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BSH and Arçelik:
Turkey's Competition Board Sets
the Rules for Online Sales Restrictions

Turkey's Competition Board (the "**Board**") rendered two significant decisions¹ last year concerning online sales restrictions that provide a view forward for many undertakings. In its decisions, the Board scrutinised the commitment packages offered by BSH and Arçelik, two of the major small and large household appliances manufacturers in Turkey. The investigations against the companies (the "**Investigations**") concerned whether Arçelik and/or BSH violated Article 4 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") by preventing their authorised resellers from selling online and/or interfering with resellers' resale prices. The Board accepted the commitment packages, which Arçelik and BSH revised after an initial review of the Board, and thus closed the Investigations with respect to the online sales restrictions contemplated by Arçelik and/or BSH.

A. Competitive Concerns Relating to the Investigations

Regarding the parties to the Investigations, BSH carries out its activities in the market of large and small household appliances under many recognised brands such as Bosch, Siemens and Profilo, while Arçelik is active in the markets of consumer durables, consumer electronics and small household appliances, trading under various brands (e.g., Beko, Arçelik, Grundig). Due to exclusive distributor agreements, the dealers of both companies sell only certain brands determined by their suppliers (i.e., Arçelik or BSH).

As a brief overview, the Guidelines on Vertical Agreements ("Guidelines") allows suppliers to offer certain conditions relating to resellers' online sales, provided that such conditions do not prevent resellers' online sales altogether. Furthermore, under the Guidelines, the online sales of resellers are generally regarded as passive sales, and passive sales restrictions will likely be in violation of Law No. 4054 unless they are considered under the exceptions stipulated by the relevant legislation.

It should also be noted that with regards to the sales of the Bosch, Siemens and Profilo brands for BSH and the sales of the Beko and Arçelik brands for Arçelik, a selective distribution system is established. Suppliers are able to set up a selective distribution system, especially in cases where the brand image and the overall market perception of the product may be damaged if it is sold by unauthorised sellers. While the Board has high standards for products and brands to satisfy the necessity for establishing selective distribution, suppliers may prohibit distributors in such a system from selling the relevant goods to unauthorised distributors. Nonetheless, the active or passive sales, including online sales, of members of a selective distribution system may not be prevented.

B. Assessments Regarding Sales on Online Marketplaces

The conditions to be introduced for online sales do not have to be exactly the same as the conditions applied for physical sales. However, the principle of equivalency dictates that any condition that may be offered by a supplier for the online sales of resellers may be deemed reasonable provided that it (i) serves the same purposes of the conditions imposed for the authorised sellers' sales via brick-and-mortar stores, (ii) provides comparable results and (iii) confirms the differences between the nature of physical and online sales channels. In this vein, the following provisions are found legitimate considering their compliance with the principle of equivalency.

B.1. Provisions Assessed Based on the Principle of Equivalency

The conditions to be introduced for online sales do not have to be exactly the same as the conditions applied for physical sales. However, the principle of equivalency dictates that any condition that may be offered by a supplier for the online sales of resellers may be deemed reasonable provided that it (i) serves the same purposes of the conditions imposed for the authorised sellers' sales via brick-and-mortar stores, (ii) provides comparable results and (iii) confirms the differences between the nature of physical and online sales channels. In this vein, the following provisions are found legitimate considering their compliance with the principle of equivalency.

1. Turkish Competition Board's Arçelik decision dated 08.09.2022 and numbered 22-41/580-240, Turkish Competition Board's BSH decision dated 08.09.2022 and numbered 22-41/579-239.

- **“Authorised sellers must have authorised seller badges on their platform stores.”**

Considering that BSH’s authorised sellers are not allowed to sell any competitor products in brick-and-mortar stores in accordance with agreements between BSH and its authorised sellers, the Board considered that the application of similar criteria to online sales, including the authorised seller’s webpage on a platform, is reasonable in the context of the principle of equivalency.

- **“The authorised seller may only sell the brands and products that it sells in its physical store on its platform store.”**

An authorised seller who sells on an online platform will be able to sell the products in alignment with the contract with BSH. The Board recognised this condition, which is consistent with the characteristics of the selective distribution system, serves the same purpose as the criteria required for physical channels, and produces comparable results.

