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The Fast-Moving Consumer Goods ("**FMCG**") retailing sector is one of the most important areas under the TCA's focus due to its structure and key role in the economy. The TCA regularly monitors the sector with sensitivity and follows developments in the sector. In this context, following the publication of the Final Report on the Turkish FMCG Retailing Sector Inquiry dated 24 May 2012 ("**2012 Sector Report**"), the first sector inquiry into the FMCG retailing sector, the TCA decided to conduct a new sector inquiry for FMCG retailing with its decision dated 16 February 2017 and numbered 17-07/73-M. The inquiry took into account the structural changes in the sector and possible future acquisitions. Accordingly, the Preliminary Report on the Turkish FMCG Retailing Sector Inquiry ("**Preliminary Report**") was published on the TCA's website on 5 February 2021. Later, the Final Report on the Turkish FMCG Retailing Sector Inquiry ("**Report**") was published on 30 March 2023.

The Report addresses issues such as the structure and development of the sector, the effects of the digitalisation process (taking into account the Covid-19 pandemic) on FMCG retailing, definitions of the relevant product and geographical market, which are important in the TCA's investigations into competition violations and merger and acquisition transactions regarding FMCG retailing. It also examines notification thresholds in mergers and acquisitions, the buying power of organised retailers against suppliers, regulations in Turkey and other countries regarding unfair trading practices, competition law legislation in terms of buyer power, and special-weight products.

In the preparation of the Report, the TCA requested information and documents from many undertakings, associations of undertakings and public institutions, including organised food retailers, suppliers, research companies, undertakings providing online market services and internet-based commercial platforms.

1. The Market Has Undergone a Transformation from Traditional to Organised but the Traditional Retail Channel Maintains its Importance in the Market

The Report states that the traditional retail channel consisting of grocery stores, kiosks, and unorganised small markets maintains its dominance in Turkey, while organised HTM retailing has developed over the years with the contributions of regional and local retail chains.

The analysis of the growth of the FMCG retailing market in terms of turnover and number of stores on an annual basis for the period 2019-2021 concludes that:

- both traditional and organised retail channels have grown in terms of turnover;
- the shrinking of the traditional channel in terms of the number of stores, the FMCG retailing market also has grown in terms of the number of stores due to the growth of the organised channel;
- in the last three years, the share of the organised channel has increased both in terms of turnover and number of stores; and
- by 2020, the share of the organised retail channel in the FMCG retailing market on a turnover basis surpassed that of the traditional retail channels.

In the same period, when the size of the FMCG retailing market is analysed according to the size of the store sales area, it is noted that the traditional channel maintains the highest share in terms of both turnover and number of stores, while discount markets (m2<400) have realised the highest growth. In terms of discount markets. The Report also notes that the number of stores in Turkey increased from approximately 6000 in 2011 to 31,000 stores in 2021 and that these numbers continue to rise. The number of stores in 2021 increased by 3400 compared to the previous year and grew by 12%. As the number of discount markets has increased rapidly in the last decade, it is assessed that private-label products should be addressed separately as this increase indicates an increase in the share of these products in the market.

The TCA assessed the market shares and concentration ratios of the undertakings in the market to gain a general overview of the market and determined that the concentration ratios of the four leading retailers in the sector (namely BİM, A101, Migros and ŞOK) were close to 60% of the FMCG retail market as of 2019, considering the course of the 2019-2021 period.

At this point, the Report highlights leading players in the market. To provide information on the market structure, A101, BİM, and ŞOK, the three major players operating in the FMCG retailing market, serve as discount markets. With 11227 stores, A101 is the leading retailer in terms of the number of stores, while BİM is the sector leader in terms of turnover. Migros operates in a hypermarket/supermarket format and is one of the four leading players in the market, together with discount markets. Carrefoursa operates similarly in the hypermarket/supermarket format but lags behind Migros in terms of the number of stores and turnover. Metro, a global retailer, operates as a wholesale retailer in Turkey and is behind other players with 37 stores.

