

September 2023

The Turkish Competition Board concludes the preliminary investigation into the sector for packaged water in Türkiye as there is no evidence of price coordination among the undertakings

ANTICOMPETITIVE PRACTICES, DISTRIBUTION/RETAIL, CONCERTED PRACTICES, INVESTIGATIONS / INQUIRIES, AGRICULTURE / FOOD PRODUCTS , PRICE COORDINATION, MARKET DEFINITION, PRICE INCREASE, TURKEY, COORDINATED EFFECTS

Turkish Competition Board, *Packaged Water*, Case No. 23-45/850-300, Decision, 21 September 2023 (Turkish)

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e-Competitions News Issue September 2023

I. Introduction

This case summary aims to provide insight into the Turkish Competition Board's ("Board") Packaged Water decision [1] ("Decision"), in which the Board, upon receiving complaints, assessed whether undertakings operating as producers/suppliers in the packaged water sector in Türkiye violated Article 4 of Law No. 4054 on the Protection of Competition ("Law No. 4054") by setting the prices of their products.

After assessing the price increases and price variations applied by the undertakings in the sector and considering that no evidence of communication was found during the onsite inspections conducted by the Turkish Competition Authority ("Authority") at the undertakings' premises within the scope of the preliminary investigation, the Board concluded the preliminary investigation by deciding not to launch a full-fledged investigation against the concerned undertakings.

II. Information on the Undertakings Involved in the Preliminary Investigation and the Packaged Water Sector

The preliminary investigation involves several undertakings operating as producers/suppliers in the packaged water sector in Türkiye. [2] While these undertakings might have slightly different business models in terms of distribution channels of their packaged water products, they mainly deliver their products to the end consumer through national chain markets, local chain markets, and dealerships in certain parts of Türkiye.

As for the packaged water sector, the Decision provides that it is possible to categorize the packaged water products into two main categories based on their package sizes. These are the packaged water categories, which consist of water sold in containers larger than 10 liters, where a significant portion of the sales volume comes from polycarbonate bottles, and the other category, which generally includes smaller volumes of water offered in plastic and glass bottles, such as 0.5-liter, 1-liter, and 5-liter containers. The main producers/suppliers in the sector generally operate by distinguishing between the traditional channel, modern channel, and home and office delivery channel. In this respect, small packaged water is generally distributed through the traditional and modern channels, while large ones are delivered to the consumer's requested address through dealerships in the home and office delivery channel.

In terms of competitive landscape of the market, the Board indicates that the branded packaged waters are generally sold in the market, and there are numerous players in the market. Moreover, the Board states that the entry barriers are low in the packaged water market, and the market exhibits a competitive structure.

In the Decision, the Board outlines the cost items for packaged water production and notes that various materials, such as preforms, caps, handles, and safety bands, are used. The Board also indicates that while most of these materials are sourced domestically, their prices are set in foreign currencies. Therefore, changes in exchange rates indirectly affect the prices of packaged water. The Board also highlights that, because water is a low-density product needing large volumes per unit weight, logistics costs depend directly on oil prices. As a result, costs can vary based on the distance between where the water is sold and the water source is.

III. Assessment of the Complaints Within the Scope of Article 4 of Law No. 4054

The Board begins with providing information on the scope of Article 4 of Law No. 4054 prohibiting agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services.

For the purposes of its assessment, the Board divided the complaints into two allegation groups: (i) The first is that from 2022 until the date of the complaint, retail chain markets such as Carrefour, Migros, ŞOK, and BİM set price changes for packaged water brands such as Buzdağı, Abant, Assu, Hamidiye, and Özkaynak on the same day, often at the same price; (ii) Another allegation is that packaged water producers, by making decisions together, increased the price of packaged waters in Istanbul by between 10 TL and 15 TL within the last 15 days before the date of complaint. In order to conduct a comprehensive assessment, the Board focused its evaluation specifically on the producers/suppliers of packaged water. Additionally, since no documents related to retail chain markets were obtained during the on-site inspections, the preliminary investigation was not extended to include these undertakings.

