

# e-Competitions

## Antitrust Case Laws e-Bulletin

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The Turkish Competition Board finds that a honey producer imposed resale price maintenance in violation of Law No. 4054 and concluding that the block and individual exemptions do not apply (*Binboğa*)

**ANTICOMPETITIVE PRACTICES, BLOCK EXEMPTION (REGULATION), INVESTIGATIONS / INQUIRIES, RESALE PRICE MAINTENANCE, AGRICULTURE / FOOD PRODUCTS , PRICE FIXING, MARKET DEFINITION, PRICE INCREASE, TURKEY**

Turkish Competition Board, *Binboğa*, Case No. 23-60/1172-420., Decision, 21 December 2023 (Turkish)

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

**Berfu Akgun** | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

**Damla Yağmur** | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

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## 1. Introduction

This case summary aims to provide insight into the Turkish Competition Board's (" *Board* ") Binboğa Decision [1] (" *Decision* "), in which the Board, assessed whether Binboğa Üretim Pazarlama Sanayi ve Ticaret AŞ (" *Binboğa* ") violated Law No. 4054 on the Protection of Competition (" *Law No. 4054* "). In its decision, the Board decided that Binboğa violated Article 4 of the Law no. 4054 by engaging in resale price maintenance practices and that these cannot either benefit from the block exemption granted by the Block Exemption Communiqué on Vertical Agreements (" *Communiqué 2002/2* ") or be granted individual exemption.

## 2. Information on the Relevant Market

The Board evaluated that honey and bee products such as pollen are a group of products that society has a habit of consumption and due to the vitamins, minerals and enzymes that they include, they also have antiviral functions. Türkiye has a significant beekeeping activity potential due to its various weather conditions, rich vegetation and

genetics in honeybee populations, however, the growth of this sector is slowing down due to the pressure of environmental factors. The market includes bulk and packaged honey and the majority of the honey is processed and packaged by wholesalers to be distributed to consumers through different channels. The Board also found that regarding the market shares of the undertakings for packaged honey market, Binboğa has the second largest market share in the market.

All in all, the Board evaluated that the relevant product market can be defined as “packaged honey market”.

### 3. Assessment under Article 4 of Law No. 4054

The Board initiated its analysis with providing information on the scope of Article 4 of Law No. 4054, that is, 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.

According to the Board’s assessment of the evidence collected in scope of the case file, it is understood that Binboğa set the prices, made an effort to increase the prices and controlled whether its buyers actually implemented the recommended prices. The Board also found that Binboğa controlled the prices of its dealers by referencing them to each other and apply pressure on buyers through supply restrictions that caused an increase in release prices. Thus, as a result of evaluation of the evidence, the Board determined that there is a violation of Article 4 of the Law No. 4054 through resale price maintenance practices, via the actions provided below:

- Binboğa monitored the shelf prices of the buyers
- Binboğa notified the buyers about recommended sale prices but efforts are made to ensure that these prices become minimum and fixed prices,
- Binboğa encouraged the buyers in various ways to apply the sale prices recommended by Binboğa,
- Binboğa could impose sanctions on buyers by ceasing the product supply, if they do not apply the recommended prices by Binboğa.

### 4. Assessment of the Resale Price Maintenance Practices Within the Scope of Article 5 of Law No. 4054

The Board also evaluated Binboğa’s practices of resale price maintenance under Article 5 of the Law No. 4054 to determine whether they benefit from block or individual exemption. In order for a vertical agreement to benefit from block exemption under Turkish Competition Law, the supplier’s share in the relevant market(s) must not exceed 30% pursuant to Article 2(2) of Communiqué No. 2002/2. Moreover, Article 4 of the Communiqué No. 2002/2 provides for the restrictions that cannot benefit from block exemption, among which are “*Preventing the purchaser from determining its own selling price*”. Therefore, the Board decided that Binboğa’s resale price maintenance practices cannot benefit from the group exemption granted by the Communiqué regardless of the undertaking’s market share. As for the individual exemption under Turkish Competition Law is governed by Article 5 of the Law No. 4054, the Board provided that four conditions exist under Article 5, all of which must be satisfied for an agreement, decision or concerted practice to benefit from individual exemption.

These conditions are as follows:

1. They must ensure new developments or improvements or economic or technical improvement in the production or distribution of goods, and in the provision of services;

2. Consumers must benefit from the above-mentioned;
3. They must not eliminate competition in a significant part of the relevant market and
4. They must not restrict competition more than necessary to achieve the goals set out in (a) and (b) above.  
Since the Communiqué No. 2002/2 and Communiqué No. 2021/3 On Agreements, Concerted Practices and Acts and Conducts of Association of Undertakings That Do Not Appreciably Restrict the Competition (“ **Communiqué No. 2021/3** ”) define resale price maintenance practices as “*clear and serious violation*”, the Board evaluated that resale price maintenance practices do not benefit from the individual exemption.

## 5. Conclusion

Upon thorough evaluation, the Board determined that Binboğa has violated Article 4 of Law No. 4054 through exercising control in terms of the resale prices of its buyers, thereby limiting the competition within the relevant market. The Board decided that these actions did not meet the criteria for a block exemption under Communiqué No. 2002/2 and were also unsuitable for an individual exemption. Consequently, an administrative fine of 3,938,700.96 TL was imposed based on Binboğa’s 2022 gross revenue, in accordance with Article 16 of Law No. 4054. This ruling demonstrates that the Board has maintains its rigid stance on resale price maintenance practices.

[1] The Board’s decision dated 21.12.2023 and numbered 23-60/1172-420.