Moreover, the Report emphasises the importance of the fact that merger/acquisition transactions do not contribute to the growth of discount markets, whereas national chain markets grow in the market through merger/acquisition transactions in addition to new store investments.

The Report notes the high entry barrier in the organised retail market due to the expansion through acquisitions and the addition of new locations by chain markets, as well as the lack of large-scale new entries in recent years. It also states that the increase in the concentration level of the market can be explained by the fact that both domestic and foreign capitalised markets of significant size have exited the market over the years and new entries in the market have been few.

The Report furthermore notes that regional/local food retailers have an important share in the development of the FMCG-organised retail market, and although these retailers have an important place in competing with national chains, regional/local chains fall behind national chains in terms of criteria such as number of stores and market share in the face of the development of national retailers as the market transforms from traditional to organised.

2. Digitalisation in FMCG Retailing Accelerates, Bringing Changes to the Market Structure

The TCA drew attention to the acceleration of digitalisation in FMCG retailing, which has led to changes in the market structure. The Report, states that the e-commerce volume of the "food and supermarket" category in Turkey grew by 250% in 2020 compared to 2019, and the ratio of online retail to total retail volume in Turkey was 6.2% in 2019, which indicates a growth of more than 100% compared to the previous four years.

It is also mentioned that (**i**) the rise of online (internet-based or online) food and FMCG retailing and (**ii**) multi-channel marketing and omnichannel marketing strategies are the key transformations in the digitalisation phase.

The Report also includes evaluations specific to Turkey, stating that the commercial ecosystem, which can be referred to as the digital FMCG retailing sector, has grown substantially with the Covid-19 pandemic and the use of online sales channels for FMCG products by consumers has spread at a much faster pace compared to the past.

Accordingly, it is determined that in 2021, sector players started to use online sales channels more actively in addition to physical sales channels (store and wholesale) compared to 2020, and in this context, online sales channels accounted for almost 3% of total sales in the FMCG organised retail sector as of 2021. However, as the limited number of organised retailers in the sector currently does not generate any commercial gain through online sales channels and the share of the turnover generated from online sales channels in total turnover remains quite small, the main sales channel of the sector is still the physical retail channel. The Report also states that the fact that the adoption of online sales channels requires a certain period of time provides a prediction that the commercial weight and importance of these channels will increase considerably in the future.

As part of the preparation of the Report, the undertakings also were requested to assess the competitive effects of online sales in the sector. In summary, it is concluded that internet-based sales channels affect the competitive structure in the sector and that these effects are expected to increase in the future.

The Report states that online sales channels in the sector gained much more importance during the pandemic period, and it is predicted that if the changes in the behavioural patterns of consumers remain permanent, these channels will maintain their importance and retailers will increase their sales in these channels even more in the future.

The Report also focuses on whether online trade platforms are considered competitors within the framework of the FMCG retailing sector. In this context, based on the responses of the undertakings consulted, the Report assesses that there may be a competitor relationship between platforms and organised FMCG retailers, especially for products in the categories of "*personal care and cosmetics,*" "*packaged/durable food,*" and "*hygiene, cleaning and health.*" In this context, it is emphasised that it would be much more accurate to conclude that there may be competitive links for certain products rather than establishing a (full) competitor relationship directly between e-marketplaces and organised retailers. This is because it is not possible to position both business models or sales channels as substitutes or alternatives for consumers for certain products due to the large and multi-product structure of the FMCG sector.

In addition, the Report also includes assessments of "dark stores," another business model that has become more prominent due to the pandemic. The importance of dark stores for the organised FMCG retailing sector also was expressed by the undertakings operating in this sector. In this context, undertakings have commented that organised FMCG retailers feel the most significant competitive pressure, especially on their business activities through online sales channels from undertakings with this business model.