- **“The authorised seller's platform store must comply with BSH's relevant corporate standards for the brand.”**

This condition was applied to both platforms and authorised sellers in the initial commitment package, but in the revised text, it has only been applied to authorised sellers only. The Board considered the condition in alignment with the principle of equivalency and found it acceptable.

- **"The types of campaigns announced by BSH should also be applied in the platform store to the extent possible."**

Authorised sellers agree to participate in all kinds of campaigns and promotional activities regarding BSH branded products in their physical stores. Therefore, to ensure that the functioning of the selective distribution system is also preserved in the marketplace, the Board concluded that it is acceptable to impose similar conditions to online sales.

“Authorised sellers will use the trade name as registered in the Arçelik system while selling in the online marketplace, will not sell under different store names, and will send the application form containing its request regarding sales in the marketplace to the e-mail address specifically allocated for this issue and to be determined by Arçelik.” (in Arçelik’s commitments)

“Authorised sellers must not use any pseudonyms other than their commercial name on platforms, and the store name of the authorised seller must be the same on all online channels.” (in BSH’s commitments)

The Board concluded that not selling under different store names serves to protect the brand image as well as the quality of the distribution system and therefore deemed that the relevant provision is reasonable.

Likewise for Arçelik, the Board concluded that the visibly indicated title of the authorised seller on the product/information page of the seller is a rational and feasible application that is also supported by marketplaces. Accordingly, the Board determined that this condition serves the same purpose and produces comparable results with the criteria required in the physical channel, and thus accepted the condition. With regards to the application sent to the e-mail address set by Arçelik, the Board stated that this will not serve as a pre-approval mechanism, but aids with the signing of the relevant protocols and their submission to Arçelik by the authorised dealer.

“Authorised resellers will only sell the brands and products of Arçelik/Beko that are provided by Arçelik, in the online marketplaces.” (in Arçelik’s commitments)

“There should be no practices in the authorised sellers’ stores on platforms that direct consumers to competitor brands.” (in BSH’s commitments)

The Board deemed both provisions as reasonable in the context of the principle of equivalency, since the provisions carrying similar purposes are also applied by Arçelik and BSH for the sales made through brick-and-mortar stores of their resellers.

“The authorised seller will sell the products from the marketplace only to final consumers. Resellers shall not engage in bulk sales (more than 2 products from the same product group shall be considered as bulk sales) and corporate sales.” (in Arçelik’s commitments)

“The authorised seller may sell on platforms that provide technical solutions that prevent the sale of more than four units of the same product to the same buyer at once.” (in BSH’s commitments)

Regarding Arçelik’s commitments, the Board concluded that authorised resellers are also refrained from selling to unauthorised resellers through physical channels. In this vein, the Board deemed the relevant provision in line with the principle of equivalency.

With respect to the provision brought by BSH, the Board denotes that BSH has also the faculty to detect the sales to any unauthorised seller through the data indicating resellers’ sales made through brick-and-mortar stores. In light of this, the Board concluded that the sale of products to unauthorised sellers can be prevented in online environment, since BSH can also prevent the sales made via brick-and-mortar stores to unauthorised sellers.

“The authorised seller who exclusively carries out the sale will be responsible for the supply and delivery of the product to the buyer and the seller will clearly inform the final consumer in this regard.”

Authorised sellers are also held responsible for the delivery of the products sold in brick-and-mortar stores as per the provisions relating to the sales via physical channels. In this respect, the Board deemed that the condition, which aims to protect the functioning of the selective distribution system in online marketplaces, serves the same purpose as the conditions imposed for the physical sales channel, and thus acceptable.

“Authorised sellers may sell on platforms that allow and enable them to determine product prices exclusively.”

The Board assessed that the relevant provision also applied with respect to sales via brick-and-mortar stores and serves the same purpose applied to such sales. In light of this, the Board deemed the relevant provision acceptable as it ensures that authorised sellers are independent in determining their resale prices.

B.2. Provisions to Preserve the Brand Image and Increase Consumer Experience

The Board deemed the following provisions as legitimate mainly in terms of enhancing consumer experience and preserving brand image.

