

April 2023

The Turkish Competition Authority dismisses allegations of abusive and discriminatory practices levelled against an e-commerce platform (*Trendyol*)

UNILATERAL PRACTICES, DOMINANCE (ABUSE), DISCRIMINATORY PRACTICES, DISTRIBUTION/RETAIL, INVESTIGATIONS / INQUIRIES, REGULATED SERVICES, BARRIERS TO ENTRY, TURKEY, MARKET POWER, EFFECT ON COMPETITION, ONLINE PLATFORMS

Turkish Competition Authority, *Trendyol*, Decision, 28 April 2023 (Turkish)

Gönenç Gürkaynak | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Dilara Yesilyaprak Akay | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Gülbin Serin | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

e-Competitions News Issue April 2023

This case summary aims to offer insight regarding the Turkish Competition Board's ("**Board**") Trendyol Decision [1] ("**Decision**"), where the Board assessed whether Trendyol has violated Article 6 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") by way of discrimination by applying different commission rates to different sellers in the same category and manually changing algorithm allegedly reducing the visibility upon two complaints. The relevant complaints are as follows: (i) the first complaint was submitted by Minoris Organik Kimya San. Tic. Ltd. Şti. ("**Minoris**") on 17.01.2023, alleging that Trendyol violated Article 6 of Law No. 4054 by applying different commission rates to sellers in the same category on its e-marketplace ("**First Complaint**"); and (ii) the second complaint was submitted on 20.02.2023, alleging that Trendyol manually intervened in the product ranking algorithm for the store named "Padella Makarna" ("**Padella Makarna**") which sells baby food products on Trendyol's online marketplace ("**Second Complaint**"). Following the First Complaint, a preliminary investigation [2] ("**Preliminary Investigation**") was launched against Trendyol, and subsequently, the Second Complaint was included in the Preliminary Investigation.

Minoris operates in various subcategories within baby care products, including "Baby Sunscreen," "Baby Detergent," "Baby Creams and Oils," "Baby Shampoo," "Baby Bath and Toilet Accessories," "Baby Stain Remover," and "Baby Pacifier Cleaner." Similarly, Padella Makarna operates in several subcategories related to food products, such as "Gourmet & Organic Products," "Pasta," "Other Baby Foods," "Dried Fruit," "Flour Mixes," "Other Flours," "Herbal Products," "Gluten-Free Products," "Baby Soups," "Bulgur," "Corn Flour," "Food Flavoring," and "Jam." The Board conducted its evaluation by considering these areas that the complainants operate to understand the scope and impact of the alleged anti-competitive practices. However, the Board determined that defining the relevant product market in terms of these subcategories was unnecessary for reaching a conclusion. This is because the specific allegations and the nature of the complaints could be sufficiently addressed without distinguishing between the various subcategories within each broader category. Accordingly, the assessment focused on whether Trendyol's

practices, as alleged, constituted an abuse of dominant position under Article 6 of Law No. 4054, irrespective of the finer distinctions between subcategories. The Board concluded the Preliminary Investigation by rejecting all of the claims and decided not to launch an investigation against Trendyol.

I. The Board's Assessment on the Relevant Product and Geographic Market

Regarding the sector information, the Board observed that the rapid expansion of retail e-commerce in recent years has prompted traditional sales channels to establish their own e-commerce platforms. Additionally, the emergence of e-marketplaces that host multiple sellers on a single platform has significantly altered market dynamics. The Board categorized e-marketplaces into two main types based on their business models: pure e-marketplaces, which exclusively facilitate sales, and hybrid e-marketplaces, which not only facilitate sales but also sell products on the same platform. Initially, the Board noted that Trendyol functioned primarily as a retailer and pure e-marketplace, but it has since transitioned to a hybrid e-marketplace model.

When assessing the relevant product market, the Board considered the allegations and stated that the primary focus of this investigation is Trendyol's e-marketplace services. By referencing its previous decisions [3], the Board defined the relevant product market in which Trendyol operates as multi-category e-marketplaces.

