

# Antitrust/Competition

## The Turkish Competition Board No-Go Decision regarding WhatsApp's "Channels" Function

On September 11, 2024, the Turkish Competition Board ("Board") published its reasoned decision (24-05/80-32, 18.01.2024) on its preliminary investigation against Meta Platform Inc. ("Meta"), which concerns the allegation that Meta abused its dominant position through applying discrimination conditions to its users in terms of access to the "Channels" function of WhatsApp.

The preliminary investigation was launched further to a complaint by GDH Medya ve Teknoloji Hizmetleri AŞ ("GDH Medya"), which has been active in the digital media sector since August 2022. As a result of the preliminary investigation, the Board decided that there is no need to launch a full-fledged investigation since there is no document indicating that Meta abused its dominant position by discrimination in the channel creation and listing processes.

The Board's substantive analysis is focused on two points: (i) discrimination in the creation of channels, and (ii) discrimination in the listing of channels.

In terms of the first point, the Board decided that Meta's commercial relationship with the complainant and with the competitors of the complainant is not of the same or similar nature. Indeed, the Board found that the "Channels" function has been initially launched for the usage of verified accounts, and that the undertakings which could create channels before the complainant already had ongoing commercial relationships with Meta and/or "verified" accounts in Meta's Instagram or Facebook applications, whereas the complainant did not have a "verified" account or a commercial relationship with Meta. Therefore, the Board decided that the complainant did not meet the condition of having a "verified" account.

In this light, the Board stated that the conduct cannot be considered discriminatory since the element of being in an "equal position" is not met. The Board also stated that even under the assumption that the complainant and its competitors are equal, the allegedly discriminatory conduct did not result in a clear and significant consequence of the detriment of the complainant since the complainant was able to create a channel within a short period of time (i.e., two weeks) following the date the channels became available, and gradual launching of a new digital feature is reasonable to improve user experience.

As to the second point, the Board stated that (i) only "verified account" are listed in the "Find Channels" tab,



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(ii) the complainant did not have a "verified" account in Meta's applications or a commercial relationship with Meta; whereas the undertakings listed in the "Find Channels" tab have been verified, therefore, (iii) the complainant and the other undertakings are not equal. The Board added that Meta did not apply different conditions in terms of verification of channel accounts. In any case, the Board evaluated under the assumption that the complainant and the other undertakings are equal that (i) WhatsApp Channels is not an indispensable commercial partner for undertakings in the news and media sector and (ii) based on the traffic data, revenues and number of users, the fact that the complainant is not listed on Channels cannot create a competitive disadvantage for the competitor.

Furthermore, the Board stated that the relevant conduct is secondary-line discrimination (i.e., vertical discrimination), therefore, WhatsApp cannot have a motive not to offer the relevant feature to any party as it would not have a positive impact on WhatsApp's business.





## Practice Area News

**EssilorLuxottica: Failure to Comply with the Commitments.** The Turkish Competition Board decided that EssilorLuxottica violated its previous commitments within two merger control filings through practices involving de facto exclusivity among others and imposed a monetary fine of 0.05% per day from the start and until the termination of the procedural violation, which lasted 3 years. While the Board decided that EssilorLuxottica's practices are exclusionary, it did not impose fines for the said substantive infringement due to the *ne bis in idem* principle.

**Negative Broad Match Agreements Violates Competition Law.** The Turkish Competition Board decided that the agreement between Letgo and its competitors to not offer bids on Google text ads for competing branded queries, where the undertakings resort to negative broad match option, violates Article 4 of Law No.4054 as it restricts competition in the market for online second-hand vehicle sale/purchase market. That said, the monetary fine of Letgo was reduced by 25% due to the settlement application.

**Several Association of Undertakings in the Egg Production Sector were Fined.** The Turkish Competition Board fined seven associations of undertakings due to their conduct in relation to determination of egg prices and supply restrictions and decided that such conduct cannot benefit from individual exemption, whereas the investigated egg producers were not fined as they did not violate Article 4 of Law No.4054.

**Nesine Decision: Upholding the Principle of *Ne Bis in Idem*.** The Turkish Competition Board imposed monetary fines on Nesine, deciding that Nesine abused its dominant position through exclusivity agreements. Although the exclusivity agreements can be considered both under Article 4 of Law No. 4054 prohibiting anti-competitive agreements as well as Article 6 regarding abuse of dominance, **The Turkish Competition Board** analyzed the practices under Article 6 by considering the *ne bis in idem* principle and avoided double punishment for the same conduct.

## In the Firm

• ELIG Gürkaynak represents corporations, business associations, investment banks, partnerships, and individuals in a wide variety of competition law matters. We also collaborate with international law firms on Turkish competition law matters.

In addition to our strong Turkish competition law practice, our international experience provides us with a high capability in multinational competition law issues.