The Report states that as of 2021, total digital sales in the FMCG channel reached a commercial size of approximately TRY 15 billion (approx. EUR 1.44 billion[1]). However, although the size and development of the sector have made remarkable progress in recent years, the commercial share of this area in organised retail remains limited. In 2021, the ratio of the size of the commercial ecosystem that can be referred to as the digital FMCG retailing sector compared to the organised retail segment of the FMCG retailing sector is estimated to be approximately 7%. However, considering that this ratio was around 1% in 2018, it is emphasised that the growth power and potential of the relevant ecosystem are extremely important.

Finally, the Report states that while the reflections of digitalisation in the industry on competitive dynamics and balances of competitors should not be ignored in competition analyses, it is crucial to define or evaluate these reflections under the specific conditions of each concrete case.

3. No Need for Lower M&A Notification Thresholds in the Sector

In the Preliminary Report prepared within the scope of the said sector inquiry, it was assessed that the notification thresholds for mergers and acquisitions could be re-determined on a sector-specific basis.

On the other hand, the Report states that the 2012 Sector Report concluded that no artificial growth in the sector through acquisitions had occurred. The introduction of a sector-specific turnover threshold had not been deemed necessary since there was growth specific to the sector in general, that very few of the approximately 20 transactions examined between 2013 and 2020 were intervened, and the growth in the sector through acquisitions is not at a level to cause concern.

Also, it is underlined that with the introduction of the test of a substantial lessening of effective competition in the merger and acquisition control regime in Turkey, the possibility of prohibiting even lower concentrations compared to the dominant position test has arisen and the TCA has adopted a narrower geographical market definition approach in its recent decisions in terms of acquisitions in the FMCG retailing sector compared to its previous decisions.

In this framework, it is stated that the fact that the acquisitions made by the same undertaking in the same relevant product market in the last three years are considered as a single transaction for the calculation of the turnover can eliminate the concerns regarding the examination of below-threshold acquisitions made by the first four undertakings in the sector. Also, the fact that the relevant geographical market is evaluated at the local level or according to store sizes in the merger and acquisitions in the relevant sector allows for a detailed examination of acquisitions.

Finally, the Report expresses concern that lower turnover thresholds for the sector as a whole would reduce the effectiveness of mergers and acquisitions between relatively small retailers, hinder the growth of these undertakings and prolong the transaction processes. It concludes that there is no need to lower the merger and acquisition notification thresholds, specifically for the retail sector.

4. Effects of Buyer Power in the Sector

Although the Report states that the retailer's ability to provide products at more affordable prices may enable final consumers to access products at more affordable prices, it emphasises that the ability of buyer power to be reflected to consumers as better prices depends on the size of the buyer's power at the retail level. In this context, it is assessed that if the competition in the market in which the buyer operates is intense, the likelihood of discounts being reflected to consumers would increase; otherwise, discounts may not be reflected to consumers. Considering that supermarkets' market power at the retail level and buyer power at the supply level reinforce each other, it is stated that market/retailer power and buyer power do not arise independently of each other.

The effects of buyer power on suppliers and consumers are listed in the report as follows:

For Suppliers	**For Consumers**
Additional costs such as listing and shelf fees create additional costs for suppliers.	Price pressure on suppliers may endanger the continuity of supply and reduce product range over time.
In cases where suppliers refuse to offer low prices or provide concessions, there is a possibility that these suppliers may not be included on the shelf.	Additional costs charged to suppliers may lead to higher prices in the long run.
Delayed payments have a negative impact on	The increased availability of private-label

the. cash flow of suppliers.	products and the de-listing of branded products may limit product range and consumer preferences.
Reflecting extra and unanticipated costs to the supplier creates financial uncertainty.	
Additional costs and discounts may increase the costs of other competitors at the retail level.	

