

COMPETITION LAW NEWSLETTER

This newsletter updates readers on the recent developments occurred in July 2024 in the competition market. It includes (i) the decision announced by the Turkish Competition Board (“**Board**”) regarding one of the investigations conducted on Google in relation Google’s various search features, (ii) important decisions settled by the European Commission (“**Commission**”) on several undertakings and (iii) other recent news.

1. Google General Search Investigation Decision

As mentioned in July and June editions of our Competition Law Newsletters, Google is being investigated by the Board for several allegations of anti-competitive behavior. The Board concluded that the economic entity comprised of Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited and Google Reklamcılık ve Pazarlama Ltd. Şti. (*altogether* “**Google**”) did not violate Article 6 of the Act No 4054 on the Protection of Competition (“**Act**”) by using its dominant position in the general search services market to obstruct the operations of other websites through some of the features it offered and abused its dominant position in the market.

The investigation examined the allegations that various search features offered on Google’s desktop and mobile search results page, including “videos,” “people also ask,” “translation box,” “sports box” and “weather box,” pushed websites further down on the search results page and caused them to lose traffic. The Board ruled that while Google held dominant position in the general search services market, it did not abuse its dominant position in the market, therefore, the Board did not impose administrative fines.

On the other hand, other investigations conducted by the Board against Google for favoring its own products/services in the advertisement technology supply chain, where it operates in a vertically integrated structure, via practices involving (i) directing the demand coming from demand-side platforms (DSPs) to its own supply-side platform (SSP) services, (ii) favored its own SSP (AdX) through its publisher ad server are still ongoing.

2. The Commission’s Decisions on Various Undertakings

2.1. Acceptance of commitments made by Apple Distribution International and Apple Inc. (“**Apple**”) regarding opening access to NFC technology.

The Commission has made Apple’s commitments legally binding to address antitrust concerns regarding its Near-Field Communication (“**NFC**”) technology used for contactless payments on iPhones. The Commission had raised issues about Apple’s refusal to grant 3rd party mobile wallet developers access to the NFC input on iOS devices, which is essential for contactless payments.

Apple's initial commitments that will apply to all developers in the European Economic Area ("EEA") and EEA-registered iOS users mainly include (i) providing 3rd party wallet developers with free access to NFC input on iOS devices, (ii) granting developers the right to use Host Card Emulation (HCE) for payments, which does not require Apple's secure element, (iii) implementing a fair, transparent procedure for granting NFC access, (iv) establishment of a monitoring mechanism and dispute resolution system to oversee Apple's compliance.

2.2. Investigation launched to Glovo and Delivery Hero (Online Food Sector)

The Commission has initiated a formal antitrust investigation to determine whether Delivery Hero and Glovo have violated EU competition rules by engaging in cartel behavior within the online food and grocery delivery sector in the EEA. Delivery Hero and Glovo, two leading food delivery companies in Europe, have come under scrutiny for potentially breaching competition regulation.

Delivery Hero, headquartered in Germany, is a company active in the food ordering and delivery business. It is currently present in more than 70 countries worldwide and partners with more than 500,000 restaurants. Glovo, headquartered in Spain, is a company active in the food ordering and delivery business. It is globally present in more than 1,300 cities in 25 countries. Delivery Hero acquired a minority stake in Glovo in July 2018 and took full control of it in July 2022. The Commission's investigation focuses on whether these companies engaged in anti-competitive practices prior to the full acquisition. Specifically, there are concerns that Delivery Hero and Glovo might have colluded by allocating geographical markets, exchanging sensitive commercial information (such as strategies, pricing, capacity, and costs), and potentially agreeing not to recruit each other's employees (no-poaching). These practices might have been facilitated by Delivery Hero's minority shareholding in Glovo.

If these allegations are confirmed, the companies will be found in violation of Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the EEA Agreement, which prohibit cartels and restrictive business practices.

The Commission's inquiry follows unannounced inspections at the offices of Delivery Hero and Glovo in June 2022 and November 2023, part of a broader investigation into possible collusion in the food delivery industry.

Additionally, this is the first time the Commission is investigating anti-competitive behavior related to a minority shareholding in a competitor. Comparatively, the Board, in its decision dated 16.06.2009 and numbered 09-28/600-141, imposed an obligation on Ereğli Demir ve Çelik Fabrikaları T.A.Ş. to divest its minority shares in Borçelik Çelik San. ve Tic. A.Ş. due to the likelihood of these shares giving rise to coordination.

2.3. Acceptance of commitments made by Vifor Pharma Ltd. ("Vifor")

The Commission has made legally binding a set of commitments offered by Vifor to address antitrust concerns related to its potential disparagement of an iron deficiency

DÜNDAR SIR

LAW FIRM

treatment called “Monofer” provided by a competitor. The investigation, which began in June 2022 following a complaint from Pharmacosmos (Monofer’s producer), focused on whether Vifor (which markets Ferinject) used misleading safety claims to undermine Monofer’s market presence.

The Commission preliminarily found that Vifor's conduct may have restricted competition in the market and potentially amount to an abuse of dominant position, in breach of Article 102 of the TFEU.

Vifor’s commitments include a campaign launch to correct misleading information about Monofer, including emails, mail, in-person meetings, and publications in medical journals as well as avoidance in external claims about Monofer’s safety unless based on official product labels or comparative clinical trials. The implementation of the commitments offered by Vifor will be monitored by a monitoring trustee appointed by Vifor and will last for a period of 10 years.

3. Other Recent News

The recent news on July is as below:

- An investigation is launched against Koroplast Temizlik ve Ambalaj Ürünleri Sanayi ve Dış Ticaret Anonim Şirketi (“**Koroplast**”) to determine whether Koroplast violated Article 4 of the Act by resale price maintenance.
- An investigation is launched against Abko İç ve Dış Ticaret Limited Şirketi (“**Abko**”) to determine whether Abko violated Article 4 of the Act by applying online sale restriction and resale price maintenance.
- An investigation is launched against İntema İnşaat ve Tesisat Malzemeleri Yatırım ve Pazarlama Anonim Şirketi (“**İntema**”) to determine whether İntema violated Article 4 of the Act by applying resale price maintenance and region/customer restrictions on its resellers or not.
- An investigation is launched against Otoyol İşletme ve Bakım A.Ş. (“**OİB**”) and ZES Dijital Ticaret A.Ş. (“**ZES**”) to determine whether (i) OİB and ZES violated Article 4 and Article 6 of the Act by their exclusivity practices in the market for charging network operation on O-5 highway, and (ii) OİB violated Article 6 of the Act by discriminating between undertakings in the market for charging network operation or not.

Should you have any inquiries, please do not hesitate to contact us.

Selim DüNDAR
Partner
sdundar@dundarsir.com

Dr. Faik Metin Tiryaki
Partner
fmtiryaki@dundarsir.com