Competition Law Bulletin

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Third Quarter

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Notable Reasoned Decisions of the Turkish Competition Board

The Board Concluded that Maçkolik Violated Articles 4 and 6 of Law No. 4054

Within the scope of the investigation conducted by the Turkish Competition Board ("Board") regarding Maçkolik, the Board evaluated (i) the allegations that Maçkolik imposed vertical restraints through the contracts it concluded with other buyers that provide advertising media, under Article 4 of the Law on the Protection of Competition No. 4054 ("Law No. 4054") and (ii) the allegations that Maçkolik engaged in de facto exclusivity practices and discriminatory conduct in the advertising and referral marketing on its platform, under Article 6 of Law No. 4054.

Firstly, the Board examined whether Maçkolik imposed vertical restraints in its advertising sales agreements. It determined that the relevant agreements included clauses stipulating that the buyer undertakings shall not publish any advertisements directly or indirectly related to any betting firm and/or prediction site or betting activities. The Board assessed that such restraints imposed on the buyer undertakings constituted limitations regarding the customers to whom these buyers could market the advertising media. In this respect, the Board concluded that the restraints imposed by Maçkolik on the customers of its vertically positioned undertakings violated Article 4 of Law No. 4054.

Furthermore, when evaluating whether Maçkolik engaged in de facto exclusivity[1] or discriminatory practices, the Board first noted that Maçkolik had entered into an advertising sales and marketing agreement with Oley and that Oley advertisements were integrated and published on Maçkolik's platforms. Therefore, the Board concluded that Maçkolik did not engage in de facto exclusivity conduct. On the other hand, the Board emphasized that considering the density of Nesine advertisements on Maçkolik's platform, the limited availability of advertising spaces for other firms, and the preferential display of Nesine in the betting referral sections, it was necessary to further assess whether Maçkolik's conduct restrained the activities of rival firms through discriminatory practices. Following its examination, the Board concluded that the terms and privileges stipulated in the agreements between Maçkolik and Nesine were not offered to Nesine's competitors and that Maçkolik was engaged in discriminative conducts in a manner that placed Nesine's competitors at a competitive disadvantage.

1. Following the interim measure decision dated 15.06.2023 adopted by the Board within the scope of the investigation conducted against Nesine, Nesine and Maçkolik signed an Amendment Protocol to remove the exclusivity provisions.

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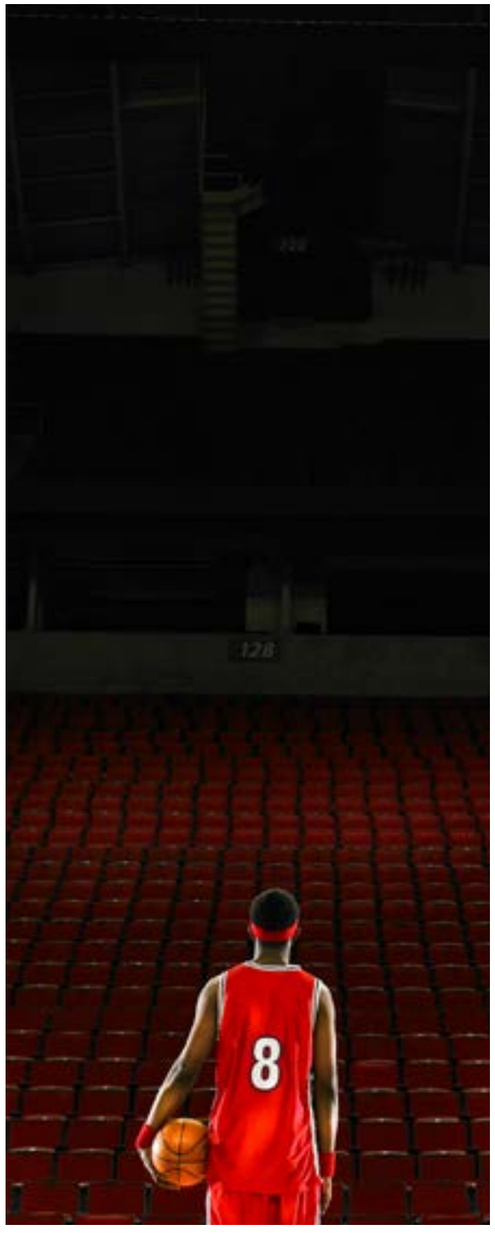
In its assessment under Article 6 of Law No. 4054, the Board noted that although the relevant conduct occurred within the scope of Maçkolik's activities in the online display advertising and referral markets in which Maçkolik was not dominant, these practices were intended to strengthen Maçkolik's position in the markets where it held dominance. Accordingly, the Board emphasized that such conduct should be assessed within a holistic framework.