“Products that are not in stock should not be offered for sale on platforms, and the price of these products should not be displayed.” and “The authorised seller will not continue to publish price information after the number of products to sell notified to the platform has been sold off.”

BSH’s main rationale with respect to these conditions is that these practices are both contrary to the legislation and are likely to harm the trust and confidence in the BSH brand by harming the consumer as it also leads to consumer discontent due to ordered products being out of stock. In this vein, the Board concluded that BSH imposing a responsibility on authorised sellers who will sell in e-marketplaces will positively affect consumer experiences and protect brand image. For this reason, the Board accepted both conditions.

“Damaged, defective or second-hand goods must not be sold.”

To prevent consumer harm and protect its brand image, BSH prohibits the delivery of damaged and/or defective goods in the relevant contracts. Considering that this condition serves the same purpose as the conditions imposed on physical sales channel as well, the Board found this condition reasonable.

“In case of system compatibility, consumers should be provided with the opportunity to track the shipment.”

In line with the information provided by online marketplaces, the Board concluded that such marketplaces already provide the opportunity to consumers to track the shipment of their delivery. In this respect, the Board determined that the condition is acceptable on the grounds that introducing this condition to authorised sellers will positively affect consumer experiences.

“Questions asked to the authorised seller on the platform should be answered within 2 (two) days.”

The Board concluded that the condition will most likely establish a shopping experience that is less risky and safer for consumers with respect to their purchases via online marketplaces. Therefore, the Board decided that the condition is reasonable to protect the quality of distribution and BSH’s brand image and is in line with the purpose of the selective distribution system.

“Cancellation can only be made if the consumer exercises the right of withdrawal as required by legislation. The authorised seller cannot cancel the order due to lack of stock.”

The Board concluded that the condition imposed by BSH is reasonable and acceptable, since it serves to the purpose of preventing consumer damage and protecting the brand image by preventing authorised sellers to cancel orders due to lack of stock.

“If there is a time or stock limit regarding the validity of the price, this period and stock quantity should be clearly stated in the relevant section of the authorised seller’s platform store.”

The Board concluded that BSH aims essentially to prevent any possible damage to consumer’s confidence in its distribution system. In this vein, the Board determined that BSH aspires to ensure consumer satisfaction as well as overall satisfaction with BSH-branded products and to avoid misleading the consumer to that end. In this framework, the Board accepted the condition, deeming it objectively appropriate and reasonable to ensure the quality of the distribution system and the brand image of BSH.

“Costs arising from consumer complaints resolved by BSH will be borne by the authorised seller.”

The Board concluded that the condition aims to ensure the functioning of the selective distribution system also in marketplaces. Also, considering the provision applied by BSH to authorised sellers with regards to their sales via brick-and-mortar stores, the Board determined that this condition serves the same purpose as the condition applied to sales made through brick-and-mortar stores, and thus acceptable in this context.

“The authorised seller will provide the consumer with the opportunity to ask questions about the product in the platform store.”

With this condition, customers will have the opportunity to find answers to questions that may affect their purchasing decision through the platform, which essentially increases the consumer benefit. Therefore, the Board concluded that the condition is reasonable in terms of the quality of distribution and protection of brand image.

“The authorised seller will offer the products for sale on marketplaces only with the logos, images, texts that are at the same quality and content as those offered in the websites of Arçelik/Beko.”

“The authorised dealer should offer the products for sale in the marketplace with the same quality and content, with logos, images and content texts as the Arçelik/Beko websites and ensure that misleading information about the products is not included in these channels.”

The Board found the relevant conditions acceptable in terms of positively affecting the consumer experience and protecting brand image.

“The authorised seller will instantly transfer information such as the number of sales, sales-delivery dates, store points of Arçelik/Beko authorised dealers, and customer data to the extent permitted by legislation, regarding the Arçelik/Beko branded products sold from marketplaces. Authorised sellers will endeavour to obtain all kinds of legal permissions and approvals within the scope of the relevant legislation in order to ensure the transfer of customer data to the Company.”

The Board accepted that this provision will increase the quality of services to be offered to customers and serves to design marketing strategies effectively. The Board concluded that the relevant provision also helps the purpose of protecting brand image.

