

COMPETITION AUTHORITY DECISION

File No : 2020-1-065
Decision No : 21-27/354-173 **Date of Decision** : 27.05.2021

A. BOARD MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE
Members : Şükran KODALAK, Ahmet ALGAN,
Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN

B. RAPORTEURS: Gözde MAVİ, Nezir Furkan KIRAN, Merve BİROĞLU, Mert ÖZMEN,
Murat ALACALAR

C. RELEVANT PARTY: - Çiçek Sepeti İnternet Hizmetleri A.Ş.
Representatives: Dr. M. Fevzi TOKSOY, Bahadır BALKI,
Mustafa AYNA, Özlem BAŞIBÖYÜK, Burak Buğrahan SEZER
Çamlıca Köşkü, Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş/İstanbul

- (1) **D. SUBJECT OF THE FILE:** Prevention/obstruction of the on-site inspection conducted at Çiçek Sepeti İnternet Hizmetleri A.Ş. on 08.04.2021, under the framework of the investigation launched with the Competition Board decision dated 01.04.2021 and numbered 21-18/213-M.
- (2) **E. PHASES OF THE FILE:** With the Competition Board (Board) decision dated 01.04.2021 and numbered 21-18/213-M, an investigation was launched on some undertakings including Çiçek Sepeti İnternet Hizmetleri A.Ş. (ÇİÇEK SEPETİ).
- (3) Within the framework of the decision above, an on-site inspection was conducted at the premises of the aforementioned undertaking by the authorized professional staff on 08.04.2021. Afterwards, an Information Note dated 25.05.2021 and numbered 2020-1065/BN-04 was prepared by the rapporteurs on the subject of prevention/obstruction of the inspection concerned, which was discussed and a decision was taken.
- (4) **F. RAPORTEUR OPINION:** The relevant Information Note states that
- On 08.04.2021, ÇİÇEK SEPETİ obstructed and prevented the on-site inspection conducted within the framework of the ongoing investigation,
 - The undertaking in question should be imposed administrative fines under Article 16.1(d) of the Act no 4054 on the Protection of Competition (Act no 4054).

G. EXAMINATION AND ASSESSMENT

G. 1. Findings

- (5) On 01.04.2021, the Board took decision no 21-18/213-M to launch an investigation under Article 41.1 of the Act no 4054 on some undertakings including ÇİÇEK SEPETİ in order to determine whether they violated the Act no 4054 by making gentlemen's agreements concerning the labor market.
- (6) Within the scope of the relevant decision, duly authorized professional staff conducted an on-site inspection on the undertaking's premises on 08.04.2021.
- (7) The findings and assessments concerning the conduct and process in question are given below, within the framework of the information included in the file:
- (8) The professional staff charged with performing the on-site inspection at ÇİÇEK SEPETİ arrived at the undertaking's address at 10:50 on Thursday, 08.04.2021. The representative of the undertaking was informed about the inspection and specifically

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reminded that nothing should be deleted from the mobile devices that would be examined within the framework of the on-site inspection.

- (9) The mobile device with the IMEI number (.....) used by the undertaking official (.....) and which had a mobile line owned by the undertaking was examined and it was found that a Whatsapp message was sent to another undertaking official (.....) at 11:52 on the day of the inspection and that this message was later deleted. An inspection of the mobile device with the IMEI number (.....), which was owned and used by (.....) but which included data owned by the undertaking showed that the relevant *Whatsapp* was not there. However, screenshots were taken from both mobile devices showing the deletion in question.
- (10) Lastly, the inspection of the mobile device with the IMEI number (.....), established by oral statement to be owned by the undertaking and used by another official of the undertaking (.....), showed that there was no *Whatsapp* correspondence between (.....) and (.....). However, inspection of (.....)'s mobile device showed there was a

correspondence with (.....) at 11:17 and 11:21 on the day of the inspection. The screenshots of the relevant correspondence were recorded by the professional staff in charge. The content of the correspondence is included below:¹

“(.....)

Can you write

(.....)

*There is something (.....) written by (.....) can you delete it
(screenshot sent)*

(.....)

I'll take care of it”

- (11) In the “On-Site Inspection Report” written after the inspection was completed, undertaking official (.....) noted the following:

“The message I sent in response to the one sent by (.....) on 11:51, which says “(.....) Everybody else will pass gradually” appears to be deleted.