As a result, the Board concluded that Maçkolik violated Articles 4 and 6 of Law No. 4054 by allocating customers to its buyers in the advertising services market and by discriminating among its buyers in the provision of online display advertising and referral services. Therefore, the Board decided to impose two separate administrative fines on Maçkolik.

Additionally, the Board imposed the following obligations on Maçkolik: (i) to adopt a transparent policy in the referral areas on its platforms related to sports betting, ensuring that no discrimination is made against undertakings active in the online fixed-odds betting market, and (ii) to establish a system that lists the undertakings active in the online fixed-odds betting market in a rotational manner, ensuring that no undertaking receives preferential treatment in the display of betting odds.

> **The full text of the reasoned decision is available here.**



The Board Assessed the Exemption Request of the Turkish Construction Equipment Distributors and Manufacturers Association Regarding the Reports to be Shared with Its Members

The Board evaluated the request submitted by the Turkish Construction Equipment Distributors and Manufacturers Association ("İMDER") for the issuance of a negative clearance and, if not possible, to grant an exemption under Law No. 4054 with respect to the information exchange to be conducted through the monthly and quarterly reports to be shared with its members.

In this context, the Board first noted that by its decision dated 07.04.2022 and numbered 22-16/269-121, an exemption had already been granted to İMDER for a period of five years for the information exchange to be conducted under certain conditions. These conditions required that for the monthly reports, the data should not contain undertaking-specific information, at least five undertakings should participate, and no participant's data should account for more than 25% of the aggregated data, and that for the annual reports, the data should be compiled with a suspension of three months without including undertaking-specific information. However, the Board observed that under İMDER's current application, İMDER aimed to include certain new information within the reporting system that has previously been granted exemption. In this regard, the Board evaluated that İMDER primarily requested that (i) the newly consolidated monthly reports be shared as data compiled from at least three undertakings, provided that the data of none of the undertakings exceeds 40% of the consolidated total, and (ii) more up-to-date data be shared with undertakings through a quarterly report that differs from the reports for which exemption had been granted.

While assessing İMDER's request, the Board referred to the Guidelines on Competition Infringements in Labor Markets ("Labor Market Guidelines") dated 21.11.2024 emphasizing the safe harbor criteria set forth therein. According to these criteria, an information exchange must (i) be conducted by independent third parties, (ii) not reveal the source of the data, (iii) include data that is at least three months old, (iv) comprise data from at least ten participants, and (v) ensure that the data of no single participant exceeds 25% of the aggregated total.

In this framework, the Board concluded that lowering the minimum participant requirement from five to three and increasing the maximum data weight limit from 25% to 40% would reduce the aggregation standard, enhance the strategic nature of the shared information, and increase the risk of restricting competition. Accordingly, the Board rejected İMDER's individual exemption request concerning the monthly reports. On the other hand, acknowledging that the sharing of annual data failed to yield the expected benefits for the undertakings and that the exchange of more up-to-date sales data might be necessary to achieve the efficiencies anticipated from the information exchange. The Board considered that the quarterly reports would not contain undertaking-specific information, the market in question was unstable and complex, and the data would be shared with a three-month delay. Considering these considerations, the Board concluded that the information exchange through quarterly reports would not go beyond what is necessary to restrict competition and therefore decided to grant an exemption for the quarterly reports.

> The full text of the reasoned decision is available here.

