

From the Presidency of the Competition Authority  
**DECISION OF THE COMPETITION BOARD**

File number: 2021-5-009 (Preliminary Inquiry/Commitment)

Decision Number : 21-53/736-369

Decision Date: 28.10.2021

**A. MEMBERS IN ATTENDANCE**

**President:** Birol KÜLE

**Members:** Şükran KODALAK, Ahmet ALGAN, Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN, Cengiz ÇOLAK

**B. RAPPORTEURS:** Ahmet Ogün KARAGÜLLE, Tülay ŞİMŞEK SARI, Aykut KARAGÖZ

**C. APPLICANT:** - SPGPrints Baskı Sistemleri Ticaret Ltd. Şti.  
19 Mayıs Mah. Turaboğlu Sk. Sıtkı Bey Plaza No:2/1 K:5 D:18  
Kadıköy/İstanbul

**D. COMPLAINANT:** Requested confidentiality

(1) **E. SUBJECT OF THE FILE:** Assessment of the commitment text submitted by SPGPrints Baskı Sistemleri Tic. Ltd. Şti. within the scope of the preliminary inquiry into the claim that the undertaking abused its dominant position in the market for repair and maintenance of laser engraving machines by means of using passwords.

(2) **F. PHASES OF THE FILE:** It is stated briefly in the application entered in the records of the Competition Authority (Authority) on 02.02.2021 with the number 14828 and the additional document entered in the records of the Authority on 23.02.2021 with the number 15432 that;

- SPGPrints Baskı Sistemleri ve Ticaret Limited Şirketi (SPGPRINTS) is a manufacturer of printing and engraving equipment and supplies those equipment to the undertakings operating in the textile sector,
- The applicant (.....) carries out activities in the textile sector and bought a laser engraving machine from SPGPRINTS to make patterns on its products,
- There are machines working with photo chemical systems that have similar functions with laser engraving machines in the market, however such machines are much slower than the laser systems and disadvantageous,
- Although there are other laser engraving machines apart from SPGPRINTS brand, machines manufactured by other manufacturers lag behind SPGPRINTS's machines in terms of quality and performance, therefore SPGPRINTS is dominant and like a monopoly with respect to laser systems,
- (.....),
- (.....),
- SPGPRINTS uses passwords to prevent third parties from providing technical services to its laser engraving machines, (.....) the password is not shared on the grounds that laser security will be canceled,
- Passwords on devices prevent technical repairers from entering machines, which means that customers' rights of disposition on a device are restricted,

- Moreover, the use of passwords block the entry of independent technical service providers who may offer services at lower prices to the market, as a result, the undertaking has become a monopoly and may charge excessive prices,
- The Competition Board considers similar issues in *Philips*<sup>1</sup>, *Döküm*<sup>2</sup> and *Radontek*<sup>3</sup> decisions and regards such practices as abuse of dominant position.
- Suggesting that SPGPRINTS should provide passwords used in devices and any internal system that enables other service providers to offer services for the machine free of charge,
- Laser engraving machines' spare parts and technical service costs should be regulated again not to be excessive and be published in a transparent way,
- Machinery spare parts should be provided to other service providers,

The applicant requested that the needful be done pursuant to the Act no 4054 on the Protection of Competition (the Act no 4054) in case SPGPRINTS does not take the necessary steps for the said issues.

- (3) The First Examination Report dated 25.02.2021 and numbered 2021-5-009/İİ prepared upon the application in question was discussed in the meeting of the Competition Board (the Board) on 04.03.2021 and the decision numbered 21-11/151-M was taken to initiate a preliminary inquiry about SPGPRINTS pursuant to article 40 of the Act no 4054.
- (4) The Board discussed the Preliminary Inquiry Report dated 06.07.2021 and numbered 2021-5-009/ÖA in the meeting on 08.07.2021 and took the decision numbered 21-34/461-M that an additional work would be made.
- (5) During the additional work process, SPGPRINTS made an application for commitment, which entered the Authority records on 11.08.2021 with the number 20219. The Information Note dated 18.08.2021 and numbered 2021-5-009/BN-01, which was prepared upon that application, was discussed in the Board meeting on 26.08.2021 and the decision numbered 21-40/581-M was taken to start the commitment discussions.
- (6) Consequently, the Information Note dated 22.10.2021 and numbered 2021-5-009/BN-02 prepared upon SPGPRINTS's commitment text which entered the Authority records on 01.10.2021 with the number 21652 and the additional commitment statement which entered the Authority records on 14.10.2021 with the number 22057 was discussed and a decision was taken.
- (7) **G. RAPPORTEUR OPINION:** In the said Information Note, it is concluded that the commitment offered by SPGPRINTS is proportional to the competition problems detected, able to solve those, quickly realizable and efficiently applicable; in addition, the commitment should be valid for five years and it is not necessary to initiate an investigation on the grounds that the password necessary for repair-maintenance of SPGPRINTS brand laser engraving machines is not provided.