Despite allegations raised by Minoris and Padella Makarna regarding Trendyol's practices in specific product categories such as "Baby Sunscreen", "Baby Detergent", "Baby Creams and Oils", "Baby Shampoo", "Baby Bath and Toilet Accessories", "Gourmet & Organic Products", "Pasta", "Other Baby Supplements", "Dried Fruit", "Flour Mixtures", "Gluten-Free Products", "Baby Soups", "Food Flavors" and "Jam", while the Board's evaluations took these segmentations into account the Board did not find it necessary to redefine the relevant product market in terms of sub-segmentation.

II. The Board's Assessment on the Dominant Position of Trendyol

The Board assessed Trendyol's dominant position in the multi-category e-marketplace market by applying the criteria set forth in Law No. 4054 and Guidelines on the Assessment of Exclusionary Conduct by Dominant Undertakings, which define dominance as the ability to independently determine economic parameters. The Board considered factors such as market share, barriers to entry, and buyer bargaining power, along with unique market dynamics like network effects and revenue metrics.

First, the Board evaluated Trendyol's and competitors' market share to assess its dominance. Trendyol's market share consistently increased throughout 2022, with a minor decline observed in January 2023. Competitors, including N11, showed fluctuations in their market shares, while new entrants maintained low shares. Based on this, the Board evaluated that Trendyol's dominance was evident in both transaction volume and commission revenue, highlighting its market leadership and ability to act independently. The Board noted that the exit of a major player, Gittigidiyor, further reinforced Trendyol's position, as other competitors held limited market shares. It was evaluated that the relevant data substantiated Trendyol's sustained market dominance without significant competitive pressure affecting its position.

The Board also evaluated the barriers to entry and growth in the multi-category e-marketplace market to further assess Trendyol's dominant position. Network effects, including both direct and indirect effects, were identified as key barriers influencing market dynamics. Direct network effects, where the platform's value increases with the number of users, and indirect effects, where the utility of a product depends on related products, contribute to market concentration. Data from industry players, such as Hepsiburada and N11, highlighted the challenges faced by new

entrants and existing competitors due to Trendyol's high market share and strengthening network effects. It was noted that the E-Marketplace Platforms Sector Inquiry Preliminary and Final Report echoed these findings, noting significant investment requirements, regulatory compliance conditions, and technology development needs as barriers to entry and growth. Industry participants outlined challenges such as high technological costs, brand recognition, de facto exclusivity practices, large data advantages, and substantial advertising budgets as hindrances to competition. Overall, the analysis revealed significant barriers to entry and growth that favored Trendyol's dominant position and posed challenges for competitors in the multi-category e-marketplace market.

Subsequently, the Board assessed buyer bargaining power as a crucial factor in determining a dominant position. Buyer power exists if customers have substantial purchasing power, are well-informed about alternative supply sources, and can switch providers or create their supply within a reasonable time. However, based on the analysis of Trendyol's transaction volume data and the share of its top 10 seller members in total transaction volume for the years 2020-2022, it was concluded that these seller members do not possess significant buyer power to exert competitive pressure against Trendyol in the multi-category e-marketplace market. Additionally, it was evaluated that individual end-users or consumers in this multi-sided market also lacked significant buyer power. Therefore, considering Trendyol's high market share, its ability to increase market share over time, and the absence of substantial buyer power, the Board evaluated that Trendyol holds a dominant position in the multi-category e-marketplace market.

III. The Board's Assessment on the Allegations of Abuse of Dominance

Within scope of the complaints, the Board focused on exclusionary behaviors and provided the theoretical framework for exclusionary practices. Accordingly, the Board carefully examined whether the alleged conducts resulted in anti-competitive market closures. It was noted that discriminatory practices were segmented into primary and secondary levels, with primary discrimination directly harming competitors and secondary discrimination impacting entities not in direct competition.

