
Investigation into the Small Household Appliances Sector Concluded with Settlement Procedure!

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INTRODUCTION

The Turkish Competition Authority (“TCA”) initiated a full-fledged investigation (“**Investigation**”) against Korkmaz Mutfak Eşyaları San. ve Tic. A.Ş. (“**Korkmaz**”), Gençler Ev Araç ve Gereçleri Pazarlama Tic. A.Ş. (“**Gençler**”) and Punto Dayanıklı Tüketim Malları İth. İhr. Tic. Ltd. Şti. (“**Punto**”). These companies operate in small household appliances and kitchen tools sectors. The purpose of the investigation was to determine whether these undertakings had violated Article 4 of Law No. 4054 on the Protection of Competition (“**Competition Law**”) via maintaining their resellers’ resale prices and Korkmaz’s adopting customer restrictions to its resellers. In the previous days, the TCA announced with its reasoned decision dated 10.11.2022 and numbered 22-51/754-313 (“**Decision**”) that the said investigation was concluded by the TCA through the settlement procedure.

The TCA found that Korkmaz, Gençler, and Punto had violated Article 4 of the Competition Law through their practices classified as resale price maintenance; however, Korkmaz’s actions, targeted to implement customer restriction, did not constitute a separate violation but were the nature of subsidiary practices of “*resale price maintenance*.” Therefore, the TCA levied administrative fines on all of the parties calculated in accordance with the relevant provisions of the Competition Law by classifying the said violation under “other violations.” A reduction of 25% was applied to the parties as a result of the settlement procedure.

The decision is of importance as it is one in which the settlement procedure was applied by each undertaking party to the investigation.

1. The TCA Found that Resale Price Maintenance Practiced by Korkmaz and Its Distributors

In the Decision, the TCA first explained the commercial relationship between the undertakings that are parties to the investigation. As a supplier, Korkmaz conducted wholesale and retail sales activities by (i) two distributors named Gençler and Punto, (ii) Korkmaz's dealers through its regional managers, and (iii) Korkmaz's own sales points called "Korkmazstore" under a franchise

model.

Considering the documents submitted by the complainant and gathered during the on-site inspections, the TCA determined that:

- Korkmaz, Gençler, Punto, and their regional managers intervened in the resale prices of their dealers;
- these interventions generally were aimed at raising the low retail price level; and
- in the event that these interventions are ineffective, the relevant dealer is subjected to various sanctions.

As a result of the examinations carried out at the parties to the investigation, the TCA concluded that Korkmaz and its distributors intervened in the prices set by their dealers, in particular in their online sales. In this respect, the TCA stated that Korkmaz, especially, had monitored the prices of its dealers' internet sales on various online marketplaces and warned those who sold below the prices they had determined.

As stated in the Decision, Korkmaz's intervention in the prices of resellers and subjecting them to certain sanctions mostly due to its disturbance stemmed from the fact that resellers sell at lower prices over the internet. Therefore, Korkmaz monitored and intervened in the prices of the online sales of its dealers. In this regard, some of the findings (from WhatsApp messages and e-mail correspondences) obtained during the on-site inspections that show Korkmaz's aim to maintain its resellers' prices were as follows:

- *"(...) broke the prices. He will not work anymore. It is even forbidden to discuss this issue with (...)."*
- *"Everyone should check the customer prices and those that don't comply should receive serious warnings. All kinds of sanctions will be applied, from product locking^[1] to account closure."*
- *"Everyone intervenes, these products are closed to the dealer that broke the prices^[2] for three months."*

Taking into account these findings, the TCA concluded that various sanctions had been applied to dealers that had disregarded Korkmaz's price directives, such as cancellation of their dealerships, not selling them products, and not allowing them to benefit from campaigns. In addition, Korkmaz gave instructions to its distributors to apply these sanctions to the dealers if necessary. Furthermore, the TCA stated that the distributors also had been threatened with such sanctions if they failed to meet their dealers' prices at the stipulated levels.