The Board Concluded that Certain Undertakings Active in the Information Technology Sector Violated Article 4 of Law No. 4054 by Entering into Gentlemen's Agreements

The Board evaluated the allegations that certain undertakings active in the information technology sector had entered into bilateral gentlemen's agreements not to poach each other's employees. Considering that the allegations under investigation concerned bilateral no-poaching agreements, the Board conducted its assessments separately for each individual agreement.

Within the scope of its assessment, the Board determined that various undertakings had entered into agreements not to employ each other's current or former employees. The Board emphasized that such collusion leading undertakings to avoid competing in a key input market would lead to the alignment of undertakings' labor cost structures and thereby increase the risk of anti-competitive coordination in other aspects of competition as well by way of reducing employee mobility.

In addition, based on the documents obtained during the investigation, the Board highlighted that the no-poaching agreements between undertakings covered a wide range of fields in terms of their activities in the output markets. In this respect, the Board underlined that it did not make any sectoral distinction in its assessments regarding the undertakings found to be parties to no-poaching agreements. On the other hand, the Board noted that no-poaching agreements directly related to legitimate cooperation between undertakings and reasonably necessary for the implementation of such cooperation could be considered as ancillary restraints. Furthermore, the Board stated that agreements between undertakings belonging to the same economic entity could not be evaluated within the scope of Article 4 of Law No. 4054.

As a result, the Board concluded that the gentlemen's agreements entered between certain undertakings that were parties to the investigation violated Article 4 of Law No. 4054 and decided to impose administrative fines on the undertakings concerned.

> The full text of the reasoned decision is available here.

The Board Concluded that Erikli and Pınar Violated Article 4 of Law No. 4054 Through Information Exchange

The Board evaluated the allegations that Erikli and Pınar violated Article 4 of Law No. 4054 through information exchange. Within the scope of its assessment, the Board determined that Erikli and Pınar exchanged competitively sensitive information either directly with each other or indirectly through their distributors in a manner that reduced strategic uncertainty in the market. The Board also considered that, given the exclusive nature of the undertakings' distribution networks, such direct or indirect communications were conducted not for market research purposes but with the intent of sharing commercially sensitive information between the undertakings.

Taking into account that price-related information is among the most strategically sensitive type of data, the Board evaluated that the exchange of information between competitors regarding current prices and sales volumes, as well as their intended future prices, increased market transparency and reduced uncertainty, which is a key element of competition through inter-competitor communication. The Board further determined that such direct and/or indirect communication between Erikli and Pınar restricted the undertakings' independent competitive conduct. Accordingly, the Board concluded that these practices that reduced strategic uncertainty had the potential and/or actual effect of restricting competition and therefore decided to impose administrative fines on Erikli and Pınar for violating Article 4 of Law No. 4054.

> The full text of the reasoned decision is available here.

The Board Imposed an Administrative Fine on Biota for Providing False or Misleading Information

The Board evaluated whether the information included in Biota's written response, submitted within the scope of the investigation initiated under the Board's decision dated 19.09.2024 and numbered 24-38/897-M, constituted false or misleading information under Article 16 of Law No. 4054.

Within the scope of its assessment, the Board determined that the turnover figures provided in two different written responses submitted by Biota were inconsistent with each other and further noted that the turnover amount stated in the first response had been used as the basis for calculating the administrative fine imposed on Biota for obstructing or hindering an on-site inspection.

In examining whether the submission of differing turnover figures could be considered as providing false or misleading information, the Board stated that the provision of information or documents that are not accurate or reliable regarding a concrete fact constitutes false or misleading information within the meaning of Article 16 of Law No. 4054. The Board also emphasized that the significance of the requested information or document for the case and its potential impact on the final decision increased the likelihood of imposing an administrative fine in relation to the information requests.

Accordingly, taking into account that the information and documents submitted by Biota directly affected the amount of the fine previously imposed for obstructing or hindering the on-site inspection, the Board concluded that the turnover information provided in Biota's written response constituted false or misleading information and decided to impose an administrative fine on Biota.

> The full text of the reasoned decision is available here.

The Board Concluded that Canon Violated Article 4 of Law No. 4054 by Fixing the Resale Prices

The Board evaluated the allegations that Canon violated Article 4 of Law No. 4054 by fixing the resale prices of its branded products.