The Board evaluated that in the relevant case, the behaviors under scrutiny targeted non-competing parties on the Trendyol platform and therefore these were categorized as secondary level discrimination.

While the Board acknowledged that dominant undertakings might be more inclined toward exclusionary behaviors due to the concentrated market structure and dynamics of buyer power it noted that it had various decisions and guidelines that established clear criteria for determining discriminatory practices as violations, including the necessity of equal treatment for buyers, the creation of competitive disadvantages, and the absence of legitimate justifications. It was noted that these evaluations also considered the overall impact on market competition, the presence of legitimate interests, and whether discriminatory actions were essential for safeguarding these interests.

After its theoretical framework for exclusionary practices, the Board assessed each complaint independently, as elaborated further below.

a. Assessment on the Allegation Regarding Discrimination by Applying Different Commission Rates to Different Sellers in the Same Category

In terms of the First Complaint, the Board thoroughly examined the allegation within the framework of Article 6, paragraph 2(b) of Law No. 4054, assessing whether sellers in the same category on the platform were treated equally. This assessment included considerations such as whether different conditions were offered to buyers with the same rights, obligations, and performances, whether Trendyol discriminated buyers and the buyers faced competitive disadvantages, whether the behavior had the potential to disrupt market competition, and whether there was a legitimate justification for such actions.

The complainant, Minoris, operates in seven categories on the Trendyol marketplace, including baby-related products like sunscreen, detergent, creams, and others. Minoris alleged competition restrictions in some categories it operates in and provided data on commission rates applied to brands in these categories, as well as in categories it does not operate in, claiming that Trendyol's alleged practices consisting of applying different commission rates to different sellers in the same category were restricting the competition. .

The Board noted that Trendyol applied a commission system which adjusted based on factors such as market share, transaction volume, and brand contribution. For each transaction routed through the application, commissions were paid by commercial users to the intermediary undertaking. For example, a brand with a significant share of total transactions in a specific category would become eligible for a different commission rate compared to brands with lower shares. The Board conducted a detailed analysis of the categories where Minoris operates, comparing commission rates and sales volumes of different undertakings in both the same categories and also different categories. The Board found that Trendyol applied different commission rates based on sales volume of seller members within each category and rendered this practice reasonable.

The Board's analysis extended to other categories where Minoris did not operate but Trendyol applied varying commission rates. After thorough examination, the Board noted that Trendyol had created a system for commissions and adhered to its category types and grading system for different seller members..The explanations regarding commission rates, particularly those applied to branded products, were found to align with the platform's criteria, especially concerning transaction volume.

Overall, the Board evaluated that the commission system evaluated by Trendyol was structured to align with market dynamics and brand performance within different product categories.

Based on this assessment, the Board determined that buyers subjected to different commission rates were not in an equal position. Therefore, the Board concluded that Trendyol's relevant practices, applying different commission rates to different sellers operating in the same category, were not deemed an abuse of dominance through discrimination. The Board did not find any other indications or evidence suggesting a violation of Article 6 of Law No. 4054.

b. Assessment on the Allegation Regarding Manual Intervention in the Product Ranking Algorithm

Second Complaint submitted by Padella Makarna, highlighted several issues Trendyol's conduct towards the complainant.. The Second Complaint emphasized that there was initially a high demand and positive feedback for baby food products sold by Padella Makarna, however this was subsequently followed by a sharp decline in its sales over Trendyol. Within this scope, Padella Makarna noted that despite various efforts such as price reductions, campaigns, and advertising, its sales over Trendyol did not recover. The seller sought further support from Trendyol, which resulted in temporary improvements yet were subsequently followed by further declines and it was noted that this was attributed by Trendyol to insufficient customer demand. The Second Complaint stated that during the "*Legendary November*" campaign, issues arose with notifications for price drops, leading to decreased sales. It also noted that further discussions with Trendyol revealed data deletion and cart emptying problems, exacerbating the sales decline and visibility reduction. Additionally, it was stated that positive customer reviews were not published, favorited products were deleted. Against this background, the competing undertakings' visibility was alleged to have been boosted and Padella Makarna's ranking was alleged to have been reduced through manual algorithmic interventions by Trendyol.