The Decision also evaluates that some of Korkmaz's actions may be considered online sales bans and customer restrictions. For example, the TCA stated that Korkmaz had required its dealers to obtain an authorization certificate to sell on the Internet and ensured that only those dealers who did not "break price" could obtain this authorization certificate. In addition, Korkmaz had imposed bans on wholesale sales under the contracts it had concluded with its dealers. However, the Decision

stated that this prohibition had been implemented by the dealers to prevent price distortion. Therefore, both practices had been evaluated within the scope of violation of a resale price maintenance. Furthermore, the Decision states that Korkmaz had engaged in conduct constituting resale price maintenance in terms of offline sales, too.

The contracts concluded by Korkmaz with its distributors and dealers included provisions that directly determined the resale prices of the resellers. As per the relevant contract provisions, the dealers and distributors were prohibited from selling at retail prices other than those determined by Korkmaz. In addition, the parties agreed that the dealers could not sell at different price levels on the internet. The contract also stipulated that certain sanctions such as penal clauses would be imposed on the resellers in case of non-application of the said provisions.

Consequently, the TCA determined that Korkmaz had violated the Competition Law by (i) inserting provisions in the agreements concluded with its resellers and (ii) establishing a maximum discount rate, accompanied by threats of penalties such as product locking or agreement termination if the resellers did not comply with Korkmaz's specified prices.

The Decision also states that Korkmaz's distributors, Punto and Gençler, were also responsible for the said violation. This was justified by the fact that these undertakings had acted as intermediaries in the maintenance of the resale prices of their affiliated re-sellers in line with Korkmaz's request.

2. Settlement Procedure in Trend: 25% Reduction for the Parties

Subsequent to the evaluations regarding the violations of the parties under investigation, the TCA declared its findings and decisions regarding the calculation of fines to be imposed on the said parties. In this regard, the TCA stated that Korkmaz, Punto, and Gençler had applied for settlement while the investigation was ongoing. The TCA later stated that as a result of the settlement procedure, a reduction of 25% was applied to the parties in the range of administrative fines levied on them.

It is noteworthy that the TCA did not find any mitigating factors regarding Korkmaz, while it did for Punto and Gençler. The TCA justified that as these companies derive their entire turnover from the sale of Korkmaz products, it is critical for them to act in line with Korkmaz's instructions to sustain their economic activities. The imposition of sanctions on Korkmaz's distributors who did not follow Korkmaz's instructions demonstrated the dependence of these undertakings on Korkmaz; therefore, a mitigating factor reduction was made in the fines imposed on Punto and Gençler.

CONCLUSION

In recent years, the TCA has started a series of investigations into industries that directly impact consumers' lives. One of these industries is the household appliances sector. Several recent investigations (both ongoing and concluded) have been launched against the undertakings operating therein.^[3] The relevant decisions mostly have been concerned with the restriction on online sales and

resale price maintenance allegations as in the Decision regarding Korkmaz, Punto, and Gençler.

The Decision is of significance as including explanatory examples regarding the violation of resale price maintenance in the small household appliances sector. The comprehensive evaluation of the implementations of Korkmaz and its distributors against their dealers is taken into account as enlightening guidance for the member of the said sector. Furthermore, the TCA's acceptance of the applications for a settlement procedure by all parties to the investigation and reduction of their fines were reduced by the maximum rate shows that the applicability and popularity of the settlement procedure are on the rise.

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[1] This term means stopping the supply of products to the relevant dealers.

[2] This term means selling at a price under the price determined by Korkmaz.

[3] These decisions include the followings;

- Miele Elektrikli Aletler Dış Ticaret ve Pazarlama Ltd. Şti. (dated 10.11.2022 and numbered 22-51/753-312),
- BSH Ev Aletleri Sanayi ve Tic. A.Ş (dated 08.09.2022 and numbered 22-41/579-239)
- Türk Philips Ticaret A.Ş. and its distributors (dated 05.08.2021 numbered 21-37/524-258),
- Arçelik Pazarlama A.Ş. and Vestel Ticaret A.Ş. (dated 02.01.2020 and numbered 20-01/13-5)
- Arnica Pazarlama A.Ş. (dated 30.09.2021 and numbered 21-46/671-335)
- Groupe SEB İstanbul Ev Aletleri Ticaret A.Ş. and İlk Adım Dayanıklı Tüketim Malları Elektronik Tekstil İnşaat ve İletişim Hiz. San. Tic. Ltd. Şti. (dated 04.03.2021 and numbered 21-11/154-63)