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<sup>1</sup> Board Decision dated 18.02.2009 and numbered 09-07/128-39.

<sup>2</sup> Board Decision dated 10.02.2016 and numbered 16-04/67-25.

<sup>3</sup> Board Decision dated 11.10.2018 and numbered 18-38/617-298

## H. EXAMINATION AND ASSESSMENT

### H.1. Examination and Findings

#### H.1.1. The party under examination: SPGPRINTS

- (8) SPGPRINTS has been carrying out activities in the market for textile printing, label and industrial printing (wallpaper manufacturing lines, electronic printing, decorative printing machines etc.). The company is under the sole control of SPGPrints B.V. of Netherlands origin. The company sells only the machines and consumable materials manufactured by SPGPrints B.V. and its subsidiaries. In addition, it offers services related to those products (assembly, maintenance, etc.).

#### H.1.2. The Relevant Market

##### H.1.2.1. Information about the Sector

- (9) Textile printing basically means dyeing the certain parts of the cloth in different colors and shapes. Textile printing has been made with different techniques since old times. The basic printing method is dyeing a mold and pressing it on cloth.
- (10) Today, five basic methods, being engraved roller printing, film printing, rotation printing, heat transfer printing and inkjet digital printing, are used. The laser engraving machines that are examined and rotation printing machines complementary to those were first manufactured in 1963 by Stork<sup>4</sup> of Netherlands origin. The key component in the development of those machines and the technique are the templates in roller shape. The manufacturing of roller templates requires advanced technology<sup>5</sup>. Laser engraving machines are used in preparing the printing template in the rotation printing method. By using laser engraving machines, the pattern to be printed is created on the template by hardening or burning, by laser beams, the rotation printing templates made from nickel coated with a chemical layer in the form of sieve. The pattern department designs the rotation printing template molds, then the molds are subject to laundering and heat treatment and the patterns in the laser engraving machines are transferred to the template<sup>6</sup>.
- (11) The technique to be used in printing is chosen depending on mostly the customer demand and the characteristics of the cloth used in manufacturing. While rotation printing is preferred for repeated fabric, other traditional methods are chosen for sewn products and household linen.
- (12) In addition to the traditional methods in textile printing technology, digital printing technology, which has advanced especially in the last decade, is used. The biggest difference between traditional and digital textile printing is that color, geometrical shapes and graphics are printed on the fabric. While the traditional method uses turning screens, digital printers use printable images, design and graphics. Then the appropriate color is chosen and the desired color prints are combined or they are

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<sup>4</sup> Stork is carrying out activities under SPGPRINTS title at present.

<sup>5</sup> <https://acikders.ankara.edu.tr/mod/resource/view.php?id=70323>

<sup>6</sup> There are two different technologies to be used for printing in rotation printing products. First is the laser exposure technique, which is widely used in our country and in the world. This method is used in hardening the areas without patterns in a sensitive coating by laser beams and then making the pattern on nickel sieve template by means of opening the chemical layers on the areas that are not hardened with pressure water. Another method is laser direct engraving, where a strong laser beam burns and moves away the hard layer applied on the nickel template and then the area with the pattern is opened and the printing template is prepared to transfer the printing paste.

applied on the fabric as small ink drops<sup>7</sup>. On the other hand, compared to digital textile printing, traditional textile printing is less costly for the user. Finally, it is seen that the traditional printing methods differ significantly from the digital printing methods used in fabric printing in the textile sector in terms of technique and costs.

