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The Turkish Competition Board publishes a decision following its preliminary investigation on alleged restrictive practices by an undertaking and its retailers in a wide range of sectors (*Doğtaş Kelebek Mobilya / Yataş Yorgan ve Yatak San ve*)

ANTICOMPETITIVE PRACTICES, DISTRIBUTION/RETAIL, DISTRIBUTION AGREEMENT, RESALE PRICE MAINTENANCE, PRICE FIXING, COOPERATION AGREEMENT, MFC CLAUSE

Turkish Competition Board, Doğtaş Kelebek Mobilya / Yataş Yorgan ve Yatak San ve, n° 1 7-30/487-211, 27 September 2017

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

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Introduction

On January 9 2018 the Competition Board published a reasoned decision dated September 27 2017(1 7-30/487-211) following its preliminary investigation into allegations by Doğtaş Kelebek Mobilya San ve Tic AŞ that Yataş Yorgan ve Yatak San ve Tic AŞ had violated Article 4 of Law 4054 on the Protection of Competition. The allegations concerned the claim that Yataş had, through its best price guarantee campaign, restricted competition by acting in cooperation with independent retailers or pressuring them with abusive pricing policies.

Doğtaş is a company active in various sectors, including furnishings, tourism and construction, while Yataş is active in the manufacture of beds, sofas and sofa suites in the furnishing and home textile sectors. Yataş owns five active brands, including ENZA HOME and YATAŞ BEDDING and is a public company exporting its products to over 45 countries.

Sector and market overview

The board's findings provide an overview of the furnishings sector and indicate that it is a traditional business, which includes a great number of family companies and ateliers. According to the Turkish Statistical Institute and the Turkey Association of Furniture Manufacturers, the sector comprises 29,346 producers and 32,382 retailers; therefore, there are approximately 61,728 firms operating in the furniture sector primarily concentrated around İstanbul, Ankara, Bursa and Kayseri.

The board found that undertakings operating in this sector can be grouped under the following categories:

- ▶ The first group includes concept stores with a wide target market and small-scale firms that do not pursue branding opportunities (also known as 'no-name' firms). It was found that although these entities do not generate a large turnover, they have the largest market share due to the number of stores.
- ▶ Alongside small-scale undertakings, a large number of undertakings operate in the furnishing sector off the record.
- ▶ The third group consists of undertakings with a well-known brand image in the furnishing production and distribution sector. Boydak Group is the market leader, closely followed by the Doğtaş-Kelebek Group, Yataş Group, Vanessa, Yatsan and Moda Life.

The board estimated that the total market share of the first two groups is approximately 65% to 70%.

The board found that Yataş's products consist of sofas, beds, sofa suites, modular furnishing and home textiles. Although its lower range products serve similar purposes to the other well-known

brands, they differ in terms of price, quality and conditions. The board indicated that while the relevant product market could be defined on a product-group basis – namely, beds, sofas, home textiles, modular furnishings and sofa suites – the best price guarantee campaign was not limited to a specific product group, but covered a wide range of products. The board ultimately left the relevant product market definition open, as such definition would have no effect on its assessment and defined the relevant geographical product market as Turkey.

Initial assessment

The allegations against Yataş concerned claims that the company had restricted competition through its best price guarantee campaign by acting in cooperation with its independent retailers or pressuring them with abusive pricing policies. The complainant asked the board to impose similar penalties to previous decisions concerning most-favoured-customer and most-favoured-nation clauses.

However, the board stated that the most-favoured-customer and most-favoured-nation clauses can be seen in context of vertical agreements regarding resale and between online platform retailers and their suppliers. It further stated that most-favoured-customer and most-favoured-nation conditions can restrict competition by giving rise to coordination, cartels and market entry barriers, but could also lead to positive outcomes, such as:

- ▶ the creation of efficiencies;☒
- ▶ the protection of trademarks; and
- ▶ the reduction of costs.

Nonetheless, the board noted that Yataş's best price guarantee conditions concerned the guarantee that its campaign prices would be the lowest price that it offered until the end of that calendar year. Therefore, the board concluded that the application in question fell under the scope of resale price maintenance rather than most-favoured-customer and most-favoured-nation practices.

Resale price maintenance from competition law perspective

The Competition Board report initially provides information on resale price maintenance from a competition law perspective and indicates that it may occur when a manufacturer directly or indirectly obliges a reseller to set a fixed, minimum or maximum price. Restricting the reseller from independently determining its own resale prices, therefore, would in turn fall under the scope of Article 4(a) of the Block Exemption Communiqué on Vertical Agreements 2002/2.

The board stated that it had, in previous decisions concerning similar content, adopted an effect-based and more flexible approach to its resale price maintenance analysis. In this regard, the board considered the following matters:

- ▶ why the undertaking concerned had engaged in resale price maintenance;❧
- ▶ the supplier's position and market power;❧
- ▶ the market structure and the density of intra-brand competition;❧
- ▶ whether resale price maintenance leads to the maintenance of a single price by suppliers or distributors within the market;❧
- ▶ whether there is an explicit unity of will between the suppliers or distributors regarding resale price maintenance; and❧
- ▶ the effects of resale price maintenance within the market.

Best price guarantee campaign

The Competition Board initially stated that Yataş's best price guarantee campaign was that the price offered under the price guarantee campaign would be the lowest price that it offered until the end of the calendar year in question. The board indicated that while an undertaking's resale price maintenance conduct can be evaluated under the scope of Article 4 of Law 4054 – pursuant to Article 5 of the same law – certain agreements could be exempt from Article 4 due to the efficiencies that may arise.

According to Communiqué 2002/2, the 40% market share threshold is among the conditions foreseen for vertical agreements to benefit from the block exemption. Thus, the board noted that Yataş competes in a market in which a great number of small-scale manufacturers and corporate brands (eg, Boydak, İstikbal and Mondi) are active. The board therefore determined that Yataş's market share in the relevant market did not exceed 40% and that its agreements with its distributors fell under the block exemption. However, the board noted that where an agreement includes any of the restrictions listed under Article 4 of Law 4054, including resale price maintenance, it is not covered by the block exemption.

The board found that 'it is possible that resellers will not be able to sell the relevant products for a price lower than the guaranteed price after the campaign period and therefore in actuality, the guarantee of the best price could result in the designation of a minimum price'. As a result of its evaluation, the board concluded that:

- ▶ no indication had been found that Yataş had intervened in resale prices through a best price guarantee campaign;
- ▶ resellers can sell products for prices different than those advised;| no documents had been found indicating that resellers had been punished for sales made with prices different to those advised;|
- ▶ competition was high among the different brands within the sector, as none of the undertakings had significant market power; therefore, the possibility of a best price guarantee resulting in resale price maintenance was slim;|
- ▶ Y a t a ş’s best price guarantee campaign aimed to prevent against:
 - ▶ the perception that the company sold expensive products in concept stores; and |
 - the negativity arising from the expectation of lower prices (specifically before wedding season) and a decrease or postponement of demand which caused a fluctuating demand |structure; and |
- ▶ although these justifications could not be categorised as reasonable grounds for price fixing that would eliminate infringement – due to market structure and no evidence of price fixing – the justifications were found sufficient to demonstrate Yataş’s intentions.

In light of the above, the board decided not to undertake a fully fledged investigation and held that Yataş’s actions had not violated Article 4 of Law 4054.