

## SERIOUS FINES IN TRENDYOL INVESTIGATION

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*Deciding that Trendyol is dominant in multi-category e-marketplace and abused its dominant position, the Competition Board imposed 61 million TL administrative fines.*

With the advancing technology, internet and the digital evolution are now touchstones in our daily lives, as a result of which new business models such as e-trade and e-marketplaces have risen. E-marketplaces serve us on a silver platter the power to fill all our needs in a virtual cart. In addition, they have paved the way to saving time as well as new shopping experiences such as comparing products and reading user reviews. Moreover, e-marketplaces allow a lot of small and medium-sized enterprises, which cannot afford to meet costs such as establishing a website and integrating to payment infrastructure, to offer their products to consumers irrespective of location. Consequently, e-marketplaces are indispensable e-stops, where we visit several times in a day and spare an important part of our shopping budgets. As a natural result of this, the e-marketplace cake has grown into a size large enough to fall under the scope of the competition law discipline. Those marketplaces which offer platform services to thousands of third party sellers and attract hundreds of thousands of customers simultaneously not only create a competition field for the sellers in the platform but also fire the race among competitors who offer the same type of services.

*“Trendyol abused its dominant position.”*

Constituting an important topic for competition authorities, e-marketplaces are also caught by the Competition Authority’s radar. An investigation concerning DSM Grup Danışmanlık İletişim ve Satış AŞ (Trendyol) was opened. In addition to the Board’s power to initiate an investigation ex officio, there were more than one complaint about Trendyol. As a result of the process which started upon complaints, the Board decided that Trendyol is dominant in multi-category e-marketplaces abused its dominant position and imposed about 60 million TL administrative fines.

*“Evidence proved Trendyol’s self-preferencing by means of data and algorithm.”*

## **Fines and Measures Imposed to Trendyol**

The outstanding point in the investigation is that Trendyol is obliged not only to pay administrative fines but also comply with a comprehensive measure package. It is possible to say that Trendyol has to do more work than paying the fines.

The case has a broad subject covering the facts stated in the complaints as well as documents obtained during the on-site inspection. We see that the Board worked on every detail and put various technical competition problems under microscope. We can say that all anticompetitive concerns which Trendyol may cause or is alleged to cause were addressed in depth.

## **Competition Authority: “Trendyol, discrimination, self-preferencing, unfair contract, predatory conduct”**

Essentially there were five arguments: Trendyol engaged in self-preferencing by means of intervening in the algorithm, discriminated among sellers, applied exclusivity, imposed unfair contract clauses and applied predatory pricing to the detriment of other e-marketplaces. To explain further, some of the claims under investigation are as follows: Trendyol made high advertisement expenses and discounts commissions and put other e-marketplaces which cannot afford so expensive advertisement budgets and discounts at a disadvantage, imposed unfair contract clauses to sellers depending on its power and made sellers work with only Trendyol. The Board resolved the questions created by those allegations with commitments. The importance of commitments is that commitments have an impact on the establishment of competition in the market. If the commitments are materialized by a dominant undertaking, they may produce significant benefits both for competitors and consumers. First, commitments are quickly realized and improve the competitive environment which was not previously functioning duly.

Of course, not every commitment offered by an undertaking is acceptable. The Board has full discretion thereon. The Board has the power to decide whether the commitments will promote competition or benefit consumers. Trendyol made commitments related to the abovementioned questions. Finally, the Board decided that some of the commitments were eligible to resolve certain competitive concerns. The decision depends on a comprehensive background ranging from detailed analysis to third party opinions.

One outstanding commitment is related to Trendyol’s excessive advertisement expenditures. Accordingly, the ratio of Trendyol’s total advertisement expenditures in the marketplace field to the net commission income gained from the marketplace cannot exceed a threshold. In relation to the advertisement expenditures, a commitment was also given that the revenues

gained from the marketplace would cover the expenditures born within the marketplace service.

There are claims that Trendyol arbitrarily closed the sellers' outlets and terminate their activities in the platform, sometimes did not give the necessary information about payments to sellers, fixes time periods for procurement irrespective of the nature of sellers' products on its own initiative and imposed sanctions to sellers who could not provide products within those time periods, reflected a shipping margin in the contracts between sellers and shipping companies and that margin was high. Trendyol committed that it will realize certain projects.

*We can say that all anticompetitive concerns which Trendyol may cause or is alleged to cause were addressed in depth.*

### **Trendyol's commitments**

Within the framework of commitments, infrastructures will be provided where sellers can access real time and trackable data. The process will be objective, equal and fair for all sellers. In this way, sellers' concerns concerning arbitrary close of outlets are resolved.

More user friendly financial status interfaces will be built so that sellers can follow their revenues from the platform. Exclusivity clause in the contracts between Trendyol and sellers is abolished; thus, sellers can freely work with any e-marketplace.

The investigation covers also anticompetitive concerns about data and algorithm.

### **Trendyol's self-preferencing by means of algorithm**

Although Trendyol is a marketplace, it is mainly a technology firm. We can say that its software infrastructure is the backbone of the company. Consequently, algorithms are important business tools. The basic question is whether Trendyol anti-competitively interferes to the algorithms. To put in other words, whether Trendyol uses algorithms to favor its own retail services. As we know, Trendyol is also working as a third party seller with its private label products at the platform. Trendyol puts its brand name on products, packages and ships them...That means Trendyol provides the sellers with an electronic shop window but at the same time it also puts its own products, especially in the fashion category, to the same window. The questions whether it spares more space to its products in this window, whether it has advantages by showing its products to users more and in this ways disadvantage its competitors were examined. Similarly, there are concerns about data stemming from the fact that Trendyol is both the owner of the marketplace and a seller. Even though Trendyol is a seller, it is the owner of the platform at the same time. Therefore, it has the power to see all the data traffic, different types of data, analyses, which seller sold which products, user reactions in the platform, sellers' financial statuses, which means that Trendyol can see all the

data which is once saved in the platform. Another question is whether Trendyol abuses this data ownership and advantages itself.

Evaluations of the documents obtained during the on-site inspection and the analyses made by the investigation team enlightened those questions. Ultimately, it was proven with evidence that Trendyol engaged in self-preferencing behavior by means of data and algorithm. As a result, Trendyol was imposed fines. In other words, it was proven that Trendyol violated the Act no 4054 by means of abusing its dominant position. In addition, beside the fines, the Board imposed measures that Trendyol should avoid interventions through algorithms and coding and using the data it obtains within the framework of marketplace operation for its private label products in order to recover market failures. Trendyol decision is important because it is the first decision in the Competition Board's history where a platform player's self-preferencing behavior by means of intervention to algorithms and use of third party data has been analyzed and detected.

### **Competition Authority's work is on a knife-edge**

Consequently, in these days of digitalization and integration to technology-based business models, the Competition Authority follows digital transformation closely and is determined not to make this field immune from competition law rules. Taking into account recent Board decisions such as Google Shopping, Google Local Search, Facebook, Yemeksepeti and Trendyol and the study on "*The Reflections of Digital Transformation on Competition Law*", "*Online Advertising Sector Inquiry*" and "*E-Marketplace Platforms Sector Inquiry*", which were shared with the public, we understand that the Competition Authority's knife-edge work to establish competition in the digital world will continue...