#### H.1.2.2. The Relevant Product Market

- (13) Market definition is a tool to detect the limits of competition between undertakings in competition law. The relevant market consists of two dimensions: product and geographic. The aim of defining the market with product and geographic dimensions is to reveal the competitors with the power to limit undertakings' behavior and prevent them from behaving independently from efficient competitive pressure.
- (14) The claims that SPGPRINTS prevents access to technical service areas of laser engraving machines it sells by means of passwords and obliges to purchase spare parts and repair-maintenance services for those products from SPGPRINTS form the basis of the complaint in question. Within this framework, products that are relevant and complementary to laser engraving machines should also be taken into account.
- (15) Products and services such as spare parts, repair and maintenance related to the main product are complementary products that are needed in different times. The market of the first product purchased by the customer is called "primary" market since the customer may need complementary products and services over time. The market for the products and services that are used with the primary product and needed after the primary product is purchased such as spare parts, consumable materials, repair and maintenance services is called secondary market or aftermarket.
- (16) In competition law literature, while defining the primary and secondary product and service markets, the analysis of i) whether the products and services in question can be included in the same market ii) if not whether secondary product and service markets can be defined brand-specifically is important.
- (17) While deciding whether aftermarkets can be defined brand-specifically in Board decisions<sup>8</sup>, factors such as product substitutability in terms of production and consumption, consumer demand and whether there are barriers for other undertakings to produce those are taken into account.
- (18) In the section on the assessment of aftermarkets of the EU Discussion Paper on Modernization of Article 82 (the Discussion Paper) published in 2005 by the EU Commission, it is stated that the Commission applies the normal approach to market definition while defining the aftermarket. This means while analyzing whether the secondary products in a given aftermarket form a separate product market, effects on sales of the primary product (giving rise to this particular aftermarket) are not taken into account. In other words, market definition focuses on the aftermarket sales to customers who have already acquired the primary product and not on potential buyers of the primary product.
- (19) The Discussion Paper mentions the cases where a brand-specific aftermarket cannot be defined. First, is the case where it is possible to switch to the secondary products of other producers. If other producers offer the secondary product, a customer who has bought one brand of primary product, they will not be dependent (locked in) on the

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<sup>7</sup> <https://www.bidusun.com.tr/haberler/dijital-baski-tekstil-sektorunde-kullanim-alanlari-ve-faydalar/>  
Accessed: 02.07.2021

<sup>8</sup> *Döküm* decision dated 10.02.2016 and numbered 16-04/67-25, *Vestel* decision dated 4.08.2008 and numbered 08-50/758-308

secondary products of that brand in the aftermarket; in this case it is necessary to define a common (not brand-specific) aftermarket. Secondly, the Discussion Paper mentions the possibility to switch to another primary product and thus avoid the higher prices in the aftermarket. This would require that switching costs are not so high. Switching costs can be of two types. First, it may not be possible to sell/purchase the used primary product at an attractive price that a switch would be economical. This is important if the price of the primary product is high compared to the secondary product. Second, switching costs are related to investments other than the price. These are training, changing routines, installations, software etc. Finally, if a conclusion is reached that there is no separate aftermarket, the analysis (where the primary and the secondary products are included together) must be conducted on the overall systems market.<sup>9</sup>

- (20) Within the scope of the file, first, the market for spare parts of SPGPRINTS brand laser engraving machines and then repair-maintenance markets are assessed for the definition of the relevant market concerning primary and secondary products.
- (21) The first factor to be noted about spare parts of SPGPRINTS brand laser engraving machines is that the spare parts needed for repair-maintenance of the said machines are not completely manufactured directly by SPGPRINTS. SPGPRINTS states that spare parts of other brands are used according to needs. It is inferred from information and documents obtained from different undertakings in the sector that it is possible to purchase spare parts but free-lance technical services cannot use spare parts because of password protection. In line with this, in case the password is given to customers, customers will not be dependent on, in other words, locked in the spare parts supplied by SPGPRINTS for repair-maintenance. Therefore, in a scenario where the password is shared, as mentioned in the Discussion Paper, one of the conditions for defining the brand-specific aftermarket will not be fulfilled. Accordingly, taking into account that different undertakings can produce spare parts and undertakings are not dependent on only the products manufactured by SPGPRINTS, it is not necessary to define a relevant market on the basis of SPGPRINTS brand spare parts.
- (22) The second factor to be assessed within the framework of the relevant market is whether it is necessary to evaluate the market for repair-maintenance of SPGPRINTS brand laser engraving machines as a separate market. The complaint emphasizes that the aim of using passwords is to prevent receiving services from free-lance technical services. It should be noted that it is partly possible to offer repair-maintenance services to laser engraving machines in question without passwords; password is needed for more serious breakdowns as understood from the information and documents provided by SPGPRINTS. This point will be explained in detail in the following sections. Explaining that while minor maintenance practices can be made without passwords, passwords are needed for serious repair and maintenance work, (.....) indicates the same point. In the response letters of (.....) and (.....) argues that in case of a serious breakdown (.....), the producer does not share technical service password and argues that the machine will be out of warranty if third parties intervene to certain spare parts; they have to get service from SPGPRINTS because of both passwords and technical inadequacy.
- (23) Another point to be taken into account in repair-maintenance services is whether repair-maintenance expenses are high enough to switch to new/another product. Accordingly, information about laser engraving machines' purchasing prices and