Regarding the first group of allegations, the Board's assessment under Article 4 of Law No. 4054 focuses on determining whether there is a meeting of minds or parallel behaviour among the undertakings operating as packaged water producers/suppliers. During the preliminary investigation, the Authority conducted on-site inspections at key producers/suppliers representing a significant portion of the packaged water market's value over the last years. These inspections did not uncover any documents indicating that the undertakings in question had set packaged water prices. Later, given that the Authority could not identify any finding indicating meeting of minds among the undertakings to restrict competition, the Board examined the price increase dates and the prices at those dates for all packaged water products sold to the four markets in question by the producers/suppliers. In the Decision, the Board examined the price increase data obtained from the undertakings within the framework of the products subject to the complaint and the producer/supplier undertakings. In this regard, the sales prices of packaged water products to the chain markets as a part of the first group of complaints were reviewed. Further to its

assessment of the price data, the Board indicates that no significant alignment was observed in the prices offered by the packaged water suppliers to the chain markets in question. Having said that, even though the Board identified similarity in the price increases of Assu and Özkaynak in their sales to BİM, it concluded that there was no suspicion of coordination between these undertakings as there was no communication evidence between these undertakings obtained during the on-site inspections.

As for the second group of allegations, the Board, expanding the time frame mentioned in the complaint, examined the price increase dates and the price changes of bottled water applied by 10 producers/suppliers, which accounted for more than 50% of the packaged water market in terms of value over the past three years, to distributors in Istanbul, starting from the beginning of July, the month preceding the complaint's filing date of August 7, 2023. As a result, the Board found that the price increase dates of the undertakings in question did not match, and the sales prices applied to the distributors varied. Therefore, the Board concluded that there was no evidence to support the second group of allegations.

IV. Conclusion

Upon thorough evaluation of the price increases and the corresponding timelines implemented by the undertakings, the Board ultimately concluded that, despite certain parallels in the pricing patterns of some undertakings, no substantive evidence of communication between them was uncovered during the preliminary investigation. As a result, the Board determined that the similarities observed did not amount to an anti-competitive agreement. Therefore, the Board decided not to initiate a full-fledged investigation against the undertakings subjected to the preliminary investigation pursuant to Article 41 of Law No. 4054.

This Decision is significant due to the Board's analysis of allegations that the undertakings coordinated to increase the prices of packaged water products. The Board's assessment indicates that similarities in pricing by different undertakings do not necessarily imply a violation in the absence of communication evidence. Thus, the decision sets an important precedent, underscoring that the existence of an agreement and price coordination must be supported by communication evidence. It provides further guidance on the Board's approach to coordination among undertakings in setting prices and clarifies the standard of proof required to establish a violation under Article 4 of Law No. 4054.

[1] The Board's decision dated 21.09.2023 and numbered 23-45/850-300.

[2] Askale İçecek Üretim Pazarlama AŞ ("Assu"), Coca-Cola Satış ve Dağıtım AŞ ("Damla"), Dydo Drinco Turkey İçecek Satış ve Pazarlama AŞ ("Saka"), Erikli Su ve Meşrubat Ticaret AŞ ("Erikli"), Hamidiye Kaynak Suları Turizm ve Ticaret AŞ ("Hamidiye"), Kaya Turistik Tesisleri Titreyengöl Otelcilik AŞ ("Abant"), Özkaynak Maden Suyu Ticaret Ltd. Şti. ("Özkaynak"), Pınar Su ve İçecek Sanayi ve Ticaret AŞ ("Pınar"), SırmaGrup İçecek Sanayi ve Ticaret AŞ ("SırmaGrup"), and Susa Gıda Maddeleri Pazarlama Ticaret AŞ ("Buzdağı").