Within the scope of the investigation, the Board determined that Canon (i) regularly monitored the sales prices of its resellers, (ii) warned resellers who sold products at prices different from the specified

level and requested that they raise their prices to the designated level and (iii) imposed various sanctions on resellers that failed to comply with these requests.

The Board further emphasized that fixing resale prices constitutes a restriction of competition by object, and therefore no impact assessment was required in the present case. Moreover, the Board highlighted that the resellers accepted Canon's requests to adjust their prices upward, that Canon closely monitored the prices of electromarket retailers, and that Canon directly intervened in pricing practices because of this monitoring.

Considering these findings, the Board concluded that Canon violated Article 4 of Law No. 4054 by fixing the resale prices of its products and decided to impose an administrative fine on Canon.

> The full text of the reasoned decision is available here.

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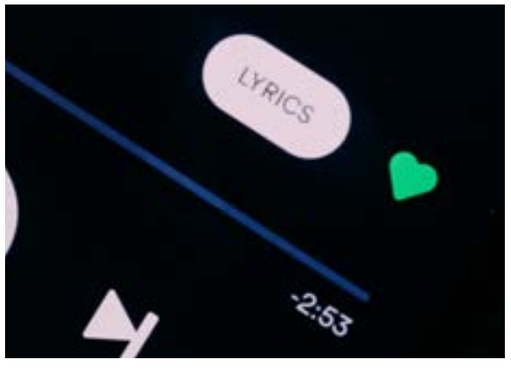
Notable Reasoned Decisions of the Turkish Competition Board

Important Announcements Published by the Competition Board

The Board Launched an Investigation into Spotify Operating in the Online Music Streaming Services Market

The Board decided to initiate an investigation into Spotify, which operates in the online music streaming services market and has a broad user base in view of allegations that its strategies and policies implemented in Turkey may have anti-competitive effects. The investigation will primarily assess whether Spotify (i) engages in conduct that hinders the activities of its competitors, (ii) affects the distribution of royalty payments made to various counterparties under competitors' licensing agreements and (iii) engages in discriminatory practices among artists and content creators on its platform, particularly with respect to visibility and other aspects of the platform.

> The announcement is available here.

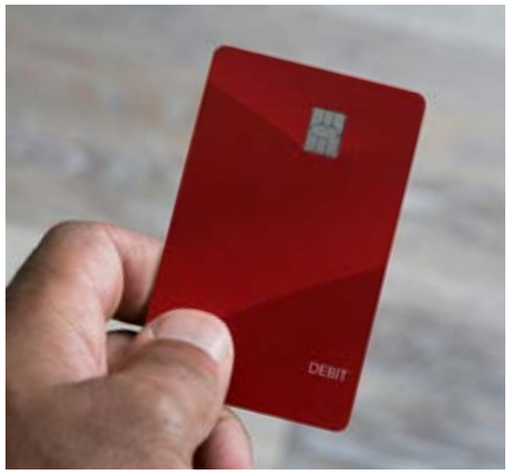


The Board Imposed a Daily Administrative Fine on Google for Breach of Its Obligations

In its decision dated 08.04.2021 and numbered 21-20/248-105, the Board determined that Google held a dominant position in the general search services market, provided advantages to its own local search (Local Unit) and accommodation price comparison (Google Hotel Ads – GHA) services on the general search results page, thereby hindering the activities of competing local search sites, distorting competition in the local search and accommodation price comparison services markets and violating Article 6 of Law No. 4054. As a result, the Board imposed an administrative fine of TRY 296,084,899.49 on Google. Additionally, the Board imposed obligations on Google to ensure that competing services would not be placed at a disadvantage on the general search results page. Google subsequently submitted various compliance proposals aimed at addressing the Board's concerns in the local search services market.

During the monitoring of the compliance process, the Board determined that Google implemented new designs under the label "Business Ads" within "paid sponsored ads," which had the same characteristics and functionality as the designs subject to the investigation. Accordingly, the Board found that Google's practices breached the obligations set out in its decision dated 08.04.2021 and decided to impose an administrative fine of TRY 355,143,671.89, calculated based on a daily rate of 0.05% of Google's 2024 gross revenues, under Article 17(1)(a) of Law No. 4054.

