to the competition law questions, suitable to eliminate them, could be fulfilled in a short period and could be effectively implemented.

(5) The Board's Assessment on Placement of Dolap Services in its Trendyol Mobile Application

The Board also examined whether the placement of the Dolap service in the Trendyol mobile application provides competitive advantage for Dolap against its competitors. In its assessment, the Board noted that Dolap service is only available in Trendyol mobile application and not available on Trendyol's website. Furthermore, the Board indicated that Dolap services provided in Trendyol mobile application have limited functions compared to the standalone Dolap application.

Drawing upon the evaluations in academic sources[3], the Board considered that integration of different services into the same application could provide an advantage, especially for undertakings benefiting from network effects, scope, and scale economies. That being said, the Board concluded that integration of different services into the same application is not a standalone competitive concern. In that context, the Board remarked that this would potentially give rise to a competition law violation if integration leads to data sharing between different services of a dominant undertaking, self-preferencing, reduction of interoperability with third parties or leveraging of financial power.

Notwithstanding, the Board also made an effects based assessment regarding the placement of the Dolap service in the Trendyol mobile application. In that context, the Board acknowledged that placement of the Dolap service in the Trendyol mobile application had limited contribution to Dolap in terms of traffic, sales volume, sales amount, commission revenue, number of listed products and user numbers in both seller and buyer side. The Board further indicated that the placement of the Dolap service in the Trendyol mobile application did not provide advantage to Dolap leading to exclusion of its competitors from the market.

(6) Conclusion

The Decision is one of the few examples, where the Board elaborates on competition law concepts such as self-preferencing and data portability that are relatively new in the competition law domain. Yet there are also a few Board decisions[4], where new conducts

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[3]   OECD   (2020),   "Digital   competition   policy: Are   ecosystems   different?" https://one.oecd.org/document/DAF/COMP/WD(2020)96/en/pdf, last date of access January 3, 2024.
[4] For instance, the Board has recently found that Meta Platforms Inc. has abused its dominant position by hampering the activities of its competitors operating in personal social network services and online display

moulded by the digital transformation are addressed.

Notably, the concept of "data portability" addressed in this decision is also covered in the Digital Markets Act[5] ("***DMA***"). While Article 5(2)(b) of the DMA stipulates user consent as a derogation of the rule preventing combination of personal data from a core platform service with personal data from any further core platform services, the Decision does not delve into the possibility of having user consent as a derogation in terms of the potential competition law questions regarding data portability. This derogation, set out in the DMA and recognised by the European Commission may be considered as a noteworthy element in cases, where potential competition law questions such as data portability are evaluated. Finally, the Decision could be taken as an indicator that the Turkish Competition Authority will be more invested in these new concepts in the upcoming days.

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advertising markets and creating barriers to entry by means of combining data collected from Facebook, Instagram and WhatsApp services with its decision dated 20.10.2022 and numbered 22-48/706-299.
[5] Please see Digital Markets Act, accessible at : http://data.europa.eu/eli/reg/2022/1925/oj_last_date_of_access January 5, 2024