It is also stated that buyer power is more effective on small suppliers and local suppliers, while it is limited for suppliers with market power or those operating worldwide. In FMCG retailing, the most prominent buyer power-driven practices were found to be additional costs charged by retailers to suppliers under various names to gain advantages such as market share and turnover increase, inventory reduction, new product introduction and contribution to brand awareness.

In the report, it is noted that another issue affecting the determination of buyer power is the ability of retailers to change suppliers in a reasonable time. In this context, it was assessed that while there are three or four supermarkets and a concentrated market shaping the retail level, there are thousands of producers and a fragmented market structure at the supply level; therefore, retailers have significant bargaining power against suppliers and can change their suppliers easily.

4.1. Private-Label Products as a Source of Buyer Power in FMCG Retailing

In the report, private-label products are considered as another source of buyer power in FMCG retailing. In terms of these products, retailers are also competitors against suppliers. Therefore, suppliers produce their own brands on the one hand and private-label market brands on the other hand, which are offered for sale at more affordable prices.

As a result, it is assessed that the interests of suppliers and consumers are affected by buyer power in relation to each other and that the use of the advantages of buyer power only in favour of supermarkets is to the detriment of suppliers and consumers.

The report also notes that the most important factor affecting the development of private-label products and the growth of this channel is that these products have an impact on consumer habits over time and play a loyalty-enhancing role. With the increase in the number of stores of discount markets, the feature of being easily accessible has come to the forefront and thus continues to develop.

On the effects of private-label products on vertical competition, two views are expressed: (**i**) that a reduction in the prices of private-label products will lead to a reduction in the prices of national brands that compete with them and consumers will benefit; and (**ii**) that the market power of private-label producers will lead to a "waterbed effect" for relatively small competitors, meaning they will be able to supply products at higher prices. In addition to the effects on prices, it is also noted that there is a risk that an increase in the number of private-label products may reduce innovation in the long run.

While the market share of private-label products is increasing, the sales of national-branded products are decreasing and the profits of producers from their own products are declining, which may lead to an upward concentration at the production level and limit competition in the long run. Given the limited shelf space, it is assessed that branded products gradually will fall behind private-label products and that the lack of shelf space for suppliers' branded products will lead consumers to have fewer options in terms of product range and quality, limiting consumer preferences. Moreover, it is stated that some powerful firms producing private-label products may use their market power in the downstream market to prevent branded products from accessing shelf space and hinder competition. Therefore, it is determined that the concentration of producers on private-label production reduces the development and availability of branded products.

According to the Report, while the turnover of private-label products in Turkey is around 20% of the total sector turnover, this rate is 31.5% in Europe and 16.3% in the world. As the share of private-label products in Europe has remained at the same level for the last four years and Turkey's growth rate in this category is considered, the share of private-label products is expected to reach the European level within a few years. At this point, the difference of opinion between retailers and suppliers is emphasised. Accordingly, retailers argue that introducing quotas and similar practices on the sale of these products would be an artificial intervention in the sector, while suppliers argue that private-label products should be kept at levels that do not hinder the development of branded products.

4.2. Regulations Needed to Prevent Abuse of Buyer Power in FMCG Retailing

In the Report, it is determined that both the market share and the buyer power of the undertakings operating in the field of FMCG retailing have increased significantly and that regulations are necessary to prevent the abuse of buyer power.

First, it is noted that unfair trading practices typically arise where one party to the contract is strong in terms of bargaining power, and in such cases, the weaker party is unable to terminate the commercial relationship because it cannot find an alternative or it would be costly to change commercial partners.

Although the effects of these unfair trading practices are difficult to measure concretely, they are thought to impact investment and innovation negatively. In addition, last-minute cancellations of orders and failure to make on-time payments to suppliers can affect the financial position of suppliers and lead to a negative financial impact on these undertakings. Although there is no law or a uniform legal framework that directly covers unfair trading practices in Turkey, it is stated that provisions in various laws address some types of unfair trading practices.