> The announcement is available here.



The Board Initiated an Investigation into Mastercard and Visa

The Board decided to initiate an investigation into Mastercard and Visa, which operate in the global card payment systems market, as well as the undertakings controlled by them, to determine whether Article 4 and/or Article 6 of Law No. 4054 were violated by preventing banks operating under Law No. 5411 on Banking Law from providing payment/POS infrastructure to other payment service providers for use by foreign merchants, thereby hindering the activities of international payment service providers. Accordingly, the Board initiated an investigation into the economic entity controlled by Mastercard and the economic entity controlled by Visa.

> The announcement is available here.

The Board Launched an Investigation into Google Regarding Play Store

The Board decided to initiate an investigation into Google based on the preliminary inquiry findings, which it deemed serious and sufficient, regarding allegations that Google violated Article 6 of Law No. 4054 by forcing developers who wish to distribute applications on its Play Store to use its own payment system, Google Play Billing (GPB) and by preventing developers from informing users about alternative payment channels.

> The announcement is available here.

The Board Concluded the Investigation Regarding Mars and CJ ENM Through the Commitments Procedure

The Board concluded the investigation into allegations that Mars abused its dominant position in the cinema film exhibition services market by creating screening programs in favor of films distributed by its own subsidiaries through the commitment procedure with respect to Mars and CJ ENM.

Within this framework, CGV Mars limited the total seat capacity offered to films distributed by Mars during their first week of screening to a maximum of 20%, and criteria based on audience preferences were established to determine whether films would continue to be screened in subsequent weeks. Accordingly, films meeting at least two of the following criteria, regardless of their distributor, will continue to be screened at Mars locations: (i) average audience per session, (ii) occupancy rate per session, (iii) inclusion among the four most-watched films at the end of the first week, and (iv) weekend audience drop rate.

In addition, Mars submitted various commitments to ensure the presence of films distributed by third-party distributors at high-audience potential locations and to implement a programming approach that prioritizes audience preferences. These commitments also provide that all distributors will be treated objectively and equally to prevent potential issues that may arise during the implementation of other commitment measures.

Furthermore, CJ ENM undertook to maintain the separate structure between Mars and CJ ENM and to limit their interactions to the level of commercial relations with third-party distributors.

The Board concluded that the commitments submitted were sufficient to address the competition concerns and decided to render these commitments binding for Mars and CJ ENM.

> The announcement is available here.

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Important Announcements Published by the Competition Board

The Board Opened an Investigation into Certain Undertakings Operating in the Shipbuilding Sector

The Board decided to initiate an investigation into certain undertakings operating in the shipbuilding sector, associations of undertakings and a consulting firm to determine whether they violated Article 4 of Law No. 4054.

According to the announcement regarding the investigation, the assessment covers 33 undertakings, two associations of undertakings, and one consulting firm and will examine whether Article 4 of Law No. 4054 was violated through practices such as the exchange of competitively sensitive information in the labor market, wage fixing, participation in no-poaching agreements and engaging in facilitating actions for the formation or maintenance of such agreements.

> The announcement is available here.

The Board Opened an Investigation into Undertakings Operating in the Meal Card Sector

The Board concluded the preliminary inquiry regarding allegations that Edenred, Multinet, Pluxee and Setcard operating in the meal card sector in Turkiye violated Article 4 of Law No. 4054.

After evaluating the information, documents, and findings obtained during the preliminary inquiry, the Board deemed the evidence serious and sufficient and decided to initiate an investigation to determine whether the undertakings engaged in practices such as collusive bidding, customer allocation and exchange of competitively sensitive information in violation of Article 4 of Law No. 4054.