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<sup>9</sup> *Döküm* Decision dated 10.02.2016 and numbered 16-04/67-25.

repair-maintenance service fees is requested from SPGPRINTS. SPGPRINTS states that the said machines' purchasing price is (.....) USD, repair maintenance cost is (.....) USD labor cost per hour + other costs, repair-maintenance services are requested once or twice in a year, some of the customers do not request those at all, repair-maintenance costs have a very small share in total costs.

- (24) As detailed above, it is stated in the Discussion Paper that if it is possible to switch to another brand's primary product and avoid high prices in the aftermarket and switching costs are not high, it is not necessary to make a brand-specific market definition; the price of the new product and investments other than the price (training, changing routines, installations, software etc.) are determinant in switching costs. Considering purchasing cost of SPGPRINTS brand laser engraving machines ((.....) USD) and the cost for know-how and training qualified staff for its use together, it is not easy to switch to competing primary products for the undertakings that need the machines in question; selling/purchasing the used primary product at an economical price which is attractive for switching may lead to high operational costs (adapting production according to the new machine, personnel training, capital requirement for the new device etc.). Thus switching is not a reasonable option for undertakings.
- (25) Consequently, the customers of SPGPRINTS brand laser engraving machines are obliged to purchase repair-maintenance services provided by SPGPRINTS especially with respect to serious breakdowns protected with software. Therefore, it is necessary to make an assessment peculiar to SPGPRINTS brand for defining the relevant product market.
- (26) In addition, looking at previous Board decisions in different sectors<sup>10</sup> for the definition of aftermarkets, it is seen that brand-specific market definition approach is adopted taking into account the points in the Discussion Paper. Considering the information stated above, previous Board decisions and the information provided by the parties, a brand-specific market definition can be made and the relevant market is defined as *"repair-maintenance services for SPGPRINTS brand laser engraving machines."*

### **H.1.2.3. The Relevant Geographic Market**

- (27) The relevant geographic market is defined as Türkiye as the activities of the undertaking concerned, SPGPRINTS, cover the whole country and there are no regional differences.

### **H.1.3. Competition Problems in the File**

- (28) The main subject of the preliminary inquiry is the claim that SPGPRINTS refuses to share the password necessary for repair-maintenance of the laser engraving machines it sells and in this way abuses its dominant position. The claim can be summarized as follows: Technical know-how is required for running and providing repair-maintenance services of SPGPRINTS's laser engraving machines. Password protection is used to prevent other technical services from providing repair-maintenance services to the said devices. Although a request was made for the password in writing, SPGPRINTS did not share the password. The complainant had to purchase repair-maintenance services from SPGPRINTS at excessive prices. On the other hand, the officials of the undertaking concerned suggest that they use password protection to ensure customers' and technicians' work safety and to protect SPGPRINTS's intellectual

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<sup>10</sup> Radontek decision dated 11.10.2018 and numbered 18-38/617-298; Döküm Decision dated 10.02.2016 and numbered 16-04/67-25.

property rights that can be considered know-how. It is necessary to analyze the effects of SPGPRINTS's password protection in the relevant market.