However, it is determined that these provisions are insufficient to solve the problems in the sector.

In this context, the TCA believes that the European Commission's Unfair Trading Practices Directive[2] ("**Directive**"), the Ombudsman System in the UK, and the Australian Competition Authority ACCC's Perishable Agricultural Goods Inquiry[3] should be examined in relation to the regulation of buyer power.

In this context, to prevent the aforementioned unfair trading practices, the Directive emphasises asymmetric bargaining power and prohibits retailers from requiring suppliers of ten trading practices in the blacklist (unilateral contract modifications by the buyer, commercial retaliation by the buyer, short notice cancellation of perishable foods, etc.); and stipulates that the six practices in the grey list (listing, payment of shelf and stock fees by the supplier, return of unsold products, payment by the supplier for marketing, etc.) can be included in bilateral agreements and supply contracts only by explicitly stipulating them.

The Directive stipulates that, if necessary, a new public body or authority should be established and complaints should be investigated by this public body or authority with a confidentiality request. Suppliers will thus be able to lodge complaints as they wish without the dilemma of being "*penalised*" by retailers that they already face.

It is also stated that in the UK, the Supermarket Ombudsman,[4] established in 2013 to ensure that retailers treat their suppliers fairly, encourages retailer compliance with the Groceries Supply Code of Practice,[5] monitors compliance with the code, and imposes sanctions when necessary.

The ACCC's Perishable Agricultural Goods Inquiry emphasised the need for a prohibition of unfair trading practices and suggested that the Directive could be used as a model. In addition, it recommended (**i**) strengthening the framework for unfair business-to-business contract terms, (**ii**) strengthening the Food and Grocery Code, and (**iii**) taking measures to increase price transparency in the sector.

4.3. Call for Buyer Market Share Threshold and Incentives to Promote Competition

The Report notes that Turkish competition law currently does not include a buyer market share threshold in addition to the supplier market share in the assessment of whether a vertical agreement benefits from a block exemption. In this context, it is stated that the buyer market share threshold may be added to the legislation due to the increase in the buyer power of retailers.

Furthermore, it is emphasised that the development of the ability of other small and local retailers to compete effectively against the buying power of large chain markets, especially discount markets, will contribute to increasing the level of competition in the sector. It is suggested that a number of incentive policy instruments be implemented to encourage small and local retailers to enter into various agreements or practices. These instruments can be listed as follows: (**i**) encouraging purchasing associations that will enable small/local retailers to purchase products at more affordable prices, and granting exemption under Article 5 of the Competition Law to agreements and decisions forming such associations; and (**ii**) encouraging local retailers to produce private-label products through various associations, and granting exemption under Article 5 of the Competition Law to such agreements.

5. Case-by-case Assessment for Chinese Wall Needed

The Report states that anti-competitive behaviour between undertakings, especially through the exchange of competition-sensitive information regarding private-label products, has the potential to lead to serious consequences such as higher prices in the short run and fewer choices and lower quality product range for consumers in the long run. Accordingly, it is stated that potential information exchanges that may have anti-competitive effects regarding private-label products should be handled with an extremely sensitive approach under competition laws. In this context, the practice of "*building a wall*" on the communication channels between the relevant (purchasing) units or business lines of undertakings, referred to as the "*Chinese Wall*," has been evaluated to limit or completely prevent potential competitively sensitive information exchanges between private-label product producers and retailers.

In this context, to prevent competitive concerns, it is stated that a Chinese Wall practice that may separate the relevant purchasing units of both markets and producers may be considered. It is also pointed out that the implementation of such a practice for the entire sector may be extremely complex and elaborate, considering the depth of the commercial and economic relationship network between the undertakings, the legal limits of the subject matter, and the operational dynamics of the undertakings. As a result, the Report concludes that a case-by-case assessment should be made by monitoring the circumstances of the concrete case and the competitive dynamics of the sector to determine whether the Chinese Wall is necessary or not.