Overall, in terms of explanations made by the complainant, Trendyol stated that, inter alia, they do not track addition to cart and sales quantity at the product and campaign breakdown level, nor do they monitor the timing of product entry or exit from campaigns or the revenue generated from them. Trendyol referred to its previous Board

decisions [4], which mandated that all algorithms, including ranking and scoring, should be applied equally to all sellers without manual adjustments to favor any seller.

In this context, the Board conducted its assessment by focusing on specific product categories, including but not limited to “organic and gourmet products”, “products without gluten”, “pasta”, “wheat” and “jam”. The Board’s examination focused on the manual intervention in the product ranking algorithm and involved analyzing the average rankings within these categories as well as the development and variation in the average number of products available in each category.

Upon thorough analysis, the Board determined that certain fluctuations were observed average rankings yet these were directly correlated with the increase in the number of products. This assessment indicated that the changes in rankings were not arbitrary but were influenced by the natural growth in the product offerings within each category. Thus, the Board’s findings suggested that the shifts in the average rankings were a consequence of the expanded product range rather than any external or manual interventions.

Within this context, the Board evaluated the average ranking of Padella Makarna across various categories and determined that these rankings fluctuated based on dynamics of each the category. It was noted that the average number of products within each category significantly influences the undertaking’s overall average ranking. Specifically, the Board observed that Padella Makarna’s average ranking was relatively high in some categories and lower in others, depending on the number of products offered.

Moreover, particularly in terms of practices during the “Legendary November” campaign, the period between October, November, and December 2022 was scrutinized closely to assess the validity of the claim that Trendyol manually intervened to diminish the visibility of Padella Makarna. The Board found that during the months of October, November, and December 2022, there was no substantial increase in Padella Makarna’s average ranking.

After a thorough investigation, the Board concluded that the allegations of manual algorithm intervention by Trendyol were unfounded.

Overall, the Board’s analysis demonstrated that the changes in rankings were attributable to the natural variation in the number of products and not due to any discriminatory practices.

Consequently, the Board decided to reject the Second Complaint and concluded that there was no basis to initiate an investigation against Trendyol on the grounds of the alleged manual intervention in the algorithm.

IV. Conclusion

The Turkish Competition Board’s Trendyol decision offers an important perspective on competition law within e-commerce, particularly regarding dominant position assessments and algorithmic interventions. By categorizing e-marketplaces and upholding previously made market definitions, the Board demonstrates a nuanced understanding of digital market dynamics. While the assessment of Trendyol’s dominant position highlights barriers to entry and challenges for competitors, the close scrutiny of discriminatory practices reflects a commitment to fair competition. Overall, this decision sets a precedent for robust enforcement in the digital economy, providing valuable guidance for navigating complex competition issues in e-commerce markets.

[1] Board's decision dated 28.04.2023 and numbered 23-19/355-122.

[2] Preliminary Investigation launched with the Board's decision dated January 26, 2023 and numbered 23-06/81-M.

[3] Board's interim measure dated 30.09.2021 and numbered 21-46/669-334; Board's decision dated 18.05.2022 and numbered 22-23/364-154.

[4] Board's interim measure dated 30.09.2021 and numbered 21-46/669-334; Board's decision dated 18.05.2022 and numbered 22-23/364-154 stating that *"Trendyol's algorithms, including ranking and scoring algorithms, will be applied equally to all sellers falling within the scope of the relevant algorithm, regardless of the seller's identity. Manual intervention in the algorithm with the purpose of providing any seller with an advantage over their competitors will not be conducted."*