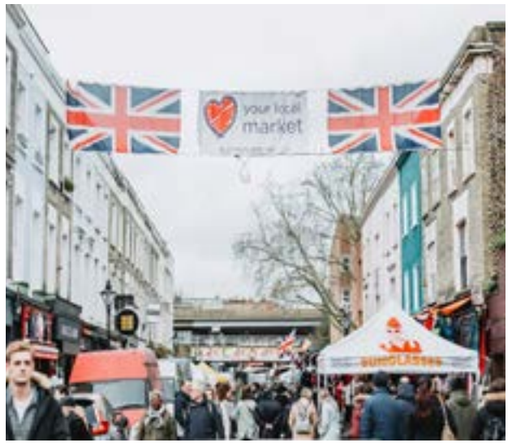
> The announcement is available here.

Significant Developments in Türkiye and Around the World

U.S. Federal Trade Commission (FTC) Chairman Ferguson Announced That Noncompete Clauses in Employment Contracts in the Healthcare Sector Should Be Reviewed and Oversight Will Continue

U.S. Federal Trade Commission ("FTC") Chairman Andrew N. Ferguson called on large employers and staffing firms in the healthcare sector to review the compliance of non-compete clauses in employment contracts with applicable laws. The announcement emphasized that such clauses should not unfairly restrict the mobility of healthcare professionals. The FTC further stated that it will continue to monitor non-compete practices in the sector and intervene where necessary. Ferguson noted that this initiative aims to enhance workforce mobility in the healthcare sector and safeguard competition within the industry.

> The full text of the announcement is available here.



The UK Competition and Markets Authority Published a Document Assessing How Price Transparency Rules Could Strengthen Consumer Decision-Making and Promote Competition

The UK Competition and Markets Authority ("CMA") published a document assessing how price transparency rules could help consumers make more informed choices and enhance price competition. The document evaluates the potential benefits of such rules, the conditions under which they are likely to be effective, and how they can be designed to deliver the greatest benefits for competition.

> The full text of the document is available here.

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Significant Developments in Türkiye and Around the World

The CMA Published a Guide on Competition-Compliant Recruitment and Employee Management in the Labor Market

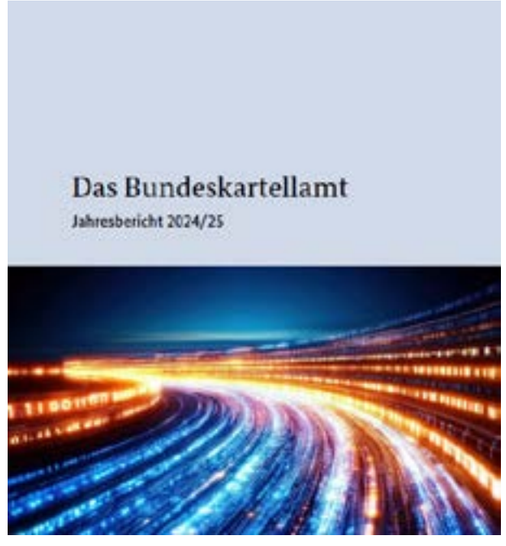
The CMA published a guide titled *"Competing for Talent"* to ensure compliance with competition law in recruitment, salary setting, and working conditions. The guide highlights how HR professionals and those responsible for recruitment and employee engagement can avoid anticompetitive practices. It provides examples of conduct to avoid, such as fixing salaries or steering employees to firms. The CMA stated that the guide aims to help employers develop effective recruitment and employee management strategies without breaching competition law.

> The full text of the guide is available here.

The German Competition Authority Published Its 2024/25 Activity Report

The German Competition Authority ("Bundeskartellamt") published its 2024/25 activity report ("Report"). The Report highlighted that in investigations aimed at protecting competition in the digital economy and artificial intelligence, the Bundeskartellamt made some pioneering decisions against major technology firms. It emphasized the competitive risks arising from strategic resources such as access to high-quality data and computing power being controlled by a limited number of players. The Report further noted that certain concentration transactions were reviewed in detail during the in-depth investigation phase, and transactions raising competitive concerns were not approved. The Bundeskartellamt also reported an increase in the number of on-site inspections and administrative fines, accompanied by effective use of external reporting mechanisms in cartel investigations. Additionally, ongoing investigations in the energy and district heating sectors, as well as structural issues affecting price formation in the oil market, continue to be monitored from a competition law perspective.

> The full text of the Report is available here.



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