- (29) Before making a competitive analysis of password protection, a dominance assessment should be made for SPGPRINTS. For a behavior investigated under article 6 of the Act no 4054 to constitute a violation, the undertaking concerned must be dominant in the relevant market and the behavior must be abusive. The concept of dominant position is defined in article 3 of the Act no 4054 as *“the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers”*. In line with that definition, an undertaking which has power to act independently of competitive pressure is considered to be dominant.
- (30) For the purposes of this file, being limited to secondary goods and services for a specific product, the relevant market is defined brand-specifically as *“the market for repair-maintenance services for SPGPRINTS brand laser engraving machines.”* Thus, competition in the relevant product market is only between undertakings providing products and services on the basis of the secondary product in question. As stated above, the relevant party SPGPRINTS uses password protection to laser engraving machines, prevents owners and technical services from exerting full control over the machines in question thereby prevents other undertakings from providing repair-maintenance services for serious breakdowns for the said products. Accordingly, it is possible to say that SPGPRINTS is the only undertaking offering repair-maintenance services in the relevant market and thus dominant without making a separate assessment regarding barriers to entry and expansion as well as buyer power.
- (31) The complainant states that the reason why they requested the password is that laser engraving machine (.....) the password was not given.
- (32) The machine in question will be dependent on SPGPRINTS during its entire lifetime and there will not be new entries to the market for repair-maintenance services for SPGPRINTS brand laser engraving machines as repair-maintenance services will be provided only by SPGPRINTS because the owner of laser engraving machine cannot reach the password to control technical settings.
- (33) In Döküm decision of the Board dated 10.02.2016 and numbered 16-04/67-25, the following conclusions are drawn on a similar subject<sup>11</sup>:
- “In usual business life, after a product is sold, the property and disposition power of that product are transferred to the buyer completely. Therefore, it is the buyer who decides who will provide the technical services. If it is assumed that the software on the device ...is under the control of only the manufacturer due to the password, this means that the manufacturer makes the customer dependent on itself during the lifetime of the device under any circumstance, which is not acceptable in normal business life.”*
- (34) On the other hand, SPGPRINTS suggests that the reasons for using password in question are as follows:
- “In laser engraving devices, there is a software for protecting both intellectual property rights and technicians and customers in terms of work safety because devices produce light at high voltage by nature. The code created with that software also provides access to sensitive information about the device's know-how. It can be deactivated, it may break functioning and safety hardware and may lead to*

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<sup>11</sup> Paragraph 33

*serious health risks. Therefore, only authorized service engineers can access this software. It should be noted that this software and the code do not constitute a barrier to change the components of the machines, providing maintenance to the machines and providing services in general to the machines from outside. On the contrary, as the said software and the code allows access to deep and technical information regarding the device components, it prevents cases where the device is broken by a technician and/or customer without adequate technical know-how and compatibility and users of the device and people around the device are not protected from laser beams at dangerous levels and high voltage.”*

- (35) The correspondence similar to the arguments SPGPRINTS makes in terms of work safety were found in the evidence obtained during the on-site inspection on SPGPRINTS's premises during the preliminary inquiry process<sup>12</sup>. It is understood from the evidence that SPGPRINTS did not share the passwords concerning laser engraving machines due to safety concerns, allowed only their technical staff to work. (.....) also mentions this. It is stated that (.....) laser engraving machine is a technology-intensive device, laser beam produced with high voltage may cause material damages or accidents involving death, thus only trained technical staff should provide repair-maintenance services.
- (36) In line with this, SPGPRINTS's using password protection for laser engraving machines due to safety concerns can be accepted as reasonable conduct basically both to protect brand image and to prevent legal cases against the undertaking. However, maintaining the password protection by the supplier who provides spare parts and/or repair-maintenance services during the warranty period after the warranty period expires is restricting the disposal of the buyers on those products. As a result, the owners of the products are dependent on the seller. Moreover, the number of free-lance technical services that can carry out activities in the market for repair-maintenance of the products requiring technical know-how like laser engraving machines is low; under these circumstances, not being able to get service from free-lance technical services due to protective methods such as passwords may make market entries impossible. Within this framework, the power to choose the technical service should be on the customer who purchases the machine and the passwords should be given to the customer upon request. In this way, the risk of causing problems because of unauthorized people handling with the devices will be minimized and the customer will bear this risk completely.