The Board states that the infrastructure development costs necessary for the realisation of this condition will be covered by Arçelik and this transfer will be made through the RAPID system², which currently allows data transfer between Arçelik and its authorised sellers. Within the framework of the data subject to the transfer, it is understood that the number of sales and delivery date is important in terms of preserving the quality of distribution and increasing efficiency.

In addition, it is noted that information such as the store score and customer data of authorised sellers in online marketplaces can facilitate Arçelik's control over the quality of its distribution network. Considering that the performance of authorised sellers in terms of sales in related channels can be measured, marketing strategies can be designed more effectively thanks to this data, thus protecting brand image, the Board assessed that this is reasonable and acceptable.

"The authorised reseller shall provide transport services for the products that it sells in marketplaces and that require installation. In consideration of customer satisfaction, the delivery of such products must be carried by transport companies to the place where the relevant products will be installed within the unit. In the event that the products have to be transported to the place of installation by the authorised services affiliated to Arçelik, Arçelik will recourse the cost incurred for this transportation service to the authorised reseller."

The Board concluded that the said provision will positively affect consumer satisfaction, given that products including those of high material value are transported to the installation area without any damage. Additionally, the Board emphasised that transporting such products to the installation area will prevent consumer dissatisfaction and eliminate any costs that may incur due to possible returns. Based on this, the Board accepted the relevant condition.

"The authorised reseller shall instantly transfer the information such as the number of sales, sales-delivery date, store points, customer data to the extent permitted by the legislation to Arçelik regarding the sales of Arçelik/Beko branded products in MPs." (in Arçelik's commitments)

"The authorised seller will share any accessible statistical information related to the sales made on the platform with BSH or permit the platform to share such information with BSH." (in BSH's commitments)

The Board acknowledged that, together with the information about consumer complaints and categories and seller rating information data, BSH aims to protect its brand image through brand/category/product information to be provided and ensure the effectiveness of the contractual provision, which stipulates that an authorised seller may only sell the brands/products which it also sells in brick-and-mortar stores on online platforms. The Board concluded that the provision complies with the principle of equivalency and therefore accepted the condition.

Similar to this assessment, the Board approved a similar provision offered by Arçelik on the grounds that the relevant provision assists to preserve brand image and the quality and nature of selective distribution systems.

B.3. Provisions to Ensure the Physical Sales of Resellers

The following provisions were deemed legitimate, mainly for the purposes of ensuring the continuity of the physical stores of resellers.

"Authorised sellers who will sell products on platforms must have a physical store in the first place."

2. The RAPID system is defined as a program in which the sales made by authorised dealers to end-users through all channels are recorded, and it allows Arçelik to see the product sales price, payment schedule, stock information, pre-accounting records, and the invoicing transactions of the seller and the end-user at the time of the sale.

The Guidelines states that distributors may be obliged to have at least one physical point of sale. However, the purpose of this requirement should not be to exclude or restrict the sales of players selling only through the internet. In line with this, the Board found that BSH does not have any authorised seller that sells only through the internet channel in its selective distribution system. Therefore, the condition is appropriate with regards to the nature of the distribution system applied by BSH.

"The sales to be made by the authorised reseller through marketplaces shall be monitored via the RAPID system. The ratio of physical sales must be at least 85% of the authorised reseller's turnover. In addition to the sales made from the stores, sales made through the OSAS system³ and sales made through the authorised reseller's own website will also be included in the physical sales."

The Board assessed that a rate of 85% does not prevent the online sales of authorised resellers and aims to protect the efficiency of physical sales channels. The Board decided that the 85% rate will not result in restricting online sales of authorised resellers in the short term.

Furthermore, the Board ruled that Arçelik will certify to the Competition Authority the information on authorised dealers selling in online marketplaces, including the marketplaces where they sell, the rate of sales in terms of quantity and value, as well as information on authorised dealers whose sales have been terminated, and the reasons for termination within 30 days after the end of 12 months from the date of notification of the reasoned decision. In this way, it will be possible to audit whether the condition that Arçelik wants to bring coincides with the market dynamics and sales trends of authorised sellers in a one-year period.

B.4. Provisions to Protect the Quality of the Selective Distribution System

"An authorised seller may sell on platforms where the contract terms and commercial conditions are objectively applied to all BSH authorised sellers, and where the authorised seller is promptly informed about any possible changes regarding the processes and services on the platform."

