
Adidas Cleared of Allegations Regarding Resale Price Maintenance and Discrimination

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Introduction

The Turkish Competition Authority (“TCA”) has launched numerous investigations into whether undertakings maintain their dealers' resale prices. These investigations include one launched into one of the most well-known sports product brands, Adidas Spor Malzemeleri Satış ve Pazarlama Anonim Şirketi (“Adidas”).

In this investigation, the TCA not only scrutinized whether Adidas had maintained the resale price but also examined whether Adidas had violated The Law No. 4054 on the Protection of Competition (“**Competition Law**”) with its discriminatory practices. In this regard, the reasoned decision regarding the allegations directed to Adidas (“**Decision**”) was published on 27 October 2022 on the official website of the TCA.[\[1\]](#)

Although the TCA concluded that there was no room for launching an investigation into Adidas regarding the aforementioned allegations, the Decision is still significant in terms of emphasizing the key points on determining the rightful behaviours that should be taken by undertakings to avoid engaging in violations such as resale price maintenance and discriminatory practices under the Competition Law.

Correspondences Analysed: No Violation

Following the TCA's launch of a preliminary investigation into Adidas after an allegation brought by one of its dealers (“**Complainant**”), the TCA experts conducted an on-site inspection at Adidas' company premises on 15 March 2022.

In the Decision, considering the correspondences examined during the on-site inspection, the TCA stated that:

- employees of Adidas had shared "Recommended Price Lists" with dealers on various dates, but as confirmed by the dealers, the relevant e-mails had not contained any statement that dealers should comply with these prices;
- the legal counsel of Adidas had opposed the restriction on online sales that had been planned

to be brought by Adidas Global, as the restriction was about the fact that Amazon would be asked to supply products exclusively from Adidas and that only authorized dealers who had been approved by Adidas would have been allowed to sell on Amazon;

- employees of Adidas had stated that it was not legally possible for Adidas to intervene in the (i) dealers' and, (ii) Trendyol's[2] sales prices, for the products directly purchased by Trendyol, at the brand day organized by Trendyol;
- the concept of "price equalisation" that had been used by Adidas employees in various correspondences, had referred directly to the common pricing strategy to provide price alignment in the company through the channels through which Adidas itself had sold directly; and
- although various dealers had expressed their discomfort with the low prices of Adidas branded products sold through Trendyol and other marketplaces, employees of Adidas had stated that they could not intervene in the prices of its independent dealers.

Also, the TCA assessed various agreements that had been concluded between Adidas and its dealers with different statuses. In this context, dealers who had made direct purchases and consignment sales had been differentiated. The TCA concluded that the contracts that had been signed by Adidas with (i) undertakings acting as franchise dealers, (ii) undertakings acting as wholesale dealers, and (iii) e-marketplaces did not constitute resale price maintenance within the scope of the Competition Law.

In these agreements, it was stipulated that Adidas could only make a recommendation about resale prices and determine the maximum resale price of the products. Additionally, the TCA stated that the findings collected during the on-site inspection illustrated that Adidas had been sending its campaign price lists to franchise dealers to inform them and had not provided any additional benefits to the dealers who set their prices in line with the list.

Considering the content of these agreements, the TCA concluded that the agreements regarding direct purchases did not include any provision that could be regarded as a restriction on the resale prices of the dealers of Adidas, and these dealers had the capability to establish their pricing strategy independently.

On the other hand, in the scope of the consignment sales, as the product's ownership still belonged to Adidas, the TCA emphasized that the violation of "resale price maintenance" was not possible in this type of sale.

Different Statutes Different Rules: No discrimination!

Another claim scrutinized in the Decision was that Adidas had disallowed the Complainant to print the domain name of its commercial website on paper bags provided for store purchases while permitting the same behaviour of its dealers, whose operations also had contained sales of other brands, such as Koray Spor, Yalçın Spor, Yalı Spor, and Barçın Spor.

In this regard, the TCA stated that Adidas' unilateral actions did not fall within the scope of Article 4 of the Competition Law, but relevant behaviour should be evaluated under Article 6, which deals with the abuse of dominant position by undertakings in the relevant market. As stated by the TCA, a behaviour can constitute a violation under Article 6 of the Competition Law only if (i) the relevant undertaking has the dominant position in the market and (ii) its behaviour has an abusive nature. Subsequently, the TCA only scrutinized whether the second criterion had been met with respect to Adidas, as the absence of one of these criteria was enough to determine that there had been no violation under Article 6 of the Competition Law. Consequently, the TCA did not find it necessary to, and therefore, not examine whether Adidas had been holding a dominant position in the relevant market since no abusive behaviour was determined within the Decision.

As stated in the Decision, for a discriminatory practice to occur within the meaning of Article 6 of the Competition Law, the following conditions must be met: (i) the buyers must be of equal position, (ii) with the same and equal rights in the obligations and duties; and (iii) different conditions must be applied for these same and equal rights. However, the TCA stated that Adidas had dealers in different distribution channels with different statuses.

The TCA assessed the claims in question and determined that the franchisees, of which the Complainant was a part, and the other Adidas dealers had operated under a distinct business manner. In the Decision, it was determined that Adidas had not had an exclusivity agreement with any dealer other than Adidas stores operating within the scope of the franchise agreement, whereas wholesale dealers had been able to work with brands other than Adidas and some wholesale dealers had even operated stores for other brands. Therefore, the TCA underlined that those franchised dealers had had a unique status. Adidas had sought to develop a uniform distribution network through these dealers and provided certain criteria for them to provide uniformity. Furthermore, undertakings named "Barçın Spor," "Yalı Spor" and "Koray Spor" had been under the wholesale channel of Adidas and sold many other brands in their portfolios. Thus, it was concluded that they could not be regarded as having the same status as the Complainant.

In this regard, the TCA determined that Adidas's behaviour did not constitute discrimination since it had involved franchisees of different statuses. Therefore, the TCA concluded that there was no room for launching an investigation against Adidas since there was no concrete information or documentary evidence that Adidas had discriminated among its dealers.

Conclusion

The TCA scrutinized allegations against Adidas regarding resale price maintenance and discriminatory practices. Consequently, it was determined that the findings obtained from Adidas during the on-site inspection were insufficient to prove resale price maintenance.

Also, regarding the allegedly discriminatory practices, positive discrimination carried out on behalf of wholesale dealers of Adidas, was evaluated. The TCA found that the wholesale dealers offered many other brands in addition to Adidas brand, but franchisees only offered Adidas brand products.

Accordingly, the TCA determined that Adidas' establishing different rules for dealers of different statuses could not be construed as a discriminatory practice under the Competition Law.

Therefore, the TCA concluded that Adidas had not violated Article 4 and Article 6 of the Competition Law through its practices, and there was no room for launching an investigation into Adidas.

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[\[1\] TCA decision dated 21.04.2022 and numbered 22-18/300-133](#)

[\[2\]](#) Trendyol, a subsidiary of Alibaba, is an allegedly dominant online marketplace in Turkey.