## **H.2. Commitment Discussion Process**

- (37) In the application made by SPGPRINTS and entered the Authority records on 11.08.2021 with the number 20219 during the additional work period, it is stated briefly that;
- They want to offer structural commitments for a rapid and effective solution of competitive concerns revealed with the findings and assessments during the preliminary inquiry,
  - The details of the commitment will be submitted to the Board until 30.09.2021.
- (38) The request of SPGPRINTS to offer commitments was discussed during the meeting of the Board on 26.08.2021 and the decision numbered 21-40/581-M was taken to start the commitment discussions. Within this scope, an online meeting on the commitment

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<sup>12</sup> Preliminary Inquiry Report Finding 1 and Finding 2.



process was made with the party and the issues discussed were saved in the minutes. Competitive concerns, the scope of the commitment, when the commitment could be submitted and similar issues were discussed. Following this process, SPGPRINTS sent the commitment text dated 01.10.2021 and numbered 21652 and the additional commitment statement dated 14.10.2021 and numbered 22057.

### **H.3. Explanations and Assessments about the Commitments**

(39) SPGPRINTS offers the following commitments in the commitment text:

- If the authorized owners of laser engraving machines whose warranty period has expired request service passwords, SPGPRINTS will share the service password with customers as soon as possible, free of charge, starting from the date when the short Board decision accepting the commitments is notified, without waiting for the notification of the reasoned Board decision.
- In order for machine owners to request passwords, their authorized representatives who are announced in the Trade Registry Gazette should sign "Customer Commitment Letter for Service Password Requests" (Customer Statement) once a year and the signed copy should be sent to SPGPRINTS's address together with the signature circular. The reason for this condition is to limit SPGPRINTS's responsibility against health and technical risks during repair-maintenance services.
- The customers requesting machine service passwords can send their password requests through their authorized representatives to [service.turkey@spgprints.com](mailto:service.turkey@spgprints.com) e-mail address. Requests sent to other e-mail addresses or made by telephone or SMS will not be valid and taken into account.
- If SPGPRINTS receives the service password requests fulfilling the conditions above, SPGPRINTS will create a password to be valid until 12:00 a.m. on the same day as soon as possible not to be later than four hours by e-mail to the requester.
- SPGPRINTS will provide the service passwords on weekdays within working hours (8.00 a.m.-5.00 p.m.) and respond to the password requests made outside working hours, including weekends, on the following working day until 12:00 p.m.
- It is necessary to submit the password request until 2:00 p.m. at the latest in order to receive the service password on the same day. The requests made after that hour will be fulfilled until 11:00 a.m. on the following working day at the latest.
- In addition, in case the customer sends the signed original copy of the Customer Statement and the signature circular showing the representatives' authority to sign to SPGPRINTS by mail but the mail has not reached SPGPRINTS's address and there is urgency about repair-maintenance for the machine, the customer can send the documents in question and mail tracking number to [service.turkey@spgprints.com](mailto:service.turkey@spgprints.com) and request the password.
- If the password provided by SPGPRINTS loses its validity and the customer makes a request again, the password will be provided in four hours at the latest in compliance with the commitment.
- During national holidays on weekdays and on condition that the day in question is not a day when enterprises and banks are closed in Austria, SPGPRINTS will forward the password request to SPGPrints Austria GmbH, in that case, the password requests will be responded in six hours at the latest and no later than 2:00 p.m. local time in Türkiye. Regarding requests not responded in this time

period, if national-regional holiday and feast days end and the working hours start in Türkiye, SPGPRINTS's holiday process is still ongoing in Türkiye and it is a working day in Austria on the following day, SPGPrints Avusturya GmbH will provide the service password to the customer until 12:00 p.m. local time in Türkiye on the day following the day when the request is made but the password is not provided.

- SPGPRINTS may claim damages from the customers for the losses stemming from failure to fulfill the commitments stated in the Customer Statement,
- In case all the service log data showing all the actions made on the machine starting from the installment is deleted after SPGPRINTS shares the service password, since it is not possible to detect the technical faults that may cause injuries to SPGPRINTS personnel, SPGPRINTS's right not to offer repair-maintenance service to that machine is reserved.
- The Customer Statement will be valid until the end of each financial year.
- In order for the Board to monitor the commitment, a copy of the Customer Statement to be signed in the following year and the lists of the password requests made and the persons given passwords during the past year will be sent to the Board,
- The commitments offered by SPGPRINTS will be valid for five years.

#### H.4. Assessment

- (40) With the Act dated 16.06.2020 and no 7246 on the Amendments to the Act on the Protection of Competition, commitment procedure is introduced in article 43 of the Act no 4054 in additional paragraphs (third and fourth paragraphs). Article 43(3) of the Act no 4054 stipulates that the procedure and principles concerning commitment mechanism shall be established with a communiqué issued by the Board. The Communiqué no 2021/2 On The Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions that Restrict Competition (the Communiqué No: 2021/2) was adopted by the Board on 11.02.2021 and entered into force after being published in the Official Gazette dated 16.03.2021 and numbered 3124.
- (41) Article 2 of the Communiqué no 2021/2 titled "Scope" includes the following provision: *"This Communiqué shall cover the commitments submitted by undertakings or associations of undertakings concerned in order to eliminate the competition problems which arise under Article 4 or 6 of the Act, except naked and hard-core cartels."*
- (42) In addition, it is provided for in article 5 of the Communiqué no 2021/2 titled "Commencing the commitment procedure" that:
- (1) Parties who wish to end an investigation conducted about them by means of a commitment may request to offer commitments during preliminary inquiry or investigation process. Requests to offer commitments during the investigation process shall be submitted to the Authority within three months after the notification of the investigation has been sent under the scope of paragraph two, article 43 of the Act. Requests to offer commitments submitted to the Authority after the said period has expired shall not be taken into account.*
- (2) The parties shall commence the commitment procedure by submitting their request to offer commitments to the Authority in written form."*
- (43) The application requesting the commencement of the commitment procedure for

eliminating the competitive concerns that are the subject of the inquiry and end the preliminary inquiry about SPGPRINTS pursuant to the abovementioned articles of the Communiqué no 2021/2, entered the Authority records on time. Hardcore and naked cartels are defined in article 4 of the same Communiqué to cover “*agreements and/or concerted practices as well as decisions and practices of associations of undertakings for the purposes of determining the fixed or minimum price for the buyer in the relationship between undertakings operating at different levels of the production or distribution chain.*”

- (44) The claims that SPGPRINTS does not give the service passwords of laser engraving machines and applies password protection are not related to naked and hardcore cartels listed in the Communiqué. Therefore, the Information Note dated 18.08.2021 and numbered 2021-5-009 concludes that the existing competition problems can be addressed under the scope of commitment procedure. Accordingly, it is concluded in the Board decision dated 26.08.2021 and numbered 21-40/581-M that it is appropriate to begin the commitment discussions.
- (45) Under this file, being limited to secondary goods and services for a specific product, the relevant market is defined brand-specifically as “*the market for repair-maintenance services for SPGPRINTS brand laser engraving machines.*” Thus, competition in the relevant product market is only between undertakings providing products and services on the basis of the secondary products in question. In addition, the investigated party SPGPRINTS uses password protection, prevents owners and technical services from exerting full control over the machines in question; thus, prevents other undertakings from providing repair-maintenance services for repair and maintenance for the said products. It is obvious from the correspondence obtained during the on-site inspection that SPGPRINTS has an attitude not to share the passwords with the undertakings requesting those passwords.
- (46) The competitive concern in the file is that the machine in question will be dependent on SPGPRINTS during its entire lifetime and the market for repair-maintenance services for SPGPRINTS brand laser engraving machines may be foreclosed as repair-maintenance services will be provided only by SPGPRINTS because the owners of laser engraving machine cannot reach the password to control technical settings. Consequently, the position that SPGPRINTS has thanks to being the manufacturer of laser engraving machines may create competitive concerns in the market for repair-maintenance services for SPGPRINTS brand laser engraving machines.
- (47) In accordance with the aforementioned issues, SPGPRINTS suggests resolving the competitive concerns arisen because of not sharing the service password in the market for repair-maintenance of laser engraving machines by sharing the password with machine owners who have signed the *Customer Statement*. At this point, it is necessary to evaluate the scope and the method of implementation of the commitment as well as how the commitment will be monitored.
- (48) It is understood from the information and documents obtained during the inquiry that the protective software on SPGPRINTS brand laser engraving machines does not allow using a fixed single password. SPGPRINTS uses a daily password that is invalid after midnight (as of 12:00 a.m.) on the day it is produced, including its own repair-maintenance services. SPGPRINTS states that it is technically very difficult to change the said protection software and software and hardware costs for machines of different ages and with different software are huge. Considering the technical and financial barriers to changing SPGPRINTS brand laser engraving machines’ protection software, the competitive concerns arisen during the inquiry process can be eliminated

by means of providing machine passwords to machine owners in a reasonable time free of charge.

- (49) Within the scope of the commitment, SPGPRINTS will provide the password for laser engraving machines whose warranty period has expired for free of charge. Machine password will only be requested by e-mail. Machine owners will be able to use the password without any further software or hardware requirements. Machine owners' password requests on successive days will be fulfilled in accordance with the periods and conditions specified within the scope of the commitment. Therefore, there is not a restriction to the number of requests for machine owners. In order to identify the persons who can request passwords as well as persons responsible for technical and legal problems while using the password, SPGPRINTS prepares the *Customer Statement*. Only the password requests made by machine owners who have signed the *Customer Statement* will be taken into consideration.
- (50) SPGPRINTS undertakes that they will respond to the password requests in four hours provided that the requests are made within their working hours (8:00 a.m.-5:00 p.m.). Password requests will not be responded outside the working hours and on national holidays. The password requests made outside the working hours will be dealt with as of the first working hour following the request and will be responded in three hours at the latest. In addition, SPGPRINTS will direct the password requests to Austria and respond within six hours at the latest if a password request is made on a national holiday in Türkiye as long as it is not a national holiday in Austria. Considering that SPGPRINTS offers repair-maintenance services under the scope of its own activities within working hours, the periods offered in the commitment package are reasonable and adequate for customers wishing to get repair-maintenance service from undertakings other than SPGPRINTS and the technical services who will provide those services to make their work plans and schedules.
- (51) In terms of how compliance with the commitment can be monitored, which is included in Article 8(2) of the Communiqué no 2021/2, SPGPRINTS undertakes that they will share with the Authority a sample of the *Customer Statement* to be signed in the following year as well as the lists of the password requests made and the persons with whom passwords have been shared during the past year, at the end of each financial year. This is accepted as a reasonable and practical solution for monitoring the commitment.
- (52) Moreover, sharing passwords via e-mail is considered an appropriate method for documenting the likely conflicts between SPGPRINTS and the customers and thus monitoring the commitment process.
- (53) In conclusion, with the commitments offered by SPGPRINTS
- a) SPGPRINTS will share with the laser engraving machine owners who are its customers the passwords that allow doing repair-maintenance on these machines. Thus, the competitive concerns regarding the foreclosure of the market for repair-maintenance services for SPGPRINTS brand laser engraving machines to technical services will be eliminated.
  - b) A monitoring mechanism will be created on the commitment offered by sharing with the Authority a sample of the *Customer Statement* to be signed in the following year as well as the lists of the password requests made and the persons with whom passwords have been shared during the past year.
- (54) It has been concluded that the commitment offered by SPGPRINTS, in its present

condition, is proportional to the competition problems detected, able to solve those, quickly realizable and efficiently applicable; therefore, it has been decided that the commitment in question shall be rendered binding for the undertaking and the preliminary inquiry shall be ended.

- (55) Moreover, in the commitment text, it is stated that the commitment period will be five years as of the notification of the Board decision, at the end of the period SPGPRINTS may offer the same commitment or request that the commitment be revised because of the changing economic and technological conditions. It has been concluded that SPGPRINTS's statements regarding the commitment period can be accepted and the commitment package might be reviewed after five years taking into account the facts such as changing economic and technological conditions.

## I. CONCLUSION

- (56) Related to the commitment text dated 01.10.2021 and numbered 21652 and the additional commitment statement dated 14.10.2021 and numbered 22057 submitted by SPGPrints Baskı Sistemleri Tic. Ltd. Şti., it has been decided UNANIMOUSLY that
- a) After assessing the commitment that SPGPrints Baskı Sistemleri Tic. Ltd. Şti. will provide the password necessary for repair-maintenance of SPGPRINTS brand laser engraving machines to customers who have accepted the *Customer Statement* and made a request via the specified communication channels in the time periods set shall be accepted because the commitment is able eliminate the competitive problems,
  - b) The commitment in question shall be rendered binding for SPGPrints Baskı Sistemleri Tic. Ltd. Şti. to be valid for five years starting from the date when the short Board decision on the acceptance of the commitment,
  - ç) According to article 10(2) of the Communiqué no 2021/2, it is not necessary to initiate an investigation about SPGPrints Baskı Sistemleri Tic. Ltd. Şti. on the grounds that they do not provide the passwords necessary for repair-maintenance of SPGPRINTS brand laser engraving machines pursuant to article 41 of the Act no 4054, with the decision subject to appeal before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.