6. Concerns Over Sale of Special-weight Products and Possible Regulations to Prevent Consumer Misperception

The Report also examines special-weight products that do not differ from the original weight products in terms of active substance, content or recipe, but are sold at a different weight than the standard weight. In this context, although suppliers are not prevented from selling producer-branded products to other markets, it is found that certain weights of some producer-branded products can be sold only in one market.

It is also stated that the types of special-weight products sold in 2018-2021 and the share of these products in total turnover increased in general. Although special-weight products do not currently occupy a significant share in the turnover of undertakings, it is pointed out that a de facto exclusivity claim may be raised as a result of the increase in the number of such products over time.

The report suggests that the sale of a product of a certain brand, sold in the market with the usual weight and price, in the same packaging but with a lower weight and lower price also may mislead the consumer. At this point, it is stated that the fact that these products, which are sold with special production, may be perceived as discounted by the consumer, but are actually lower priced, may be due to the lower weight of the product and this may cause the consumer to perceive that these markets are cheaper than local markets. In this context, considering the current market power of the markets, it is argued that the concentration in the market should be prevented from further increasing due to a possible misperception of the consumer, and for this reason, regulations should be made to ensure that the sale of products produced in special weights is ceased.

7. Regulatory Proposals and Conclusion

A number of regulatory proposals are included to address the competitive concerns addressed in the Report, especially for unfair trading practices:

Prohibition of (**i**) payment terms exceeding 30 days for perishable agricultural and food products, (**ii**) payment terms exceeding 60 days for other agricultural and food products, (**iii**) short notice of cancellation for perishable food products, (**iv**) unilateral contract modifications by the buyer, (**v**) payment requests not related to the transaction, (**vi**) transfer of the risk of lost and spoiled goods to the supplier, (**vii**) failure to provide written consent to the supply contract by the buyer despite the supplier's request, (**viii**) misuse of trade secrets by the buyer, (**ix**) commercial retaliation by the buyer, and (**x**) transfer of the cost of reviewing consumer complaints to the supplier.	To have a regulation that (**i**) prohibits the return of unsold products, payment of listing, shelf and stock costs by the supplier, payment by the supplier for promotion, payment by the supplier for marketing and advertising, payment by the supplier for advertising, or (**ii**) stipulates that retailers may demand payment from the supplier on these issues only if there is a clear provision on the subject in the contracts between the parties.	Administrative fines to be imposed for the prevention of unfair trading practices should (**i**) be of a deterrent nature, (**ii**) continue until the violation is terminated, (**iii**) be based on the turnover of the undertaking to ensure deterrence, and (**iv**) there should be the possibility to increase the fine in case of repetition of violation.

The proposals in the Report are not limited to unfair trading practices. It is also stated that, with respect to new store openings, retailers within the same economic unity may be prohibited from opening a second branch within a specified distance and these undertakings may be prevented from making an acquisition within the same distance. The Report also includes proposals for discounted products and special-weight products to prevent misperceptions among consumers.

To sum up, the Report highlights crucial concerns with its proposals for regulation, emphasising its significance. Additionally, the part on digitalisation and the conclusions on the consequences of digitalisation on market dynamics are equally significant. Lastly, a notable takeaway from the Report is that there is no justification to lower the merger and acquisition notification thresholds specifically for the sector.

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[1] The EUR figures in this article, are converted using the Central Bank of Turkey's average buying exchange rate. This rate is EUR 1= TRY 10.47 for 2021

[2] Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0633

[3] https://www.accc.gov.au/inquiries-and-consultations/finalised-inquiries/perishable-agricultural-goods-inquiry-2020

[4] OECD (2013), Policy Roundtables Competition Issues in the Food Supply Chain, s. 377. https://www.oecd.org/daf/competition/CompetitionIssuesintheFoodChainIndustry.pdf

[5] https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice