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The Turkish Competition Authority accepts commitments to conclude an investigation on whether a company broke competition laws by influencing resale prices and limiting online sales of cosmetics (*Engingrup*)

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This case summary aims to offer insight into the Turkish Competition Board's ("**Board**") Engingrup Decision [7] ("**Decision**"). The Board examined whether Engingrup violated Article 4 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**") [2] through interfering in resale prices and/or restricting online sales of the products. The Board ultimately decided to conclude the investigation, determining that the commitment package submitted by Engingrup is sufficient to address the competitive concerns under investigation.

Background of the Case and Relevant Market

The investigation into anti-competitive practices within the cosmetics market commenced with an initial focus on Yöntem Profesyonel Kozmetik Ürün. San. ve Tic. Ltd. Şti. ("**Yöntem**"). However, the Board opted to expand the scope of the investigation to include the activities of Yöntem, Yöntem Kozmetik A.Ş. ("**Yöntem Kozmetik**"), M-M Kozmetik Tic. A.Ş. ("**MM Kozmetik**"), Magna Kozmetik Tic. A.Ş. ("**Magna Kozmetik**"), and Engin SDH A.Ş. ("**Engin SDH**") as these undertakings were conclusively assessed as a single economic unit within Engingrup due to family ties and unity of interest among the family members according to the Board's evaluations.

In terms of Engingrup's operations in Türkiye, the Board emphasized that Engingrup offers consultancy, management, and research services on diverse matters, including trademarks, concession issues, business processes, investment, and marketing areas. Additionally, Engingrup provides feasibility studies for commercial and industrial investments, along with reports on investment possibilities. The Decision also outlines and considers the activities of the undertakings within the investigation, including Yöntem Kozmetik, Yöntem, MM Kozmetik, Magna Kozmetik, and Engin SDH.

Considering the undertakings' activities and precedent, the Board identifies two distinct markets for cosmetic products based on production and marketing methods: (i) selective cosmetic products and (ii) mass market cosmetics products. [3] On the other hand, the Board also considers decisions that adopted a broader relevant product market definition as the "cosmetics products market." [4] Based on this, the Board, in alignment with its precedent, does not find it necessary to embrace such a distinction on a product-basis, as such an approach would not impact the competitive analysis within the case. Therefore, within its Decision, the Board refrains from specifying a relevant product market definition.

Assessment on the Concept of Economic Unit and Family Links

Before delving into assessment concerning the commitment package, the Board determines whether Yöntem Kozmetik, Yöntem, MM Kozmetik, Magno Kozmetik and Engin SDH would be considered under the same economic unit due to family links among these undertakings.

In its assessments the Board firstly refers to the Article 3 of the Law No. 4054 which defines an undertaking as "*Natural and legal persons who produce, market and sell goods or services in the market, units which can decide independently and constitute an economic whole*". Moreover, the Board takes into consideration the preamble of the Article 4 of the Law No. 4054 which states that "*Principle of economic wholeness is adopted for the definition of undertakings. In other words, a subsidiary will not be evaluated independently, but together with the company or companies it is connected to.*" Therefore, the Board, taking its precedents into consideration, evaluates the natural persons and legal entities incapable of making independent decisions in the market during their economic activities, despite having separate legal personalities, may be considered as forming an economic unit with those under their control in terms of ownership and decision-making processes. Consequently, they should be regarded as a single economic unit, even if they have distinct legal personalities. In other words, in order to conclude whether such natural persons and legal entities should be deemed constituting a single economic unit, the aspect of economic independence is of more importance.

Another aspect to determine whether there is an economic unity is related to family links among individuals and/or groups. The Decision indicates that the most important criteria for assessing the existence of an economic entity among natural persons are the family links and the unity of economic interests. This unity is capable of removing the competition motivation between these individuals, rather than relying on the "control" principle. Considering the Board's precedent, the Decision encapsulates the aspects that should be examined while defining the economic entity among the natural persons/groups as follows:

- Whether there are economic relationship and family bond between them,
- The basis, nature, the size of the economic relationship and their effect on the independent activities on the market (if any);
- Determination of whether there is a unity of interest among these persons based on the above evaluations.

Referring to the Board's precedent, the Decision indicates that natural persons and their family members are considered part of a single economic unit, and the undertakings controlled by the members of the same family are regarded as part of the same economic entity. [5]

Based on the foregoing, the Board acknowledges the familial ties among the shareholders of the six undertakings, namely, Engingrup, Yöntem Kozmetik, Yöntem, MM Kozmetik, Magna Kozmetik and Engin SDH. The Board also determines that Musa Kazım Engin, Yusuf Engin and Oğuz Engin are the shareholders of Engingrup, indicating that

Engingrup is controlled by the Engin family. Furthermore, it was inferred that;

- Yöntem Kozmetik's sole shareholder was Engingrup;
- Yöntem's sole shareholder was Yöntem Kozmetik and therefore, Yöntem Kozmetik was indirectly controlled by Engin family.
- MM Kozmetik's sole shareholder was Yöntem Kozmetik, and Yöntem Kozmetik is indirectly controlled by Engin family.
- Manga Kozmetik was controlled by MM Kozmetik and therefore indirectly controlled by Engin family,
- Engin SDH was controlled by Yöntem Kozmetik and therefore indirectly controlled by Engin family.

Furthermore, the information gathered for the investigation illustrates that strategic decisions for the six listed companies are made through a unified will, specifically that of the Engin family. This conclusion is drawn from the fact that Yusuf Engin is a board member of all six companies, Musa Kazım Engin serves as the chairman of the board for five of the listed companies (excluding Yöntem), and Oğuz Engin is a member of the board of directors for the five companies listed above (excluding Engin SDH).

Finally, the Board concludes that Yöntem Kozmetik, Yöntem, MM Kozmetik, Magna Kozmetik and Engin SDH are within the same economic unity as Engingrup and accordingly were a single undertaking. Therefore, the investigation party was designated as Engingrup, an economic entity consisting of other undertakings as well.

Assessment on the Commitments

Within the scope of the investigation, it was found that Yöntem's agreements with its authorized dealers contain provisions prohibiting online sales. These clauses stipulate that resellers must seek approval from Yöntem to sell products through internet. Moreover, it was observed that the relevant agreement titled "*Wella-Salon Agreement*" concluded between Yöntem and its resellers include the provisions restricting the sales made or to be made among themselves except the end user. In this regard, the commitment package, containing the following commitments, was submitted to the Authority to address the relevant competition law issues.

- Yöntem committed to excluding the problematic provisions of the "*Wella-Salon Agreement*" in the renewed agreements to be executed with all of its resellers.
- Engingrup or the economic unity under its ownership committed to include the following provision in the resale agreements it enters into: "*All products subject to the agreements may be sold through all online channels including marketplaces. No separate authorization or approval is required for resellers to realize sales over the internet. The provisions included agreements that contradict this provision will not be applied.*"
- Engingrup committed to announce the amendments made to the agreements on all Engingrup's websites and publish the renewed version of the agreements on the websites within the period granted to fulfil these commitments.
- Engingrup committed to provide the documents demonstrating that the agreements concluded with the re-sellers are renewed within the 60 days following the service of the Board's short form decision.

Upon examining the commitment package, the Board concluded that the competitive concerns that may arise due to the behaviours of Engingrup and the undertaking included in its economic unity are adequately addressed by the proposed commitments, which are considered sufficient to remedy potential competition issues. Therefore, the Board decided to conclude the investigation regarding Engingrup's online sales restriction practices and not to impose any monetary administrative fine against Engingrup in this regard, without referring to Engingrup's actions in relation to the determination of resale prices.

Conclusion

The significance of the Board's Decision extends beyond merely being another example of an investigation concluded through the commitment mechanism. Its significance lies in the comprehensive scrutiny it applies to the concept of economic unity and familial ties. The Decision establishes unambiguous criteria aligned with its precedent, offering a recent illustration of the Board's application of such criteria. Initially centred on Yöntem, the Board subsequently delineates the economic unity involving Yöntem Kozmetik, Yöntem, MM Kozmetik, Manga Kozmetik, and Engin SDH, ultimately identifying Engingrup as the focal point of the investigation. This analysis underscores the Decision's broader implications and contributes to the evolving landscape of legal interpretations surrounding economic unity and familial links.

[1] Decision of the Board dated 02.03.2023 and numbered 23-12/186-62.

[2] Article 4 of the Law No. 4054 prohibits agreements and concerted practices between different undertakings as well as the decisions of association of undertakings that have as their object or effect or potential effect of restricting competition, whereas Article 6 of Law No. 4054 prohibits abuse of dominance.

[3] Board's decisions dated 10.10.2005 and numbered 05-66/946-255; dated 08.05.2008 and numbered 08-32/401-136; dated 09.09.2009 and numbered 09-41/987-249; dated 16.09.2021 and numbered 21-43/638-317.

[4] Board's decision dated 15.01.2004 and numbered 04-03/48-13.

[5] Decisions of the Board dated 24.10.2000 and numbered 00-41/446-244; dated 28.05.2002 and numbered 02-32/366-152; dated 09.03.2006 and numbered 06-18/217-56.