The condition prevents authorised sellers from operating on platforms that offer different types of incentives, supports or practices to authorised sellers who are in equal conditions. In this vein, the Board refers to the characteristics of the selective distribution system. In line with the nature of selective distribution systems, no discrimination should be applied between the distributors within the system. In this context, the Board found that BSH's condition requiring the same contractual terms and commercial conditions to be applied for all sellers reasonable and acceptable.

"The authorised seller agrees that BSH may monitor the sales process and service quality of the authorised sellers on platforms in accordance with the published guidelines and agreement."

BSH has stated that the same obligations offered by the condition apply to the operations of authorised sellers in the physical channel. In this line, the Board found that the guidelines to be published by BSH and the supervision to be carried out depending on the contract are in accordance with the nature of the distribution system. Also, the Board remarks that such guidelines and contemplated provision serve the purpose of protecting brand image. Additionally, the Board determined that the condition serves the same purpose as the conditions imposed on physical sales channels, and thus found it acceptable.

"The authorised dealer shall also engage in behaviours targeting brand image and customer satisfaction in the sales it will make via marketplaces. The authorised reseller's store scores in these channels must be in the top 20% according to the marketplace's scoring. In cases where this condition is not met, Arçelik shall issue a written warning to the authorised reseller and grant a period of 2 months. Within this period, the authorised reseller is expected to increase its store score. At the end of the 2-month period, a second written warning is given to authorised resellers who do not comply with these criteria and an additional 1-month period shall be granted. Arçelik has the right to terminate the protocol regarding sales from the marketplaces with the authorised reseller who still cannot enter the top 20% at the end of the 3-month period and damages the brand image in terms of customer satisfaction." (in Arçelik's commitments)

3. Online order assignment system

An authorised seller may sell on platforms where the criteria used for ranking, based on searches made by consumers on the platform are applied equally to every authorised seller.” (in BSH’s commitments)

“The authorised seller will be evaluated based on objective criteria such as service scoring (seller rating) and complaint management.” (in BSH’s commitments)

Within the framework of both commitment packages, the Board recognised that the criteria referred to in the provisions, especially considering customer satisfaction, are generally applied by marketplaces in an equal and objective manner. In this vein, the Board concluded that the provision stipulating a certain score achievement is objectively concrete and reasonable in terms of protecting the quality of the distribution and brand image and as well is in line with the purpose of the selective distribution system.

“The authorised seller shall sign a protocol that contains the provisions, an example of which is provided in the Annex-1. Given that the protocol is terminated by the parties or it is determined by Arçelik that its provisions are not complied with, the protocol between Arçelik and the authorised seller regarding sales from the marketplaces will be terminated and the sale of the products through the marketplaces shall be ceased.” (in Arçelik’s commitments)

“Authorised sellers who want to sell on platforms must sign a separate agreement with BSH.” (in BSH’s commitments)

The Board found that the relevant provision is reasonable and acceptable, as it assists to preserve the predetermined standards of selective distribution systems in marketplace sales and increase the effectiveness in online channels.

Within the context of the condition, BSH aims to ensure and maintain the internal consistency of the selective distribution system and to present a uniform image covering all sellers and products in all sales channels included in the system. In this vein, the Board found that the circular sent with respect to the authorised sellers’ sales through their own websites and the framework agreement to be signed with authorised sellers who will sell in the marketplaces serve the same purpose. Additionally, the Board found the condition acceptable as it would positively affect consumer experiences and protect brand image.

C. Conclusion

After an initial review and revisions to the commitments offered by BSH and Arçelik, the Board accepted the commitments for adopting a commercially efficient structure that will not result in disproportionate costs for BSH/Arçelik to implement in order to produce a sustainable solution for the regulation of resellers’ online sales.

In this line, the Board concluded that the provisions regulating the online sales of resellers may be legitimised under certain conditions. These conditions include (i) increasing in the quality/nature of distribution, brand reputation and/or potential efficiency, (ii) serving the same purposes as the criteria for physical sales channels, provide comparable results, and justifying the differences arising from the nature of both distribution channels, and hence they are acceptable within the context of the principle of equivalency.

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