The reason is that around that time I sent many messages very quickly in order to make sure that I did not receive any private, non-work related texts from my wife or close friends that should not be seen by someone else, and to let them know that I was busy. I also had to quickly postpone or cancel my afternoon meetings. I sent texts to a few people about that. I deleted the message sent to (.....) because it was a message I inadvertently sent to them instead of someone else and it had nothing to do with them.”

- (12) On the other hand, undertaking official (.....) and another official (.....) added the following statement to the official report:

“We had no intention of obstructing or preventing the Authority’s inspection. On the contrary, we immediately handed over any device they wanted, including personal ones.”

¹ The original correspondence in Turkish was quoted with any spelling errors intact.

G.2. Assessment

- (13) Article 16.1(d) of the Act no 4054 titled “Administrative Fine” lists “*the prevention or obstruction of on-site inspection*” as one of the cases that require imposing administrative fines on the undertakings concerned. According to the aforementioned Article, in case of prevention or obstruction of the inspection, the Board can impose administrative fines on real and legal persons with the nature of undertakings as well as on associations of undertakings or the members thereof, at 0.5% of their gross revenues.
- (14) According to the information included in the file, the professional staff charged with conducting the on-site inspection at the premises of ÇİÇEK SEPETİ arrived at the address of the undertaking at 10:50 on Thursday, 08.04.2021. After presenting their authorization and Competition Authority (Authority) IDs, providing the information required and specifically mentioning that no data should be deleted on the mobile devices to be inspected, the professional staff carried out the on-site inspection.
- (15) In that context, the documents collected as a result of the inspection of the mobile device of undertaking official (.....) showed that a *Whatsapp* message sent to another undertaking official (.....) at 11:52 had been deleted. Similarly, the documents collected from (.....)’s mobile device confirmed that the relevant *Whatsapp* message did not exist. Under the circumstances, it is assessed that the professional staff’s access to the evidence and findings they could potentially acquire during the on-site inspection was obstructed and prevented. In their statement on the subject included in the On-Site Inspection Report, (.....) noted that they deleted the message after realizing that they had sent it by mistake, however this statement is not taken into consideration due to the fact that before starting the on-site inspection the officials of the undertakings were specifically warned not to delete anything.
- (16) At the same time, it was also established that the *Whatsapp* correspondence collected from (.....)’s mobile device, which occurred between 11:17 and 11:21 on the day of the inspection between the aforementioned person and (.....) another official of the undertaking was also completely deleted from (.....)’s mobile device. In that correspondence carried out at 11:18, (.....) writes “*there is something (.....) written by (.....) can you delete it*” on the day of the inspection and shares with (.....) the screenshot of a previous e-mail by (.....), who is understood to be an employee of the undertaking. The screenshot shows an e-mail sent by (.....) on 04.08.2019, which includes the statement “(.....)²”. (.....) replies (.....)’s aforementioned message at 11:21 by saying “*I’ll take care of it*”. Accordingly, it is understood that the undertaking officials tried to delete (.....) correspondences while the inspection was ongoing.
- (17) Within the framework of the explanations above, it is assessed that during the on-site inspection conducted on 08.04.2021, ÇİÇEK SEPETİ prevented/obstructed the inspection by deleting various correspondences. As a result, it was concluded that administrative fines should be imposed on the undertaking.
- (18) On the matter of calculating the administrative fines to be imposed in case of the prevention or obstruction of on-site inspections, Article 16 of the Act no 4054 includes the provision “gross revenues generated by the end of the financial year closest to the date of the decision as determined by the Board,” according to which it was decided that an administrative fine of (.....) TL should be imposed on the undertaking concerned, at 0.5% of the total revenue of (.....) TL generated in 2020.

² The relevant part cannot be seen in the screenshot.

H. CONCLUSION

- (19) In accordance with the report prepared and the contents of the file examined, it was decided, UNANIMOUSLY, that
- a) on 08.04.2021, Çiçek Sepeti İnternet Hizmetleri A.Ş. prevented and obstructed the onsite inspection conducted within the framework of the investigation launched in accordance with the Competition Board decision dated 01.04.2021 and numbered 21-18/213-M,
 - b) For that reason, an administrative fine of
 - (.....)- TL should be imposed on Çiçek Sepeti İnternet Hizmetleri A.Ş., at 0.5% of its gross revenues in 2020, as per Article 6.1(d) of the Act no 4054,with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision.