

From the Presidency of the Competition Authority

DECISION OF THE COMPETITION BOARD

File number: 2020-39/3-019 (Investigation)

Decision Number: 21-53/747-360

Decision Date: 28.10.2021

A. MEMBERS IN ATTENDANCE

Chairman Birol KÜLE

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

B. RAPORTEURS: Şamil PİŞMAF, İbrahim Hilmi KOÇAK, İbrahim ŞAHİN, Ahmet SAĞDUYU, Cihan TİGAN, Muhammed Ali BEKTEMUR, Büşranur ÖZCAN

C. APPLICANTS: - Ex officio

- Confidentiality request
- Confidentiality request

D. UNDER INVESTIGATION:

- 1) BİM Birleşik Mağazalar A.Ş.
Representatives: Metin PEKTAŞ, Atty. Deniz KIVANÇ, Atty. Derviş Boran BEYSÜLEN
19 Mayıs, Dr. Hüsnü İsmet Öztürk Sk. No:5 Şişli İSTANBUL
- 2) CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş.
Representatives: Atty. Şahin ARDIYOK, Atty. Armanç CANBEYLİ
Büyükdere Cad. Bahar Sok No: 13 River Plaza Kat 11-12 Levent, Şişli İSTANBUL
- 3) Çağrı Gıda Temizlik Maddeleri İnşaat Sanayi ve Ticaret A.Ş.
Representatives: Atty. Veysel DAĞAŞAN, Atty. Fatih YEL
Tercüman Sitesi A-5 Blok Zemin Kat Daire:4 Cevizlibağ Zeytinburnu İSTANBUL
- 4) Metro Grosmarket Bakırköy Alışveriş Hizmetleri Tic. Ltd. Şti.
Representatives: Atty. Şahin ARDIYOK, Atty. Bora İKİLER, Atty. Hazar BAŞAR
Büyükdere Cad. Bahar Sok No: 13 River Plaza Kat 11-12 Levent, Şişli İSTANBUL
- 5) Migros Ticaret A.Ş.
Representative: Bahadır BALKI, Mustafa AYNA
Çamlıca Köşkü Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş İSTANBUL
- 6) Şok Marketler Ticaret A.Ş.
Representative: Atty. Meryem Kübra ŞIVGIN
Büyükdere Cad. Kaynak Apt. No:157/11 Zincirlikuyu Şişli İSTANBUL
- 7) Yeni Çağdaş İhtiyaç ve Gıda Maddeleri İnş. Tic. Ltd. Şti.
Representatives: Atty. Hayrettin KENT, Atty. H. Kübra KENT,
Atty. Ş. Kerem KENT, Atty. Gülşah ALGIN
Söğütözü Mah. 2176. Sok. Platin Tower İş Merkezi No:7/44 Kat:12 Çankaya ANKARA
- 8) Yeni Mağazacılık A.Ş.
Representatives: Atty. H. Emre ÖNAL, Atty. Murat BALCI, Atty. İpek İNCE
Büyükdere Cad. Bahar Sok. No:13 River Plaza Kat:17 Levent İSTANBUL
- 9) Yunus Market İşletmeleri Ticaret A.Ş.

İstanbul Yolu 24. km Saray Mah. Aygersan Kavşağı 1023. Sok. No 3 Saray
Kazan ANKARA

- 10) Gratis İç ve Dış Tic. A.Ş.
Representatives: Atty. Umut KOLCUOĞLU, Neyzar ÜNÜBOL, Atty. Ali TUNÇSAV
Sağlam Fikir Sok. Kelebek Çıkmazı No:5 Esentepe İSTANBUL
- 11) Watson Güzellik ve Bakım Ürünleri Tic. A.Ş.
Representatives: Bahadır BALKI, Ertuğrul Can CANBOLAT, Mustafa AYNA, Özlem BAŞIBÖYÜK
Çamlıca Köşkü Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş İSTANBUL
- 12) Banvit Bandırma Vitaminli Yem San. A.Ş.
Representatives: Dr. M Fevzi TOKSOY, Bahadır BALKI, Fırat EĞRİLMEZ, Seniha İrem AKIN
Çamlıca Köşkü Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş İSTANBUL
- 13) Beypi Beypazarı Tar. Ür. Paz. San. Tic. A.Ş.
Representative: Atty. Bülent Turhan GÜNDÜZ
Şair Nazım Sokak No:5 Ayrancı ANKARA
- 14) Colgate-Palmolive Temizlik Ürün. San. ve Tic. A.Ş.
Representatives: Atty. Gönenç GÜRKAYNAK, Atty. Öznur İNANILIR, Atty. Yeşim YARGICI
Çitlenbik Sok. No:12 Yıldız Mah. Beşiktaş İSTANBUL
- 15) Dalan Kimya End. A.Ş.
Representative: Atty. Serkan MUTLUEL
Ankara Cad. No:81 Bayraklı Tower K:14 D:97-98 Bayraklı İZMİR
- 16) Dentavit Sağlık Ürünleri Tic. Ltd. Şti.
Representative: Atty. Mehmet Burak KÜÇÜKİSLAMOĞLU
19 Mayıs Mah. 19 Mayıs Cad. No:37 Ubm Plaza Kat:8/26 Şişli İSTANBUL
- 17) Eczacıbaşı Tüketim Ürün. San. ve Tic. A.Ş.
Representatives: Atty. Prof. Dr. İ. Yılmaz ASLAN, Atty. Orhan ÜNAL
Gazi Umur Paşa Sok. Bimar Plaza No:38/8 Balmumcu Beşiktaş/İstanbul
- 18) Evpaş Evyap Paz. ve Tic. A.Ş.
Representatives: Atty. Altuğ GÜZELDERE, Atty. Tuğba VURAL
İnönü Cad, 19/9-11, Dilaram Apt.- Gümüşsuyu, Taksim, İSTANBUL
- 19) Johnson and Johnson Sıhhi Malzeme San. ve Tic. Ltd. Şti.
Representatives: Atty. Şahin ARDIYOK, Atty. Bora İKİLER, Atty. Sercan SAĞMANLIGİL
Büyükdere Cad. Bahar Sok No: 13 River Plaza Kat 11-12 Levent, Şişli İSTANBUL
- 20) Karizma Beşler Et Gıda Sanayi Ve Tic. A.Ş.
Representatives: Dr. M. Fevzi TOKSOY, Bahadır BALKI, Ertuğrul Can CANBOLAT, Nabi Can ACAR, Burak Buğrahan SEZER
Çamlıca Köşkü Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş İSTANBUL
- 21) Katmer Un İrmik San. ve Tic. A.Ş.
Sincan Organize Sanayi Bölgesi Kazakistan Cad. No:2 Sincan ANKARA
- 22) Küçükbay Yağ ve Deterjan Sanayi A.Ş.
Representatives: Atty. Prof. Dr. Vural SEVEN, Atty. Bahadır DOĞANCI, Atty. Giray TAMER, Atty. Aydın UÇARKUŞ

Cumhuriyet Bulvarı No:127 Çiftçi Apt. Daire:3 Alsancak İZMİR

23) Nestle Türkiye Gıda Sanayi A.Ş.

Representative: Sezin ELÇİN CENGİZ

Ferko Signature Büyükdere Cad. No:175 Kat:10 Levent İSTANBUL

24) Nivea Beiersdorf Kozmetik San. ve Tic. A.Ş.

Representatives: Atty. Efser Zeynep ERGÜN, Atty. Sibel YILMAZ ATİK

İzzet Paşa Mah. Yeni Yol Cad. Nuro Tower No:3 Kat:2 Şişli İSTANBUL

25) Procter & Gamble Tüketim Malları San. A.Ş.

Representatives: Atty. İlmütlühan SELÇUK, Atty. Artun ATAK

Ebulula Mardin Cad. No:57 Akatlar Beşiktaş İSTANBUL

26) Savola Gıda ve San. Tic. A.Ş.

Representatives: Atty. Gönenç GÜRKAYNAK, Atty. Sinem UĞUR,

Atty. Büşra KİRİŞÇİOĞLU

Çitlenbik Sok. No:12 Yıldız Mah. Beşiktaş İSTANBUL

27) Söke Değirmencilik San. ve Tic. A.Ş.

Representatives: Dr. M. Fevzi TOKSOY, Bahadır BALKI, Mehmet SALAN,

Umay RONA

Çamlıca Köşkü Tekkeci Sok. No:3-5 Arnavutköy Beşiktaş İSTANBUL

28) Türk Henkel Kimya San. ve Tic. A.Ş.

Representatives: Atty. Şahin ARDIYOK, Dilara YEŞİLYAPRAK, Atty. Aslı AK

Büyükdere Cad. Bahar Sok. No:13 River Plaza Kat:11-12 Levent Şişli

İSTANBUL

29) Unilever Sanayi ve Ticaret Türk A.Ş.

Representatives: Atty. Hakan ÖZGÖKÇEN, Atty. Zümrüt ESİN,

Atty. Sinan DİNİZ, Atty. Ceren SEYMENOĞLU, Atty. Ceren GÖKTÜRK,

Atty. Cem BURAN

Ebulula Mardin Cad. Gül Sok. No:2 Maya Park Tower Akatlar Beşiktaş İSTANBUL

30) Association of Food Retailers

Ayazmadere Cad. No:12 Akşit Plaza Kat:7 Dikilitaş Beşiktaş İSTANBUL

- (1) **E. SUBJECT OF THE FILE: Analysis of the pricing behavior of supermarket chains dealing with food and cleaning product retail and their suppliers at producer and wholesaler level during COVID-19 outbreak**
- (2) **F. THE SUMMARY OF THE CLAIMS:** The claim that supermarket chains dealing with food and cleaning product retail, their suppliers at producer and wholesaler level violated article 4 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of their pricing behavior.
- (3) **G. PHASES OF THE FILE:** Since the first COVID-19 case was announced in our country, there have been supply shortages and/or excessive price increases concerning food and cleaning products as well as protective goods. Within this framework, in addition to the complaints submitted to the Competition Authority, on 23.03.2020, Financial Crimes Investigation Board (MASAK) sent their work showing the geometric averages of supermarket chains' retrospective price movements in *Excel* format, which they completed on 23.03.2020.
- (4) The Information Note dated 30.03.2020 and numbered 2020-3-019/BN prepared as a result of the abovementioned events was discussed during the Competition Board

(Board) meeting on 31.03.2020. Per the Board decision numbered 20-17/242-M, it was decided that a preliminary inquiry shall be made in order to determine whether supermarket chains dealing with food and cleaning product retail, their suppliers at producer and wholesaler level violated articles 4 and 6 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of their pricing behavior during COVID-19 outbreak.

- (5) Following the preliminary inquiry decision, information and documents were requested from BİM Birleşik Mağazalar A.Ş. CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş., (CARREFOURSA), Çağrı Gıda Temizlik Maddeleri İnşaat Sanayi ve Ticaret A.Ş. (ÇAĞRI), Metro Grosmarket Bakırköy Alışveriş Hizmetleri Tic. Ltd. Şti. (METRO), Migros Ticaret A.Ş. (MİGROS), Şok Marketler Ticaret A.Ş. (ŞOK), Yeni Çağdaş İhtiyaç ve Gıda Maddeleri İnş. Tic. Ltd. Şti. (ÇAĞDAŞ), Yeni Mağazacılık A.Ş. (A101), Yunus Market İşletmeleri Ticaret A.Ş. (YUNUS), Gratis İç ve Dış Tic. A.Ş. (GRATİS) and Watson Güzellik ve Bakım Ürünleri Tic. A.Ş. (WATSONS), which operate in the sector. The responses sent by those undertakings were saved in the Authority records on different dates with different numbers. Many complaints about sudden and steep price increases were also sent to the Authority during the preliminary inquiry period.
- (6) The Preliminary Inquiry Report dated 04.05.2020 and numbered 2020-3-19/ÖA was prepared in light of the information and documents obtained within the preliminary inquiry and discussed in the Board meeting on 07.05.2020. An investigation was initiated about

- 1.BİM
- 2.CARREFOURSA
- 3.ÇAĞRI
- 4.METRO
- 5.MİGROS
- 6.ŞOK
- 7.ÇAĞDAŞ
- 8.A101
- 9.YUNUS
- 10.GRATİS
- 11.WATSONS
- 12.Karizma Beşler Et Gıda Sanayi ve Tic. A.Ş. (BEŞLER)
- 13.Türk Henkel Kimya San. ve Tic. A.Ş. (HENKEL)
- 14.Banvit Bandırma Vitaminli Yem San. A.Ş. (BANVİT)
- 15.Savola Gıda ve San. Tic. A.Ş. (SAVOLA)
- 16.Söke Değirmencilik San. ve Tic. A.Ş. (SÖKE UN)
- 17.Katmer Un İrmik San. ve Tic. A.Ş. (KATMER UN)
- 18.Evpaş Evyap Paz. ve Tic. A.Ş. (EVYAP)
- 19.Procter & Gamble Tüketim Malları San. A.Ş. (P&G)
- 20.Colgate-Palmolive Temizlik Ürün. San. ve Tic. A.Ş. (COLGATE PALMOLIVE)
- 21.Beypi Beypazarı Tar. Ür. Paz. San. Tic. A.Ş. (BEYPI)
- 22.Küçükbay Yağ ve Deterjan Sanayi A.Ş. (KÜÇÜKBAY)
- 23.Johnson and Johnson Sıhhi Malzeme San. ve Tic. Ltd. Şti. (J&J)
- 24.Unilever Sanayi ve Ticaret Türk A.Ş. (UNILEVER)
- 25.Nivea Beiersdorf Kozmetik San. ve Tic. A.Ş. (NIVEA)
- 26.Dentavit Sağlık Ürünleri Tic. Ltd. Şti. (DENTAVIT)
- 27.Eczacıbaşı Tüketim Ürün. San. ve Tic. A.Ş. (ECZACIBAŞI)
- 28.Dalan Kimya End. A.Ş. (DALAN)

29.Nestle Waters Gıda ve Meşrubat San. ve Tic. A.Ş. (NESTLE WATERS)

according to article 41 of the Act no 4054 in order to determine whether they violated article 4 of the Act.

- (7) Moreover, the interim measure decision dated 07.05.2020 and numbered 20-23/298-145 was taken that the Authority shall be informed about the price increases in food and cleaning products in a method and time period to be specified by the Authority starting from the date when the short decision was notified until the investigation was completed¹. The interim measure decision was notified to the investigation parties with the letter dated 05.06.2020 and numbered 7121. In accordance with the interim measure decision, weekly price increase data were saved in the Authority records until the interim decision was abolished per the Board decision dated 22.10.2020 and numbered 20-47/648-M.
- (8) The rapporteurs in charge of conducting the investigation were assigned according to the approval of the President dated 11.05.2020 and numbered 6141. Additional assignments were made per the approvals of the President dated 16.09.2020 and numbered 12580 and dated 02.02.2021 and numbered 20187.
- (9) Investigation Notifications dated 12.05.2020 and numbered differently were sent to A101, BEŞLER, CARREFOURSA, COLGATE PALMOLIVE, ÇAĞDAŞ, ÇAĞRI, DALAN, DENTAVIT, EVYAP, GRATİS, KATMER UN, KÜÇÜKBAY, METRO, MİGROS, NIVEA, P&G, SAVOLA, ŞOK, UNILEVER and WATSONS on 14.05.2020; to BİM, ECZACIBAŞI, HENKEL, J&J, NESTLE WATERS, SÖKE UN and YUNUS on 15.05.2020; to BEYPİ on 18.05.2020 and to BANVİT on 21.05.2020. In addition to sending certain information, the parties were requested to send their first written plea within 30 days within the scope of the investigation.
- (10) Responses and additional responses to the information requests in the investigation notification entered the Authority records on different dates with different numbers. Since it was understood that NESTLE WATERS's legal personality ended, it was excluded from the investigation with the Board decision dated 21.05.2020 and numbered 20-25/352-153. Afterwards, the decision dated 21.05.2020 and numbered 20-25/325-M was taken that an investigation shall be initiated about Nestle Türkiye Gıda Sanayi A.Ş. (NESTLE) to determine whether article 4 of the Act was violated and that the investigation shall be combined with the investigation initiated per the Board decision dated 07.05.2020 and numbered 20-23/298-M. The relevant investigation notification was sent to NESTLE on 21.05.2020.
- (11) Per the Board decision dated 28.05.2020 and dated 20-26/328-M, an investigation was initiated about Association of Food Retailers (GPD) whether it violated the Act no 4054 and the investigation was combined with the investigation initiated per the Board

¹ METRO filed a case numbered 2020/980 E. before Ankara 14th Administrative Court and requested that the Board decision dated 07.05.2020 and numbered 20-23/298-145 as well as the part on the interim measure of the transaction dated 12.05.2020 and numbered 5234 regarding the implementation of the decision be annulled. The Court rejected the request for the stay of execution with its decision dated 16.07.2020 and numbered 2020/980 E. METRO objected to that decision and the objection was rejected with the decision of Ankara Regional Administrative Court 8th Administrative Law Chamber. ÇAĞRI also requested stay of execution for the Board decision dated 07.05.2020 and numbered 20-23/298-145 in the case numbered 2020/1909 E. before Ankara 14th Administrative Court. The Court rejected the request for the stay of execution with its decision dated 04.11.2020 and numbered 2020/1909 E.

a decision dated 07.05.2020 and numbered 20-23/298-M. The investigation notification was sent to GPD with the letter dated 02.06.2020 and numbered 6893.

- (12) With the letter dated 10.06.2020 and numbered 7355, the net sales figures of HENKEL, P&G, COLGATE PALMOLIVE, J&J, UNILEVER and ECZACIBAŐI for 2019 were requested from the Department of Revenue Administration. The response of the Department of Revenue Administration entered the Authority records on 11.06.2020 with the number 5658.
- (13) Within the scope of the investigation, on-site inspections were made in A101, BİM, HENKEL and ŐOK on 28.05.2020; in GPD, GRATİS, MİGROS, P&G and UNILEVER on 29.05.2020; in CARREFOURSA, COLGATE PALMOLIVE, ÇAĞRI and NESTLE on 09.06.2020; in METRO and WATSONS on 10.06.2020; in ECZACIBAŐI, J&J, NIVEA and SAVOLA on 11.06.2020; in BEYPI and EVYAP on 02.06.2020; in ÇAĞDAŐ and YUNUS on 30.06.2020, in KÜÇÜKBAY on 01.12.2020; in DALAN, BEŐLER, DENTAVİT and BANVİT on 02.12.2020, in KATMER UN and SÖKE UN on 03.12.2020, in ŐOK, MİGROS, CARREFOURSA, A101 and BİM on 12.01.2021, in COLGATE PALMOLIVE, UNILEVER, ECZACIBAŐI, P&G and HENKEL on 13.01.2021, in EVYAP on 14.01.2021, in SAVOLA on 04.03.2021, in P&G on 19.03.2021.
- (14) Undertakings' first written pleas entered the Authority records on different dates with different numbers in time. EVYAP and GPD did not send the first written pleas.
- (15) Within the scope of the investigation, YUNUS, ŐOK, MİGROS, BİM, ÇAĞDAŐ, CARREFOURSA and A101 were asked for their approval with the letter dated 25.06.2020 and numbered 8128 so that the data which supermarket chains had shared with Turkish Statistical Institute (TÜİK) since December 2019 could be shared with the Authority. The approvals were saved in the Authority records. Request for information and documents were submitted to TÜİK for the exchange of the data in question. TÜİK's response entered the records of the Authority on 25.08.2020 with the number 9071.
- (16) During the investigation, information requests were sent to undertakings that were party or not party to the investigation occasionally. The responses were saved in the Authority registration in time. Moreover, information requests dated 14.10.2020 and numbered 14279-14282 were sent to about 130 undertakings regarding weekly sales amount and weekly sales value (VAT included) and unit price data between 01.01.2018 and 20.09.2020 about certain products of undertakings supplying goods to investigation parties. The responses to those information requests entered the Authority records in time.
- (17) In the Board meeting on 22.10.2020, the investigation period was extended for six months as of its expiration date according to article 43 of the Act no 4054 with the decision numbered 20-47/647-M. In the same meeting, it was decided that (with the decision dated 22.10.2020 and numbered 20-47/648-M) the first article of the Board decision dated 07.05.2020 and numbered 20-23/298-145 on imposing an interim measure per article 9(4) of the Act no 4054 shall be abolished.
- (18) In order to conduct on-site inspections on the premises of Eksun Gıda Tarım San. ve Tic. A.Ő. and Oba Makarnacılık San. ve Tic. A.Ő., the Information Note dated 06.01.2021 and numbered 2020-3-019/BN-06, which included the request for granting the powers listed in article 15 of the Act was discussed in the Board meeting dated

07.01.2021. The decision numbered 21-01/14-M was taken to grant the powers listed in article 15 of the Act.

- (19) At the end of the investigation process, the Investigation Report dated 31.03.2021 and numbered 2020-3-19/SR was prepared. The report was sent to the Competition Board members and to investigation parties by mail or electronic notification according to article 45(1) of the Act.
- (20) During the second written plea period, some of the undertakings requested that additional time be granted to submit their pleas per article 45(2) of the Act. Accordingly, the second written plea periods were extended for all undertakings that requested additional time period with the Board decision dated 15.04.2021 and numbered 21-22/253-M.
- (21) Undertakings' second written pleas entered the Authority records on different dates with different numbers in time. However, ÇAĞDAŞ, ÇAĞRI, BEYPI, KÜÇÜKBAY, DENTAVİT, DALAN and GPD did not use their second plea rights.
- (22) The request that the due period for the additional written opinion that would end on 22.06.2021 be extended for 15 days according to article 45(2) of the Act no 4054 because the scope of the second written pleas was extensive and information requests needed to be made to investigation parties or third parties was discussed in the Board meeting on 17.06.2021. The decision numbered 21-31/396-M was taken to extend the additional written opinion period for 15 days as of its expiry.
- (23) To be evaluated within the scope of the additional written opinion, information requests were sent to SAVOLA, Nielsen Araştırma Hizmetleri Ltd. Şti. (NIELSEN) and İpsos Araştırma ve Danışmanlık Hizmetleri A.Ş. (İPSOS). The responses entered the Authority records in time.
- (24) The Additional Written Opinion dated 07.07.2021 and numbered 2020-3-019/EG was notified to the Board members and the undertakings concerned according to article 45 of the Act no 4054. Undertakings' third written pleas entered the Authority records on different dates with different numbers in time. BEYPI, DENTAVİT, KÜÇÜKBAY, GPD, DALAN, ÇAĞDAŞ did not use their third plea rights.
- (25) The request for hearing per article 46 of the Act no 4054 was discussed in the Board meeting on 24.09.2021 and the decision numbered 21-45/654-M to hold the hearing on 27.10.2021 was taken. The hearing was held on the decided date.
- (26) The final decision was taken according to the Report, the Additional Opinion, evidence collected, written pleas, the hearing and the contents of the file concerning the investigation.
- (27) **H. RAPPORTEUR OPINION:** In the relevant report, it is concluded that
 - I.a) A101, BİM, CARREFOURSA, MİGROS and ŞOK ensured the coordination of prices and price increases by either direct or indirect contact through common suppliers. Competitively sensitive information such as future prices, price change dates, seasonal activities and campaigns were also shared directly or through common suppliers. The companies used the suppliers to intervene in the prices of the undertakings which made discounts or which did not yet increase their prices when prices in the market in general were increasing, and ensured that they also increased their prices to the disadvantage of the consumers. Where the competitors did not increase the prices, the undertakings constantly monitored compliance with the collusion by quickly implementing discounts specific to a

product and/or region and through the use of penalizing strategies, including such as making out return invoices to the supplier. Thus, the aforementioned undertakings violated Article 4 of the Act no 4054 by agreements or concerted practices that showed the characteristics of a hub-and-spoke cartel, aimed at fixing the retail prices of many products they offered for sale.

- b) In addition to the aforementioned undertakings, SAVOLA and P&G, which are suppliers among the parties to the investigation, violated article 4 of the Act no 4054 by means of agreements made or concerted practices in the form of a hub and spoke cartel aiming to fix retail prices, by mediating for ensuring and maintaining the collusion/coordination between the aforementioned undertakings about shelf prices and price changes with respect to their own products and in this framework for sharing competitively sensitive information such as retailers' future prices and price change dates, and therefore are equally and jointly responsible with the retailers for the violation.
 - c) Accordingly, administrative fines should be imposed to A101, BİM, CARREFOURSA, MİGROS, ŞOK, SAVOLA and P&G according to article 16(3) of the Act no 4054,
- II.a) SAVOLA., which is a provider/supplier violated article 4 of the Act no 4054 by means of determining resale prices of undertakings operating at retail level,
- b) Therefore, administrative fines should be imposed to the said undertaking according to article 4(1)(a) of the Regulation on Fines to be applied in Cases of Agreements, concerted practices and decisions that restrict competition and article 16(3) of the Act no 4054,
- III.a) No evidence could be found showing that ÇAĞRI, METRO, ÇAĞDAŞ, YUNUS, GRATİS, WATSONS, BEŞLER, HENKEL, BANVİT, SÖKE UN, KATMER UN, EVYAP, COLGATE PALMOLIVE, BEYPI, KÜÇÜKBAY, J&J, UNILEVER, NIVEA, DENTAVIT, ECZACIBAŞI, DALAN, NESTLE and GPD violated the Act no 4054, therefore it is not necessary to impose administrative fines on the said undertakings.
- b) In addition, an opinion should be sent to the investigation parties reminding that all suppliers and retailers should avoid exchange of competitively sensitive information related to the competitors in their markets and related to the competitors of the parties in a vertical relationship and they can only share information about themselves with the parties with which they are in a vertical relationship; otherwise an investigation shall be initiated.

I. ANALYSIS, GROUNDS AND LEGAL BASIS

I.1. Undertakings under investigation

I.1.1. Retailers under investigation

I.1.1.1. A101

- (28) A101 is controlled by Turgut Aydın Holding A.Ş., which is engaged in the activities in retail, maritime business, healthcare, textile and construction areas and holds companies such as Memorial Health Group, Aydın Örne and English Home are under its umbrella. A101 has been active in retailing since 2008. A101 has nearly 10.000 stores throughout Türkiye.

I.1.1.2. BİM

- (29) BİM started retailing in staple food and consumer products in 1995 with 21 stores. BİM has nearly 7600 stores throughout Türkiye (including File²). There are about 750 products in its portfolio.

I.1.1.3. CARREFOURSA

- (30) CARREFOURSA was founded in 1993 and it has been active in organized retailing since 1993. The first CARREFOURSA store was opened in Adana after a partnership was established between Sabancı Holding and Carrefour Group in 1996. CARREFOURSA acquired Gima and Endi stores in 2005 and totally 55 stores from İsmar and 1e1 in 2015. It also bought 85% shares of Kiler Alışveriş Hizmetleri Gıda Sanayi ve Ticaret A.Ş. CARREFOURSA has 647 stores in 52 cities throughout Türkiye.

I.1.1.4. ÇAĞDAŞ

- (31) ÇAĞDAŞ was founded in 1996 and it is active in organized food retailing. It has totally 112 stores in Ankara and Eskişehir.

I.1.1.5. ÇAĞRI

- (32) Founded in 1998 in İstanbul, ÇAĞRI carries out activities in retailing. It has a total of 62 stores, being 58 in İstanbul and four in Kocaeli. ÇAĞRI is a family company.

I.1.1.6. METRO

- (33) METRO is an international retail company with a “wholesale market” concept with its more than 760 stores in 35 countries. METRO opened its first store in Türkiye in İstanbul in 1990. It has 37 stores in 21 cities.

I.1.1.7. MİGROS

- (34) (.....TRADE SECRET.....)^{3, 4}.
- (35) Şok stores were transferred by MİGROS and other shareholders to Gözde Finansal Hizmetler A.Ş. and Bizim Toptan Satış Mağazaları A.Ş., the subsidiaries of Yıldız Holding A.Ş.⁵ Anadolu Endüstri Holding A.Ş. (as its title in 2015) indirectly acquired MİGROS’s control by purchasing (.....)% of MH Perakendecilik ve TAŞ (MH PERAKENDECİLİK), controlled by MOONLIGHT.⁶ Afterwards, in 2017, Anadolu Endüstri Holding A.Ş. purchased remaining (.....)% of MH PERAKENDECİLİK. MH PERAKENDECİLİK currently holds (.....)% shares of MİGROS.
- (36) (.....TRADE SECRET.....)^{7 8}
- (37) MİGROS carries out activities in retailing sector in cosmetics, stationery, glassware, electronics, book and textile areas in addition to food and necessities. It has nearly (.....) stores, being (.....) in 81 cities.

²FILE is a chain store owned by BİM, which started to operate in 2015. The stores are larger and more products are sold compared to BİM.

³(.....)

⁴(.....).

⁵The transaction was authorized with the Board Decision dated 17.08.2011 and numbered 11-45/1044-357.

⁶The transaction was conditionally authorized with the Board Decision dated 09.07.2015 and numbered 15-29/420-117.

⁷(.....)

⁸(.....)

I.1.1.8. ŞOK

- (38) ŞOK was founded in 1995 and is active mainly in food retailing. As of the end of 2019, ŞOK has 6500 stores and 29738 personnel overall Türkiye. ŞOK has three affiliated partners. They are Taze Sebze Meyve Sanayi ve Ticaret A.Ş., Teközel Gıda Temizlik Sağlık Marka Hiz. San. ve Tic. A.Ş. (TEKÖZEL) and UCZ Mağazacılık Ticaret A.Ş. (UCZ). ŞOK's shareholders indirectly hold the control of UCZ, which operates at retail sector and Bizim Toptan Satış Mağazaları A.Ş., which sells products at the wholesale level.

I.1.1.9. YUNUS

- (39) YUNUS is a family company operating in retailing since 1989. YUNUS has nearly 100 stores in Ankara, Çankırı, Çorum, Düzce, İzmit, Kırşehir, Sakarya, Sivas, Aksaray, Amasya, Tokat and Yozgat.

I.1.1.10. GRATİS

- (40) GRATİS has been carrying out activities in the retail sale of cosmetics and personal care products since 2009. All of its shares belong to Sedes İç ve Dış Ticaret A.Ş. ACTERA⁹ and Demir SABANCI¹⁰ have direct control over SEDES and thus GRATİS¹¹.

I.1.1.11. WATSONS

- (41) Having more than 350 stores in 59 cities, Watsons is engaged in the retail sale of any kind of beauty and personal care products, equipment and accessories.

I.1.2. Producers/Suppliers under investigation and GPD

I.1.2.1. BANVİT

- (42) BANVİT started its activities in 1968 as a mixed feed producer and went into the production of chicken in 1985. BANVİT carries out production activities in Elazığ, İzmir and Bandırma. Its product portfolio includes raw chicken, turkey products, covered products, ready products and delicatessen.

I.1.2.2. BEŞLER

- (43) Founded in 1945 in İstanbul, BEŞLER operates in red meat and meat products sector.

I.1.2.3. BEYPI

- (44) BEYPI was founded in 1986 in Bolu. It engages in chicken production and sales. BEYPI makes integrated production and within this framework it produces and sells incubating eggs, chicks, live pullets, feed and eggs. BEYPI currently has (.....) partners.

I.1.2.4. COLGATE PALMOLIVE

- (45) Founded in 1995 in İstanbul, COLGATE PALMOLIVE produces, markets, distributes, imports and exports oral care, personal care and home care products with Colgate, Palmolive, Irish Spring, Hacışakir, Protex and Lady Speed Stick brands mainly.

⁹ACTERA is a private capital company with corporate investors under its umbrella. ACTERA engages in advertising, media, sports club operation, aviation and ground services, automotive spare parts (impermeability profiles), mother, baby and kids ware and products, package manufacturing and the retail sale of cosmetics and personal care products.

¹⁰ Demir SABANCI carries out activities concerning the retail sale of cosmetics and personal care products, plastics and rubber based packaging, insurance agency business and brokerage.

¹¹The transaction was authorized with the Board Decision dated 14.12.2017 and numbered 17-41/646-284.

I.1.2.5. DALAN

- (46) DALAN was founded in 1971 in İzmir and produces soap bars, liquid soap, shampoo, hair conditioner, shower gel, body lotion, body oil and hand and body cream.

I.1.2.6. DENTAVIT

- (47) Founded in 2011, DENTAVIT supplies, distributes and markets oral care products such as tooth paste, tooth brush, tootwash and tooth brush storage box with Rocs, Firefly, Flipper and Steripod brands mainly.

I.1.2.7. ECZACIBAŞI

- (48) ECZACIBAŞI was founded in 1969 under the title İpek Kağıt Sanayi ve Ticaret A.Ş. (Changed in 2017). ECZACIBAŞI produces, sells and distributes products of sanitary paper, personal care and cosmetics, baby care, home care, professional cleaning, hygiene and food categories with its brands Selpak, Solo and Uni.

I.1.2.8. EVYAP

- (49) EVYAP operates in soap and personal care sector with its brands Duru, Fax, Arko, Evy Baby, Emotion, Blade, Belissima and Activex. It was founded in 1976.

I.1.2.9. HENKEL

- (50) Founded in 1963, HENKEL produces, imports, sells and markets products in detergent, home care/cleaning, personal care and adhesive categories with its brands Persil, Vernel, Perwoll, Pril, Bref, Blendax, Gliss, Palette, Diadermine, Fa and Pritt mainly.

I.1.2.10. J&J

- (51) J&J carries out activities in the production, retail and wholesale, export and import of medicine, medical devices, consumer health (shower gel, wet wipes, shampoo, liquid soap, etc.) and eye care products in Türkiye with its brands Johnson's Baby, Neutrogena, Listerine, Le Petit Marseillias, Rocand Ogx. J&J was founded in 1974.

I.1.2.11. KATMER UN

- (52) KATMER UN was founded in 1995 and it is active in wheat flour sector.

I.1.2.12. KÜÇÜKBAY

- (53) Founded in 1978, KÜÇÜKBAY produces and sells all sorts of cooking oil under Orkide, Ediz and Oba brands.

I.1.2.13. NESTLE

- (54) NESTLE is active in the production, marketing and sales of food and drinks including mainly confectionery, coffee products, infant nutrition products, out-of-home products, pet food, cereals, milk drinks and healthy food. It was established in 1875.

I.1.2.14. NIVEA

- (55) NIVEA sells, distributes, develops and markets the cosmetics products of the brands owned by Beiersdorf AG in Türkiye. The undertaking was established in 1993 in İstanbul.

I.1.2.15. P&G

- (56) Founded in İstanbul in 1987, P&G produces, imports, sells and markets the products with its brands Ariel, Alo, Prima, Gillette, Head &Shoulders, İpana, Oral-B, Pantene,

Herbal Essences, Orkid and Fairy under the following categories: home care/cleaning, feminine care, hair care, grooming and beauty care.

I.1.2.16. SAVOLA

- (57) SAVOLA started its activities in 1985. It produces and sells sunflower oil, olive oil, margarine and other cooking and edible oils mainly with its brands Yudum, Sirma, Egemden and Vala.

I.1.2.17. SÖKE UN

- (58) SÖKE UN was founded in 1963 and it is active in wheat flour sector. Its factory located in Aydın/Söke has a capacity to grind wheat (.....) tons/day and its factory in Ankara has a capacity to grind wheat (.....) tons/day.

I.1.2.18. UNILEVER

- (59) Founded in İstanbul in 1952, UNILEVER operates in home care/cleaning, personal care and ice cream with its brands Axe, Dove, Rexona, Signal, Clear, Elidor, Vaseline, Algida, Lipton, Knorr, Hellmann's, Calve, Domestos, Cif, Omo, Yumoş and Rinso.

I.1.2.19. GPD

- (60) GPD was established in 2012 in İstanbul. It is the representative of national and local organized food retailers and food service chains. All the leading retail organizations and food service chains are members of GPD.

I.2. Relevant Market¹²

I.2.1. General Information about the Markets

I.2.1.1. Information about the Retail Market

- (61) Fast moving consumer goods (FMCG) retailing is the sale of products such as food, drink, personal care goods, cosmetics and cleaning products, which are rotating fast, stored for a short time and consumed constantly to end users. Although some of large-scale FMCG stores sell durable goods such as furniture and electronic products as well as textile and glassware products, a large part of this sector's turnover is generated by the sale of FMCG. Therefore the main function of these stores from consumers' perspective is the sale of FMCG. The main actors in FMCG retailing are hypermarkets, supermarkets, medium-size markets, markets, groceries, kiosks and specialized stores (such as butcher, greengrocer, dried fruit and nuts seller).
- (62) Table 1 shows the size of traditional¹³ and organized¹⁴ retailing channel on the basis of turnover and store number as well as the size of total FMCG retailing market. As seen from the table both traditional and organized retail channel contribute to the growth of FMCG retail market. On the other hand, while the traditional channel is shrinking the organized channel is growing on the basis of the number of stores. The increase in the number of stores in the organized channel counterbalances the decrease in the number of stores in the traditional channel, making FMCG retail market grow on the basis of the number of stores.

Table 1: The size of FMCG Retailing Market during 2017-2019 Period

¹² Türkiye FMCG Retailing Sector Inquiry Preliminary Report is referred to in the preparation of this section.

¹³ Traditional channel covers groceries, gas stations, dried fruit and nuts sellers, kiosks, pharmacies and perfumeries.

¹⁴ Organized channel covers supermarkets, hypermarkets and discount markets.

Turnover (TL)	2017	2018	2019
Total FMCG Retailing	(.....)	(.....)	(.....)
Traditional Retail Channel	(.....)	(.....)	(.....)
Organized Retail Channel	(.....)	(.....)	(.....)
The number of Stores	2017	2018	2019
Total FMCG Retailing	(.....)	(.....)	(.....)
Traditional Retail Channel	(.....)	(.....)	(.....)
Organized Retail Channel	(.....)	(.....)	(.....)

Source: NIELSEN

- (63) The table below shows the shares of traditional channel and organized channel in the overall FMCG Retailing market annually between 2017 and 2019. The share of the organized channel has increased on the basis of both turnover and the number of stores in the last three years.

Table 2: The Shares of Traditional Channel and Organized Channel in the Overall FMCG Retailing Market between 2017 and 2019

Share on the Basis of Turnover	2017	2018	2019
Traditional Retail Channel	(.....)	(.....)	(.....)
Organized Retail Channel	(.....)	(.....)	(.....)
Total	(.....)	(.....)	(.....)
Share on the Basis of the Number of Stores	2017	2018	2019
Traditional Retail Channel	(.....)	(.....)	(.....)
Organized Retail Channel	(.....)	(.....)	(.....)
Total	100.0	100.0	100.0

Source: NIELSEN

Table 3: The Number of Stores on the basis of the Sales Area Size in FMCG Retailing Market between 2017 and 2019

	2017	2018	2019
Organized Channel	Hypermarket ($m^2 \geq 2500$)	(.....)	(.....)
	Supermarket ($1000 < m^2 < 2499$)	(.....)	(.....)
	Supermarket ($400 < m^2 < 999$)	(.....)	(.....)
	Supermarket ($m^2 \geq 400$)	(.....)	(.....)
	Discount Markets ($m^2 < 400$)* ¹⁵	(.....)	(.....)
Traditional Channel	(.....)	(.....)	(.....)
Total	(.....)	(.....)	(.....)

Source: NIELSEN

- (64) Although the market share of the organized channel has not surpassed that of the traditional channel on the basis of turnover, they are very close. Türkiye is in the early stages of organized channel's growth curve and still developing.
- (65) The tables below show the sizes of the supermarkets in the overall retail market and organized retail market separately. The size of the whole market and concentration rates are given including traditional and organized channel, going from general to specific.

¹⁵ * A101, BIM and ŞOK

Table 4: The Shares of the First Ten Undertakings (%) and Concentration Rates (%) in the Overall FMCG Retailing Market During 2017-2019 Period

	2017	2018	2019
BİM	(.....)	(.....)	(.....)
A101	(.....)	(.....)	(.....)
Migros	(.....)	(.....)	(.....)
ŞOK	(.....)	(.....)	(.....)
Metro	(.....)	(.....)	(.....)
Carrefoursa	(.....)	(.....)	(.....)
Bizim Toptan	(.....)	(.....)	(.....)
Çağdaş	(.....)	(.....)	(.....)
Hakmar Express	(.....)	(.....)	(.....)
Gimsa	(.....)	(.....)	(.....)
CR3	(.....)	(.....)	(.....)
CR4	41.30	48.03	51.91
CR10	51.74	59.24	63.47

Source: Information provided by undertakings and NIELSEN

- (66) Looking at the course of the market in the last three years, BİM is by far the market leader. MİGROS, which was the second player after BİM in 2017, fell behind A101 although it increased its market share consistently. Regarding the market concentration level, the total market shares of the first four undertaking exceed 50% in 2019. The total market shares of the ten biggest players are about 63%. The shares of the markets in only FMCG organized retail channel are given in the table below.

Table 5: The Shares of the First Ten Undertakings (%) and Concentration Rates (%) in the Organized Retail Market during 2017-2019 Period

	2017	2018	2019
BİM	(.....)	(.....)	(.....)
A101	(.....)	(.....)	(.....)
Migros	(.....)	(.....)	(.....)
ŞOK	(.....)	(.....)	(.....)
Metro	(.....)	(.....)	(.....)
Carrefoursa	(.....)	(.....)	(.....)
Bizim Toptan	(.....)	(.....)	(.....)
Çağdaş	(.....)	(.....)	(.....)
Hakmar Ekspres	(.....)	(.....)	(.....)
Gimsa	(.....)	(.....)	(.....)
CR3	(.....)	(.....)	(.....)
CR4	69.72	71.93	73.50
CR10	87.36	88.73	90.05

Source: Information provided by undertakings

- (67) Looking at undertakings' market shares and concentration rates specific to FMCG organized retail market, BİM's leadership is more apparent. Although BİM has lost an insignificant amount of market shares in 2019, its shares are (.....) points more than its closest competitor. A101 and ŞOK have increased their market shares while other undertakings shown in the table except (.....) have lost market shares. This leads to an increase in the concentration rates composed of the undertakings at the top ranks in the market.
- (68) Analyzing the performance of undertakings with significant growth performance in the market in detail is important for the current and future conditions of the market.

Table 6: The Number of Undertakings' Stores in Years

	2011	2012	2013	2014	2015	2016	2017	2018	2019
A101	1287	1768	2665	4028	5373	6362	7113	8005	9132
Adese	140	140	135	142	150	155	151	103	81
Akyurt	39	45	47	47	49	42	40	41	40
Altunbilekler	-	-	-	73	79	83	81	77	72
Başgimpa	40	46	52	55	57	56	55	56	56
Beğendik	-	-	45	45	44	44	38	28	28
Bildirici	18	19	20	21	20	20	20	20	20
BİM	3315	3670	4000	4497	4980	5623	6123	6733	7530
Bizim Toptan	124	137	152	153	156	162	176	174	175
Carrefoursa	243	243	244	333	779	656	625	596	634
Çağdaş	61	68	74	79	87	95	101	108	115
Çağrı	27	36	39	41	43	49	54	60	61
Çetinkaya	20	20	24	27	28	28	29	31	31
Düzgün	8	11	11	11	11	11	11	14	17
Esenlik	23	24	32	37	44	44	42	42	46
Furpa	13	19	22	27	31	41	42	46	47
Gimsa	9	9	9	9	9	9	10	11	11
Groseri	18	18	20	21	22	22	25	26	27
Hakmar	19	20	20	23	25	25	25	25	26
Hakmar Express	193	218	251	279	307	378	463	518	564
Kim	60	71	75	79	78	82	85	91	105
Metro	26	29	29	31	32	38	39	40	40
Migros	717	851	967	1154	1363	1566	1858	2059	2153
Mopaş	83	84	98	100	104	102	102	106	108
Onur	43	54	57	71	77	136	142	147	147
Özdilek	12	13	14	15	15	18	20	21	21
Pehlivanoğlu	-	-	-	-	52	60	61	64	66
Rammar	46	51	49	49	47	42	43	42	44
Seyhanlar	17	34	57	68	85	103	109	125	127
Sincap	26	31	32	34	32	30	26	31	29
Soykan	41	40	43	45	52	56	52	34	31
ŞOK	1135	1233	2037	2301	3000	4000	5100	6364	7215
Tespo	15	15	15	18	19	20	20	21	21
Yunus	46	64	66	74	75	81	103	115	99

Source: Information provided by undertakings

- (69) In the table, especially, the increase in the number of discount market stores is noteworthy. It is also seen that the number of supermarket chains' stores such as MİGROS and CARREFOURSA also continue increasing. The number of wholesale market stores and regional/local market stores either fell or had a limited increasing performance. Moreover, the increase in the number of discount market stores is obviously different from the other part of the market. Supermarkets with increasing number of stores such as MİGROS and CARREFOURSA expanded in the market not only with the investments to new stores but also with mergers/acquisitions. Discount markets which have a leading role in the growth of the market gained such growth rates without mergers/acquisitions but only through investments in new stores. This fact is important because it shows discount markets' position and power in the market.

I.2.1.2. Information about Supply Markets

- (70) Organized FMCG retailing is a sector that delivers the products provided by producers/suppliers to end consumer in various ways especially under food and cleaning/hygiene categories. The main element of FMCG retailing is retail services and the retail chains providing those services.

- (71) The vertical relation between retailers and producers/suppliers from which they purchase the products they sell is the supply pillar of the market. There are international companies with wide product range as well as companies with relatively limited product range in the supply market in our country.
- (72) International producers/suppliers generally manufacture products in Türkiye but they may also import final products directly from the main company, to which they are affiliated globally, and provide those to retailers. On the other hand, local producers/suppliers are limited to their own product groups in supplying both branded and private label products to retailers. Ability to switching to producing alternative products is limited for producers/suppliers and they cannot produce all the products sold in a retail sales point. As a natural result of this, it is not possible to talk about a single supply market in the sector. Within this framework, supply markets can be categorized under two main headings depending on the goods supplied: food and cleaning/hygiene.
- (73) Food category is divided into sub-categories such as drinks (fizzy drinks, soft drinks, tea, coffee, mineral water, water, etc.), dairy and breakfast food (milk, cheese, yogurt, margarine, egg, olive, etc.), pulses, bakery and pasta (pasta, beans, flour, etc.), oil (sunflower oil, olive oil), meat and meat products.
- (74) Cleaning/hygiene category is basically divided into two as personal care and cleaning. Personal care category is divided into the following sub-categories: hair care (shampoo, hair conditioner, hair foam, hair spray, gel, hair dye, etc.), oral care (toothbrush, toothpaste, mouthwash, etc.), toiletries (bath foam, soap, shower gel, cologne, deodorant, perfume, etc.), grooming (shaving foam, shaving gel, blades, razors, etc.) and tissues (nappies, baby wipes, rolls, sanitary papers, sanitary towels, etc.). Cleaning category is divided into the following sub-categories: dish washing detergents, laundry detergents, cleaners, bleach and other cleaning products (degreaser, cling film, foil, bin liner, baking paper, air freshener, laundry conditioner, carpet cleaner, etc.) The main categories where the produces/suppliers party to the investigation carry out activities are given below:

Table 7: The Main Categories Where the Produces/Suppliers Party to the Investigation Carry Out Activities

Food	Cleaning/Hygiene	Food and Cleaning/Hygiene
BANVİT	COLGATE PALMOLIVE	UNILEVER
BEŞLER	DALAN	
BEYPİ	DENTAVIT	
KATMER UN	ECZACIBAŞI	
KÜÇÜKBAY	EVYAP	
NESTLE	HENKEL	
SAVOLA	J&J	
SÖKE UN	NIVEA	
	P&G	

Source: Undertakings' responses

1.2.1.2.1 Information about Cleaning and Hygiene Market¹⁶

- (75) The estimated market shares of the undertakings operating in supplying/producing cleaning and hygiene products on a category basis during 2016-2020 period are given in the table below.

¹⁶ Cleaning and hygiene markets are handled under a separate section because they form a basis to the assessments under the heading numbered I.3.3.2.1. in the decision.

Table 8: Market shares of producers/suppliers in personal care¹⁷ category during 2016-2020 period

Personal care	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)	(.....)
ECZACIBAŞI	(.....)	(.....)	(.....)	(.....)	(.....)
HAYAT	(.....)	(.....)	(.....)	(.....)	(.....)
EVYAP	(.....)	(.....)	(.....)	(.....)	(.....)
COLGATE PALMOLIVE	(.....)	(.....)	(.....)	(.....)	(.....)
HENKEL	(.....)	(.....)	(.....)	(.....)	(.....)
LOREAL	(.....)	(.....)	(.....)	(.....)	(.....)
NIVEA	(.....)	(.....)	(.....)	(.....)	(.....)
ERUSLU	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' Responses and rapporteurs' calculations

Table 9- Market Shares of Producers/Suppliers in Hair Care¹⁸ Category during 2016-2020 Period

Hair Care	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
UNILEVER	(.....)	(.....)	(.....)	(.....)	(.....)
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
HENKEL	(.....)	(.....)	(.....)	(.....)	(.....)
LOREAL	(.....)	(.....)	(.....)	(.....)	(.....)
COTY Inc.	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings'2 responses and rapporteurs' calculations

Table 10: Market Shares of Producers/Suppliers in Oral Care¹⁹ Category during 2016-2020 Period

Oral care	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
GSK	(.....)	(.....)	(.....)	(.....)	(.....)
COLGATE PALMOLIVE	(.....)	(.....)	(.....)	(.....)	(.....)
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

Table 11: Market Shares of Producers/Suppliers in Toiletries²⁰ Category during 2016-2020 Period

Toiletries	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
EVYAP	(.....)	(.....)	(.....)	(.....)	(.....)
NIVEA	(.....)	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)	(.....)
COLGATE PALMOLIVE	(.....)	(.....)	(.....)	(.....)	(.....)
LOREAL	(.....)	(.....)	(.....)	(.....)	(.....)
ECZACIBAŞI	(.....)	(.....)	(.....)	(.....)	(.....)
RB	(.....)	(.....)	(.....)	(.....)	(.....)
HENKEL	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

¹⁷ Personal care main category covers "hair care", "oral care", "body care", "grooming" and "paper products".

¹⁸ Hair care main category covers "hair dye", "shampoo", "hair conditioner", "hair foam", "hair spray" and "gel".

¹⁹ Oral care category covers "tooth brush", "toothpaste" and "tootwash".

²⁰ Toiletries cover "bath foam", "cologne", "soap and shower gel", "wax and hair removers", "condom", "women perfume", "deodorant", "skin care products", "baby powder" and "lubricant".

Table 12: Market Shares of Producers/Suppliers in Grooming²¹ Category during 2016-2020 Period

Grooming	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
EVYAP	(.....)	(.....)	(.....)	(.....)	(.....)
NIVEA	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

Table 13: Market shares of producers/suppliers in paper products²² category during 2016-2020 period

Paper Products	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
HAYAT	(.....)	(.....)	(.....)	(.....)	(.....)
ECZACIBAŞI	(.....)	(.....)	(.....)	(.....)	(.....)
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
ERUSLU	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

Table 14: Market Shares of Producers/Suppliers in Cleaning²³ Category during 2016-2020 Period (%)

Cleaning	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)	(.....)
HENKEL	(.....)	(.....)	(.....)	(.....)	(.....)
RB	(.....)	(.....)	(.....)	(.....)	(.....)
HAYAT	(.....)	(.....)	(.....)	(.....)	(.....)
KOROZO	(.....)	(.....)	(.....)	(.....)	(.....)
BEYAZ KAGIT	(.....)	(.....)	(.....)	(.....)	(.....)
ABC DETERJAN	(.....)	(.....)	(.....)	(.....)	(.....)
PROVEL	(.....)	(.....)	(.....)	(.....)	(.....)
FATER	(.....)	(.....)	(.....)	(.....)	(.....)
ECZACIBAŞI	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

Table 15: Market Shares of Producers/Suppliers in Washing Up Liquid Category during 2016-2020 Period

Washing up liquid	Market Share (%)				
Undertaking	2016	2017	2018	2019	2020
P&G	(.....)	(.....)	(.....)	(.....)	(.....)
RB	(.....)	(.....)	(.....)	(.....)	(.....)
HENKEL	(.....)	(.....)	(.....)	(.....)	(.....)
OTHER	(.....)	(.....)	(.....)	(.....)	(.....)

Source: Undertakings' responses and rapporteurs' calculations

²¹Grooming category covers "shaving cream", "blade" and "razor".

²² Paper products cover "baby wipes", "sanitary papers", "nappies" and "sanitary towel".

²³ Cleaning category covers "degreaser", "non-chemical cleaner", "cling film and baking folio", "bin liners and baking papers", "dishwasher cleaner", "bleacher", "dishwasher freshener", "air refreshener", "laundry conditioner", "cleaner", "dishwashing detergent" and "carpet cleaner".

Table 16: Market Shares of Producers/Suppliers in Laundry Detergent Category during 2016-2020 Period

Laundry Detergent Undertaking	Market Share (%)				
	2016	2017	2018	2019	2020
P&G	(....)	(....)	(....)	(....)	(....)
HENKEL	(....)	(....)	(....)	(....)	(....)
UNILEVER	(....)	(....)	(....)	(....)	(....)
HAYAT	(....)	(....)	(....)	(....)	(....)
RB	(....)	(....)	(....)	(....)	(....)
BEYAZ KAGIT	(....)	(....)	(....)	(....)	(....)
ABC DETERJAN	(....)	(....)	(....)	(....)	(....)
OTHER	(....)	(....)	(....)	(....)	(....)

Source: Undertakings' responses and rapporteurs' calculations

Table 17: Market Shares of Producers/Suppliers in House Cleaners Category during 2016-2020 Period

House Cleaners Undertaking	Market Share (%)				
	2016	2017	2018	2019	2020
UNILEVER	(....)	(....)	(....)	(....)	(....)
HENKEL	(....)	(....)	(....)	(....)	(....)
RB	(....)	(....)	(....)	(....)	(....)
HAYAT	(....)	(....)	(....)	(....)	(....)
OTHER	(....)	(....)	(....)	(....)	(....)

Source: Undertakings' responses and rapporteurs' calculations

Table 18: Market Shares of Producers/Suppliers in Bleacher Category during 2016-2020 Period

Bleacher Undertaking	Market Share (%)				
	2016	2017	2018	2019	2020
UNILEVER	(....)	(....)	(....)	(....)	(....)
FATER	(....)	(....)	(....)	(....)	(....)
HAYAT	(....)	(....)	(....)	(....)	(....)
ABC DETERJAN	(....)	(....)	(....)	(....)	(....)
OTHER	(....)	(....)	(....)	(....)	(....)

Source: Undertakings' responses and rapporteurs' calculations

Table 19: Market Shares of Producers/Suppliers in Other Cleaning Products²⁴ Category during 2016-2020 Period

Other Cleaning Products Undertaking	Undertaking's Market Share (%)				
	2016	2017	2018	2019	2020
KOROZO	(....)	(....)	(....)	(....)	(....)
UNILEVER	(....)	(....)	(....)	(....)	(....)
HENKEL	(....)	(....)	(....)	(....)	(....)
PROVEL	(....)	(....)	(....)	(....)	(....)
HAYAT	(....)	(....)	(....)	(....)	(....)
RB	(....)	(....)	(....)	(....)	(....)
ABC DETERJAN	(....)	(....)	(....)	(....)	(....)
OTHER	(....)	(....)	(....)	(....)	(....)

Source: Undertakings' responses and rapporteurs' calculations

- (76) As seen from the table above, there are many national and international players in each cleaning and hygiene category and sub-categories. In addition, UNILEVER, P&G, ECZACIBAŞI, HENKEL, EVYAP and HAYAT are competitors in many categories. Suppliers' positions and shares vary in a wide range in the said categories.

²⁴ Information about "degraser", "non-chemical cleaner", "cling film and baking folio", bin liner and baking paper", "dishwasher cleaner", "dishwasher freshener", "air freshener", laundry conditioner" and "carpet cleaner" categories, which are under the cleaning category but are not included under "washing up liquid", "laundry detergent", "bleacher" and "house cleaner" categories.

For instance, in grooming category, P&G is the leader with (.....)% shares but is in middle rank of the paper products category with (.....)% shares.

- (77) On the other hand, NİELSEN, whose data are used for preparing the tables, explained that there is another “other” category with unknown number of companies under the scope of “other cleaning products” category. Thus, it is systematically impossible to determine the number of companies under “other cleaning products” category. However, it is said that the number of companies that have a certain amount of shares and are able to be reported statistically is 1,310 in personal care products category and 471 in house cleaning category.

I.2.2. Relevant Product Market

- (78) In the Guidelines on the Definition of the Relevant Market (Relevant Market Guidelines), the relevant product market is defined as the market composed of the goods and services which are regarded as identical in terms of price, intended use and characteristics in the eye of the consumers. Retailers as well as producers/suppliers of food and cleaning/hygiene products are under investigation. Alternative relevant product markets can be defined as “retail sale of food products”, “retail sale of cleaning/hygiene products”, “production/supply of food products”, “production/supply of cleaning/hygiene products”. Moreover, they can be defined at retail and production/supply levels on the basis of each sub-category listed above. In Board decisions, it is seen that products under a category and even under a sub-category can be defined as a separate relevant product market²⁵ and main categories can be defined as a relevant product market directly²⁶.
- (79) For instance, on the basis of wheat flour, although flour may be categorized in many ways depending on the intended use and nutrition values, wheat flour is divided into two basically, being bread flour and all purpose flour. Bread flour corresponds to 80-90% of the flour production in Türkiye. It is produced by grinding wheat whose technological characteristics are suitable for baking bread. All-purpose flour is suitable for products that are directly consumed such as baklava, beurek, biscuit, cake, pastry, phyllo, lavash, pizza, hamburger, French bread, bagel, cookie, multigrain bread and all pastry products as well as for making the intended products such as flour with additives, specially processed flour and semolina flour. If users bake products that require all purpose flour such as baklava and beurek with bread flour, the end product quality may be lower, preventing the desired result because of wheat flours’ rheological characteristics (damp, gluten, protein, resistance, ash amount, etc.).
- (80) However, depending on paragraph 20 of the Relevant Market Guidelines stating that *“in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be made”*, the relevant product market is not defined.

I.2.3. Relevant Geographic Market

- (81) Geographic markets are areas in which undertakings operate in the supply and demand of their goods and services, in which the conditions of competition are sufficiently homogeneous, and which can easily be distinguished from neighboring areas, as the conditions of competition are appreciably different from these areas.

²⁵Board Decision dated 14.08.2008 and numbered 08-50/722-282.

²⁶Board Decision dated 19.09.2018 and numbered 18-33/556-274.

Among the parties to the investigation operating at the retail level, while some of them are sales points of the retail chain operating at a national level, others are operating in one or more than one city. In previous Board decisions, especially in acquisition decisions, FMCG retail and its sub-divisions FMCG organized retail markets were analyzed on both a city base²⁷ and district base²⁸.

- (82) On the other hand, parties to the investigation operating at production/supply level supply goods to retailers in almost every region of Türkiye.
- (83) Depending on the provision in paragraph 20 of the Relevant Market Guidelines, considering the relevant geographic market within the framework of alternative definitions stated above, since the definition will not change the conclusion in this decision, it is concluded that it is not necessary to define the relevant geographic market.

I.3. ANALYSES, FINDINGS, AND ASSESSMENTS

I.3.1. Findings about BİM, CARREFOURSA, MİGROS and ŞOK

FINDING 1

- (84) The e-mail subjected *“RE: Bim&Savola/03 July poster offer”* sent by SAVOLA employee (.....) on 28.05.2018 to BİM employees (.....), (.....) and (.....), which was obtained during the on-site inspection at SAVOLA, includes the following correspondence:

“Hello Mr. (.....)

I am submitting our price offer about the products

that we are planning to participate for your poster work 03 July

<image001.png>

I request your feedback. Have a nice week...”

- (85) BİM employee (.....) responded the said e-mail on 28.05.2018 and sent an e-mail to SAVOLA employee (.....) and BİM employees (.....) and (.....) with the following expressions:

“Mr. (.....)

There was yudum 2 at 12.95 at the weekend.

Let’s handle this when the old actions, previously priced goods and their price perception are over.

Respectfully,

...”

- (86) In the same e-mail chain, SAVOLA employee (.....) said the following in the e-mail dated 28.05.2018 sent to BİM employee (.....):

“Where was it? Let’s step into it boss...”

BİM employee (.....) responded *“C4”*²⁹ to the said e-mail.

²⁷ Board decisions dated 17.06.2005 and no 05-40/557-136, dated 04.05.2006 and no 06-32/392-102, dated 18.12.2008 and no 08-73/1158-452, dated 15.04.2010 and no 10-31/486-182.

²⁸ Board decisions dated 31.10.2005 and no 05-76/1030-287 dated 06.07.2006 and no 06-47/632-180 dated 05.04.2007 and no 07-30/293-110 dated 15.07.2009 and no 09-33/728-168 dated 23.02.2011 and no 11-10/186-62 dated 09.02.2012 and no 12-06/185-47 dated 09.02.2017 and no 17-06/56-22 dated 18.04.2018 and no 18-11/204-95.

²⁹ Refers to CARREFOURSA As seen from the several documents obtained during the investigation, CARREFOURSA is referred to as C4 or CRR in the correspondence in the FMCG sector.

- (87) In the Whatsapp conversation between SAVOLA employee (.....) and MİGROS employee saved as “Migros (.....)” (it is understood that the employee is MİGROS dry goods category director (.....)) on 10.08.2018, the following messages are found:
“(.....) : (Nevgros aisle photo showing that 5 L Yudum sunflower oil sticker price is 35.90 was shared)
*Migros(.....) : Nice bro, if the market increases, there will be no problem :)
Meanwhile, shelf prices will rise on Tuesday
On Monday everybody should be organized and change on Tuesday
(.....) : On Monday we are changing to 39.95 TL shelf price.
We'll sent an e-mail to you on Monday morning.”*
On 11.08.2018, the following correspondence is made
Migros(.....) : Ok, we'll have changed as of Tuesday”
On 14.08.2018:
*Migros(.....) : Şok did not change the prices
(.....) : (...)
("Referring to the “Şok did not change the prices” message): There is 1 L and they will change it too, don't worry
(...)*
- (88) In the continuation of the same correspondence, on 28.08.2018, the following messages are found:
“(.....) : (Several price label pictures that are considered to be CARREFOURSA's price labels were shared).
*Carrefour
We are waiting for you.
Şok 1 L Yudum will be 10.95 on the shelf tomorrow. Please change tomorrow. (.....)³⁰
approved it.
There won't be any problems.
I need your help bro.”*
On 29.08.2018, the following correspondence is made:
“(.....) : Forwarded(Several price label photos, which are found to belong to ŞOK were shared. The price of “Yudum Sunflower Oil 1L” being 10.95 was circled in red)
Şok”
- (89) In the continuation of the same correspondence on 21.09.2018, the following messages are found:
“(.....) : Forwarded(A shelf picture which is considered to belong to CARREFOURSA was shared showing that the sticker price of “Yudum Sunflower Oil 5 L” was 42.90)
ForwardedC4 price change
*Migros(.....) : Cash register receipt is needed for İstanbul region
(.....) : (CARREFOURSA cash register receipt showing that the price of “Yudum Sunflower Oil 5 L” is 42.90 is shared.)
Migros(.....) : Ok”*
- (90) In the messaging in the Whatsapp group called “Strategy team”³¹ on 02.10.2018 among SAVOLA employees (.....) and (.....), the following messages are found:
“(.....) : (Screenshot that is considered to belong to Carrefoursa website showing that Yudum Sunflower Oil 2 L is sold at 28% discounted price is shared).

³⁰ ŞOK senior manager (CEO)

³¹ The Whatsapp group called “Strategy Team” consists of SAVOLA sales unit managers (.....), (.....) and (.....); the group has no members other than the said persons.

Let's have it corrected please.

(.....) : Have you sent (.....)³² Migros shelf price (.....)? If not let's send it tomorrow morning bro."

- (91) The Whatsapp conversation between SAVOLA employee (.....) and MİGROS employee saved as "Migros(.....)" includes the following:

"(.....) : Forwarded (Shelf picture, which is understood to belong to MİGROS, showing that the sticker price of "Yudum Sunflower Oil 2 L" is 20.90 was shared)

Forwarded Migros Snf 2 L 20.90 tl

Migros(.....) : There's File's price, we shared it yesterday

(.....) : 'File' is changing tomorrow

Migros(.....) : When the receipt is sent, we can change too."

"File" mentioned in the messaging is FILE supermarket chain owned by BİM, which started to operate in 2015 with larger stores and more products offered compared to BİM³³. The continuation of the same messaging:

"(.....) : Cheers mate. Thanks a lot. Good night."

- (92) On 08.11.2018, in the Whatsapp group called "Strategy team", SAVOLA employee (.....) shared a screenshot showing the Whatsapp conversation with the CARREFOURSA employee saved as "(.....) Carrefour", who is found to be purchasing specialist (.....). The said messaging covers the following messages:

"(.....) Carrefour: (The screenshot that is considered to belong to Migros Sanal Market showing that Yudum Sunflower Oil 5L plastic bottle and can products are on sale was shared).

Mr. (.....) what are those prices, is there something that we don't know. I am taking both olive oil and sunflower oil prices down and billing the difference. Don't ask me why later.

(.....) : (.....) It is beyond our knowledge we have not supported for sunflower oil, olive oil prices are the prices that we agreed with Migros the prices we shared with you"

- (93) On 13.11.2018 the following messages are sent in the Whatsapp group called "Strategy team":

"(.....) : forwarded Hello Mr. (.....), in the index Yudum 5 L can is 34.95 in İstanbul Onur supermarket I request the cash register receipt immediately please"

Mr (.....) .

Migros sent the text above. They want Onur supermarket's cash register receipt. If the price is high they won't decrease. Shall we have (.....) take the cash register receipt? Is this price correct?

(.....) : Onur?

It can't be.

In onur Komili is in insert

(.....) : I wrote, I wanted it from (.....)

Forwarded (Onur supermarket receipt showing that the price of Yudum Sunflower Oil 5 L is 39.95 was shared.)

I sent it to Migros"

- (94) On 26.01.20109, the following messages are sent in the Whatsapp group called "Strategy team":

"(.....) : (.....) Boss, you must enter and approve Erzurum warehouse order. The details are in the e-mail sent by (.....)

³² Referring to CARREFOURSA Purchasing specialist (.....)

³³ See. <https://www.file.com.tr/Categories/12/file.aspx>

Besides, if you send me February March action products that we plan for Migros and Crr³⁴, I'll share it with A101

Thx

(.....) (Approving emoji)

(.....) I can't access the system Mr. (.....).

- (95) On 12.02.2019, in the Whatsapp group called "Strategy team", SAVOLA employee (.....) shared a screenshot showing the Whatsapp conversation on 11.02.2019³⁵ with the A101 employee saved as "A101 (.....)", who is considered to be (.....)³⁶. The said correspondence covers the following messages:

"A101 (.....) : Are you coming at 3 pm today? Hi

I wrote ŞOK's price to Mr. (.....)

We have to get information till tomorrow noon.

Otherwise we will break the price

(.....) : We are coming Mr. (.....)."

Following the communication given above, the following correspondence was made in the "Strategy Team" Whatsapp group on 12.02.2019:

"(.....) : (.....) wrote. We have to get information from ŞOK today (.....)

(.....) Dude, I am calling but he does not answer. I'll go to şok in a minute.

Tomorrow, the price will be up.

He says they would make it according to the following index 1'25

(.....) : Have you gone or on the phone?

(.....) : We have to talk the scenario has changed I am going now I talked on the phone

You can say (.....) that it'll be 11.40 tl tomorrow.

(.....) : Well done, thanks"

Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with A101 employee saved as "A101 (.....)" The said correspondence covers the following messages:

"A101(.....) : Hi

Did you have a chance to talk Şok price?

(.....) : It'll be 11.40 TL tomorrow. Mr. (.....). See you

A101 (.....) : Superb

I hope they won't score against

(.....) : No no they won't Otherwise they will lose what they have"

Following the communication given above, the following correspondence was made in the "Strategy Team" Whatsapp group on 12.02.2019:

"(.....) called me too

Inform the guy quickly

That it raised

(.....) : I've already done so boss

In the text above

(.....) : I've just read it ok

His reply is positive

congrats

If it's not 11.40 tomorrow

³⁴ Referring to CARREFOURSA. It is seen that in the correspondence in this section CARREFOURSA is abbreviated as "crr" and "c4"

³⁵ Although the date is not clear in the screenshot, it is inferred from the content and details about time that the correspondence was made on 11.02.2019.

³⁶ A101 group purchasing manager.

(.....) you run to Çamlıca in the morning
I think

(.....) : (.....) No problem, it is done

(.....) : I hope

(.....) did you go to Şok today?

(.....) : No because (.....)³⁷ told me "I did it" and (.....)³⁸ said "see you this week" they have a pl side meeting

(.....) : Thanks"

- (96) In the e-mail sent by A101 employee (.....) to SAVOLA employee and copied to SAVOLA employees (.....), (.....) and A101 employee (.....) subjected "yudum sunflower prices" on 12.02.2019, which was obtained during the on-site inspection at SAVOLA, the following messages are found:

"Hello

Broken prices in the market must be corrected immediately

Best regards

..."

- (97) In "Strategy Team" Whatsapp group, on 13.02.2019, the following messages were sent:

"(.....) : Did you

Take the picture of Şok's price

The store is open

urgent

photo

(.....) Forwarded (a picture showing that the sticker price of Yudum Sunflower Oil 1 L is 11.40 taken from one of Şok's stores was shared)

(.....) : Thanks (.....)

(.....) : Well done

(.....) : Don't mention it, this is what it should be"

Subsequently in the same correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with the A101 employee saved as "A101 (.....)" The said correspondence on 13.02.2019 covers the following messages:

"(.....) : Forwarded (the picture showing that Yudum sunflower oil 1 L sticker price is 11.40 TL shared by (.....) in the abovementioned correspondence was sent to A101

(.....))

A101 (.....) : Thank you.

It would be 11.95

Why did he bring it to 1.25?

(.....) : You're welcome boss. We talked about 11.40

A101 (.....) : No, dude

The guy

Brought to 11.95

(.....) : You told us that would not cause trouble Please get off our tail

A101 (.....) : We are organized for 11.95

Don't do that

The guy has advantage now

³⁷ Referring to ŞOK's dry goods purchasing director (.....)

³⁸ Referring ŞOK's dry goods purchasing director (.....)

(.....) : We are urgently waiting for (.....) warehouse orders
A101 (.....) : Wasn't this guy's price 11.95?
It was so when we started"

Subsequently, the following correspondence was made in the "Strategy Team" Whatsapp group on 13.02.2019, attributing to the texts given above:

"(.....) : Now he wants 11.95
(.....) We'll make 11.95 but he wants support even a little per item
(.....) What's all that about?
(.....) man!
(.....) d
(...)³⁹

He must do 'buy more pay less' urgently
It is already 2490
This makes 10 tl
It is a reason for urgent
buy more pay less

(.....): Şok is now just bearing a loss in profit
(.....): They will publish it tomorrow
Director (.....)

You talk
to ŞOK too

(.....) : Ok
(.....) : Is buy more pay less beginning tomorrow
a101 2490

(.....): Yesterday I talked quite a bit with (.....)⁴⁰ there he said (.....) dont you know it from Ülker if margin comes back 0.5 points it is impossible if you don't give support. I persuaded him to 11.40 with difficulty they won't do it under current conditions I said you are making 36 margin you are decreasing your margin yourself, migros [and] all market 11.90. they said now that you don't give support, if we'll consume our margin then 10.15 would sell more and continue like that at this point. (.....) said we'll present it inside if there is a little support

(.....): A101 should make 'buy more pay less'
Urgently

We'll think about ŞOK

Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with the A101 employee recorded as "A101 (.....)" The said correspondence on 13.02.2019 covers the following messages:

"A101(.....): We are breaking the price now.
The amount we are coming back is the difference
(.....) : No, don't. It'll be a big trouble. Let's rise to 24.95 for two pieces.
A101 (.....): It is Şok who causes the trouble, not us.
We made it clear in the meeting.
We are out of this game.
(.....) : But you are getting into it.
We should act together.
they are calling at you and you are in the game. Don't.
A101 (.....) : There's no problem when they make it 11.95.
We won't be equal."

³⁹ Slang expression

⁴⁰ ŞOK trade director

Attributing to the communication above, the following correspondence was made in the "Strategy Team" Whatsapp group on 13.02.2019:

"(.....) : He should make it 13.95

But in addition

he should start buy more pay less

That's what's important

1.25

13.95

2495 for dual

"(.....) : he will turn difference for 13.95 per item"

Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with the A101 employee saved as "A101 (.....)". The said correspondence on 13.02.2019 covers the following messages:

"(.....) : We are waiting for your support for order of 1000 tons each today. We'll produce and distribute immediately.

(...)

A101 (.....) : We can't do anything until Şok has been dealt with

(...)

Here is the situation for 1.25

If Şok raises the price until Friday, we won't change the shelf [price]

*When it raises, we'll do 2*1.25 offer with a price of 14.25"*

Attributing to the communication above, the following correspondence was made in the "Strategy Team" Whatsapp group on 13.02.2019:

"(.....) : Ok

talk to şok thx

today is wed

but

How is it going to be

We are losing time

why are we waiting for buy more pay less

They look at price for single

Then they decide

buy more pay less should begin immediately"

- (98) In "Strategy Team" Whatsapp group, on 14.02.2019, the following messages were sent:

"(.....) : Are we going to get an approval for 100 tons and 11.95 from Şok tomorrow

(.....) : I've just talked to them they were out on the field today

There is noone in the office, I said let's meet in the evening. if we talk hopefully we'll heal the breach

(.....) : We should see the price at the shelf on Friday morning. It'll be a big trouble otherwise.

(...)

(.....) : It won't be on Friday. Şok changes the prices on Wednesday. It can be on Thursday at the earliest, seems it will be

(.....) : ugh"

- (99) In the same Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with the A101 employee saved as "A101 (.....)" on 15.02.2019. The said correspondence covers the following messages:

"A101(.....) : Good morning

Did the price of Yudum rise?

(A picture of ŞOK's shelf showing that Yudum Sunflower Oil 1 L is 11.40 TL was shared)

It didn't Mr. (.....)?"

- (100) On 21.02.2019 the following messages were sent in the Whatsapp group called "Strategy team":

...

(.....) : Migros will pay tomorrow. (.....)⁴¹ called me. He said the amount is not clear but I've done my best.

He reminded that we should correct Crr and Çağdaş prices again.

I said it is on us he'll organize a meeting next week

We'll make our actions clear

(.....) : It seems that 5 L Şok is ok at the end of March they canceled orkide But we must make an offer according to 36.45

(.....) : Ok

(.....) : Let's hope for the best

Let's check it in the morning

Did (.....) say ok? Or is it what (.....) said?

(.....) : We already made an offer

For may?

Send the same price

Sent it at the evening immediately

31.89 plus

Send it

Anyway çağdaş price is corrected today

fyi

(.....) : (.....) I think he suggests sending a higher price so that the price is not broken I also think that we can raise the price a little. Let's not take a risk

I'll send (.....) Çağdaş and Carrefour prices tomorrow"

- (101) In the e-mail sent by A101 employee (.....) to SAVOLA employee (.....) on 26.02.2019, copied to A101 employees (.....), (.....) and SAVOLA employee (.....) subjected "May 11-17 10 TL Register Act. YUDUM EGEMDEN YALIN 1L" , which was obtained during the on-site inspection at SAVOLA, the following messages were sent:

"(...)

We approve Egemden Yalın 1L product for activity that you sent at (...) tl + vat net cost.

I wish success for both parties

For 11-17 May poster, the delivery should be completed one week before at the latest.

There should not be any broken prices on our poster date and in the periods covering 3 weeks before + 3 weeks after our poster date.

In case a broken price is detected during the time period I indicate, the loss will be invoiced to you. We request that you make your plans accordingly.

We will deliver our regions' orders next week

..."

- (102) On 11.03.2019, the following messages were sent in the Whatsapp group called "Strategy team":

"(.....) : A101 Omega 31L 18.20 TL ok

⁴¹ Referring to MİGROS Dry Staple Food Group Director (.....)

(...)

They will send approval and tonnage letter tomorrow

(...)

My 4.5 L action approval is in the meeting. They will get it

Each warehouse will give its order

They will announce action beginning date.

For Sirma 4.5 L corn oil, they will submit it for listing approval after the action starts tomorrow

He says that he will do the listing at the price we offered

3 L riviera olive oil will not be done. Bcs they make 4 L PI

He said that for 1 25 L we can make 24.90 TL for two by showing ŞOK 2 L shelf price and pulling A101 shelf price to normal and raising the basis.

- (103) In “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with A101 employee saved as “A101 (.....)” The said correspondence covers the following messages:

“A101(.....) : Mr. (.....) migros can price is still 39.90

It is seen that 5 L plastic bottle is not present for sale

If there is no change until Friday we will withdraw purchase and sales price

(.....) : It will be 41.20

(Quoting “It is seen that 5 L plastic bottle is not present for sale”) I couldn’t get this

A101 (.....) : It is not 41.50

We cannot see 5 L plastic product price

There is no 5 L in both migros stores

Neither in online store

(.....) : (Quoting “It is not 41.50” message) It is going to be

No problem

A101 (.....) : hope we won’t quarrel later

(...)

We made it at the price of plastic

Equalized can and plastic

There is no price for plastic now

(.....) : I will find and send it

Can will be 41.50 as I said”

- (104) On 24.06.2019, the following messages were sent in the Whatsapp group called “Strategy team”:

“(.....) : (.....) C4 price

(.....)⁴²

what’s it going to be?

Price shelf

I’ll call you

?

I think they should stop saying migros will change then we will change

(.....) : C4 still says I’ll change after Migros. I told them that the situation is serious.

When it comes to Şok yes it is difficult to talk before the committee but it wasn’t difficult during the breakfast. He asked lots of questions later. on the phone bim sent 4 I Dap 29.90 I hope, he is trying to persuade, he’ll be in. On the order day, I’ll open the computer and enter it, no problem I’ll deal with it.”

⁴² Considered to be CARREFOURSA employee (.....) .

Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with CARREFOURSA employee saved as “(.....) Carrefour”. The said correspondence covers the following messages:

“(.....) Carrefour: Ok did migros correct the shelf prices
(.....) : Dude, Migros insert will be 39.45 even if you don't correct
But from now on we should stop saying first Migros should change than we will change
(.....) Carrefour: We cannot raise
It is a separate unit affiliated to holding
Man, you have been working for years, don't you know”

- (105) The e-mail sent by SAVOLA employee (.....) on 01.07.2019 to CARREFOUR employee (.....) and copied to SAVOLA employee (.....), (.....) and CARREFOURSA employee (.....) with the subject “RE: Savola June 17, Recommended Shelf Sales Prices” includes the table showing recommended shelf sales price and the following messages:

“Hello Mr. (.....)
I request your support and feedback for systematical definitions
...”

- (106) Subsequently in the same e-mail chain, the e-mail sent by SAVOLA employee (.....) on 05.07.2019 to his colleagues (.....) and CARREFOURSA employee (.....) copied to a colleague (.....), subjected “RE: Savola June 17, Recommended Shelf Sales Prices” includes the following messages:

“What is going on, it still hasn't changed (.....)?”

- (107) In the same e-mail chain, the e-mail sent by SAVOLA employee (.....) on 05.07.2019 to his colleague (.....) and CARREFOURSA employee (.....) copied to a colleague, subjected “RE: Savola June 17, Recommended Shelf Sales Prices” includes the following messages:

“Mr. (.....)
We are planning to change on July 11 to 13.95 TL at the same time with the market.
...”

- (108) On 01.08.2019, the following messages were sent in the “Strategy team” Whatsapp group:

“(.....) : Guys
Migros and C4
Did not change prices?
45
2490
36
KU Omega etc
I don't know about olive oil whether changed or not
We cannot deliver goods
fyi
A101 should change later
3895
seeing them
What did we do for this warn them (.....) ⁴³”.

⁴³ Referring to MIGROS Dry Staple Food Group Director (.....)

- (109) On 08.08.2019, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as “(.....) Migros” between 07.08.2019 and 08.08.2019. The correspondence on 07.08.2019 covers the following messages:

*“(.....) :(.....) Hi I’ve just been in a meeting with A101 if you define the shelf prices tomorrow
If virtual market is reflected to shelf on Friday A101 will define on Friday and reflect on Saturday
We shouldn’t miss it man fest is coming”*

On 08.08.2018, the following correspondence is made:

*“(.....) : Good morning my friend price change systematic definition is very important today before the fest A101 is certainly defining on Friday
Carrefour is defining today too bro please don’t miss it otherwise we’ll be toast*

Attributing to the communication above, the following correspondence was made in the “Strategy Team” Whatsapp group on 08.08.2019:

*“(.....) : C4 is defining, it seems like a lie
Their marketing wrote a thesis for our shelf price calculation*

(.....) : No it’s real we agreed with (.....) ⁴⁴ man.

- (110) On 07.09.2019, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with A101 employee saved as “A101 (.....)” The said correspondence covers the following messages:

*“(.....) : Good morning boss
Migros shelf price for 5 L can is 44.95 TL we are waiting for you for the price change
Have a nice weekend*

*A101 (.....) : Hi Is 4 L plastic listed? If the prices are not changed on Tuesday
We’ll change There are action supports that I am waiting for before*

*(.....) : Where do you ask whether 4 L plastic is listed?
We already sent your action offers. We are waiting for feedback*

*A101 (.....) : In migros
We are waiting for action for shelf products*

(.....) : I sent an e-mail boss. I am waiting for approval. Besides for 10L snf and olive oil, we are requesting urgent action support”

- (111) On 10.09.2019, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with MİGROS employee saved as “(.....) Migros” The said correspondence covers the following messages:

*“(.....) : Man you define underlined 44.95 TL sunflower 5 L 39.95
44.95 omega 38.95 I’ll send offer we shouldn’t be late
I will certainly send it today*

(.....) Migros: I am in the meeting it’s friendly don’t be embarrassed before the other party

Let’s be organized to september 12 with the beginning of the catalog

(.....) : Thanks pal he should change the price tomorrow, accordingly showing that shelf price A101 will also change

(.....) Migros: Man, it will be reflected on 12, be organized for 12

(.....) : You said 11 on the phone what happened?”

⁴⁴ CARREFOURSA purchasing specialist (.....)

- (112) The e-mail sent by A101 employee (.....) to SAVOLA employee (.....) on 23.10.2019 subjected "Re: Omega 3 3 L new cost", which was obtained during the on-site inspection at SAVOLA includes the following:

"(...)

We will make a request for action also We will organize the price changes together with the market

"(...)"

- (113) The response sent by SAVOLA employee (.....) to A101 employee (.....) includes the following:

"Mr. (.....)

The market is changing the price tomorrow

We said in the meeting that we'll take action order tomorrow.

We kindly request your support

"(...)"

- (114) Moreover, regarding the e-mails above, SAVOLA employee (.....) sent an internal message to SAVOLA employee (.....) saying "ok then if Migros changes tomorrow it'll be great 45.90".

- (115) On 13.01.2019, in "Strategy team" Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as "(.....) Migros " The said correspondence covers the following messages:

"(.....) : (Attributing to the picture with the insert brochure)

116-29 January C4 insert.

16-17 January Komili Riviera Cash Register

Activity-16.90 TL

"(.....) Migros: Man, in Şok yudum sunflower 2 is 4,5 L in a101 you should solve it

Then the ball is in our court now

"(.....) : There is no problem in A101 it is 1,25 L now

More expensive

The ball is certainly in your court now is there only 2 l sunflower in the list

Please January is over you haven't changed the price we haven't made a plan

- (116) On 16.01.2020, in "Strategy team" Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as "(.....) Migros" The said correspondence on 15.01.2020⁴⁵ covers the following messages:

"(.....) : Let's organize it together on the same day or you tell us a date at the worst

We must finish it this week

On 16.01.2020, the following correspondence was made:

"(.....) Migros: (.....) good morning

We are organizing price change on Friday can you organize a101 and other parties?

It will be on shelf Friday

"(.....) : Good morning OK

Attributing to the communication above, the following correspondence was made in the "Strategy team" Whatsapp group on 16.01.2020:

"(.....) : c4

"(.....) : They will define on friday"

⁴⁵ Although the date is not clear in the screenshot, it is inferred from the content and details about time that the correspondence was made on 15.01.2020.

- (117) On 17.01.2020, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with A101 employee saved as “(.....) A101” (who is considered to be (.....)). The said correspondence on 17.01.2020⁴⁶ covers the following messages:

“(.....) A101: (.....) according to 39.95

Mr. (.....) sent an e-mail

(.....):(.....) sent an e-mail we talked in the evening about the balances lot conditions 1L under 40.45 tl

(.....) A101: (.....) We normally work at 99 index
We cannot make over 39.95

(...)

according to 99 index it is 40.15. The price is ridiculous 39.95 is a convenient price for shelf

Evaluate the conditions then we will move on accordingly.

Attributing to the communication above, the following correspondence was made in the “Strategy Team” Whatsapp group on 17.01.2020:

(.....) : I talked to him. (.....) called me . They say let’s make it 39.95 until the end of the month then 40.15 TL I said 40.45 is suitable. Migros Crr⁴⁷ will look at you and will decrease the shelf price then all our efforts will be useless

They are waiting for feedback until 14.30. They will give a price inside”

- (118) In the e-mail sent by BİM employee (.....) on 03.02.2020 to SAVOLA employee (.....) and BİM employee (.....) and copied to BİM employee (.....) subjected “Re: Incoming delivery”, which was obtained during the on-site inspection at SAVOLA is as follows:

“Hello

Mr. (.....)

Our sales price will be 40.95 as of tomorrow,
for your information”

- (119) The response sent by SAVOLA employee (.....) on 03.02.2020 to BİM employees (.....) and (.....) and copied to BİM employee (.....), it is stated that

“Hello Mr (.....)

We are selling Yudum 5 L plastic sunflower oil at 43.95 in your Ömerli and Aksaray region.

As you also know, can sale price is 1 TL above the plastic price.

Our shelf price in the market is 45.95 TL.

Within this framework, I should say that 40.95 TL shelf price is too low we had better raise it.

Best regards

...”

- (120) The response sent in the same chain by BİM employee (.....) on 03.02.2020 to SAVOLA employee (.....) and BİM employee (.....) and copied to BİM employee (.....), it is stated that

“Hello

I made it 43.95 we request your support so that there is no lower price in the market as of tomorrow.”

⁴⁶ Although the date is not clear in the screenshot, it is inferred from the content and details about time that the correspondence was made on 17.01.2020.

⁴⁷ CARREFOURSA

- (121) The e-mail which is the continuation of the e-mail chain given above sent by BIM employee (.....) on 17.02.2020 to SAVOLA employee (.....) subjected "Re: Regional product offer/MERSİN&YUDUM" includes the following:

"Hello

Mr. (.....)

We raised the price of Yudum 5 L to 43.95 but you did not keep your word about the market.

There is 39.90 price and 40.90 price

Can you call me

If there is any other phone number to contact you would you mind giving it to me?"

- (122) On 27.02.2020, the following messages were sent in the Whatsapp group called "Strategy team":

"(.....):(.....)⁴⁸ called (.....)

We must raise Carrefour 4 L price to 37.90 immediately

Otherwise 5 L can will be canceled

(.....): shelf?

(.....): shelf

(.....): Migros changed it from 35.50 to 33.90

Say it too

Migros

is not whiter than white

Why 37.90

36.90 is enough

Where will they cross

45.95 ?

(.....):...

Migros is waiting for Crr shelf price to be 37.90 (.....).

- (123) On 10.03.2019, in "Strategy team" Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as "(.....) Migros " The said correspondence covers the following messages:

(.....): They will decrease the price, please correct it

(.....) Migros(.....) Isn't A101 4,5 L 39.95? 4 L parity is 35.5

(.....): Let's talk I sent the price change for 5 L and 4 L we should be organized with A101

What time shall we come on Friday

Migros let's organize it on 3 pm

(.....): OK

..."

- (124) The e-mail subjected "RE: Current store zero(delivery plan)/URGENT" sent by SAVOLA employee (.....) on 25.03.2020 to A101 employees (.....) and (.....), which was obtained during the on-site inspection at SAVOLA, includes the following correspondence:

"Mr. (.....)

We are delivering your orders at previous prices to your warehouses as fast as possible

But please help us for price changes

⁴⁸ Referring to Migros Dry Staple Food Group Director (.....)

Market conditions are hard and we can deal with those costs only by your cooperation

Thx

...

- (125) A101 employee (.....) responded the said e-mail on 25.03.2020 as follows:

"Hi

We must not be talking about price today I repeatedly informed you about your broken prices. What support do you want from us?

We have always changed in line with the market and will continue to do so.

Best regards"

- (126) The e-mail sent in the same chain by SAVOLA employee (.....) to A101 employee and copied to A101 employees (.....) and (.....) and SAVOLA employees (.....) and (.....) includes the following message:

"Change C4 shelf price to 46.95 urgently Mr. (.....)! I am waiting"

- (127) The e-mail sent on 30.03.2020 by A101 employee (.....) to SAVOLA employee (.....) and copied to A101 employee (.....), (.....) and SAVOLA employees (.....), (.....) subjected "RE: Yudum sunflower cost revision and order/A101/URGENT", which was obtained during the on-site inspection at SAVOLA includes the following messages:

"...

We repeatedly told you that we cannot arrange a price change when your market price is not fixed. We agreed on a certain index. Those conditions should not be distorted.

..."

- (128) The e-mail sent subsequently in the same chain on 30.03.2020 by A101 employee (.....) to SAVOLA employee (.....) and copied to A101 employees (.....), (.....) and SAVOLA employees (.....), (.....) subjected "RE: Yudum sunflower cost revision and order/A101/URGENT", which was obtained during the on-site inspection at SAVOLA includes the following messages:

"...

As I said on the phone, we will wait for the market for the price change organization. We cannot change under these conditions. There is an index we agreed on

..."

- (129) The e-mail sent by A101 employee (.....) on 01.04.2020 to SAVOLA employees (.....) and (.....) copied to A101 employee (.....) subjected "RE: 9907 GOP Region delivery information (urgent)", which was found during the on-site inspection at SAVOLA, includes the following messages:

"...

I overlooked the e-mail. We can also make a conference [call] but before that I want to remind you the subjects we agreed on.

...

The market was not organized for the price change. Then you planned an action. We think that you can make this issue manageable until we deliver our orders inside.

..."

- (130) The e-mail sent by SAVOLA employee subsequently in the same chain to SAVOLA employees (.....) and (.....) subjected "RE:9907 GOP Region delivery information (Urgent)" on 01.04.2020 includes the following messages:

"...

We have already delivered 125 thousand there are entries

...

We organized the price changes migros changes 4 L on Friday c4 changes 5 L tomorrow

Can you write those immediately

..."

- (131) On 03.04.2020 the following messages were sent in the "Strategy team" Whatsapp group:

"(.....): Today is the deadline for BİM

We should take the confirmation and organize a101

It is 09:14 now

We have time until 12

Have we done it guys

I cannot follow it presentations etc

On Monday, there will be a price change again

We'll increase the prices

We are getting prepared

Did you make it what's the scoop

(.....)⁴⁹ how much a101 and bim"

- On 05.04.2020, the following correspondence was made

(.....): We just talked to (.....)⁵⁰

He sent 45.95 Crr 5 L price. He said you scored against us

I sent him 4L's

Then we talked about the market

I said don't worry Crr will make 47.95 on Monday (.....)⁵¹ it is necessary that we have

(.....)⁵² change the price

- (132) On 06.04.2020 the following messages were sent in the "Strategy team" Whatsapp group:

"(.....):(.....) Crr price change?

(.....):For which product?

1 L?

(.....): 1L,5L,

4 L can't be found online, we don't know if the price changed

(.....): They changed the price no problem

(.....): Which?

(.....): They don't change 5 L we talked they are waiting for Migros remember Mr.

(.....) told yesterday that he would call (.....)⁵³

4 L plastic can

They did

(.....): 1L? 2L we talked yesterday

Mr. (.....) Also wrote

(.....): Man, we talked about it, it is not certain, we are not sure about changing yet let's decide it certainly according to how much it will be on a product basis we are changing the prices daily and weekly

(.....): 1L 15.90 2L 25.90

⁴⁹ Referring to A101 group purchasing director (.....)

⁵⁰ Referring to BİM purchasing director (.....)

⁵¹ SAVOLA employee (.....).

⁵² Referring to CARREFOURSA Purchasing Specialist (.....)

⁵³ Referring to CARREFOURSA Assistant General Director (.....)

(.....) :Ok we'll send to customers

What we are doing won't do. That time I said let's change in all 1-2 L. we said no. now we have to deal with it product by product it will take time in vain if we change 1-2 L sunflower then let's change "omega kızartma ustasi" (oil special for frying) it should be more expensive than 1-2 L sunflower or we cannot raise costs in activity in discounted products.

(.....): I think we should change. Look at the prices in the application received, they are batty ..

Forwarded(A picture of CARREFOURSA's shelf showing that Yudum Sunflower Oil 4 L is 35.50 TL was shared)

Forwarded Crr

Forwarded Please organize it until Wednesday thanks'

(.....)⁵⁴ wrote

Is it a joke. Didn't Crr change?

(.....): They changed did they withdraw it this guy is silly. Swear down!"

Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with CARREFOURSA employee saved as "(.....) Carrefour" The said correspondence on 06.04.2020 covers the following messages:

"(.....): We are even planning to change to 49.90 TL

(Referring to the picture of a shelf in CARREFOURSA showing that Yudum Sunflower oil 4 L product price is 35.50 TL sent to Strategy Team group by (.....))

Dude what is this is it a joke

Why did you reduce the price

This month we cannot deliver 1 product, for your information you don't know about the market I guess then you will say "my margin is low"

You removed it in the virtual market also you should change

On the day when I said that the guys changed it

(.....) Carrefour: We also raised it we changed to the prices you told

When they did not change we reduced

If you make them change, we'll change

38.90 to 37.90, a bit off

(.....): Then, how, don't you look since then they changed only 0.40 kuruş lower then you change to those prices

Why are you making it 35.90

Besides you are removing it from the virtual

Move the yardsticks, however you like, no problem, if you want sell at 10 tl when the stocks are finished and margin falls 5% then you'll do what you want"

(133) On 07.04.2020, in "Strategy team" Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with BİM employee saved as "(.....)⁵⁵" The said correspondence on 06.04.2020 covers the following messages:

"(.....) :(Attributing to certain pictures sent before showing prices):

Those are Carrefour

They are changing to 47.95 for 5 L

As you see they changed for 4 L

(.....): What's all that about?

I can't get reception

⁵⁴ Referring to MİGROS Dry Staple Food Category Manager (.....)

⁵⁵ BİM Purchasing Director (.....)

Sirma corn can 5 L or DAP

(.....) : Come again!

(.....) : Offer

(.....) : No corn”

On 07.04.2020, the following correspondence is made

“(.....) : C4 did not change”

Following the communication given above, the following correspondence was made in the “Strategy Team” Whatsapp group on 07.04.2020:

“(.....) : Good morning

(.....) wrote (.....)

There will be big trouble

(.....): A101

Send urgently pls⁵⁶

(.....) sent(A picture of BIM’s shelf showing that Yudum Sunflower Oil 5 L is 39.95 TL was shared)

(.....): yes

...

(.....): is (.....) Crr changing the price tomorrow?

We have to call back (.....)

(.....): He does not answer.

(.....): He’ll reduce the shelf price then

(...)⁵⁷”

Subsequent to the correspondence given above, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with CARREFOURSA employee saved as “(.....) Carrefour”. The said correspondence covers the following messages: “(.....): Bim changed the price for 5 L plastic, define 47.90 for 5 L can today when the market changes next week we’ll change to 49.90.

It is important. Bim says c4 did not change. I hope they will not reduce later. When you change to 49.90, they will make 48.90 but do it 47.9 now.

Bro you did not respond bim will reduce tommorrow otherwise

(.....) Carrefour: I just saw it

We’ll do nothing if migros does not change.”

Upon the response from (.....) at 19:35, the messaging in “Strategy team” Whatsapp group as of 19:36 continues as follows:

“(.....) : Let’s call (.....)⁵⁸

(.....) : What about 4 L they did not change those

(.....) : They changed 4 L bro

(.....): No bro no

I urgently want a picture please

(.....) : Bro it changed why are you saying no want from (.....)

(.....): I’ll send(.....)⁵⁹

- (134) Subsequently in the correspondence, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with CARREFOURSA employee saved as “(.....) Carrefour”. In the said messaging, following the subject mentioned above, it is stated

⁵⁶It is considered that this message is about the orders.

⁵⁷ Slang expression

⁵⁸ CARREFOURSA Assistant General Director.

⁵⁹ BIM Purchasing Director (.....)

(.....): *You changed 4 L today didn't you*
(.....) Carrefour: *Yes we did."*

- (135) In the e-mail chain sent between SAVOLA and BİM employees obtained during the on-site inspection at SAVOLA, first, the e-mail sent by SAVOLA employee (.....) to BİM employees (.....) and (.....) subjected "“Ömerli&Aksaray Bim Yudum 5L plastic/Mersin & Adana2 Yudum 5L can snf /Application and recommended shelf sales” covers the messages and the table shown in a screenshot below:

“Hello Mr. (.....)

I am informing you about new recommended shelf sales and cost application work to be valid from April 16, Thursday after the increase in the prices of semi-finished products.

...

I request your feedback for approval. Best regards” ...”

- (136) Subsequently in the said chain, on 14.04.2020, the e-mail sent by SAVOLA employee (.....) to BİM employees (.....) and (.....) subjected “RE:Ömerli&Aksaray Bim Yudum 5L plastic /Mersin & Adana2 Yudum 5L can snf /Application and recommended shelf sales” covers the messages below:

“Hello Mr. (.....)

I request for your help for implementing our recommended price table on Thursday, best regards (...)”

- (137) Lastly in the said chain, on 17.04.2020, the e-mail sent by SAVOLA employee (.....) to BİM employees (.....) and (.....) subjected “Ömerli&Aksaray Bim Yudum 5L plastic /Mersin & Adana2 Yudum 5 L can snf /Application and recommended shelf sales” covers the messages below:

“Hello Mr. (.....)

Tomorrow, all our market prices will be revised.

At the same time, we request for your help for taking the lower position (the recommended costs and sales prices stated below)

Best regards ...”

- (138) On 16.04.2020, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as “(.....) Migros”. The said correspondence covers the following messages:

“(.....) : Good morning you defined the new recommended shelf prices didn't you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....)⁶⁰ told me that it'll be done today we are organizing the market accordingly.

(.....) Migros: Hi ok there is no problem with us the prices will be updated tomorrow A101 is important for us you should organize them

(.....): Ok we are organizing them for Saturday for the second price change Is 5 L plastic defined if there is something to be updated I can help now

(.....) Migros: 5 L plastic is defined the price will be updated orders will be made next Monday

- (139) On 18.04.2020, in “Strategy team” Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with CARREFOURSA employee saved as “(.....) Carrefour”. The said correspondence covers the following messages:

“(.....) Good morning bro why didn't you change the prices please have them corrected today you say OK 1 L is still 13.90 at you it's like a joke

⁶⁰ Referring to MİGROS Dry Staple Food Group Director (.....)

(The screenshot that is considered to belong to Migros Sanal Market showing Yudum Sunflower Oil products' prices was shared)."

- (140) On 20.04.2020, in "Strategy team" Whatsapp group, SAVOLA employee (.....) shared the screenshot of the Whatsapp conversation with Migros employee saved as "(.....) Migros". The said correspondence covers the following messages:

"(Referring to the message sent on 16.04.2020 by (.....) " Good morning you defined the new recommended shelf price in the system didn't you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....) told me that it'll be done today we are organizing the market accordingly."

(.....) Migros: you said here that they defined you didn't inform us "when you didn't change we canceled that part" we were not informed we showed price on Saturday the guys did not change today is Monday they say it will be reflected tomorrow we won't change it beforehand again you should know C4 shows the price before us then we'll change accordingly

Ok let's wait for tomorrow 5 L will be reflected to shelf

(.....) : We are organizing for the same day but the change is not made or there is a problem when the change is not made to the same price they also defined if only you had made it always on Friday ok we'll talk later

As you know prices are not defined at the weekend if it was made on Friday it would be on the same day anyway there is no problem for tomorrow for your information."

In the screenshot of the messaging between SAVOLA employee (.....) and CARREFOURSA employee saved as "Carrefour (.....)" shared just after the screenshot mentioned above includes the following:

"(.....) : Good morning when those prices including 4 L can will be reflected to shelf
Thanks

(.....) Carrefour: Good morning they will be reflected tomorrow

(.....) : You should reflect to the virtual market today we are having trouble

This is all trouble at least you could reflect it at the weekend anyway 5 L can price is changing tomorrow please correct it as 49.95 today then it will be on shelf tomorrow

(.....) Carrefour: Nobody can change the price on Saturday
Man

(.....) : You should have defined it on Friday anyway OK define 5 L can including 1 L in the system today and reflect it tomorrow if we ship a goal tomorrow too we will be all at sea you should know it

(.....) Carrefour: I wrote

They couldn't do that because they don't work on Saturdays"

- (141) On 20.04.2020 the following messages are sent in the "Strategy team"Whatsapp group:

"(.....) : (.....)⁶¹ called and said if carrefour does not change local prices we will have to reduce the prices. I told that they will change and persuaded him not to make anything.

(.....) : What is local that you say boss
Which local?

he should tell

C4 will also change tomorrow

(.....) : Those in Ankara and Ist. Onur Özen

(.....) : We talked in the morning man we agreed with (.....) for

⁶¹ Referring to MİGROS Dry Staple Food Group Director (.....)

tomorrow

(.....) : Ok bro. The guy just called upon that.

I informed him

(.....) : Man, what are those prices 4.5 L Yudum is 37.84 1.25 L is 12.05 tl.”

- (142) In the e-mail chain obtained during the on-site inspection at SAVOLA, first, the e-mail sent by SAVOLA employee (.....) to BİM employees (.....) and (.....) subjected ““Ömerli&Aksaray Bim Yudum 5l pet /Mersin & Adana2 Yudum 5l can snf /Application and recommended shelf sales” covers the messages and the table shown in a screenshot above:

“Hello Mr. (.....)

I am informing you about new recommended shelf sales and cost application work to be valid from April 22, Wednesday after the increase in the prices of semi-finished products.

(...)

I request for your feedback for approval. Best regards”

(...)”

- (143) The response sent by BİM employee (.....) to SAVOLA employee (.....) in the continuation of the said e-mail chain includes the following:

“Hello

Please contact them for 5 L can that our regions sell. Finally, it is their decision to purchase and sell. (...) In addition, we are in an environment where the prices are loosing due to the developments in the import legislation. We cannot explain why prices are raised to the management.

Besides we can see that the prices are not fully changed in the market. (...)”

- (144) At the end of the e-mail chain, the e-mail sent by SAVOLA employee (.....) to SAVOLA employees (.....) and (.....) the in-house evaluation of the e-mail given above is made and the following messages are found:

“What does it mean now”

Let’s respond to it right now let’s not wait

He should make 48.95 although not 49.95 everyone changed he remained that’s unacceptable.

- (145) The e-mail sent by BİM employee (.....) on 11.06.2020 to SAVOLA employee (.....) copied to BİM employees (.....) and (.....) subjected “ÇAĞDAŞ 5 L CAN PRICE”, which was obtained during the on-site inspection at SAVOLA includes the following:

“(...)”

Can you interfere with Çağdaş’s prices? Or shall we return 2 L difference

(...)”

- (146) Subsequently in the same chain, the e-mail sent by SAVOLA employee (.....) to his colleagues on 11.06.2020, the following was stated:

“(...)”

Can we interfere individually?

We request for your help

(...)”

- (147) Subsequently in the same chain, in the e-mail sent by SAVOLA employee (.....) to his colleague (.....) copied to (.....) subjected “RE:ÇAĞDAŞ 5 L CAN PRICE”, the following messages are included

“(...)”

What does it mean individually Friends told in the morning that they are working together but because of the competition act they cannot return the difference please warn the customer in writing.

(...)”

- (148) The e-mail sent by BİM employee (.....) to SAVOLA employee (.....) on 18.08.2020 subjected “FW: Yudum oil competitors’ prices”, which was obtained during the on-site inspection at the SAVOLA includes the following:

“Hi

Mersin market prices

Carrefour can 45.90 plastic 44.90

Migros 49.90”

- (149) Photographs in “jpg” format were attached to the e-mail showing “Yudum Sunflower Oil 5 L” prices in different markets. The response sent by SAVOLA employee (.....) to BİM employee (.....) on 18.08.2020 subjected “RE: yudum oil competitors’ prices” includes the following:

“C4 is the action price planned one month before.

Their shelf prices will be 51.90

...”

- (150) In the Whatsapp conversation between BİM employee (.....) and SAVOLA employee (.....) on 03.09.2020, which was obtained during the on-site inspection at BİM, a picture of shelf price tickets of Yudum oil types was shared and the following correspondence was made:

“(.....) : Migros new shelf prices

For your information

Have a nice day

(.....) : 5 L is same

(.....) : It will be on shelf Friday”

- (151) In the continuation of the correspondence, (.....) sent MİGROS insert photo showing Komili brand sunflower oil and the following messages were sent:

“(.....) : I know boss

In the next insert on September 17, Yudum 4 L DAP 40.45 TL

Keep it

(.....) : Congrats

(.....) : On 8 September, we will change 7 % price

Fix the product in the same way.”

- (152) On 04.09.2020, SAVOLA employee (.....) shared a picture showing Yudum sunflower oil 5 l shelf prices in MİGROS and a screenshot that is considered to be in-house correspondence saying

“(.....) : Migros Price change Kırlangıç SF 2lt 25.45 → 27.45 Komili SF 2lt 25.90 → 28.90 Yudum SF 4 L plastic 38.95 → 43.95 Yudum SF 5L can 49.90 → 55.90

Good morning

Have a nice Friday”

- (153) In the e-mail sent by SAVOLA employee (.....) on 16.09.2020 to A101 employee (.....) copied to SAVOLA employees (.....), (.....) and A101 employee (.....) subjected “Savola September 21 price change costs” covers the messages and the table showing information about the products:

“Hello Ms. (.....)

Due to the increasing raw oil costs we cannot meet the future orders with the costs defined in our system now as of tomorrow (17.09.2020).

We would kindly like you to revise the coming orders after tomorrow in your system according to the cost we shared before.

Our net net costs for current products as of September 21 are given below for your information.

...”

- (154) The e-mail sent subsequently in the same chain by SAVOLA employee (.....) on 17.09.2020 to SAVOLA employee (.....) and A101 employee (.....), copied SAVOLA employees (.....) and (.....), subjected “*RE: Savola September 21 Price Changes Costs*” includes the following messages:

“Hello

We can organize the changes with your [price] changes in the market

...”

- (155) In the e-mail sent by SAVOLA employee (.....) on 21.02.2020 to A101 employees (.....) and (.....) copied to A101 employees (.....), (.....) and SAVOLA employees (.....), (.....) and (.....) subjected “*RE: CURRENT WAREHOUSE ZEROS*”, which was obtained during the on-site inspection at SAVOLA, the following messages are found:

Hello,

You re-arranged your orders again because of the price change process and other known processes.

Then we planned all the delivery.

Deliveries are made rapidly. If there is a failure meanwhile, our firm is not the only responsible one...

We are waiting for your support during the price change periods. If you expand the changing process there may be delays.

An invoice made due to this reason will not be accepted by our firm because it will do nothing but increase the current disagreement.

Best regards

...”

- (156) In the reply sent by A101 employee (.....) on 21.10.2020 to SAVOLA employee (.....) and A101 employee (.....) and copied to A101 employees (.....), (.....) and SAVOLA employees (.....),(.....) and (.....), the following was stated:

“Hello

How can we change the price when our conditions are not met? Until now we take a position according to market prices without any fuss. It is you who changed the game plan. Now we are taking a new position accordingly.

The period that you don't make delivery are 15-20 days; this does not explain the price you said. If you are causing a loss in turnover you have to compensate it. It is not something that happened in a short time.

We repeatedly sent e-mails about the disagreement and make an action work. It is you who did not take any steps and send feedback. Keep your word!

Best regards

...”

- (157) The e-mail sent by SAVOLA employee (.....) on 21.10.2020 to ŞOK employee (.....) copied to ŞOK employee (.....) and SAVOLA employees (.....) and (.....) subjected “[EXTERNAL]RE: 2020-2021 OLIVE OIL TOTAL CONNECTION”, which was obtained during the on-site inspection at SAVOLA includes the following statements:

“ ...

In the last meeting at general director level, there was an agreement on a package trade model where there would be listing, in&out plans for branded products.

Friday this week or next week, according to your convenience, we would like to set a meeting with the participation of Mr. (.....).

We can meet according to your and Mr. (.....)'s convenience we can assess our Q4 and 2021 strategy in detail.

We kindly request your feedback.

...”

- (158) The e-mail sent subsequently in the same chain by ŞOK employee (.....) on 21.10.2020 to SAVOLA employee (.....) and ŞOK employee (.....) copied to SAVOLA employees (.....), (.....), (.....) subjected “[EXTERNAL]RE: 2020-2021 OLIVE OIL TOTAL CONNECTION” includes the following statements:

“ ...

We did not make such a package agreement, it will not be made. There is no such agreement. It is unlikely that you will work with us unless you correct your prices in the market.

...”

- (159) The e-mail sent by A101 employee (.....) on 02.12.2020 to SAVOLA employee (.....) and A101 employee copied to A101 employee (.....) and SAVOLA employees (.....) and (.....) subjected “RE: November 05 price change”, which was obtained during the on-site inspection at SAVOLA includes the following statements:

“ ...

We always made changes observing the market dynamics but our 10 L activity is used as an excuse and cheap price perception is created in the market and the prices are not changed; we can't understand this. This is an action, not a shelf price. It moves on by crossing the current shelf price.

We are also following the current oil costs carefully. At last, you made a change of 60%. There is no such rate at the market now. Your actions are returning from shelf at 14% levels. In addition there are still broken prices.

(...)”

- (160) In the power point file named “NADISC. Takip Konular 04.12.2020” obtained from SAVOLA employee (.....)'s computer during the on-site inspection at SAVOLA, the following statements are found:

“Price changing timing: Although A101 price changes are made at the same time with Migros why CM loss is not seen, look at the detail?

(...)”

- (161) Whatsapp conversation between SAVOLA employees (.....) and (.....) on 08.02.2021 is as follows:

“(.....) : I'm going to office dude for btt agreement and A101 olive oil definition, for your information

Did migros answer, A101 is asking

It is going for publication I called (.....)⁶² did not answer

(.....) : (.....)⁶³ did not answer either

(.....) : Those are (...) the guys are waiting

(.....) : I talked to them Wednesday morning is certain

⁶² MİGROS employee (.....).

⁶³ MİGROS employee (.....).

(.....) : (.....)

Why not Tuesday (...)

Meanwhile there will be an increase in olive oil one more time

They gave it like that inside

Before

On Friday

On Saturday purchase changed

(.....) : Is Komili changing

One more time

Dude I can't get it

(.....) : All. (.....) told me. To raw

It is branded

(.....) : This (.....)(...) ⁶⁴ will certainly make the second increase to komili he is getting ahead of us

Anyway let' hope for the best

(.....) : certainly

Tell (.....) ⁶⁵this too

He may know already

He shouldn't do (.....)"

- (162) Whatsapp conversation between SAVOLA employees (.....) and (.....) on 17.02.2021 is as follows:

"(.....) : Dude we couldn't talk how is migros now

What are we doing A101

(.....) : I told him⁶⁶ it should be done this month, the price change should also be made simultaneously

She'll call at 11.00 tomorrow.

(.....) : Ok man thanks did you also talk for price change in other products costs are increasing already

Everyone is talking about additional price change

(.....) : Yes I talked for it

(.....) : You did the right thing man"

FINDING 2

- (163) The Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....) on 03.04.2019 includes the following messages:

"(.....) : What are Bim/migros/şok doing?

(.....) : Mr. (.....) .

We talked to Bim they say let's wait until Friday

Competitors did not change prices yet"

- (164) On 04.04.2019, the following correspondence was made:

"(.....) : Mr. (.....) hello

We are changing the prices of regulated sale products all over Türkiye except İstanbul

Potato 5

Onion 4

Tomato 7 other products are free for İstanbul

⁶⁴ Slang expressions.

⁶⁵ A101 employee (.....).

⁶⁶ Referring to MİGROS employee (.....).

We are planning to change at the beginning of next week I am informing the regions like that

(.....) : Why?

(.....) : We said that we are changing

(.....) : To whom?

(.....) : Bim

(.....) : Let's see first that they did it then we'll write

(.....) : They are defining it today

We can define too

(.....) : Ok let's define

We can inform the regions

(.....) : Ok

It is said that İstanbul will change next week

(.....) : We'll write for İstanbul separately

But be careful about the language

Don't say competitor

Don't say the decision taken by the senior management

Let's write it carefully

(.....) : Ok"

- (165) According to the data sent by the investigation parties, the price movements on relevant dates concerning potato, onion and tomato as mentioned above are given in the table below:

Table 20: Price changes concerning the products that are mentioned in the correspondence (TL VAT included)

	Undertaking	ANKARA			İSTANBUL			İZMİR		
		Date ⁶⁷	Previous price	New price	Date	Previous price	New price	Date	Previous price	New price
Tomato kg	BİM	05.04.2019	4.00	6.95	05.04.2019	4.00	6.95	05.04.2019	4.00	6.95
	A101	05.04.2019	3.00	7.00	12.04.2019	3.00	7.60	05.04.2019	4.00	6.99
	ŞOK	06.04.2019	3.00	6.95	13.04.2019	3.00	6.95	06.04.2019	3.00	6.95
	CARREFOURSA	11.04.2019	3.00	6.95	11.04.2019	3.00	6.95	12.04.2019	4.00	5.99
	MİGROS	09.04.2019	3.00	4.95	16.04.2019	3.00	5.95	06.04.2019	4.00	4.95
Potato kg	BİM	05.04.2019	2.90	4.97	05.04.2019	2.90	4.97	05.04.2019	2.90	4.97
	A101	05.04.2019	2.00	5.00	12.04.2019	2.00	4.00	05.04.2019	2.90	5.00
	ŞOK	06.04.2019	2.00	4.95	13.04.2019	2.00	4.13	06.04.2019	2.90	4.95
	CARREFOURSA ⁶⁸	11.04.2019	2.90	6.75	11.04.2019	2.90	6.75	11.04.2019	2.90	6.75
	MİGROS	09.04.2019	2.00	3.95	11.04.2019	2.00	2.90	06.04.2019	2.90	3.95
Onion kg	BİM	05.04.2019	2.25	3.97	05.04.2019	2.25	3.97	05.04.2019	2.25	3.97
	A101	05.04.2019	2.00	4.00	12.04.2019	2.00	3.00	05.04.2019	2.75	4.00
	ŞOK	06.04.2019	2.00	3.95	13.04.2019	2.00	3.00	06.04.2019	2.00	3.95
	CARREFOURSA	11.04.2019	2.00	3.00	11.04.2019	2.00	3.00	10.04.2019	2.75	3.00
	MİGROS	09.04.2019	2.00	3.25	09.04.2019	2.00	2.75	08.04.2019	2.75	3.25

FINDING 3

- (166) Whatsapp conversation on 19.11.2019 in "CarrefourSA İcra" group taken from CARREFOURSA Assistant General Director (.....)'s mobile phone during the on-site inspection at CARREFOURSA includes the following messages:

⁶⁷ "Date" column in this table and price change tables below includes price change dates.

⁶⁸ CARREFOURSA's sticker price for "Potato kg" rose to 6.75 on 11.04.2019 for only one day then it fell to 2 TL on 12.04.2019 and the next increase was on 16.04.2019 at 6.75 TL level.

(.....)⁶⁹: *BİM changed the prices in dairy products*

Can you look how much?

(.....): *I am having the prices in bim checked today. I'll share when I learn.*

(.....): *As far as I know they will change next Tuesday they did not change yesterday We look regularly everyday*

(.....): *They have changed today, A101 (.....)⁷⁰ is in fine fettle. They are changing now.*

(.....) *I'll have it checked just now.*

It is 3.45 and 3.75 we are changing

We are checking a few more stores.

- (167) According to the data sent by the parties, the price movements made by the said undertakings to private label one liter full fat and semi-skimmed milk, which are found to be the subject of the document, on the relevant dates are given in the table below:

Table 21: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price
PL ⁷¹ Full fat milk 1 L	BİM	19.11.2019	3.25	3.75
	A101	20.11.2019	3.25	3.75
	CARREFORUSA	20.11.2019	3.25	3.75
PL semi-skimmed milk 1 L	BİM	19.11.2019	2.95	3.45
	A101	20.11.2019	2.95	3.45
	CARREFORUSA	21.11.2019	2.95	3.45

FINDING 4

- (168) The-mail sent by BİM Purchasing Group Assistant Director (.....) to BİM employee (.....) and Purchasing General Director (.....) on 10.04.2020 (time: 13:10) subjected “FW: April 14 Price recommendations”, which was obtained during the on-site inspection at BİM includes the following:

“Hello Mr. (.....) and Ms. (.....)

The recommended prices to be valid as of Tuesday are as follows:

We submit for your information and request your evaluations.

Respectfully,

(.....) ”

- (169) The e-mail sent by BİM Purchasing Group Assistant Director (.....) to purchasing assistants on 10.04.2020 (time 14:47) subjected “FW: April 14 Price recommendations”, as a follow-up of the said e-mail covers the following messages:

“Hi colleagues,

Ms. (.....) and Mr. (.....) approved the prices as recommended.

We request that they be defined in the system as soon as possible.

There will be a transfer at 15:00

For your information

Respectfully,

(.....) ”

- (170) Excel tables concerning the current prices of competitors concerning egg, tahini, wet wipes, chicken drumstick, crisps, vegetables and fruits some of which show

⁶⁹ CARREFOURSA Executive Board Member and General Director (.....).

⁷⁰ Then CEO of A101.

⁷¹ Abbreviation for *private label*

competitors current sales prices of the same products are attached to the e-mail chain. The note below is written on the Excel file named “FRITOLAY GİRFORMA 09 04 2020 .xlsx” attached to the said e-mail:

“Competitor prices will change on Monday.”

- (171) It is understood from the price change form in the Excel file showing also competitors' current prices that the prices of Doritos, Ruffles and Lays brand crisps supplied by FRİTO LAY⁷² were planned to be raised from 4.25 to 4.75.

PRODUCT	CURRENT	RECOMMENDATION	ŞOK	MIGROS	CARREFO URSA	A101
	SALES PRICE	SALES PRICE				
CRISPS DORİTOS NACHO /TACO /EXTREME	4.25	4.75	4.25	4.25	4.25	4.25
CRISPS RUFFLES ORJ/CHEESE ONION/ LAYS K/FRESH VEG	4.25	4.75	4.25	4.25	4.25	4.25

- (172) The e-mail sent by ŞOK Purchasing Director (.....) to ŞOK Campaign-Pricing Director (.....) on 10.04.2020 (time 14:55) copied to ŞOK employees (.....) and (.....) subjected “Fritolay-Sale Price Change”, which was obtained during the on-site inspection at ŞOK includes the following messages:

“(..)

We are defining Fritolay sales prices on 13.04 Monday. But as I said on the phone I'd be pleased if you define it on Sunday.

We are changing it simultaneously with competitor A on Monday. Otherwise we are defining it on Sunday. I'll inform you on Sunday.

The approved form is attached.

“(..)”

- (173) The e-mail sent subsequently in the same chain by ŞOK Purchasing Director (.....) to ŞOK Campaign-Pricing Director (.....) on 12.04.2020 copied to ŞOK employees (.....) and (.....) subjected “FW:Fritolay-Sale Price Change”, includes the following messages:

“Hello (.....)

The market was organized. Can you define “only sales prices” attached as of tomorrow...”

- (174) In the e-mail sent subsequently in the same chain by ŞOK Campaign-Pricing Director (.....) to ŞOK Purchasing Director (.....) copied to ŞOK employees (.....) and (.....), a screenshot showing that the prices of Ruffles, Lays, Çerezza and Cheetos brand crisps supplied by FRİTO LAY would be defined by an in-house program starting on 13.04.2020 with the note “Hello, please check”. The information about current prices and prices to be valid on 13.04.2020 concerning the relevant products according to the said screenshot is given in the table below:

Product name	Current Sales Price (TL)	Sales Price (TL)
RUFFLES ORIGINALS 107 GR	4.25	4.75
DORITOS TACO 121 GR	4.25	4.75
DORITOS TURCA 113 GR	4.25	4.75
LAY'S CLASSIC 107 GR	4.25	4.75
LAY'S YOGHURT FRESH GREENS	4.25	4.75

⁷² Frito Lay Gıda Sanayi ve Ticaret A.Ş.

ÇEREZZA 3-PACK 103 GR	3.25	3.50
RUFFLES CHEESE ONION LARGE PACK 107 GR	4.25	4.75
DORITOS NACHO 121 GR	4.25	4.75
LAY'S SPICE 107 GR	4.25	4.75
DORITOS HOT CORN 113 GR	4.25	4.75
ÇEREZZA 3-PACK 43 GR	1.50	1.75
RUFFLES KETCHUP 107 GR	4.25	4.75

- (175) ŞOK Purchasing Director (.....) says "(...) Ok (.....), thanks..." in the e-mail sent to ŞOK Campaign-Pricing Director (.....) and copied to ŞOK employees (.....) and (.....).
- (176) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning Doritos, Ruffles and Lays brand crisps as mentioned in the document above are given in the table below:

Table 22: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price
DORITOS 113-121 GR	BİM	14.04.2020	4.25	4.75
	A101	13.04.2020	4.25	4.75
	ŞOK	13.04.2020	4.25	4.75
	CARREFOURSA	13.04.2020	4.25	4.75
	MİGROS	13.04.2020	4.25	4.75
LAYS 107 GR	BİM	14.04.2020	4.25	4.75
	A101	13.04.2020	4.25	4.75
	ŞOK	13.04.2020	4.25	4.75
	CARREFOURSA	-	5.25	5.25
	MİGROS	NA	NA	NA
RUFFLES 107 GR	BİM	14.04.2020	4.25	4.75
	A101	13.04.2020	4.25	4.75
	ŞOK	13.04.2020	4.25	4.75
	CARREFOURSA	13.04.2020	4.25	4.75
	MİGROS	13.04.2020	4.25	4.75

OBSERVATION 5

- (177) In the e-mail sent by CARREFOURSA Dry Goods Purchasing Specialist (.....) on 25.03.2020 to CARREFOURSA employee (.....) and copied to CARREFOURSA employees (.....) and (.....) subjected "Agricultural Products Current Market Information", which was obtained during the on-site inspection at CARREFOURSA, the following is stated:

"Hello Mr. (.....)

The current information about agriculture based products are as follows

* 5% price change is expected in sunflower oil (Yudum and Biryag explained)

(...)

For your information

Respectfully,

- (178) The e-mail sent on 27.03.2020 subsequently in the same chain by CARREFOURSA Dry Good Purchasing Specialist (.....) to CARREFOURSA employee (.....) copied to (.....) and (.....) subjected "RE: Agricultural Products Current Market Information" includes a table showing BİM's previous and new prices for certain products as well the following explanations about the increase expected the following week:

"Hello Mr. (.....)

According to the latest information, the situation about prices is given below.

Respectfully,

Ürün	Bim Eski fiyat	Bim Yeni fiyat (27 Mart)	Geçiş oranı			
Kuru fasulye 1 KG	10,45	10,95	5%			
Bulgur 1 KG	3,95	4,25	8%			
Kırmızı mercimek 1 KG	5,95	6,75	13%			
Yeşil Mercimek 1 KG	5,95	6,95	17%			
Pirinç Osmanlık 1 KG	8,5	Aynı	Artış haftaya bekleniyor			
Ürün	Bim fiyat	Önümüzdeki hafta Beklenti	Beklenti Geçiş Oranı			
Ayçiçek yağ	36,9	37,9	3%			
Rusya ve Ukrayna 20 gün ihracatı kapatma kararı almış ve şuan dışardan yağ alımı yapılamıyor.firmalar kotalı ürün sevkine						
başladı(örnek:Trakyabirlik)						

- (179) The e-mails sent by MİGROS employee (.....) to MİGROS employee (.....) on 01.04.2020 subjected "Fwd:" about a meeting under the umbrella of TİGEM (Directorate General of Agricultural Enterprises) with the participation of competing undertakings' representatives includes the following messages:

"sent from my iPad

message:

From: :(.....) (Migros)"

Date: 1 April 2020 18:39:26 GMT+3

To: :(.....) (Migros)" (.....), "(.....) (Migros)(.....)", "(.....) (Migros)"(.....), "(.....)

Mr (.....). Those are the subjects discussed during the meeting at TİGEM.

(I directly put the talks into writing. Sorry for the mistakes) TMO (Turkish Grain Office) will begin to sell rice and paddy.

BİM says our sales calmed down yet they are more than last year they expect more than 10% increase in pulses, dry goods and sunflower due to Russia.

Bügem (General Directorate of Plant Production) follows the process they may intervene. Bim says 5 L sunflower oil will be 43 tl. C4 also says they need support there will be an increase.

TMO will make 80% increase in pasta wheat. They don't expect an increase in pasta.

Lemon was discussed. Its export is terminated. There will be less problems.

Egg Bim says demand is falling we did not bring down producers' prices last week.

This week they fell too much 22 kuruş price was told in Başmakçı.

Producers will decrease this week and we will decrease also, they said.

Sales are good.

Slightly beyond the usual amount.

Have a nice evening. Sent from my iPhone"

- (180) In the e-mail sent by CARREFOURSA Dry Goods Purchasing Specialist (.....) on 06.04.2020 to CARREFOURSA employee (.....) and copied to CARREFOURSA employees (.....) and (.....) subjected "Re:Agricultural Products Current Market Information", which was obtained during the on-site inspection at CARREFOURSA, the following is stated:

"Hello Mr. (.....)

*There is still uncertainty about sunflower oil in the market.

* PL price is expected to reach 40.90 in a few days. Raw oil increase rose 12%

Compared to last month this rate will be reflected exactly. Expectations are in this direction.

**Biryag sent its second list in two weeks (limited to 25 tons) there was 8% price change Shelf price is now 43.45*

Next week it will be 45.90

(...)

Respectfully,

- (181) The e-mail sent by BİM employee (.....) on 06.04.2020 to “Purchasing Directors”, “BimMSA”; BimMSAAssistants” groups and copied to Purchasing General Director (.....) subjected “Price changes-Important”, which was obtained during the on-site inspection at BİM, includes the following messages:

“Hello

I would appreciate if you urgently write the purchasing price changes of the products whose prices will change tomorrow and Tuesday next week.

Respectfully,

(.....) .

- (182) Subsequently in the same chain, BİM Purchasing Director says “Hello (.....) can you prepare this table” in in the e-mail subjected “FW: Price changes-Important” sent on 06.04.2020 (time **16:25**) to BİM employee (.....) and copied to (.....). The tab named 07.04 in the Excel file named “Fiyat Değişiklikler.xlsb” attached to the aforementioned e-mail covers the following information:

Article No		Previous price	New price
(...)	(...)	(...)	(...)
900273	SUNFLOWER OIL PET 5 L SOLE	36.95	39.95
900308	SUNFLOWER OIL 1 L SOLE	8.95	9.95
900313	SUNFLOWER OIL 2 L SOLE	16.95	18.95

- (183) In the e-mail sent subsequently in the chain mentioned before, by CARREFOURSA Dry Goods Purchasing Specialist (.....) on 25.03.2020 (time **22:55**) to CARREFOURSA employee (.....) and copied to CARREFOURSA employees (.....) and (.....) subjected “Re: Agricultural Products Current Market Information”, which was obtained during the on-site inspection at CARREFOURSA, the following is stated:

“Mr. (.....), I’ve just had the prices of sunflower that BİM will raise tomorrow.

It will rise from 36.90 to 39.90.

I talked to (.....)

We are organizing the price just now.

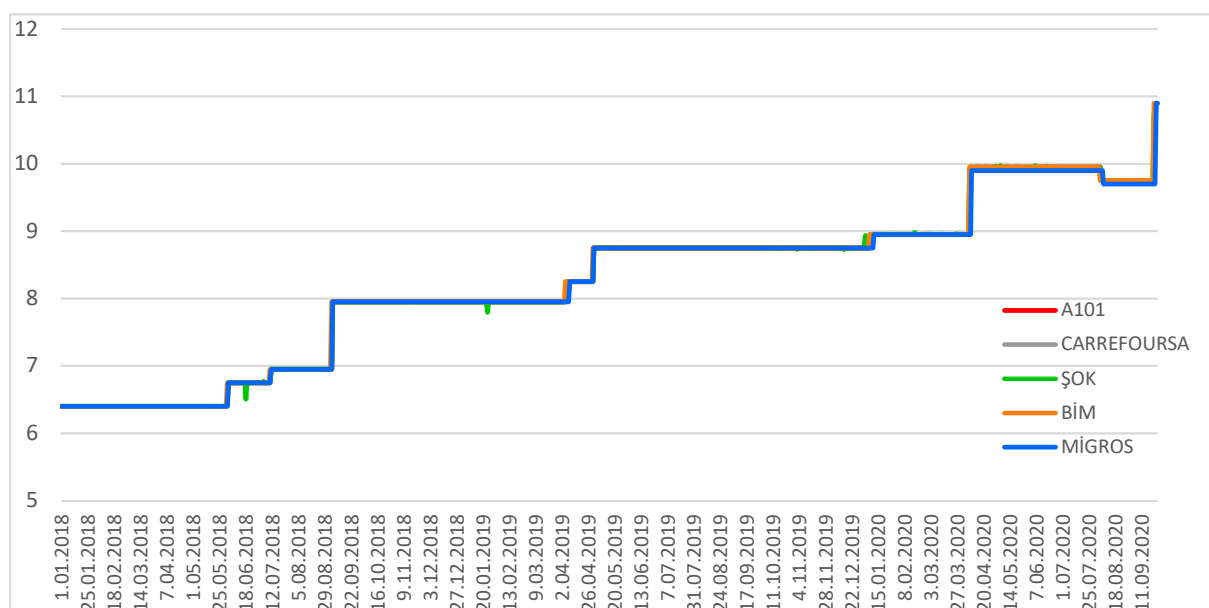
- (184) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning private label sunflower oil products mentioned in the documents above are given in the table below:

Table 23: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price
PL Sunflower Oil 1 L	BİM	07.04.2020	8.95	9.95
	ŞOK	07.04.2020	8.95	9.95
	A101	08.04.2020	8.95	9.95
	CARREFOURSA	08.04.2020	8.95	9.95
	MİGROS	09.04.2020	8.95	9.90
PL Sunflower Oil 2 L	BİM	07.04.2020	16.95	18.95
	ŞOK	07.04.2020	16.95	18.95
	A101	08.04.2020	16.95	18.95
	CARREFOURSA	08.04.2020	16.95	18.95
	MİGROS	09.04.2020	16.95	18.90
PL Sunflower Oil 5 L	BİM	07.04.2020	36.95	39.95
	ŞOK	07.04.2020	36.95	39.95
	A101 ⁷³	08.04.2020	36.95	39.95
	CARREFOURSA	08.04.2020	36.95	39.95
	MİGROS	09.04.2020	36.95	39.90

- (185) In addition, the graphs of daily sticker prices applied by A101, BİM, CARREFOURSA, MİGROS and ŞOK concerning private label sunflower products 1.2 and 5 L between 01.01.2018 and 15.09.2020 are given below. It should be noted that there are lines for each of the five undertakings in question but it is difficult to distinguish between different undertakings' price lines because daily sticker prices are exactly the same in a significant part of the observation period in the said charts⁷⁴

Chart 1: Private label (PL) 1 L Sunflower Oil Daily Regional Sticker Prices (TL, VAT included)



⁷³ Among the sticker prices for PL Sunflower Oil 5 L of A101, only İzmir ticket price rose from 39.95 to 41.50 on 04.04.2020. There was no difference in Ankara and İstanbul prices.

⁷⁴ BEF – G. abbreviation means daily regional sticker prices.

Chart 2: Private label (PL) 2 L Sunflower Oil Daily Regional Ticket Prices (TL, VAT included)

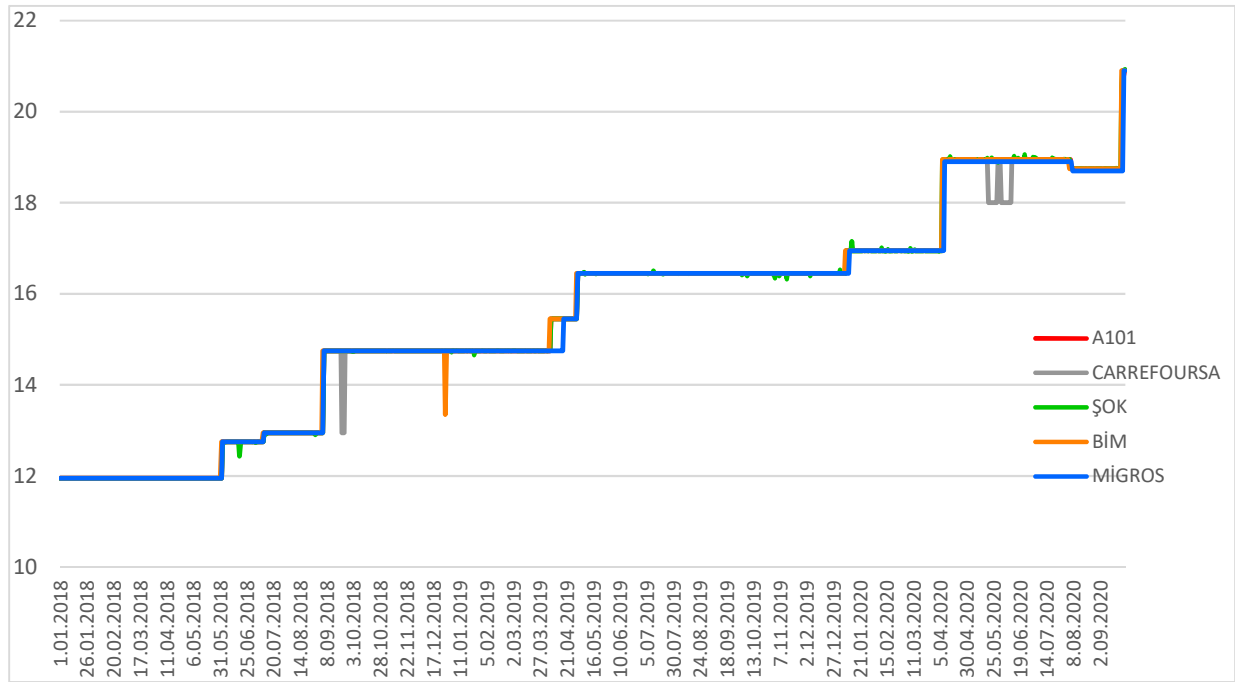
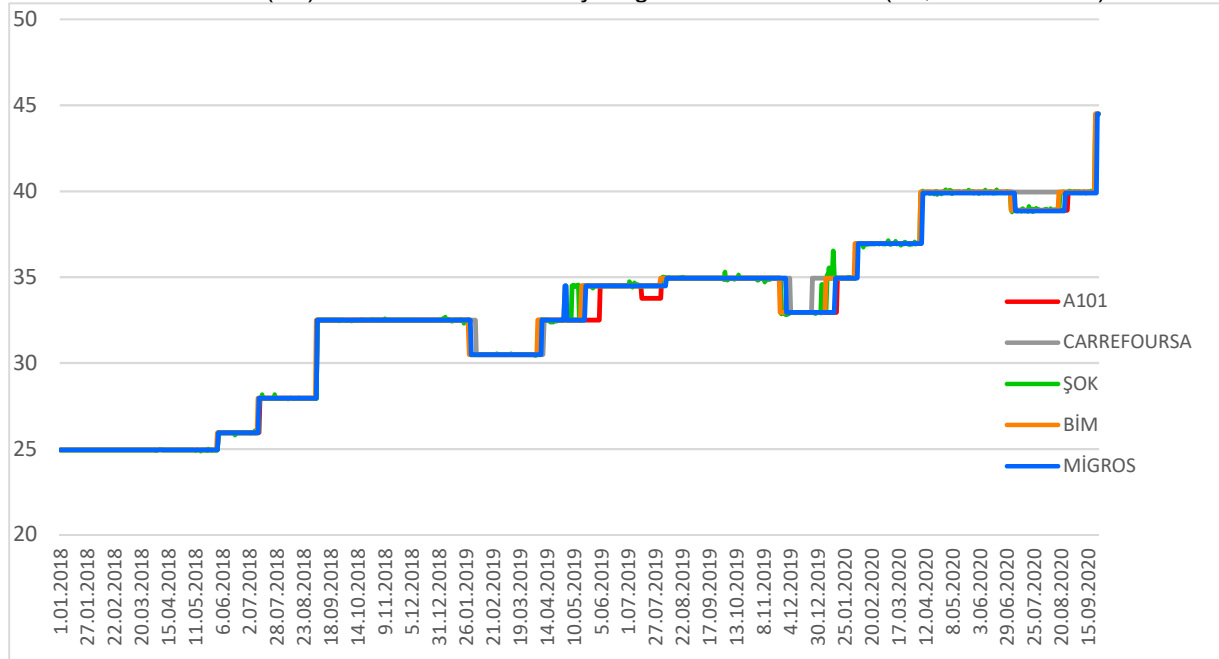


Chart 3: Private label (PL) 5 L Sunflower Oil Daily Regional Sticker Prices (TL, VAT included)



FINDING 6

(186) The e-mail sent by ŞOK employee (.....) to ŞOK Trade Director (.....) on 30.04.2020 subjected "Price Change", which was obtained during the on-site inspection at ŞOK is as follows:

"...

I completed the study about the price changes you wanted. We can talk about it.

"..."

(187) As a follow-up of the said e-mail, the excel file named "Fiyat Geçiş Açıklama 30.04.xls" attached to the e-mail sent by ŞOK employee (.....) to ŞOK trade director (.....) on 05.05.2020 subjected "FW: Price change" shows previous sales price, new sales price

and explanations about the price change concerning certain products. In the table titled “PRICE CHANGE EXPLANATIONS” included in the Excel file, the competing retail chains are coded as “red”, “blue”, “orange” and C4⁷⁵. The explanations below are found showing that prices will be changed simultaneously with one or more competitors in respect of certain products:

Product Name	Previous sales price	New sales price	Explanation
Ace classic 2 L	7.45	8.25	The shelf price will be changed simultaneously with the competitor orange tomorrow. Purchasing price may be changed on May 20 by taking support for 15 days.
Molfix nappies	26.95	29.95	The shelf price will be changed simultaneously with the competitor blue. Purchasing price may be changed on May 20 by taking support for 15 days.
Bingo Soft Concentrated 1440ml	17.95	19.95	Competitors do not have this product. The shelf price will be changed simultaneously with the competitor orange and C4 tomorrow. Purchasing price may be changed on May 20 by taking support for 15 days.
Mintax liquid soft soap 1000 ml	6.75	6.95	Competitor red and blue do not have this product. Price can be changed simultaneously with competitor orange tomorrow without margin loss.

(188) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the products mentioned in the documents above are given in the table below:

Table 24: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
ACE classic 2 L	ŞOK	06.05.2020	7.45	8.25	2 L
	CARREFOURSA	06.05.2020	7.45	8.25	Classic 2 L Hygiene
	MİGROS	07.05.2020	7.45	8.25	Normal 2 L; Extra Hygiene 2L; Perfumed 2L
	A101	NA	NA	NA	NA
	BİM	NA	NA	NA	NA
Molfix nappies	A101	06.05.2020	26.95	29.95	Midi 30; Maxi 27; Junior 20 ; Extra Large 17
	ŞOK	06.05.2020	26.95	29.95	Twin package Extra Large 17
	CARREFOURSA	06.05.2020	29.95	33.45	Eco Package (Midi 34-pack; Maxi 30-pack; Maxiplus 26-pack; Junior 24-pack; Junior+ 22-pack; Extra Large 20-pack); Underpant nappy (Maxi 30-pack; Midi 34-pack; Junior 24-pack; Extra Large 20-pack)
	MİGROS	07.05.2020	51.95	54.90	3D (Junior 48-pack; Extra Large 39-pack; Maxi 60-pack; Midi 72-pack; Maxi Plus 52-pack; Newborn 100-pack Mini 90-pack)
	BİM	NA	NA	NA	NA

⁷⁵ BİM, A101 and MİGROS are coded according to their signboard/logo colors as “red”, “blue” and “orange” whereas CARREFOURSA is coded as “C4”.

Bingo Soft Concentrated 1440 ML types	ŞOK	06.05.2020	17.95	19.95	1440 ML
	CARREFOURSA	06.05.2020	17.90	19.95	1440 ML
	MİGROS	07.05.2020	17.90	19.90	1440 ML
	BİM	NA	NA	NA	NA
	A101	NA	NA	NA	NA
PL Soft Soap 1 L	ŞOK	06.05.2020	6.75	6.95	1 L
	MİGROS	-	6.75	6.75	1 L
	BİM	NA	NA	NA	NA
	A101	NA	NA	NA	NA

FINDING 7

- (189) The e-mail sent on 30.04.2020 by ŞOK employee (.....) to ŞOK senior manager (.....) copied to ŞOK trade director subjected "Price Change Approval", which was obtained during the on-site inspection is as follows:

" ...

* As of Monday the price of the product shown below with the details attached will be changed from 16.95 to 18.95 in Competitor M and Competitor A.

* Competitor B will raise it on Tuesday.

There is item return in this product. Old item return will continue for 15 days (extra margin will be done)

Prices will be made upon your approval

(...)

PRODUCT NO	PRODUCT NAME
59666	SENSODYNE MINT TOOTHPASTE 100 ML

- (190) In response to the e-mail where competing retail chains are coded as Competitor A, Competitor B and Competitor M⁷⁶, ŞOK employee (.....) says "Hi (.....) can you raise the price of the product attached as of Monday? I'll send Mr. (.....)'s approval via Whatsapp" in the e-mail sent to ŞOK Campaign-Pricing Manager copied to (.....) and (.....) on 01.05.2020.

- (191) In the e-mail sent subsequently in the same chain by ŞOK Campaign-Pricing Director (.....) to ŞOK employee (.....) and copied to ŞOK Trade Director (.....) the screenshot showing the price change on the in-house price management program for the said Sensodyne toothpaste. Depending on the screenshot, the information about current prices and prices to be valid on 04.05.2020 concerning the relevant product is given in the table below:

Product Name	Current sales price (TL)	Sales beginning date	Sales Price (TL)
SENSODYNE MINT TOOTHPASTE 100 ML	16.95	04.05.2020	18.95

- (192) As a follow-up of the same chain, in the e-mail sent by ŞOK employee (.....) on 06.05.2020 to ŞOK Trade Director (.....) and copied to ŞOK employees (.....) and (.....) subjected "RE: Price change approval", the following messages were sent:

"Hello Mr. (.....)

Since the product below is not changed in cmpt B, we'll withdraw the price change. I request your approval for 16.95 tl sales price".

⁷⁶ A101 is coded as "Competitor A", BİM as "Competitor B" and MİGROS as "Competitor M".

- (193) ŞOK Trade Director (.....) answered “*Unfortunately. Ok.*” in the e-mail sent on the same day to ŞOK employee (.....) and copied to (.....) and (.....).
- (194) As a follow-up of the same e-mail chain, in the e-mail sent by ŞOK employee (.....) on 08.05.2020 to ŞOK Trade Director (.....) and copied to ŞOK employees (.....) and (.....) the following messages were sent:
“Hello Mr. (.....) Sensodyne sales price was changed by cmp b I request the approval of 18.95 sales price for us.”
- (195) In the following e-mail sent by ŞOK Campaign-Pricing Director (.....) to ŞOK employees (.....) and (.....) copied to ŞOK Trade Director (.....) on the same date, the screenshot showing that the sales price was changed from 16.95TL to 18.95 TL again as of 09.05.2020 on the in-house price management program was shared.
- (196) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning Sensodyne toothpaste mentioned in the documents above are given in the table below:

Table 25: Price changes concerning the product that is mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Explanation
Sensodyne Toothpaste 100 ML	First stage: May 4-5 Price Movements				
	A101	04.05.2020	16.95	18.95	As stated in the correspondence, ŞOK, CARREFOURSA and A101 increased the product price at the same time; MİGROS joined them one day later.
	ŞOK	04.05.2020	16.95	18.95	
	CARREFOURSA	04.05.2020	16.95	18.95	
	MİGROS	05.05.2020	16.95	18.95	
	BİM	-	16.95	16.95	
	The second stage: Withdrawal of the price increase by ŞOK and A101 when BİM did not increase the price				
	A101	06.05.2020	18.95	16.95	It is understood that A101 and ŞOK brought the price to its previous level because BİM did not increase the price. MİGROS and CARREFOUR did not make any change.
	ŞOK	07.05.2020	18.95	16.95	
	CARREFOURSA	-	18.95	18.95	
	MİGROS	-	18.95	18.95	
	The third stage: Price increase by ŞOK and A101 again when BİM increased the price too				
	BİM	08.05.2020	16.95	18.95	It is seen that when BİM ultimately increased the price, ŞOK and A101 also increased the price again.
	A101	09.05.2020	16.95	18.95	
	ŞOK	09.05.2020	16.95	18.95	

FINDING 8

- (197) The e-mail sent by ŞOK Purchasing Category director (.....) to ŞOK senior manager (.....) copied to ŞOK employees (.....) and (.....) on 12.06.2020 subjected “*Price Changes*”, which was obtained during the on-site inspection at ŞOK is as follows:
“Hello Mr. (.....)
The price change forms about Oreo and Popkek is attached, submitted for your approval.”

- Oreo is only sales price change. It will be reflected to shelf simultaneously with competitor A and competitor M tomorrow.
- Popkek will be reflected to shelf on Monday together with Competitor A and Competitor M, Competitor B will change on Tuesday.

(198) In the e-mail sent in response to the said e-mail by ŞOK employee (.....) to ŞOK Campaign-Pricing Director (.....) and copied to ŞOK Purchasing Category Director (.....) on 12.06.2020 subjected "FW: Price changes", ŞOK employee says "Hello (.....), I would appreciate if you could enter the prices attached. Oreo price is valid as of tomorrow, Eti cake purchase and sale prices are valid as of Monday. Thanks."

(199) In the e-mail sent subsequently in the same chain by ŞOK Campaign-Pricing Director (.....) to ŞOK employee (.....) copied to ŞOK employees (.....) and (.....) subjected "RE: Price Changes", the screenshot of the in-house price management program showing the price changes in the said products. Depending on the screenshot, the information about current prices and the new prices to be valid on 13.06.2020 and 15.06.2020 concerning the relevant products are given in the table below:

Product Name	Current sales price (TL)	Sales beginning date	Sales Price (TL)
Oreo 95 Gr	3.95	13.06.2020	4.75
Eti Popkek Chocolate 60 gr	1.00	15.06.2020	1.15
Eti Popkek Banana 60 gr	1.00	15.06.2020	1.15

(200) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the products mentioned in the documents above are given in the table below:

Table 26: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
OREO Biscuit Types	A101	13.06.2020	3.95	4.75	95 Gr
	ŞOK	13.06.2020	3.95	4.75	95 Gr
	CARREFOURSA	13.06.2020	3.95	4.75	95 Gr
			8.45	9.95	Thins 96 Gr
			2.00	2.50	38 Gr
	MİGROS ⁷⁷	13.06.2020	9.95	11.95	228 Gr
			3.95	4.75	95 Gr
			8.45	9.95	Thins 96 Gr
			2.00	2.50	38 Gr
	BİM	NA	9.95	11.95	228 Gr ⁷⁸
NA			NA	NA	
Eti Pop Kek types 60 Gr	ŞOK	15.06.2020	1.00	1.15	Cacao, banana
	A101	15.06.2020	1.00	1.15	Cocoa ⁷⁹
	BİM	16.06.2020	1.00	1.15	Cocoa, banana
	CARREFOURSA ⁸⁰	-	1.15	1.15	Cocoa

⁷⁷ In addition to the products in the table, MİGROS increased the prices of 154 Gr, 192 Gr and 246 Gr products from 10.95 to 11.95, from 14.45 to 15.95, from 19.95 to 21.95.

⁷⁸ 228 Gr OREO biscuit types were on sale in MİGROS between 10.06.2020 and 12.06.2020 and sold at 4.45 TL, thus 9.95, which was the price out of campaign, was taken as the previous price.

⁷⁹ According to the documents submitted by A101 "Eti Pop Kek Banana 60 Gr" was on sale between 03.06.2020 and 23.06.2020 sold at 0.75 TL whereas it was sold at 1.15 TL after the offer was over.

⁸⁰ According to the information submitted by CARREFOURSA, prices of Eti Pop Kek 80 Gr and 160 Gr products increased on 04.06.2020.

	MİGROS ⁸¹	-	1.15	1.15	Cocoa, banana
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FINDING 9

- (201) The e-mail sent by ŞOK Purchasing Category Director (.....) to ŞOK senior manager (.....) copied to ŞOK employees (.....) and (.....) on 18.06.2020 subjected “Re: Pasifik Price Update”, which was obtained during the on-site inspection is as follows:

“Hello Mr. (.....)

Pasifik’s price update form is attached.

We are informed that Competitor M will update on Monday, Competitor A will do it on Monday with 90% certainty, Competitor B will update the prices on Tuesday for the overlapping five products. The firm told us that if we pioneer and make the price update as of tomorrow, they can send 3 orders at the previous price as usual and if we make it on Monday together with the market we cannot purchase orders at previous prices and new orders cannot be delivered until the purchasing price is updated.

What about doing it on Monday?

They also told that the prices of Probis 280 gr, which we don’t sell regularly but we have on July 1 poster and which Competitor B sells regularly, will also be updated; Competitor B will update it as 6.50 on Tuesday. The product price is 5.95 TL on our poster now; we have to send an approval to Marketing Unit until tomorrow for publishing the poster. The Firm wants us to apply the same price on our poster with the price which Competitor B will change on Tuesday.

Let’s take it out from the poster. We cannot show a high price on a poster.

Lastly, the firm told that Competitor B will decrease the prices of Çokonat, Coco Star and Albeni. Will there be support for decreasing prices?

We submit the definition of new shelf prices and changing Probis prices as 6.50 TL as of tomorrow to your evaluation.

...”

- (202) In the same e-mail chain, in the e-mail sent by ŞOK Purchasing Category Director (.....) on 18.06.2020 to ŞOK senior manager (.....) and copied to ŞOK employees (.....) and (.....) , subjected “Re: Pasifik Price Update”, the following messages are sent:

Tomorrow, we will talk to the firm to change the prices on Monday and make it clear.

They told that they will not give support for shelf discounts to be made by Competitor B.

- (203) In the same chain, in the e-mail sent by ŞOK Purchasing Category Director (.....) on 19.06.2020 to ŞOK senior manager (.....) and copied to ŞOK employees (.....) and (.....) , subjected “Re: Pasifik Price Update”, the following messages are sent:

“The firm says that Competitor A and Competitor M will reflect the prices to shelf.

As we did not change the shelf price today, the firm withdrew the discount support given to products with margin loss, even small, at -0,20%. They are waiting for us to apply new purchase prices to continue the delivery.

- (204) ŞOK employee (.....) said “I request that purchase and sale valid as of Monday be submitted, thank you” in the response sent on 19.06.2020 to ŞOK Campaign-Pricing Manager (.....) and ŞOK Category Expert (.....) copied to (.....).

⁸¹According to the information submitted by MİGROS prices of all Eti Pop Kek types increased on 04.06.2020.

(205) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning ÜLKER⁸²/PASİFİK⁸³ products mentioned in the documents above are given in the table below:

Table 27: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Undertaking	Product ⁸⁴	Type ⁸⁵	Date	Previous price	New price
MİGROS	Alpella Mini Roll Cake with milk 32 Gr	1	22.06.2020	0.85	0.90
CARREFOURSA	Alpella Mini Roll Cake with milk 32 Gr	1	22.06.2020	0.85	0.90
BİM	Cake Mini Roll 32 G Alpella	1	23.06.2020	0.85	0.90
MİGROS	Godiva Almond Dark Chocolate and Strawberry Milk Chocolate 60 Gr	2	22.06.2020	7.00	8.00
CARREFOURSA	Godiva Square Strawberry Milk Chocolate 60G	2	22.06.2020	7.00	8.00
CARREFOURSA	Godiva Square Almond Dark Chocolate Chocolate 60G	2	22.06.2020	7.00	8.00
MİGROS	Biskrem Extra Cocoa filled 230 G	3	22.06.2020	4.50	4.95
CARREFOURSA	Ülker Biskrem Extra 230Gr	3	22.06.2020	4.50	4.95
BİM	Biskrem Extra Cocoa filled 230 G	3	23.06.2020	4.50	4.95
MİGROS	Ülker Bebe Package 172 G	4	22.06.2020	2.95	3.25
CARREFOURSA	Ülker Bebe Milky Biscuits 172 G	4	22.06.2020	2.75	3.25
BİM	Baby Biscuits 172 G Ülker	4	23.06.2020	2.75	3.25
A101	Ülker Bebe Biscuits 172 G	4	22.06.2020	2.75	3.25
BİM	Baby Biscuits 1000 G Ülker	5	23.06.2020	11.95	13.95
A101	Ülker Bebe Biscuits 1000 G	5	22.06.2020	11.95	13.95
MİGROS	Çiziviç Salty Cracker 246 Gr	6	22.06.2020	4.25	4.50
CARREFOURSA	Çiziviç Salty Cracker 246 Gr	6	22.06.2020	4.25	4.50
BİM	Cracker Salty 3*82 G Çiziviç	6	23.06.2020	4.25	4.50
A101	Çiziviç Salty Cracker 246 Gr	6	22.06.2020	4.25	4.50
MİGROS	Ülker Mini Hobby Bite Size Flowpack 250 G	7	22.06.2020	7.50	7.75
CARREFOURSA	Hobby Flowpack 250 G	7	22.06.2020	7.00	7.75
A101	Ülker Hobby Bar Chocolate 250 G	7	22.06.2020	7.00	7.75
CARREFOURSA	Kat Kat Tat Hazelnut Cream Filled 25 Gr	8	22.06.2020	0.75	1.00
CARREFOURSA	Kat Kat Tat Strawberry Cream Filled 28 Gr	8	22.06.2020	0.75	1.00
MİGROS	Ülker Probis Protein biscuit cocoa and banana filled 75 G	9	22.06.2020	1.75	2.00
CARREFOURSA	Probis Sandwich biscuit 75 Gr	9	22.06.2020	1.75	2.00
MİGROS	Ülker Probis Family Size 280 G	10	22.06.2020	6.00	6.50
CARREFOURSA	Ülker Probis Biscuit Family Size	10	22.06.2020	6.00	6.50
BİM	Banana&Cocoa cream filled Biscuit 280 G Probis	10	23.06.2020	5.95	6.50
A101	Probis biscuit cream filled 28X10 Gr	10	22.06.2020	5.95	6.40
MİGROS	Ülker Altınbaşak Grissini Bran- Plain 125 Gr.	11	22.06.2020	3.75	4.25
CARREFOURSA	Ülker Altınbaşak Grissini 125Grx12	11	22.06.2020	3.75	4.25
CARREFOURSA	Ülker Altınbaşak Bran Grissini 125Grx12	11	22.06.2020	3.75	4.25
MİGROS	Ülker Bebe Biscuits 800 G	12	22.06.2020	9.55	11.15
CARREFOURSA	Ülker Bebe Biscuits 4X200Gr	12	22.06.2020	9.55	11.15
CARREFOURSA	Ülker Çokokrem 350Gr Glass Jar spreadable chocolate	13	22.06.2020	10.75	11.50
ŞOK	Ülker Çokokrem Glass Jar 350 Gr	13	6/24/2020	10.50	11.50

⁸² Ülker Bisküvi Sanayi A.Ş.

⁸³ Pasifik Tüketim Ürünleri Satış ve Tic. A.Ş. (PASİFİK), which sells and distributes Ülker products.

⁸⁴ Product names in the documents given by undertakings.

⁸⁵A column called "Type" is added to the table to facilitate comparison between the price movements of the products which are considered the same although monitored under different names by the undertakings.

MİGROS	Ülker Çokosandviç 10-pack 300 G	14	6/22/2020	4.95	5.50
CARREFOURSA	Ülker Çokoprens Sandwich biscuit 10-pack	14	22.06.2020	4.95	5.50
BİM	Sandwich biscuit with cocoa cream 300 Gr Çokoprens	14	23.06.2020	4.95	5.50
A101	Çokoprens Biscuit with cocoa cream 10X30 Gr	14	22.06.2020	4.95	5.50
CARREFOURSA	Ülk. Çokokrem 400Gr spreadable chocolate Glass Jar	15	22.06.2020	9.60	10.75
ŞOK	Ülker Çokokrem Glass Jar 400 Gr	15	24.06.2020	9.60	10.60
MİGROS	Ülker Altınbaşak Cocoa Biscuit 81 Gr	16	22.06.2020	1.75	2.00
CARREFOURSA	Ülker Altınbaşak Cocoa Biscuit 81 Gr	16	22.06.2020	1.75	2.00
MİGROS	Ülker Bebe Biscuits 400 Gr	17	22.06.2020	6.30	7.50
CARREFOURSA	Ülker Bebe Biscuits 400 Gr	17	22.06.2020	6.30	7.50
CARREFOURSA	Ülker Petitbeurre 450Gr	18	22.06.2020	5.75	6.25
A101	Ülker Petibör biscuits 450 Gr	18	22.06.2020	5.75	6.25
MİGROS	Ülker biscuits with cocoa 175 Gr - Ülker Pötibör - Double Roasted 175 Gr.	19	22.06.2020	2.50	2.75
CARREFOURSA	Ülker Petitbeurre 450Gr	19	22.06.2020	2.50	2.75
CARREFOURSA	Ülker biscuits with cocoa 175 Gr	19	22.06.2020	2.50	2.75
CARREFOURSA	Ülker Pötibör Double Roasted 175 Gr.	19	22.06.2020	2.50	2.75
A101	Ülker Petibör biscuits mixed 175 Gr	19	22.06.2020	2.50	2.75
MİGROS	Ülker Dark Chocolate Drop 150G - Ülker White chocolate button - Dark 120G	20	22.06.2020	6.00	6.50
ŞOK	Ülker Dark Chocolate Drop 150Gr	20	24.06.2020	6.00	6.50
MİGROS	Ülker Cocoa 50 G	21	22.06.2020	3.00	3.50
ŞOK	Ülker Cocoa 50 Gr	21	24.06.2020	3.00	3.50
MİGROS	Ülker Çokoprens Sandwich biscuit 20X30G	22	22.06.2020	9.60	10.50
CARREFOURSA	Ülker Çokoprens Sandwich biscuit 20- pack 600 Gr	22	22.06.2020	9.60	10.60
MİGROS	Ülker Pötibör - Double Roasted - Cocoa 450 Gr	23	22.06.2020	5.75	6.25
CARREFOURSA	Ülker Cocoa P.Beurre 450Gr	23	22.06.2020	5.75	6.25
CARREFOURSA	Ülker Pötibör Double Roasted.450Gr	23	22.06.2020	5.75	6.25
MİGROS	Ülker Çokosandviç 30 G	24	22.06.2020	0.60	0.65
CARREFOURSA	Ülker Çokoprens Sandwich biscuit 30Gr	24	22.06.2020	0.60	0.65
MİGROS	Ülker Finger Biscuits 750 G - Ülker Pötibör Biscuits 800 G	25	22.06.2020	9.00	9.75
CARREFOURSA	Ülker Pötibör Biscuits 4X200Gr	25	22.06.2020	9.00	9.75
CARREFOURSA	Ülker Finger Biscuits 5X150Gr	25	22.06.2020	9.00	9.75
MİGROS	Ülker Chocolate tablet with coconut 50 Gr	26	22.06.2020	3.25	3.50
CARREFOURSA	Ülker Chocolate tablet with coconut 50 Gr	26	22.06.2020	3.25	3.50
MİGROS	Ülker Dore cocoa cream filled biscuits 86 G	SINGLE	22.06.2020	2.00	2.25
CARREFOURSA	Ülk. Çokokrem 950Gr Spreadable Chocolate Glass Jar	SINGLE	22.06.2020	21.00	22.90
CARREFOURSA	Ülker Çokokrem 180Gr	SINGLE	22.06.2020	4.75	5.25
CARREFOURSA	Ülker Golden Hazelnut Spread 350Grx6	SINGLE	22.06.2020	19.00	20.75
CARREFOURSA	Ülk. Çokokrem 650Gr Glass Jar Spreadable Chocolate	SINGLE	22.06.2020	18.25	19.90
CARREFOURSA	Ülker Çokokrem Glass Jar 135Gr	SINGLE	22.06.2020	3.95	4.50
BİM	Cake chocolate 35 G Dankek	SINGLE	23.06.2020	1.00	1.15
ŞOK	Ülker Çokokrem Tube 40 Gr	SINGLE	24.06.2020	1.75	2.00

FINDING 10

(206) The e-mail sent by ŞOK Purchasing Category Director (.....) to ŞOK senior manager (.....) copied to ŞOK employees (.....) and (.....) on 30.06.2020 subjected "Price Update Forms", which was obtained during the on-site inspection is as follows:

"Hello Mr (.....)

Price change forms and Taşkale churchkela warehouse allocation are attached for your approval.

- Haribo: Organized on the same day with the market. Only the shelf price will be changed.
- Dippo: Only the shelf price will be changed.
- Wasa Shelf price change in the market is completed. Only the shelf price will be changed.
- Şölen: Purchase-sale price change. Although Competitor B did not change the price to recommended shelf price completely for Karmen 3 Fold Wafer product, the firm supports us to protect our margin due to our agreement.
(...)"

(207) The e-mail sent in response to the e-mail on 30.06.2020 by Şok employee (.....) to ŞOK Campaign-Pricing Manager (.....) subjected "FW: Price Update Forms" includes the expression "For your information for defining".

(208) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning Haribo products mentioned in the documents above are given in the table below:

Table 28: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types	
Haribo Candy Types	CARREFOURSA	01.07.2020	3.75	4.00	80 Gr	
			6.50	6.90	160 Gr	
			4.95	6.90	150 Gr	
	MİGROS	01.07.2020	7.45	8.50	200 Gr	
			5.75	6.40	175 Gr	
			4.90	5.45	150 Gr	
	A101		01.07.2020	4.25	4.75	130 Gr
	BİM		-	4.25	4.25	130 Gr
ŞOK		01.07.2020	4.25	4.75	130 Gr	

FINDING 11

(209) The e-mail sent by ŞOK Purchasing Category Director (.....) to ŞOK senior manager (.....) copied to ŞOK employees (.....) and (.....) on 17.07.2020 subjected "Price Change", which was obtained during the on-site inspection includes the following:

"CLASSIFIED

"Hello Mr. (.....)

Biscolata Mood sales price change form is attached for your information. We request for your approval to update the shelf price together with Competitor A and Competitor M on Monday (only shelf price). The supplier says that Competitor B will update the price on Tuesday"

(210) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the products mentioned in the documents above are given in the table below:

Table 29: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
Biscolata Mood types		-	2.00	2.00	40 Gr

	CARREFOURSA ⁸⁶	-	5.90	5.90	125 Gr
	MİGROS ⁸⁷	-	2.00	2.00	40 Gr
		-	5.90	5.90	125 Gr
	ŞOK	20.07.2020	4.75	5.25	110 Gr
	BİM	21.07.2020	4.75	5.25	110 Gr
	A101	22.07.2020	4.75	5.25	110 Gr

FINDING 12

- (211) The e-mail sent by ŞOK Purchasing Category Director (.....) on 11.08.2020 (time **13:30**) to ŞOK senior manager (.....) copied to ŞOK Trade Director and ŞOK employee (.....) on 11.08.2020 subjected "Price Change", which was obtained during the on-site inspection includes the following:

"CLASSIFIED

"Hello Mr. (.....)

Price change forms are attached for your approval.

- *Dippo: We changed the shelf price on July 1. We request your approval for defining the purchasing price.*
- *Peki cake: We request your approval to switch to the new shelf prices which are reflected on Competitor B's shelves.*
- *Kinder Joy: Competitor B has applied the new price today. We request your approval for defining the purchasing price.*

(...)

Meanwhile if Eti can organize the market for the sales prices, I will share the form for price changes today.

- (212) The e-mail sent by ŞOK Purchasing Category Director (.....) on 11.08.2020 (time **14:46**) to ŞOK senior manager (.....) copied to ŞOK Trade Director and ŞOK employee (.....) subjected "Eti Price Change", which was obtained during the on-site inspection includes the following:

"CLASSIFIED

"Hello Mr. (.....)

Price change form for 4 Eti products that are not listed in Competitor B is attached for your information. We request your approval for changing the purchase and sales price together with Competitor A and Competitor M tomorrow..."

- (213) In the same chain, the e-mail sent on 11.08.2020 by ŞOK employee (.....) to ŞOK Campaign - Pricing Manager (.....) subjected "FW: Eti Price Change", includes a screenshot of the e-mail sent by ŞOK senior manager (.....) to ŞOK Purchasing Category Director (.....) and copied to ŞOK employees (.....) and (.....) subjected "RE: Eti Price Change". The expressions given above in the said screenshot are remarkable:

"CLASSIFIED

Ok

But we shouldn't write the messages like this Mr. (.....), should we?"

- (214) In the same e-mail chain, the e-mail sent by ŞOK Campaign-Pricing manager (.....) to ŞOK employee (.....) includes the screenshot of the in-house price management

⁸⁶ It is seen in the documents submitted by CARREFOURSA that the price increase for Biscolata Mood 125 gr was not made between July 17 and 21, 2020 but on July 9, 2020. Previous price: 5.40; new price: 5.90)

⁸⁷ It is seen in the documents submitted by MİGROS that the price increase for Biscolata Mood 125 gr was not made between July 17 and 21, 2020 but on July 4, 2020. (Previous price: 5,40; New price: 5.90)

program showing the price changes in the said products. Depending on the screenshot, the information about current prices and the new prices to be valid on 12.08.2020 concerning the relevant products are given in the table below:

Product name	Current sales price (TL)	Sales beginning date	Sales Price (TL)
Etimek Classic 143 gr	3.50	12.08.2020	4.00
Eti Petite Bear Mini 72 gr	5.50	12.08.2020	6.00
Eti Tutku Mozaik 100 gr	2.00	12.08.2020	2.25
Eti Cin Bite size 114 gr	2.00	12.08.2020	2.25

- (215) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the Eti products mentioned in the documents above are given in the table below:

Table 30: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)⁸⁸

Product	Undertaking	Date	Previous price	New price	Types
ETİMEK Types	ŞOK	12.08.2020	3.50	4.00	Classic 143 Gr, Salt-free 148 Gr
	CARREFOURSA	12.08.2020	3.50	4.00	Classic 143 Gr, Salt-free 148 Gr
			4.25	4.95	Sour dough 115 Gr (the price was decreased to the previous level two days later.
	MİGROS	12.08.2020	3.50	4.00	Classic 143 Gr, Salt-free 148 Gr
			7.95	11.50	Classic 429 Gr
	A101	12.08.2020	3.50	4.00	Classic 143 Gr, Salt-free 148 Gr
BİM	NA	NA	NA	NA	
ETİ Petite Types	ŞOK	12.08.2020	5.50	6.00	Mini 72 Gr
	CARREFOURSA	12.08.2020	4.95	6.00	Mini 72 Gr
			2.50	2.75	Mini 32 Gr
			1.00	1.25	Milky Sticks
			4.95	5.00	Mini 72 Gr
	MİGROS	12.08.2020	2.50	2.75	Mini 32 Gr
			1.00	1.25	Milky Sticks
			0.75	1.00	Milky Sticks 13 Gr
A101	-	0.50	0.50	8 Gr	
	-	1.00	1.00	18 Gr	
BİM	NA	NA	NA	NA	
ETİ Tutku Types	ŞOK	12.08.2020	2.00	2.25	100 Gr
	MİGROS	12.08.2020	2.00	2.25	100 Gr
			3.00	3.40	160 Gr
	A101	12.08.2020	2.00	2.25	100 Gr
	CARREFOURSA	13.08.2020	2.00	2.25	100 Gr
			4.15	4.70	210 Gr
BİM	NA	NA	NA	NA	
ŞOK	12.08.2020	2.00	2.25	114 Gr	

⁸⁸ Price changes made on 12.08.2020 were detected concerning 49 different ETİ products including the products written in the table in MİGROS. Price changes made on 13.08.2020 were detected concerning 26 different ETİ products including the products written in the table in CARREFOURSA.

ETİ Cin Types	MİGROS	12.08.2020	2.00	2.25	114 Gr
		12.08.2020	6.00	6.75	342 Gr
	A101	12.08.2020	2.00	2.25	114 Gr
	CARREFOURSA	13.08.2020	2.00	2.25	114 Gr
			6.00	6.75	342 Gr
BİM	NA	NA	NA	NA	

FINDING 13

- (216) In the e-mail sent by ŞOK Purchasing Director (.....) on 08.09.2020 to ŞOK Trade Director (.....) copied to ŞOK employee (.....) subjected "Doğanay Turnip 1 L - Sales Price Change", the following messages are sent:

"Hello Mr. (.....)

Competitor B increased the shelf prices of Doğanay turnip 1 L products today. Tomorrow the entire market will increase.

We are increasing turnip prices to 4.95 as of tomorrow. Our bargaining for purchasing price still continues.

We request your approval for defining the sale price.

- (217) It is seen that the price change was approved by the expression "ok" in the e-mail sent by ŞOK Trade Director (.....) to ŞOK Purchasing Director (.....) on 08.09.2020. In the same e-mail chain, the screenshot of the in-house price management program regarding the price changes was also shared. Depending on the screenshot, the information about current prices and the new prices to be valid on 09.09.2020 concerning the relevant products are given in the table below:

Product Name	Current sales price (TL)	Sales beginning date	Sales Price (TL)
Doğanay Turnip Juice Plain 1 L	4.50	09.09.2020	4.95
Doğanay Turnip Juice Hot 1 L	4.50	09.09.2020	4.95

- (218) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning Doğanay products mentioned in the documents above are given in the table below:

Table 31: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price
Doğanay Turnip Juice 1 L	BİM	08.09.2020	4.50	4.95
	ŞOK	09.09.2020	4.50	4.95
	CARREFOURSA	09.09.2020	4.50	4.95
	MİGROS	11.09.2020	4.50	4.95
	A101	-	3.95	3.95

FINDING 14

- (219) The e-mail sent by ŞOK Purchasing Director (.....) on 25.09.2020 to ŞOK Trade Director (.....) copied to ŞOK employees (.....) and (.....) subjected "Popcorn -Price Change", which was obtained during the on-site inspection at ŞOK includes the following:

"CLASSIFIED "Hello Mr. (.....)

We are working with 2 producers in popcorn. The firms want price change in the products below due to the price increase in the raw materials.

There is no product in Competitor B. We are going to apply the shelf prices as 2 tl together with Competitor A tomorrow. Our bargaining for purchasing still continues.

We request your approval for the shelf price.

..."

- (220) The response sent by ŞOK trade director on 25.09.2020 to ŞOK Purchasing Director (.....) copied to ŞOK employees (.....) and (.....) includes the expression *“It should be done on Tuesday”*.
- (221) In the same chain, the e-mail sent by ŞOK employee (.....) to ŞOK Purchasing Director (.....) and ŞOK Trade Director (.....) copied to (.....) subjected *“RE: Popcorn-Price Change”* includes the following messages:
“CLASSIFIED
“Hello Mr. (.....)
The sales price is arranged with A for tomorrow, the product is not available in another Account. Let’s reflect it to sale tomorrow.
We’ll talk about the purchase price on Tuesday.
...”
- (222) In the e-mail sent by ŞOK Campaign-Pricing Director (.....) to ŞOK employees (.....) and (.....) copied to ŞOK Trade Director (.....) on 25.09.2020 in the same chain, the screenshot showing the in-house price management program regarding the price change of the said private label popcorn product was shared. Depending on the screenshot, the information about current prices and prices to be valid on 26.09.2020 concerning the relevant product is given in the table below:

Product name	Current sales price (TL)	Sales beginning date	Sales Price (TL)
Amigo Pop Corn 60 gr	1.75	26.09.2020	2.00

- (223) According to the data sent by the investigation parties, the price movements by the undertakings concerned on relevant dates concerning private label popcorn products mentioned in the documents above are given in the table below:

Table 32: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price
PL Popcorn 60 gr	A101	26.09.2020	1.75	2.00
	ŞOK	26.09.2020	1.75	2.00

FINDING 15

- (224) The e-mail sent by ŞOK Purchasing Director (.....) on 02.10.2020 to ŞOK Trade Director (.....) copied to ŞOK employees (.....) and (.....) subjected *“Redbull Price Change”*, which was obtained during the on-site inspection at ŞOK includes the following:
“Hello Mr. (.....)
The market has changed the shelf prices for Redbull products today.
We request your approval for defining the shelf prices tomorrow, our bargaining for purchase price still continues.
Best regards”
- (225) The relevant parts of the price change approval table concerning Redbull products in the said e-mail are as follows:

PRODUCT NO	PRODUCT NAME	CURRENT SALES PRICE	NEW SALES PRICE	Sales Price Beginning
62579	RED BULL ENERGY DRINK 473 ML	9.95	11.75	3.10.2020
8110030	RED BULL ENERGY DRINK 250 ML	5.95	6.95	3.10.2020

- (226) On 02.10.2020, ŞOK Trade Director (.....) sent a reply to ŞOK Purchasing Director (.....) copied to ŞOK employees (.....) and (.....) by asking
“Who is the market”
- (227) The e-mail sent by ŞOK Purchasing Director (.....) on 02.10.2020 to ŞOK Trade Director (.....) and copied to ŞOK employees (.....) and (.....) , subjected *“RE:Redbull Price Change”*, includes the following messages:
*“Hello
M, C and local supermarkets have changed. Only competitor A and we are changing tomorrow.
Best regards”*
- (228) According to the data sent by the investigation parties, the price movements by the undertakings concerned on relevant dates concerning the RED BULL products mentioned in the documents above are given in the table below:

Table 33: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
RED BULL drink types	CARREFOURSA	01.10.2020	5.95	6.95	250 ML
			7.75	8.95	355 ML
			9.95	11.75	473 ML
			22.45	26.45	4X250 ML CAN
			33.45	39.45	6X250 ML CAN
	MİGROS	02.10.2020	5.95	6.95	250 ML
			7.75	8.95	355 ML
			9.95	11.75	473 ML
			22.45	26.45	4X250 ML
			33.45	39.45	6X250 ML
	ŞOK	03.10.2020	5.95	6.95	250 ML
			9.95	11.75	473 ML
	A101	03.10.2020	5.95	6.95	250 ML
	BİM	NA	NA	NA	NA

FINDING 16

- (229) In the e-mail sent by ŞOK Category Expert (.....) to ŞOK Trade Director (.....) and ŞOK employee on 18.11.2020 subjected *“RE: Price Changes 18.11.2020”*, which was obtained during the on-site inspection at ŞOK, the following messages were sent:
*“CLASSIFIED
Hello Mr. (.....) the table is below. Pril product prices will be reflected simultaneously with the competitor orange tomorrow. There are no products in red and blue...”*

The parts concerning Pril products in the table in the correspondence are shown below:

PRODUCT NO	PRODUCT NAME	CURRENT SALES PRICE	NEW SALES PRICE
(...)	(...)	(...)	(...)
83992	PRIL GOLD GEL DEGRASER 900 ML	29.90	36.9
30990131	PRIL RINSE AID 470 ML	8.70	10.8

- (230) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the Pril products mentioned in the documents above are given in the table below:

Table 34: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
PRIL DEGRASER	ŞOK	19.11.2020	29.90	36.90	Gold 900 ML
	MİGROS	19.11.2020	29.90	36.90	Gold 900 ML
	CARREFOURSA	20.11.2020	29.90	36.90	Gold 900 ML
	A101	NA	NA	NA	NA
	BİM	NA	NA	NA	NA
PRIL rinse aid	MİGROS	17.11.2020	9.25	11.50	500 ML
	ŞOK	19.11.2020	8.70	10.80	470 ML
	CARREFOURSA	-	19.90	19.90	750 ML
	A101	NA	NA	NA	NA
	BİM	NA	NA	NA	NA

FINDING 17

- (231) The Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....), which was obtained during the on-site inspection at A101 includes the following messages:

“(.....) : Mr. (.....) there is a change in dardanel to be valid as of Sunday migros is changing tomorrow margin is not decreasing

(.....): Define it in the system tomorrow See Migros first

(.....): Yes yes

We did not do anything today”

- (232) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning the Dardanel products mentioned in the documents above are given in the table below:

Table 35: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Product	Undertaking	Date	Previous price	New price	Types
DARDANEL Tuna fish types	CARREFOURSA ⁸⁹	21.11.2020	25.90	29.90	*75 Gr 3-pack Tuna Light 75 Gr 3-pack
			27.90	31.90	* Olive oil 75 Gr 3-pack
			13.90	17.90	Flawpack tuna 120 Gr
			28.90	34.90	*Light 150 Gr
			29.90	34.90	150 Gr 2-pack
			34.90	36.90	* Olive oil 150 Gr 2-pack
			17.50	18.90	Olive oil 150 Gr
			13.90	17.90	Sunflower oil 150 Gr
	MİGROS ⁹⁰	21.11.2020	25.90	29.90	Sunflower oil 75 Gr 3-pack
			27.90	31.90	Olive oil 75 Gr 3-pack
			13.90	16.90	Flawpack tuna 120 Gr
			29.90	34.90	Sunflower oil, Light 150 Gr 3-pack
			34.90	36.90	Olive oil 150 Gr 2-pack
			17.50	18.90	Olive oil 150 Gr

⁸⁹ The prices in Ankara for the products beginning with “ * ” under types category is 0.05 TL lower than the prices in the table for only past prices. Moreover, it is seen that there was an increase on 21.11.2020 in the prices of Steak 185 Gr Fillet 125 Gr, Cereal-Couscous 185 Gr and 75 gr 2-pack apart from the products in the table concerning DARDANEL product types sold in CARREFOURSA, the increases are respectively: from 31.90 to 34.90, from 21.90 to 24.90, from 11.90 to 14.90, from 17.90 to 19.90.

⁹⁰ In terms of DARDANEL product types offered by MİGROS, apart from the products in the table, the price of hot product 80-gr 3-pack increased from 24.90 to 29.90 on 21.11.2020.

			14.90	17.90	Sunflower oil 150 Gr
A101 ⁹¹	22.11.2020		25.90	29.90	75 Gr 3-pack
			27.90	31.90	Olive oil 75 Gr 3-pack
			13.90	16.90	Flawpack tuna 120 Gr
		BİM	NA	NA	NA
ŞOK	NA	NA	NA	NA	NA

FINDING 18

- (233) In the e-mail sent by ŞOK Category Expert (.....) to ŞOK Trade Director (.....) and ŞOK employee (.....) on 02.12.2020 subjected "Sales Price Changes", which was obtained during the on-site inspection at ŞOK, the following messages were sent:

"Hello Mr. (.....)

Competitor red increased the prices of Fairy washing up liquid and Fairy Platinum dishwasher 33 tablets. Depending on your approval, prices for other products will increase simultaneously with competitor blue and orange tomorrow. They will be registered in the system in light of the approval.

PRODUCT NO	PRODUCT NAME	CURRENT SALES PRICE	SALES PRICE
62074	ALO POWDER DETERGENT 4.5 KG	32.50	35.95
62075	ARIEL MOUNTAIN BREEZE 4.5 KG	41.95	44.95
76954	ARIEL BRIGHT COLORS 4.5 KG	41.95	44.95
78971	ARIEL MOUNTAIN BREEZE LIQUID DETERGENT 1.69 L	32.75	36.9
78970	ARIEL BRIGHT COLORS LIQUID DETERGENT 1.69 L	32.75	36.9
75071	FAIRY WASHING UP LIQUID	9.50	10.65
76433	FAIRY ALL-IN-ONE 50 CAPSULES	52.50	59.95
71005	FAIRY PLATINUM 33 TABLETS	37.95	42.9
80539	PRIMA NAPPY PANTS 4 MAXI 21	33.90	39.9
80540	PRIMA NAPPY PANTS 5 MAXI 18	33.90	39.9
80541	PRIMA NAPPY PANTS 6 EXTRA LARGE 15	33.90	39.9
60133	MINTAX CONCENTRATED BLEACHER 4000 ML	13.70	13.95

- (234) According to the data sent by the investigation parties, the price movements made by the undertakings concerned on relevant dates concerning Fairy products mentioned in the documents above are given in the table below:

Table 36: Price changes concerning Fairy products that are mentioned in the correspondence (TL, VAT included)

Undertaking	Product	Date	Previous price	New price
FAIRY LIQUID-TABLET DISHWASHING DETERGENT				
BİM	Fairy platinum 33 tablets	02.12.2020	37.95	42.90
BİM	Washing up liquid 650 ml Fairy	02.12.2020	8.25	9.25
ŞOK	Fairy platinum 33 tablets	03.12.2020	37.95	42.90
ŞOK	Fairy Lotion	02.12.2020	7.35	9.80
ŞOK	Fairy all-in-one 50 capsules	03.12.2020	52.50	59.95
ŞOK	Fairy washing up liquid 750 ml	03.12.2020	9.50	10.65
CARREFOURSA	Fairy platinum 43 tablets	03.12.2020	51.90	59.90
CARREFOURSA	Fairy 650 ml Lemon	03.12.2020	8.25	9.25
CARREFOURSA	Fairy 1350 ml Lemon	03.12.2020	16.25	18.50
CARREFOURSA	Fairy Liquid 2700 ml Lemon	03.12.2020	26.90	30.50
CARREFOURSA	Fairy 400 ml Lemon	03.12.2020	6.25	7.25

⁹¹In terms of DARDANEL product types offered by A101, apart from the products in the table, Tuna 125 gr and Sardine 125 gr product prices increased on 22.11.2020 from 13.90 to 14.90 and from 8.90 to 9.90.

CARREFOURSA	Fairy 1500 ml Lemon	03.12.2020	16.25	18.45
A101	Fairy platinum 33 tablets	03.12.2020	37.95	42.90
A101	Fairy washing up liquid 650 ml	03.12.2020	8.25	9.25
A101	Fairy Dishwasher 50 Capsules H1A	03.12.2020	51.90	59.95
MİGROS	Fairy Platinum Lemon 33 492 G	04.12.2020	37.95	42.90
MİGROS	Fairy washing up liquid Apple-Lemon-Orange-Pomegranate 650 m l	04.12.2020	8.25	9.25
MİGROS	Fairy all-in-one 50 capsules 675 G	04.12.2020	51.90	59.95
MİGROS	**Fairy washing up liquid Apple-Lemon-Orange-Pomegranate 1,350 ml ⁹²	04.12.2020	16.25	18.50
MİGROS	Fairy washing up liquid Apple-Lemon 2*1,350 ml	04.12.2020	26.90	30.50
MİGROS	Fairy all-in-one 120 capsules 1,621 G	04.12.2020	98.50	109.95
MİGROS	Fairy all-in-one 36 capsules 486 G	04.12.2020	39.90	46.25
MİGROS	Fairy all-in-one 70 capsules 946 G	04.12.2020	70.50	81.75
MİGROS	Fairy all-in-one 90 capsules 1,216 G	04.12.2020	77.90	89.90
MİGROS	Fairy Pure and Clean 650 ml	04.12.2020	13.90	15.90
MİGROS	Fairy washing up liquid Lemon 6*650 ml	04.12.2020	34.90	39.90
MİGROS	Fairy Lemon 1.5 L	04.12.2020	15.95	18.25
MİGROS	Fairy Platinum Lemon 1,500 ml	04.12.2020	23.90	27.25
CARREFOURSA	Fairy all-in-one 22 capsules	05.12.2020	29.90	34.75
CARREFOURSA	Fairy all-in-one 84 capsules	05.12.2020	83.90	97.25
CARREFOURSA	Fairy all-in-one 60 capsules	05.12.2020	62.90	72.90
CARREFOURSA	Fairy all-in-one 36 capsules	05.12.2020	39.90	46.25
CARREFOURSA	Fairy all-in-one 70 capsules	05.12.2020	70.50	81.75
CARREFOURSA	Fairy all-in-one 120 capsules	05.12.2020	114.90	132.90
CARREFOURSA	Fairy all-in-one 90 capsules	05.12.2020	89.50	103.50
ŞOK	Fairy washing up liquid Lemon 2*1 L	05.12.2020	20.90	23.50

- (235) The details of price changes made on close dates regarding other products mentioned in the e-mails are given below. As seen in the table, apart from the changes in ŞOK on 03.12.2020, five big supermarket chains party to the investigation (A101, BİM, CARREFOURSA, MİGROS and ŞOK) changed the prices of Ariel laundry detergent types between 09 and 11.12.2020; CARREFOURSA, MİGROS and A101 changed the prices of Alo laundry detergent types between 09-10.12.2020; CARREFOURSA, MİGROS, A101 and ŞOK changed the prices of Prima nappy types between 25.11.2020 and 01.12.2020; BİM, A101, CARREFOURSA and MİGROS changed the prices of PL bleachers between 25.11.2020 and 27.11.2020. It should be noted that the price changes for products with overlapping package/weight are mostly the same.
- (236) At this point, the price changes in Ariel and Alo products are remarkable. For instance, it is understood that BİM, CARREFOURSA and MİGROS, on 09.12.2020, increased the prices of Ariel powder detergent 1.5 kg types simultaneously from 15.95 TL to 16.90-16.95 TL whereas A101 and ŞOK changed the prices on 10.12.2020 and 11.12.2020 respectively from 15.95 TL to 16.90 TL. Similarly, CARREFOURSA and MİGROS increased the prices simultaneously on 09.12.2020. The previous and new prices of Alo and Ariel were exactly the same for overlapping weights. A101 followed those undertakings in terms of the same products by means of making exactly the same price changes on 10.12.2020.

Table 37: Price changes concerning other products that are mentioned in the correspondence (TL, VAT included)

Undertaking	Product	Date	Previous price	New price
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⁹² The prices of apple and lemon types of the product in Ankara and İzmir were the same as those in the table. The prices in Istanbul rose from 15.95 to 18.50.

ARIEL LAUNDRY DETERGENT TYPES				
ŞOK	Ariel bright colors liquid detergent 1.69 L	03.12.2020	32.75	36.90
ŞOK	Ariel mountain breeze liquid detergent 1.69 L	03.12.2020	32.75	36.90
ŞOK	Ariel mountain breeze 4.5 KG	03.12.2020	41.95	44.95
BİM	Ariel bright colors powder detergent 1.5 L	09.12.2020	15.95	16.90
BİM	Ariel mountain breeze powder detergent 1.5 L	09.12.2020	15.95	16.90
CARREFOURSA	Ariel mountain breeze 1.5 KG	09.12.2020	15.95	16.95
CARREFOURSA	Ariel bright colors 1.5 KG	09.12.2020	15.95	16.95
CARREFOURSA	Ariel bright colors 4 KG	09.12.2020	36.95	39.95
CARREFOURSA	Ariel mountain breeze 4 KG	09.12.2020	36.95	39.95
CARREFOURSA	Ariel bright colors 6 KG ⁹³	09.12.2020	44.90	49.90
MİGROS	Ariel mountain breeze 10 wash 1.5 KG	09.12.2020	15.95	16.95
MİGROS	Ariel mountain breeze color 10 wash 1.5 KG	09.12.2020	15.95	16.95
MİGROS	Ariel liquid bright colors 26 wash 1,690 MI	09.12.2020	32.75	36.90
MİGROS	Ariel mountain breeze 26 wash 1,690 MI	09.12.2020	32.75	36.90
MİGROS	Ariel mountain breeze 26 wash 4 KG	09.12.2020	36.95	39.95
MİGROS	Ariel mountain breeze color 26 wash 4 KG	09.12.2020	36.95	39.95
MİGROS	Ariel mountain breeze 40 wash 6 KG	09.12.2020	44.90	49.90
MİGROS	Ariel liquid bright colors 15 wash 975 MI	09.12.2020	21.75	24.50
MİGROS	Ariel liquid mountain breeze 15 wash 975 MI	09.12.2020	21.75	24.50
MİGROS	Ariel liquid bright colors 2X1.3L 2X20 wash	09.12.2020	41.90	46.90
MİGROS	Ariel liquid mountain breeze 2X1.3L 2X20 wash	09.12.2020	41.90	46.90
MİGROS	Ariel gel mountain breeze 12 capsules 324 G	09.12.2020	27.90	34.90
MİGROS	Ariel Liquid 24 wash mountain breeze 1.56 L	09.12.2020	30.90	34.90
CARREFOURSA	*Ariel mountain breeze 6 Kg ⁹⁴	10.12.2020	44.90	49.90
A101	Liquid detergent Color 1690 MI Ariel	10.12.2020	32.75	36.90
A101	Liquid detergent 1690 MI Ariel	10.12.2020	32.75	36.90
A101	Powder detergent Color 1.5 Kg Ariel	10.12.2020	15.95	16.90
A101	Powder detergent 1.5 Kg Ariel	10.12.2020	15.95	16.90
ŞOK	Ariel mountain breeze 1.5 KG	11.12.2020	15.95	16.90
ŞOK	Ariel bright colors 1.5 KG	11.12.2020	15.95	16.90
ŞOK	ALO powder detergent 4.5 KG	03.12.2020	32.50	35.95
CARREFOURSA	Alo 1.5 Kg white and color	12/09/2020	12.25	13.35
CARREFOURSA	Alo winter aconite 4 Kg 26 wash	09.12.2020	28.90	31.95
CARREFOURSA	Alo Platinum 6 Kg Fairy Effect	09.12.2020	35.90	40.90
MİGROS	Alo Platinum 40 wash 6 Kg Fairy Effect	09.12.2020	35.90	40.90
MİGROS	Alo Platinum Fairy Effect Color 6 Kg	09.12.2020	35.90	40.90
MİGROS	Alo winter aconite white&color 10 wash 1.5 Kg	09.12.2020	12.25	13.35
MİGROS	Alo winter aconite 10 wash 1.5 Kg	09.12.2020	12.25	13.35
MİGROS	Alo bright colors 10 wash 1.5 Kg	09.12.2020	12.25	13.35
MİGROS	Alo winter aconite white&color 26 wash 4 Kg	09.12.2020	28.90	31.95
MİGROS	Alo winter aconite 26 wash 4 Kg	09.12.2020	28.90	31.95
MİGROS	Alo bright colors 26 wash 4 Kg	09.12.2020	28.90	31.95
A101	Powder detergent 4 Kg Alo	12/10/2020	28.90	31.95
BİM	NA	NA	NA	NA
PRIMA NAPPY TYPES				
CARREFOURSA	* Prima Eco Package 4 size 40-pack	27.11.2020	43.90	48.75
CARREFOURSA	Prima Eco Package 3 size 45-pack	27.11.2020	43.90	48.75
CARREFOURSA	Prima Eco Package 4+ size 34-pack	27.11.2020	43.90	48.75
CARREFOURSA	Prima Eco Package 5+ size 29-pack	27.11.2020	43.90	48.75
CARREFOURSA	* Prima Eco Package 6 size 26-pack	27.11.2020	43.90	48.75
MİGROS	Prima nappy pant single pack no 7 14-pack	28.11.2020	39.75	43.90
MİGROS	Prima nappy pant single pack 6 Ext. Larg. 15 pack16+Kg	28.11.2020	39.75	43.90

⁹³ The previous price of the product in Ankara was 43.95.

⁹⁴ The previous price of the product in Ankara was 43.95.

MİGROS	Prima nappy pant single pack 5 12-18 Kg 18-pack	28.11.2020	39.75	43.90
MİGROS	Prima nappy pant single pack Maxi no 4 21-pack	28.11.2020	39.75	43.90
MİGROS	Prima nappy pant single pack 3 Midi 28- pack 6-11 Kg	28.11.2020	39.75	43.90
A101	Prima nappy newborn 36-pack	28.11.2020	32.90	34.90
A101	Prima nappy mini 31-pack	28.11.2020	32.90	34.90
A101	Prima nappy midi 27-pack	28.11.2020	32.90	34.90
A101	Prima nappy maxi 24-pack	28.11.2020	32.90	34.90
A101	Prima nappy junior 20-pack	28.11.2020	32.90	34.90
A101	Prima nappy extra large 17-pack	28.11.2020	32.90	34.90
CARREFOURSA	Prima nappy pant single pack no 4 24-pack	30.11.2020	39.90	43.90
CARREFOURSA	Prima nappy pant single pack no 6 15-pack	30.11.2020	39.90	43.90
CARREFOURSA	Prima nappy pant single pack no 5 18-pack	30.11.2020	39.90	43.90
CARREFOURSA	Prima nappy pant single pack no 3 28-pack	30.11.2020	39.90	43.90
ŞOK	Prima nappy Jumbo 4 maxi 40-pack	01.12.2020	46.90	49.90
ŞOK	Prima nappy Jumbo 5 Junior 29-pack	01.12.2020	46.90	49.90
ŞOK	Prima Jumbo 6 extra large 26-pack	01.12.2020	46.90	49.90
ŞOK	Prima nappy pants 4 maxi 21-pack	03.12.2020	33.90	39.90
ŞOK	Prima nappy pants 5 junior 18-pack	03.12.2020	33.90	39.90
ŞOK	Prima nappy pants 6 extra large 15-pack	03.12.2020	33.90	39.90
MİGROS ⁹⁵	Prima nappy pant offer pack no 7 42-pack)	10.12.2020	99.75	109.90
MİGROS	** Prima nappy pants 6 extlarge offer pack 45-pack 15+kg	10.12.2020	99.75	109.90
MİGROS	*Prima nappy pant offer pack no 5 12-17 kg 56-pack)	10.12.2020	99.75	109.90
BİM	NA	NA	NA	NA
PL BLEACHER TYPES				
BİM	Bleacher ultra 1250 MI Güldal	25.11.2020	5.75	5.95
BİM	Bleacher 2500 MI Güldal	25.11.2020	5.75	5.95
A101	Bleacher 4 Kg Çiçeğim	26.11.2020	9.20	9.50
A101	Bleacher ultra 1250 MI Çiçeğim	26.11.2020	5.75	5.95
CARREFOURSA	Carrefour Bleacher 2340 MI	26.11.2020	5.75	5.95
CARREFOURSA	Carrefour Perfumed Bleacher 3750 MI	26.11.2020	9.00	9.25
MİGROS	Migros Bleacher 1 L	27.11.2020	2.95	3.05
MİGROS	Migros Bleacher Perfumed 1 L	27.11.2020	2.95	3.05
MİGROS	Migros Bleacher 2.5 L	27.11.2020	5.75	5.95
MİGROS	Migros Bleacher Perfumed 2.5 L	27.11.2020	5.75	5.95
MİGROS	Migros Bleacher 4 L	27.11.2020	8.90	9.25
MİGROS	Migros Bleacher Perfumed 4 L	27.11.2020	8.90	9.25
MİGROS	Migros Ultra Bleacher Fresh 1 L	27.11.2020	4.60	4.75
MİGROS	Migros Ultra Bleacher Ocean 1 L	27.11.2020	4.60	4.75
MİGROS	Migros Ultra Bleacher 5 Kg	27.11.2020	16.50	16.95
ŞOK	Mintax concentrated bleacher 4000 MI	03.12.2020	13.70	13.95
CARREFOURSA	Carrefour ultra bleacher mountain breeze 750 MI	03.12.2020	3.45	3.55

FINDING 19

(237) In the e-mail sent by Şok Category Purchasing Director (.....) on 10.04.2020 to ŞOK manager (.....) and copied to (.....) subjected "ACTIVITY APPROVAL/ALGİDA/11-17 April activity offers", the following messages are included:

"Mr. (.....)

⁹⁵ Since the products beginning with "***" were on sale between 28.11.2020-09.12.2020, the price without discount were taken as the previous price. Discounted price: 89.90 TL)

The activity offers for the products below on 11-17 April are submitted. Competitor A will apply it as of tomorrow. They have supported so that there will not be margin loss. Submitted for your approval”

The e-mail includes a table about “shelf sales prices” and “activity prices” about Algida, Carte D’or and Magnum brand ice creams.

- (238) In the e-mail sent afterwards by ŞOK Category Purchasing Director (.....) on 17.04.2020 to (.....) copied to (.....) subjected “ACTIVITY APPROVAL/ALGIDA/18-24 April activity offers”, the following messages are included:

“Mr. (.....)

The activity offers for the products for 18-24 April below are submitted. They have been taken in a way to prevent margin loss.

Competitor A will apply the activities.

There will be shelf discount for Algida Maraş style products and other products are 30% discounted second product activity.

Submitted for your approval”

The e-mail includes a table about “shelf sales prices” and “activity prices” about Algida, Carte D’or and Magnum brand ice creams.

- (239) The e-mail sent by ŞOK Category Purchasing Director (.....) to (.....) on 24.04.2020 is as follows:

“Mr. (.....)

Algida submitted the shelf discount activities below and buy 5 pay 4 activities for boom boom and Maraş cornet products.

There will not be margin loss.

Competitor A will apply all the activities.

Competitor M will be involved in this practice.

Submitted for your approval

Boom Boom buy 4 get 1 free

Cornet Maraş buy 4 get 1 free

Magnum mini types 19.45 TL instead of 22.50; C’dor Selection types 15.50 TL instead of 18.50

C’dor Classic types 14.75 TL instead of 17.50

Maraş 500 ml types 9.95 TL instead of 14.00

Maraş double churned ice cream and Maraş Çiftliğim 12.75 TL instead of 15.00 TL.

FINDING 20

- (240) The Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....) on 15.09.2020, which was obtained during the on-site inspection at A101 includes the following messages:

(.....) : Bim did not change lever prices.

We had problem in transfer.

We cannot get return from L

The prices did not change in Ömerli warehouse

(.....) : How? I don’t get it. The change was supposed to be yesterday wasn’t it?

Why didn’t bim change?

Didn’t we notice it yesterday? I don’t understand

(.....) : We did but it was not solved.

Bim put our region as an excuse.

(.....) : I don't understand it. Did it show it as an excuse that the prices did not change in one region?

The prices didn't change in only one region?

Why didn't you tell me we should have talked

(.....) : It did not flow in the warehouse feeding Bim's neighborhood.

(.....) : Are we sure that it is only one region?

(.....) : Let me check by taking the average of yesterday's sales.

(.....) : When did we define?

(.....) : We defined it on Friday for Monday.

(.....) : (.....) It should be in the normal flow.

What is special transfer or problem?

(.....) : As far as I know normal transfer is made to the register two times a day.

It makes five until Monday

(.....) : Give me certain information about which regions there has not been a change.

Didn't we talk to unilever yesterday?

They must have known.

At least we would have withdrawn the prices. It'll never do.

(.....) : We talked about that.

They did not tell us that Bim would not change.

Now there seems to be a problem in Ömerli

I will look at best selling products.

(.....) : Let's send the invoice today.

It'll not do

Talk to (.....) in how many regions is the price not defined?

(.....) : There is problem only in Ömerli

I sent you sales in store for Rexona

(.....) : They didn't change in any products did they?

(.....) : No, for none of the products

Whether they will do it tomorrow is uncertain.

We are solving Ömerli in half an hour.

Then they will look at all regions.

What shall we do if they change tomorrow?

Bim did not say that they will change

Shall we withdraw the prices

We think they will change on Friday

(.....) : We are withdrawing after half an hour. Let's withdraw the common products with bim after exactly 30 minutes unless you hear from me.

(.....) : OK"

FINDING 21

- (241) In the Whatsapp conversation dated 07.02.2019 between BİM employee (.....) and the number saved as "(.....)⁹⁶ beypazari", who is found to be a manager in Beypazari Karakoca Doğal Maden Suyu A.Ş. (BEYPAZARI), BEYPAZARI manager shared a photo of a price label showing that the price of Beypazari mineral water 6-pack is 4.25 TL. It is understood that the price label belongs to A101 because of the letter type and shelf colors. The messaging, which was obtained during the on-site inspection at BİM is as follows:

(.....) beypazari: Mr. (.....) good morning. The competitor made 4.25 today for your information

⁹⁶ Considered to be BEYPAZARI Chairman of the Executive Board (.....)

Hello Mr. (.....) depending on your word I had it changed to 4:25 this morning in the competing firm. I request that you make it 4:25 tomorrow morning otherwise we cannot take the prices to this level again, for your information. Thank you. We will continue to deliver goods to you at current prices until 18/2/19

(.....) : Hello Mr. (.....) I would like to remind you our phone call.

We did not give a word for 4.25.

We will discuss the issue inside tomorrow.

I'll let you know.

Best regards”

- (242) In the Whatsapp conversation dated 15.05.2019 between BİM employee (.....) and the number saved as “(.....)”, who is considered to be BİM Organization Committee and Purchasing Committee member (.....), (.....) shared a photo. The messages are as follows:

(.....): Ankara Çağdaş supermarket

(.....): I'll look into that matter Mr. (.....) I'll call back

- (243) The picture in question sent by BİM employee (.....) on 16.05.2019 (time 17:03) to BEYPAZARI manager Mr. (.....) shows Beypazarı mineral water being sold at 3.95 TL in a ÇAĞDAŞ store.

- (244) The correspondence between BİM employee (.....) and Mr. (.....) on 16.05.2019 (time 18:15 – 19:02) on the same subject is as follows:

(.....): Hello Mr. (.....)

I talked to the firm about the issue. I'll give you information as soon as I'm informed. The firm does not have any information but we just changed the price of the product, they may be using a previous stock or giving from its margin; our margin is generally about 22, the locals in Ankara may take price action at low margins. Beypazarı's owner Mr. (.....) swears that there is no one who buys at a lower price than us, using a slang word and his own name in the same sentence 😊 he will send me certain information and fixed price.

See you

(.....): OK Mr. (.....) Let's follow. (...)”

- (245) The Whatsapp conversation between BİM employee (.....) and BEYPAZARI manager Mr. (.....) on 17.05.2019 is as follows:

(.....): Mr. (.....)

Was the price fixed?

Did you look into the subject?

(.....) beypazarı: Yes their campaign will end on Sunday.”

- (246) Another picture was shared in the correspondence on the same subject between BİM employee (.....) and Mr. (.....) stating

(.....) “ Hello Mr. (.....)

Çağdaş's price was fixed.

FINDING 22

- (247) In the Whatsapp conversation on 06.04.2020 between Purchasing Group Director (.....) and Şölen Çikolata Gıda Sanayi ve Ticaret A.Ş. (ŞÖLEN) CEO (.....), the following messages were sent:

“(.....) : Mrs. (.....) I forwarded the message my colleagues sent as an attachment. They say that there is not any problem in delivery.”

It is understood from the screenshot that the message in question in the e-mail sent by ŞÖLEN vice-CEO and General Director (.....) is as follows:

"Hello Mrs. (.....)

I talked to BİM on the phone last Wednesday. They did not make any complaints. I made a request because they did not change the shelf price. As they did not increase Luppo prices, Migros which changed the price made a discount again. We wanted them to increase the price immediately due to this vicious circle. They will change tomorrow.

They may be out of stock because of price advantage under current conditions. We do not have any problem in January. Customer services may give information better.

Best regards."

(.....) : Mrs. (.....) should we understand from this letter that they stopped delivery because we changed our prices? There are official orders in the system and they are not delivered Mrs. (.....)

(.....) : No.

(.....) : If you want I can send you

Official orders

(.....) : Of course

(.....) : They are saved in both companies' official registry.

(.....) : My colleagues say that there is a stock out because your price is cheap and prices have not been changed.

(...) "

FINDING 23

- (248) In the e-mail sent by A101 Executive Board Member (.....) to a group of A101 employees on 10.04.2020, subjected "P&G", which was obtained during the on-site inspection at A101 the following messages are found:

"P&G is preparing for price change.

They will give priority to us in the market change.

Even if we don't take the order immediately we can give orders to be delivered in April-May, they will deliver those. They prefer to make a delivery to a single point. Let's prepare the needs and quantities accordingly.

Best regards."

(.....) .

- (249) The Whatsapp conversation between P&G employee (.....) and P&G employee (.....) on 16.07.2020, which was obtained during the on-site inspection at P&G is as follows:

"(.....) : I hope bim will say ok for Saturday

You are on leave today so sorry

(.....): That's ok

(.....) : Can you write me if you are informed

Migros sidesteps saying if bim will not change bla bla

I keep saying they will

(.....) : Certainly they will (.....) (...)

(.....): do you think they will do it on Saturday

Or on next Tuesday

(.....): Honestly pal we couldn't talk I don't know.

(.....): They are changing tomorrow.

fyi"

- (250) According to the data sent by the investigation parties, the price movements by the undertakings concerned on the relevant dates concerning P&G products are shown in the table below:

Table 38: Price changes concerning the products that are mentioned in the correspondence (TL, VAT included)

Undertaking	Product	Date	Previous price	New price
MIGROS ⁹⁷	Fairy platinum 33 tablets 492 Gr	17.07.2020	34.95	37.95
	Fairy 650 MI Liquid Dishwashing detergent (Apple-Lemon-Orange-Pomegranate)	17.07.2020	7.45	8.25
BİM ⁹⁸	Fairy platinum 33 tablets	21.07.2020	34.95	37.95
	Fairy 650 MI Liquid Dishwashing detergent	21.07.2020	7.45	8.25

- (251) The Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....) on 20.10.2020, which was obtained during the on-site inspection at A101 includes the following messages:

“(.....) : Migros and Bim did not change Fairy and Ariel prices

Peros and Nivea changed

“(.....) : Does it mean that P&G lied?

“(.....) : We also asked about it yesterday they said, there is no problem and now they say, we cannot contact them.

“(.....) : How couldn't they make Migros change?

Why didn't we talk about it yesterday?”

FINDING 24

- (252) In the e-mail sent on 29.12.2020 by (.....) employee (.....) to ŞOK Category Director (.....) copied to (.....) Sales Manager (.....) subjected “[EXTERNAL] (.....) Price Arrangement”, the following is stated:

“Hello

Product prices needed to be arranged due to the increase in raw milk price and other costs.

New prices of the products for which we are working with you are given below:

Your assistance is needed to define those prices in a way to cover the products to be delivered to warehouses as of January 2.”

Also VAT excluded net costs and recommended shelf price information for some milk products are shown in a table.

- (253) In the reply sent on 30.12.2020 by ŞOK Category director (.....) to (.....) employee (.....) copied to certain ŞOK and (.....) employees subjected “[EXTERNAL] (.....) Price Arrangement”, the following was stated:

“Hello

We told you our expectations about prices. Unfortunately we cannot continue with the current margin structure.

⁹⁷ When price increase notifications on the relevant days submitted by MİGROS are checked, it is seen that MİGROS changed the prices of 16 different P&G products apart from those on the table on 17.07.2020.

⁹⁸ When the price increase notifications submitted by BİM for the relevant dates are checked, the price of Ariel 1.5 Kg powder detergent belonging to P&G was changed from 14.95 to 15.95 on 21.07.2020.

We are waiting for your support during this price change process for improving margins.

Unfortunately we cannot update prices unless the sales prices change in the market.

Respectfully submitted for your information.”

- (254) The e-mail sent afterwards in the same chain by (.....) Sales Manager (.....) to ŞOK Category Director (.....) is as follows:

“Hello (.....)

Your margins according to previous and new prices are given below.

[Table]

In the new fiction there is not a decrease in any product margin, you will see improvement in margins in most products. If it is not adequate, you can change your sales prices and increase your margins.

We need to deliver products at new prices on the date we stated because of the increase in raw milk prices, which did not change for 14 months, and all other cost increases. We do not want to be harmed in the fight between retailers “I’ll change first/I’ll change later” We have given the same information to your competitors.

I ask for your help so that both sides will not bear a loss during this process

...”

- (255) The Whatsapp conversation between BİM employee (.....) and Purchasing Assistant (.....) on 07.01.2020, which was obtained during the on-site inspection at BİM is as follows:

(.....) : It is only Pınar which changed the prices

(.....) : Hakmar ak gıda previous prices

(.....) : They did not

(.....) : We have just urged İçim about this subject

(.....) : Göynük

(.....) : Migros and carrefour claim that they have changed.

(.....) : Let me check”

- (256) The e-mail sent by (.....) Supermarket Chains Director (.....) on 22.04.2020 to ŞOK employee (.....) and copied to ŞOK employee (.....) subjected “[EXTERNAL]FW: (.....) Price Change” includes the following messages:

“ ...

As you know all raw materials for our (.....) product is imported.

It is necessary that we should increase the prices because of the increase in foreign exchange and general costs. Depending on this, our new price to be valid on 11.05.2020 is ATTACHED.

...”

- (257) The e-mail sent by ŞOK employee (.....) on 22.04.2020 afterwards to ŞOK Trade Director (.....) subjected “FW: [EXTERNAL]FW: (.....) Price Change” includes the following messages:

“ ...

They are asking for price shamelessly. I will balk at this Mr. (.....), if necessary I’ll sell at 5% margin. I won’t increase the price of this product before or at the same time as anybody.

Competitor A and B broke. I won’t fix it unless they do.

...”

- (258) The e-mail sent on 27.05.2020 by BİM Purchasing Assistant Director (.....) to Purchasing Group Assistant Director (.....) and copied to certain BİM employees subjected “Purchase-sale price chn.”, which was obtained during the on-site inspection at BİM includes the following messages:

“Hello

We will restore purchase and sale price of Nescafe 100 gr to the previous price since the competitor did not change the price.

We would kindly request your help.

Respectfully,

Best regards”

The note “We will restore purchase and sale price to the previous price since the competitor did not change the price.” is written on the Excel file named “NESCAFE KLASİK GİRFORMA.xls” attached to the said e-mail.

- (259) The e-mail sent by BİM Purchasing Group Assistant Director (.....) to BİS group on 13.04.2020 subjected “Price transfer-Revised” is as follows:

“Hello

The prices of the products below are defined in the system as of 14.04.2020 (Tuesday).

We kindly request your support for transfer.

Article	Article no	Previous price	New price
(...)	(...)	(...)	(...)
0300032	CARBONATED DRINK COKE 2.5 L PEPSİ	6.50	7.25
0300186	CARBONATED DRINK COKE 1.5 L PEPSİ	4.75	5.25
0301662	CARBONATED DRINK PEPSİ NORMAL / TWİST 1 L	3.95	4.45

Respectfully,”

- (260) In the same day, the e-mail, which is the follow-up of the e-mail in question with the same addressees and subject, is as follows:

“Hello

We should withdraw the prices that we have defined for tomorrow since the firm has not changed the prices in the market.

Definition has been made, we kindly request your assistance for the transfer as stated below.

		Previous price	New price
0300032	CARBONATED DRINK COKE 2.5 L PEPSİ	7.25	6.50
0300186	CARBONATED DRINK COKE 1.5 L PEPSİ	5.25	4.75
0301662	CARBONATED DRINK PEPSİ NORMAL / TWİST 1 L	4.45	3.95

Respectfully,”

FINDING 25

- (261) In the e-mail sent by BİM Purchasing Group Director (.....) to BİM Executive Board Member (.....) and BİM Organization Committee and Purchasing Committee (.....) copied to BİM Purchasing Director (.....) on 06.04.2020 subjected “Omo powder detergent kg change”, the following messages are written:

"Hello Mr. (.....) and Mr. (.....)

We were thinking of changing from 5.5 kg to 5 kg for Omo Powder Detergent.

We decided to park at the beginning of April in our meeting.

Afterwards, we persuaded Unilever to delay it until the end of April

However the product is sold out because the sales have increased.

We have to take GPC decision to change in mid-April.

To summarize

5 kg will be BİM exclusive (Like current 5.5 kg) the price will continue at 39.95

Psychological level.

The change in other retailers will be in a way as stated hereunder

And they will continue to sell over 40 tl

Current KG

New KG

A101

6.5 kg

5.5 kg

Migros

6 kg

5.5 kg

Carrefour

6 kg

5.5 kg

Şok

Omo NA

Omo NA

Submitted for your approval.

Respectfully,"

- (262) In the same day, after BİM Executive Board Member (.....) replied the said e-mail "Mrs. (.....), approved", BİM Purchasing Group Director (.....) sent an e-mail on the same subject to Purchasing Director (.....) saying

"Hello (.....)

Mr. (.....) approved it.

Please write to all GM s and compete the change.

Best regards."

- (263) In the e-mail sent by A101 Executive Board Member (.....) to a group of A101 employees on 06.08.2020, subjected "Price Index Broken Index Products" which was obtained during the on-site inspection at A101 the following messages are found:

"Hi colleagues

BİM/ŞOK broken index products are attached.

Please look at them and send the explanations to me.

Best regards."

- (264) A101 employee (.....) sent a reply to A101 Executive Board Member (.....) and copied to certain A101 employees subjected "RE:Price Index Wrong Index Products" saying "Hello Mr. (.....) our explanations are attached". It is seen that in the Excel file named "Endeks Bozuk Ürünler 17.Grup.xlsx", the explanation "The price will be fixed in Migros" is written on the sheet called "Migros broken index products" for "broken index" in other words for products whose prices are lower in Migros compared to A101.

PRODUCT	SALES PRICE	BİM	ŞOK	CARREFOR	MİGROS	A101 Index	Bim Index	Şok Index	Carrefour Index	Migros Index	Explanation
(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
CAKE RASPBERRY 171 G ETİ TARTİNİ	5.00		5.00	5.00	4.95	100.00	WRONG	100.00	100.00	99.00	The price will be corrected in Migros
OAT BISCUIT 5X46 G ÜLKER ALTINBAŞAK	4.50			4.25	4.25	100.00	WRONG	WRONG	94.44	94.44	The price will be corrected in Migros
HAZELNUT PROTEIN BISCUIT 175 G ETİ BURÇAK	6.50			6.50	5.00	100.00	WRONG	WRONG	100.00	76.92	The price will be corrected in Migros

- (265) In the Whatsapp conversation dated 15.09.2020 between A101 Executive Board Member (.....) and A101 Category Director (.....), which was obtained during the on-site inspection at A101, the correspondence between A101 Executive Board Member (.....) and Mr. (.....), who was found to be a producer/supplier employee was shared with A101 Category Director. *“Hello (.....) I am helpless in terms of price change I cannot get a clear answer from category. You may not believe but we changed the prices for şok and bim. Now our trade is bearing losses for base total, I can apply any method you can suggest if any, otherwise we cannot supply materials at our current purchasing prices and we are about to run out of stocks I request your support immediately.”*
- (266) The Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....) on 09.10.2020, which was obtained during the on-site inspection at A101 includes the following messages:
 (.....): *They sold tomatoes at 5.20 to Bim.*
 (.....): *Who told us so*
 (.....): *We are on the phone*
With firm’s gm
 Mr. (.....)
He told me so”
- (267) The e-mail sent by A101 employee (.....) to A101 employee (.....) on 11.11.2020 subjected *“RE: REPLY TO BİM COCA COLA 2.5 L”*, which was obtained during the on-site inspection at A101 includes the following messages and a table showing the shelf prices and action prices of Coca-Cola and Pepsi brand carbonated drinks:
“Hello Mrs. (.....)
The action definitions below are withdrawn as of 12.11.2020. The firm gave us the information that Pepsi 2.5 L migros action price will be withdrawn on Friday. Respectfully submitted for your information about whether action definition will continue for the said product.
 ...”
- (268) The e-mail sent in the same chain on 11.11.2020 by A101 employee (.....) to A101 Executive Board Member (.....) and copied to A101 employee (.....) subjected *“RE: REPLY TO BİM COCA COLA 2.5 L”*, includes the following messages:

"Hello Mr. (.....)

The price continues in Migros shall we wait for Migros

..."

- (269) The e-mail sent on 16.11.2020 by A101 employee (.....) to A101 Executive Board Member (.....) and copied to some of A101 employees subjected "RE: Migros broken index products", includes the following messages:

"Hello Mr. (.....)

Both prices for ready bean salad are discounted. On November 7, we planned digital poster with Yayla, in return for this, Migros reduced sales prices and action prices to our level. We talked with the firm, prices will be updated. We distributed Doğanay white vinegar for once we are removing it from the index şok and Migros reduced prices in this product we will index to the same price. Our prices for PL white vinegar are 7.90 because they are indexed with şok. We are following the prices in Migros the producer said it would index it to us.

Respectfully."

The e-mail also includes the price comparison and index monitoring tables.

SAP CODE	PRODUCT	SALES PRICE	MIGROS	PRODUCT COMPARED WITH MIGROS
18001801	READY BEAN SALAD 400 G YAYLA	5.55	5.50	READY BEAN SALAD 400 G YAYLA 6.95
18000080	WHITE VINEGAR 2000 ML DOĞANAY	5.75	5.45	WHITE VINEGAR 2000 ML DOĞANAY
18000083	WHITE VINEGAR 2000 ML GALLE	7.90	7.80	WHITE VINEGAR 1000 ML MİGROS 3,9 (UY:7,8)
18000085	WHITE VINEGAR 2000 ML GALLE	7.90	7.80	WHITE VINEGAR 1000 ML MİGROS 3,9 (UY:7,8)
18000105	WHITE VINEGAR 2000 ML GALLE	7.90	7.80	WHITE VINEGAR 1000 ML MİGROS 3,9 (UY:7,8)
18001688	WHITE VINEGAR 2000 ML GALLE	7.90	7.80	WHITE VINEGAR 1000 ML MİGROS 3,9 (UY:7,8)
18001697	WHITE VINEGAR 2000 ML GALLE	7.90	7.80	WHITE VINEGAR 1000 ML MİGROS 3,9 (UY:7,8)

PRODUCT	Migros Index
READY BEAN SALAD 400 G YAYLA	99.10
WHITE VINEGAR 2000 ML DOĞANAY	94.78
WHITE VINEGAR 2000 ML GALLE	98.73
WHITE VINEGAR 2000 ML GALLE	98.73
WHITE VINEGAR 2000 ML GALLE	98.73
WHITE VINEGAR 2000 ML GALLE	98.73
WHITE VINEGAR 2000 ML GALLE	98.73

- (270) In the Whatsapp conversation on 09.11.2020 between A101 Executive Board Member (.....) and "(.....) MSM GROUP", which was obtained during the on-site inspection at A101, they said "There is a rumor that BİM will change tomorrow." In the Whatsapp conversation on 10.11.2020 between A101 Executive Board Member (.....) and "A101 Commercial Management", the following message was sent: "BİM did not change

prices today. According to the information given change is on Wednesday. Our change day will be Thursday then. Is it convenient Mr. (.....)?

- (271) The Whatsapp conversation between A101 Purchasing General Director (.....) and A101 Commercial Management on 21.11.2020, which was obtained during the on-site inspection at A101, includes the following messages:

“(.....): Hello bim is putting eti on a full poster in December, prices are broken. Eti told that at Biz⁹⁹ sût dilimi will be 1.50 ¹⁰⁰ it fell to 1.50 in şok and migros. Poster date is not certain but they say the first week of December”

- (272) On the same date, in the Whatsapp conversation between A101 Executive Board Member (.....) and “(.....) MSM Group”, the message “Bim will make a poster for Eti products, do we have any information?” was sent.

- (273) The Whatsapp conversation between A101 Executive Board Member (.....) and “(.....) MSM Group” on 27.11.2020, which was obtained during the on-site inspection at A101, includes the following messages: “Can you talk with Eti? When is the price change in BİM?” (.....) answered the question on the same day: “They said on a single day, Wednesday” and (.....) said: “Bim told eti only Wednesday”

- (274) In the e-mail sent by A101 employee (.....) to A101 employee (.....) on 02.12.2020 subjected “OKRA POSTER PRICE TICKET”, which was obtained during the on-site inspection at A101, the following messages are included:

“...
...

Poster planning for January 7 concerning okra is attached.

Bim decreased vegetable prices and the product is sold at 8.45.

(...)

Competitor Bim is buying the product from (.....) and their purchasing price is 0.30 kuruş higher than ours.

If it is ok for you, I'll move on with 8.25 margin.

...”

- (275) The e-mail sent by ŞOK employee (.....) to ŞOK employee (.....) on 17.12.2020 subjected “Fw: Pulses price increase”, which was obtained during the on-site inspection at ŞOK includes the following:

Look at the price changes yesterday (.....)

Bulghurs are over 30 margin until the end of 2021.

Lentil is close to 25%.

It is now rice's turn but the competitor has mixed costs they will change when 40 thousand tonnes are finished

Baldo 11tl we made (.....) until January 2022.

- (276) The e-mail sent on 06.01.2021 by (.....) Special Customer Sales and Support Representative (.....) to ŞOK Category Director (.....) copied to certain ŞOK and (.....) employees subjected “RE:[EXTERNAL]Şok Market Price Change”, which was obtained during the on-site inspection at ŞOK is as follows:

“Hello Mr (.....)

Price changes with other firms that we are working have been completed and I kindly request your support for the price change concerning your firm.

Respectfully,

⁹⁹It is considered that Biz is written by mistake instead of Bim.

¹⁰⁰ There is an explanation about a typing mistake in the original Turkish text in footnote.

- (277) The e-mail sent in the same chain on 07.01.2021 by (.....) manager (.....) to ŞOK Category Director (.....) copied to certain ŞOK and (.....) employees subjected “RE:[EXTERNAL]Şok Market Price Change” is as follows:

“Hello Mr. (.....)

As I said before today, the will change the price tomorrow and the final price that we can apply in this process is submitted for your information.

(...)”

- (278) The e-mail sent in the same chain on 11.01.2021 by (.....) Special Customer Sales and Support Representative (.....) to ŞOK Category Director (.....) copied to certain ŞOK and (.....) employees subjected “RE:[EXTERNAL]Şok Market Price Change”, which was obtained during the on-site inspection at ŞOK is as follows:

“Hello Mr. (.....)

We are waiting for your reply immediately,

Best regards,

Respectfully.”

FINDING 26

- (279) The e-mail sent by A101 CEO Assistant (.....) to central purchasing managers and central purchasing assistants dated 05.05.2020 and subjected “Competitor Price Index *150 Products* IMPORTANT*”, is as follows

“Hello

150 product index data are saved on the basis of weekly index as follows. I request that they are checked and the products with action are notified. It will be published as stated below unless we are not informed until 11.00 on May 6, Wednesday. For your information”

The e-mail shows the prices of the products in question in BİM, Migros, ŞOK and Carrefour.

- (280) It is seen in the excel files taken from A101 Purchasing General Director (.....) that the prices of BİM, Migros, ŞOK and Carrefour concerning nearly 3000 products were analyzed and indexes as well as tables making comparisons with competitors were made for 21 weeks.

- (281) In the e-mail sent by Purchasing Group Assistant (.....) on 07.04.2020 to Executive Board Member and CFO (.....) subjected “March 150 products & Tonnage Report”, the messages below are written:

“Hello

150 Products and Tonnage report prepared by Central Purchasing department for March 2020 is attached.

Respectfully,

(.....) ”

Excel files named “Mart 2020 150 Ürün Raporu.xlsx” and “Tonaj Raporu 2020.xlsx” are attached. It is seen that a table is made for the prices of ŞOK, MİGROS, CARREFOURSA and A101 for 150 products specified in the Excel file “Mart 2020 150 Ürün Raporu.xlsx”. Tables showing monthly sales categorized according to product groups are included in the Excel file named “Tonaj Raporu 2020.xlsx”

- (282) In the e-mail sent on 04.09.2020 by ŞOK Dry Goods Purchasing Director (.....) to ŞOK employees (.....) subjected “Competitor index”, which was obtained during the on-site inspection at ŞOK, the Excel file “RAKİP PORTFÖY ÇALIŞMASI 2020 Dosyasının Kopyası.xlsx ” is attached and the following message is written: In the said file, there is an index work prepared for ŞOK, BİM, A101 and MİGROS in liquid oil product group.

(283) In the e-mail sent by (.....) on 11.01.2021 to in-house e-mail groups subjected “MİGROS & B.İ.M PL INDEX 11.01.2021 PRICE INQUIRIES”, which was obtained during the on-site inspection at MİGROS, following messages were written:

“Bim full price inquiry list is uploaded to 11.01.2021 index screen.

Index price interval should be written as 19.01.2021.

Please send your objections to price until 12:00 TOMORROW to me.

For your information

Best regards”

Excel file named “BİM 11.01.2021 FULL ARAŞTIRMA.xlsx” consisted of the detailed price study made in BİM stores in İstanbul, Ankara, Adana, İzmir is attached.

(284) The e-mail sent by CARREFOURSA Pricing Director (.....) on 21.05.2020 to a group of CARREFOURSA employees, which was found during the on-site inspection at CARREFOURSA is as follows:

“Hello

Prices calculated according to HS/S products W21 market data are attached.

Details about competitor’s product prices; price differences according to Migros-A101 region and margin calculation are also in the file.

HS/S product prices will be valid as of tomorrow in stores.

I kindly request that you look at the file today and take actions for the products you deem necessary.

The pricing policy is summarized below:

- *Regions except Ankara-Eskişehir*

(.....)

Thanks

(...)”

Excel file named “Bölgesel HS-S W21 Fiyatlar.xlsx” consisted of detailed price analysis and index study was attached to the said e-mail.

(285) It is seen in the Excel files taken from CARREFOURSA file server during the on-site inspection at CARREFOURSA that monthly and weekly indexes as well as comparative tables of competitors’ prices were made.

I.3.2. Assessment concerning A101, BİM, CARREFOURSA, MİGROS and ŞOK within the scope of article 4 of the Act no 4054

I.3.2.1. The Provisions of The Relevant Legislation and The Concept of “Cartel”

(286) The Lawmaker points out the following issues in Article 4 of the Act no 4054:

“Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

Such cases are, in particular, as follows:

a) Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any condition of purchase or sale

b) Allocation of markets for goods or services, and sharing or controlling all kinds of market resources or elements,

c) Controlling the amount of supply or demand for goods or services, or determining them outside the market,

(...)"

(287) The ground for this article is as follows:

"Since the purpose of this Act is the protection of competition, agreements and practices between undertakings which prevent, restrict or distort competition must be prohibited. For the purposes of the article, the term agreement is used to refer to all kinds of compromise or accord to which the parties feel bound, even if these do not meet the conditions for validity as regards the Civil Law. It is not important whether the agreement is written or oral. Even if the existence of an agreement between the parties cannot be established, direct or indirect relations between the undertakings that replace their own independent activities and ensure a coordination and practical cooperation are prohibited if they lead to the same result."

(288) There is not a distinction in competition law based on how the collusion manifests itself while assessing whether the consensus between undertakings is legal or illegal¹⁰¹. *The definitions of "agreement", "decisions by associations of undertakings" and "concerted practice" are intended, from a subjective point of view, to catch [all] forms of collusion having the same nature which are distinguishable from each other only by their intensity and the forms in which they manifest themselves*¹⁰².

(289) Moreover, Article 16(3) of the Act no 4054 includes the provision that an administrative fine up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations, which generate by the end of the financial year preceding the decision, or which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board, will be imposed to those who committed behavior prohibited in Articles 4,6 and 7 of this Act.

(290) The Fines Regulation regulates the procedures and principles relating to setting fines in accordance with article 16 of the Act to the undertakings and associations of undertakings or members of such associations as well as managers and employees thereof who committed behavior prohibited in Articles 4 and 6 of the Act. In article 3 about "Definitions" of the abovementioned Regulation cartel is defined as "agreements restricting competition and/or concerted practices between competitors for fixing prices; allocation of customers, providers, territories or trade channels; restricting the amount of supply or imposing quotas, and bid rigging".

(291) Cartel is defined as *"an anticompetitive agreement, anticompetitive concerted practice, or anticompetitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce"*¹⁰³ in OECD's "Recommendation of the Council concerning Effective Action Against Hardcore Cartels" and it is stated that cartels are "the most egregious violations of competition law".

(292) In the Regulation on Active Cooperation for Detecting Cartels (Leniency Regulation), the explanations about cartels in the general preamble is as follows:

¹⁰¹ Case C-49/92 P Commission v Anic Partecipazioni [1999] ECR I-4125

¹⁰² Case C 8/08 T-Mobile Netherlands BV & ors (4 June 2009)

¹⁰³ OECD (1998), "Recommendation of the Council concerning Effective Action Against Hardcore Cartels", C(98)35/FINAL.

(2) Price increases caused by cartels which are regarded as the most serious competition infringements lead to transfer of income from customers to cartel members. Another damage of cartels is that some of the customers cannot afford to buy the relevant product and therefore are deprived of the good or service concerned. Cartels lessen the pressures on their members that lead them to reduce costs and innovate. These damages create other economic, social, cultural and political problems. For instance, prices increase, efficiency is eliminated, entrepreneurship lessens; besides, social problems arise because more and more people become unable to buy products of better quality at lower price.”

- (293) Moreover, competition law strictly prohibits all kinds of direct or indirect contact having as its object or effect of affecting competitors’ market behavior or disclosing market behavior they have planned or decided to implement as clearly and consistently shown in the established case law of the Court of Justice of the European Union¹⁰⁴ and accepted in Turkish competition case law¹⁰⁵. In another words, direct or indirect contact between undertakings having an anticompetitive effect or object is certainly prohibited.
- (294) It is stated in Paragraph 40 of the “Guidelines on Horizontal Cooperation Agreements” (the Guidelines) that Information may be exchanged among undertakings directly, or indirectly via the supply or distribution network of undertakings. Paragraph 54 highlights that any information exchange with the objective of restricting competition in the market will be considered as a restriction of competition, regardless of its effect whereas paragraph 55 points out that the exchange of competition-sensitive information among rivals such as future prices, outputs or sale amounts are normally considered cartels, since they generally aim to fix prices or quantities.
- (295) The case law, with all these legislation provisions, draw attention to the harms created by cartels that can manifest themselves in the form of price fixing, allocation of customers, suppliers, regions or commercial lines; restricting the amount of supply or applying quotas; anticompetitive agreements for bid rigging or concerted practices. The case law prohibits any activities having such object or effect and regulates the sanctions to be given to those who have engaged in those kinds of activities. In this regard, a special importance is given to cartels compared to other competition infringement types in the said legislation provisions.
- (296) On the other hand, according to EU and Turkish competition law, the distinction between legal and illegal consensus between undertakings, the legal and economic context where such agreement takes place is taken into account as a whole rather than whether collusion is horizontal or vertical. In addition to this, there is no doubt that the undertakings who enable, mediate or facilitate naked and hardcore cartels especially fixing of prices and quantities, allocation of markets and customers, bid rigging, exchange of competitively sensitive information such as future prices, production and sales quantities can be held responsible equally¹⁰⁶.

I.3.1.2. Assessment of the Findings

- (297) The important points in the analysis and findings given above concerning leading chain supermarkets A101, BİM, CARREFOURSA, MİGROS and ŞOK are summarized

¹⁰⁴ For example, see *Suiker Unie v Commission* [1975] ECR 1663. Para 4, 74.

¹⁰⁵ For example, see the decision of the 13th Chamber of the Council of state dated 09.05.2012 and numbered 2008/8485 E., 2012/968 K.

¹⁰⁶For example, see Competition Board decision dated 02.12.2013 and numbered 13-67/929-391 sayılı kararı. See. *AC-Treuhand v Commission*, C-194/14 P, EU:C:2015:717, *Icap and Others v Commission*, T-180/15, EU:T:2017:795.

hereunder and they are evaluated in light of the legislation provisions as well as the case law.

- (298) In terms of the information and evidence corresponding to the time period between 28.05.2018 and 17.02.2021 under the scope of FINDING 1 the following conduct is detected: Concerning the liquid oil products of different brands supplied by SAVOLA; A101, BİM, CARREFOURSA, MİGROS and ŞOK coordinated prices and price changes through SAVOLA (the market was organized). They shared competitively sensitive information such as future prices, price change dates, seasonal activities and campaigns were also shared. They “fixed” the prices, through “intervening” by means of SAVOLA, the prices of the undertakings among themselves and even local supermarket chains, which reduced the prices or had not increased the prices yet - or as it was stated in the documents - which applied “broken” prices. They constantly monitored compliance with the agreement by means of punishment strategies such as “breaking the price” and/or making out return invoices. Thus, the aforementioned undertakings were party to an agreement or concerted practice that showed the characteristics of a hub-and-spoke cartel, aimed at fixing the retail prices of the said products.
- (299) Depending on the information and documents given under **FINDING 2**, in the Whatsapp conversation sent on 03.04.2019 and 04.04.2019, first A101 Executive Board Member (.....) asked A101 Category Director (.....): “What are Bim/migros/şok doing?” He answered that (.....) talked to BİM and they said that they suggested waiting until Friday. It is seen that on the next day, A101 Category Director (.....) told the following: Prices of potato, onion and tomato, which were regarded as *regulated products* would be increased as of the following day (April 5) throughout Türkiye except İstanbul. They would be respectively 5, 4 and 7 TL. Prices of other products would be determined independently. New prices would be applied in İstanbul the following week. A101 Executive Board Member was informed that the regions would be informed accordingly. When he was asked about the reason, he said that the reason was the correspondence with BİM. Afterwards, in line with the information that BİM would define the price on the same day, A101 Executive Board Member (.....) approved the price change. In addition he warned A101 Category Director (.....) to use a *careful language* and not to use expressions such as “competitor” and decision taken by “senior management”.
- (300) It is understood from the data requested from the parties to the investigation concerning potato, onion and tomato on the relevant dates that BİM increased the prices of the abovementioned products from 2.90 TL to 4,95 TL, from 2.25 TL to 3.97 TL and from 4.00 TL to 6.95 TL respectively on 05.04.2019. Similarly, it was found that A101 increased those prices on the same date in Ankara and İzmir from 2.00-2.90 TL to 5.00 TL, 2.00-2.75 TL to 4.00 TL, from 3.00-4.00 TL to 7.00-6.99 TL respectively. A101 changed the prices in İstanbul the following week. In any case, depending on the information and documents given under the scope of **FINDING 2**, it is understood that A101 and BİM colluded to determine the prices of potato, onion and tomato and the agreed prices were applied except for minor differences.
- (301) According to the analysis and observations made under the scope of **FINDING 3**, it is understood from the expressions “They changed today, A101 (.....) is in fine fettle. They are changing now.” in the Whatsapp conversation in the group called “CarrefourSA İcra” on 19.11.2019 and other expressions in the document that A101 CEO (.....) talked to CARREFOURSA General Director (.....) and informed that A101 would change

prices in response to BİM's price increase in private label semi-skimmed and full-fat 1 L milk. Assistant general director (.....) told, *"It is 3.45 and 3.75 we are changing"* in the continuation of the same messaging. It is seen in the data given by the parties to the investigation concerning the said milk products on the relevant dates that A101 and CARREFOURSA increased the price of full-fat milk 1 L private label milk from 3.25 TL to 3.75 TL on 20.11.2019 whereas they increased the price of semi-skimmed milk 1 L from 2.95 TL to 3.45 TL on 20.11.2019 and 21.11.2019.

- (302) According to the information and documents given under **FINDING 4**, in the Excel file named *"FRITOLAY GİRFORMA 09 04 2020.xlsx"* attached to the e-mail sent within BİM on 14.04.2020 at 14:47 concerning the prices¹⁰⁷ to be applied on 14.04.2020 related to several products, there is a form showing the increase in the prices of Doritos, Ruffles and Lays brand crisps from 4.25 to 4.75 TL as well as competitors' current prices. *"Competitor prices will change on Monday."* is written at the bottom of the form.
- (303) In the correspondence made within ŞOK at 14:55 subjected *"Fritolay - Sales Price Change"* on the same day, the following statements are made: *"We are defining Fritolay sales prices on 13.04 Monday."* and *"We are changing it simultaneously with competitor A on Monday."*
- (304) In the continuation of the same correspondence among ŞOK employees, they said: *"The market was organized. Can you define "only sales prices" attached to be valid as of tomorrow."*
- (305) It is understood from the screenshot of an in-house program that the prices of Doritos, Ruffles and Lays brand crisps supplied by FRİTO LAY would be increased from 4.25 to 4.75 TL as of 13.04.2020 Monday.
- (306) As a result, it is concluded that the firms were aware of each other's price changing decisions beforehand by means of direct or indirect contact; in this way they coordinated price increases overall the market or ensure *"the organization of the market"* as indicated in the document above. It is seen in the data submitted by the parties to the investigation concerning the said crisps on the relevant dates that CARREFOURSA, MİGROS and ŞOK increased the prices in all crisps shown in the table related to FINDING 4 on 13.04.2020, and BİM on 14.04.2020 exactly from 4.25 to 4.75 TL (except for MİGROS and CARREFOURSA concerning LAYS 107 gr).
- (307) The following observations are made depending on the information and documents obtained within the scope of **FINDING 5**: It was stated in the correspondence made within CARREFOURSA between 25.03.2020 and 27.03.2020 that they expected that the prices of sunflower oil would increase by 3% from 36.9 TL to 37.9 TL in BİM in the following week *"according to the new information"*. It was stated in a correspondence on 01.04.2020 within MİGROS that the expectations for price increases in sunflower oil prices as well as price, demand and costs related to certain products were shared in a meeting under the body of TİGEM with the participation of competing undertakings' representatives; BİM representative said that the price of 5 L sunflower oil would be 43 TL. CARREFOURSA representative stated that there would be an increase and there was a need for support. In the correspondence within CARREFOURSA on 06.04.2020, it was stated that they expected the price of private label sunflower oil to be 40.90 TL in a few days. It was stated that Bıryağ shelf price was 43.45 and would be 45.90 the

¹⁰⁷ The subject of the said e-mail is *"FW: April 14 Price recommendations"*. In the previous mail with the same subject it is said, *"The recommended prices to be valid as of Tuesday are as follows"*.

the following week. According to the correspondence within BİM on 06.04.2020 (at 16:25) it was decided that the prices of 1, 2 and 5 L private label sunflower oil would be increased from 8.95 TL to 9.95 TL, from 16.95 TL to 18.95 TL and from 36.95 TL to 39.95 TL. In the correspondence among CARREFOURSA employees, they said: "(...) *I've just had the prices of sunflower that BİM will raise tomorrow. It will rise from 36.90 to 39.90. (...) We are organizing the price just now.*"

- (308) Depending on the data about the said private label sunflower oil products concerning the dates in question, it is found that BİM and ŞOK on 07.04.2020; A101 and CARREFOURSA on 08.04.2020 and MİGROS on 09.04.2020 increased the prices of 1, 2 and 5 L private label sunflower oil from 8.95 TL to 9.90-9.95 TL, from 16.95 TL to 18.90-18.95 TL and from 36.95 TL to 39.90-39.95 TL. Moreover, before the said price changes, undertakings' current prices of the relevant products were exactly the same for each package type. According to the price charts given under the scope of **FINDING 5**, it is seen that undertakings' price lines in the daily price tickets prepared for the relevant products during 01.01.2018 – 15.09.2020 period, for which data were requested at daily frequency, cannot be distinguished from each other.
- (309) According to the analysis and observations given under the scope of **FINDING 6**, a table was attached to the correspondence made on 05.05.2020 within ŞOK, where the competitors BİM, A101 and MİGROS were coded on the basis of their logo/signboard colors respectively as "*red*", "*blue*" and "*orange*" whereas CARREFOURSA was coded as "*C4*". The table showed both the previous prices and the new prices of several products. Also it was stated in the table that the price of Ace Classic 2 L would be changed at the same time as *competitor orange*, the price change for Molfix nappy would be made at the same time as *competitor blue*. The price of Bingo Soft Concentrated 1440 ml product, which was not available in other competitors, would be changed *simultaneously* with *competitor orange* and *C4* on the next day. It was stated that the purchasing price might be changed on May 20 by taking support for 15 days; the price of private label Mintax soft soap, which was not available in *competitor red* and *blue*, could be changed at the same time as *competitor orange* without margin loss.
- (310) As a result of the analysis of the data requested from the undertakings party to the investigation concerning the said dates, it is concluded that in terms of Ace Classic 2 L and Bingo Soft Concentrated 1440 ml, on 06.05.2020 ŞOK and CARREFOURSA, on 07.05.2020 MİGROS changed the prices to exactly the same or very similar¹⁰⁸ levels. Similarly, on 06.05.2020 ŞOK and CARREFOURSA, on 07.05.2020 MİGROS changed the prices of Molfix nappies. ŞOK increased the price of private label soft soap on 06.05.2020 whereas there was no price change in MİGROS for this product.
- (311) According to the information and documents requested within the scope of **FINDING 7**, the following observations are made: In the correspondence made within ŞOK on 30.04.2020, it was stated that MİGROS (*coded as competitor M*) and A101 (*coded as competitor A*) would increase the price of Sensodyne Toothpaste 100 ml from 16.95 TL to 18.95 TL on Monday following the correspondence (04.05.2020); BİM (*coded as competitor B*) would increase the price on Tuesday (05.05.2020); extra margin could be made for "previous item return for 15 days"¹⁰⁹ Internal approval was granted within

¹⁰⁸ ŞOK and CARREFOURSA increased the prices of Bingo Soft from 17.95 and 17.90 TL to 19.95 whereas MİGROS increased those from 17.90 TL to 19.90 TL.

¹⁰⁹ It is considered that it means that previous purchase prices will be valid for 15 days following the price change.

ŞOK with the e-mail sent the next day to increase the price from 16.95 to 18.95 TL as of 04.05.2020. According to the following correspondence in the chain on 06.05.2020, a request for approval was made to define the price as 16.95 again since BİM did not change the price of the relevant product. Finally, when BİM changed the price, a request for approval was made for increasing the price to 18.95 TL again.

- (312) As a result of the analysis of the data requested from the undertakings party to the investigation concerning the said Sensodyne toothpaste within the scope of the abovementioned finding, it is understood that on 04.05.2020 A101, ŞOK and CARREFOURSA and on 05.05.2020 MİGROS raised prices exactly from 16.95 to 18.95 but BİM did not change prices on that day. Afterwards, between 06 and 07.05.2020, respectively A101 and ŞOK reduced their prices again to 16.95. After BİM increased its prices from 16.95 to 18.95 as stated in the correspondence on 08.05.2020, A101 and ŞOK changed their prices as 18.95. This is an example of the cases where competitors applied a penalizing strategy quickly to maintain their agreement on prices they reached by means of direct or indirect contacts in, other words their collusion, or the cases where the prices were not increased or restored to their previous level in case an undertaking did not comply with the price.
- (313) The information and documents obtained within the scope of **FINDING 8** showed that it was stated in the correspondence within ŞOK dated 12.06.2020 that the new prices of Oreo products would be *reflected to shelf* on 13.06.2020 *simultaneously* with *Competitor A* (A101) and *Competitor M* (MİGROS) whereas the prices of Eti Popkek types would be *reflected to shelf* on the following Monday, 15.06.2020, at the same time as A101 and MİGROS and BİM *would change* them on 16.06.2020.
- (314) As a result of the analysis of the data requested from the parties to the investigation concerning the said products on the said dates, as shown in the table given in the relevant section, on 13.06.2020, A101, CARREFOURSA, MİGROS and ŞOK increased the price of Oreo 95 Gr, which was the subject of the correspondence, *simultaneously* and exactly in the same way as written in the document from 3.95 TL to 4.75 TL. It was found that both the previous and new prices applied by MİGROS and CARREFOUR for the overlapping Oreo products were exactly the same¹¹⁰; MİGROS increased the prices of four Oreo biscuit types which were not available in its competitors on the same day¹¹¹. In terms of Eti Popkek types, on 15.06.2020 A101 and ŞOK, on 16.06.2020 BİM increased the prices from 1 TL to 1.15 TL exactly in the same way as written in the document. On the abovementioned date, Eti Popkek prices applied by MİGROS and CARREFOUR were already 1.15 TL; there was not a change in prices. In any case, the findings about especially Oreo are a net indication of the coordination and collusion made and maintained by means of direct or indirect contacts among undertakings.
- (315) Depending on the information and documents obtained within the scope of **FINDING 9**, the following observations are made: In the correspondence within ŞOK concerning ÜLKER/PASİFİK products on 18.06.2020-19.06.2020, PASİFİK, which distributes Ülker products, gave detailed information about when competitors would change the prices and the change rates in terms of Ülker products. Accordingly, it was stated that on 22.06.2020 MİGROS and on 23.06.2020 BİM would update the prices. Finally, on

¹¹⁰ As stated before, 228 Gr Oreo biscuit types were on sale in MİGROS between 10.06.2020 and 12.06.2020 for a short time and sold at 4.45 TL, thus 9.95, which was the price out of campaign, was taken as the previous price.

¹¹¹ It was stated that BİM did not sell Oreo products mentioned in the document.

22.06.2020 A101, MİGROS and CARREFOURSA; on 22.06.2020 BİM and on 24.06.2020 ŞOK changed the prices as stated. As shown in the table given in the relevant section, the prices were exactly the same in almost all overlapping 26 different products at least in two of the competing chain supermarkets. Also the previous prices of almost all of those products were exactly the same. Taking into account the information and documents given within the scope of Finding 9 and observations and assessments about other findings stated above together, it is concluded that the price increases made by all competitors, largely at the same time and rate, concerning many products were coordinated by means of direct contacts/communications and/or indirect contact/communications through a common supplier.

- (316) According to the information and documents under **FINDING 10**, it is understood that a similar coordination was made in terms of Haribo products. In the correspondence made on 30.06.2020 within ŞOK regarding price updates to be made on the following day, the expression about Haribo price changes *“organized in the same day as the market”* is remarkable. As a result of the analysis of the data requested from the parties to the investigation concerning Haribo products, it is seen that on 01.07.2020, CARREFOURSA, MİGROS and ŞOK applied the price increases, which were the subject of the correspondence, *at the same time*, in other words, they successfully *“organized the market”*¹¹².
- (317) According to the analysis and observations given within the scope of **FINDING 11**, it is understood that in the correspondence made within ŞOK on 17.07.2020, a request for approval was made to update the prices of Biscolata mood on 20.07.2020, Monday together with Competitor A (A101) and Competitor M (MİGROS) and the supplier informed that Competitor B (BİM) would update the prices on 21.07.2020 on Tuesday. As a result of the analysis of the data requested from the parties to the investigation concerning the abovementioned Biscolata Mood products, it is seen that ŞOK, BİM and A101 increased the prices of Biscolata Mood 100 gr from 4.75 to 5.25 TL on July 20, 21 and 22, 2020. MİGROS and CARREFOURSA stated that there was no price change concerning the said products.
- (318) According to the documents and information obtained within the scope of **FINDING 12**, the correspondence within ŞOK on 11.08.2020 at 13:30 gave information about the reasons of price changes foreseen for several products. It was stated the price change form would be shared on the same day *“if Eti can organize the market for the sales prices”*. According to the correspondence made at 14:46, it is understood that ETİ¹¹³ *“organized the market”* within an hour. The correspondence includes the expression *“We request your approval to change the purchase and sales price together with Competitor A and Competitor M tomorrow”*¹¹⁴ for the four products that were not listed in BİM, which was coded as Competitor B. The expression *“Ok But we shouldn't write the messages like this Mr. (...), should we?”* in the e-mail sent in response to the correspondence categorized as “Classified” is remarkable.
- (319) As a result of the analysis of the data requested from parties to the investigation concerning the products relevant to Finding 12, the following is observed: As shown in the relevant table in detail, in terms of the said Etimek 143 gr product, the price was changed from 3.50 TL to 4.00 TL on 12.08.2020 by A101, CARREFOURSA, MİGROS

¹¹² According to the information given by BİM, Haribo products were sold only in one region and in a few stores on the relevant date and it did not change the prices.

¹¹³ ETİ Gıda Sanayi ve Ticaret A.Ş.

¹¹⁴ 12.08.2020 Wednesday

and ŞOK, just as indicated in the document. CARREFOURSA, MİGROS and ŞOK changed the prices of Eti Petito types on 12.08.2020; the changes were exactly the same in some of the products. In terms of Eti Tutku 100 gr and Eti Cin 114 gr, which were mentioned in the document, A101, CARREFOURSA, MİGROS and ŞOK changed the prices from 2.00 to 2.25, and MİGROS and CARREFOURSA changed the prices exactly in the same way for other overlapping weights on 12.08.2020-13.08.2020. It should be noted that MİGROS changed the prices of 49 Eti products including those in the table on 12.08.2020 whereas CARREFOURSA changed 26 different Eti products including those in the table on 13.08.2020.

- (320) According to the information and documents given within the scope of **FINDING 13**, in the correspondence within ŞOK on 08.09.2020, it was stated that *Competitor B* (BİM) increased the shelf prices of Doğanay turnip juice 1 L products and the market as a whole would apply those prices the following day. A request for approval was submitted for increasing the price of the said product from 4.50 TL to 4.95 TL. As a result of the analysis of the data requested from the parties to the investigation concerning Doğanay turnip juice 1 L products within the scope of the abovementioned finding, it is understood that on 08.09.2020 after BİM raised the prices from 4.50 TL to 4.95 TL ŞOK and CARREFOURSA on 09.09.2020 and MİGROS on 11.09.2020 raised prices exactly from 4.50 to 4.95 TL.
- (321) According to the information and documents obtained within the scope of **FINDING 14**, it was stated in the correspondence made within ŞOK on 25.09.2020 that the shelf prices would be 2TL the following day together with *Competitor A* (A101) for the private label popcorn which was not available in *Competitor B* (BİM). Confirmation was requested for price change and the relevant manager replied, *"It should be done on Tuesday¹¹⁵"*. However, another ŞOK employee replied the e-mail saying *"The sales price is arranged with A for tomorrow (...) Let's reflect the increase tomorrow. We'll talk about the purchase price on next Tuesday."* The employee insisted on increasing the prices from 1.75 to 2 TL as of 26.09.2020. Depending on the analysis of the data requested from A101 and ŞOK regarding private label popcorn products, it was found that both undertakings increased the prices from 1.75 to 2 TL on 26.09.2020 just as stated in the document.
- (322) According to the information and documents obtained within the scope of **FINDING 15**, in the correspondence made within ŞOK on 02.10.2020, a request for approval was made for defining the new shelf prices as 11.75 TL instead of 9.95 TL for 435 ml and as 6.95 instead of 5.95 to be valid on the following day since the shelf prices in the market were changed for Red Bull energy drink. In response to this, ŞOK manager asked *"Who is the market"* and the employee informed that MİGROS coded as *M* and CARREFOUR coded as *C* as well as local supermarkets changed to the new price and *Competitor A* (A101) and they would change the prices the next day. Depending on the analysis of the data requested from undertakings party to the investigation concerning Red Bull products, as shown in the relevant table in detail, CARREFOURSA and MİGROS changed the prices at exactly the same rate on 01.10.2020 and 02.10.2020 for overlapping five products; ŞOK, for two overlapping products and A101, for one overlapping product. In other words, it is found that both the previous and the new prices of all overlapping Red Bull products including those mentioned in the document were exactly the same.

¹¹⁵ On 29.09.2020

- (323) According to the information and documents obtained within the scope of **FINDING 16**, in the correspondence made within ŞOK on 18.11.2020, it was stated that concerning two Pril products, which were not available in BİM and A101 (coded as *red* and *blue* respectively), the prices given in the table would be changed at the same time as competitor *orange* (MİGROS) on the following day (19.11.2020). Depending on the analysis of the data requested from undertakings concerning the abovementioned products, the following observations are made: Those products were not sold in A101 and BİM. In terms of Pril rinse aid products, which were sold at different package weights by undertakings, the prices were increased by MİGROS on 17.09.2020 and by ŞOK on 19.09.2020 whereas CARREFOUR did not change the prices during that period. Moreover, in terms of Pril Gold Gel Degraser 900 ml, the prices were increased from 29.90 TL to 36.60 TL just as indicated in the document by ŞOK and MİGROS on 19.11.2020 and by CARREFOURSA on 20.11.2020.
- (324) Depending on the information and documents obtained within the scope of **FINDING 17**, the following observations are made: According to the correspondence made within A101 on 20.11.2020, the prices of Dardanel products would be changed on the following Sunday (22.11.2020). It was highlighted that MİGROS would change the prices the next day (21.11.2020). In response to this, A101 manager instructed that the price increase would be done the next day but whether MİGROS made a change should be checked first. Depending on the analysis of the data requested from undertakings concerning Dardanel brand tuna fish types, it was concluded that the prices of the said products were increased by CARREFOURSA and MİGROS on 21.11.2020 and by A101 on 22.11.2020¹¹⁶. As shown in the table in detail, both previous and new prices and thus price changes were exactly the same for almost all overlapping products in competing undertakings.
- (325) According to the information and documents obtained within the scope of **FINDING 18**, it is seen that it was stated in the correspondence within ŞOK on 02.12.2020 that in terms of Fairy washing up liquid and Fairy platinum 33 tablets, the prices would be changed simultaneously with competitor blue (A101) and orange (MİGROS) the next day with ŞOK trade director's approval. Depending on the analysis of the data requested from undertakings concerning Fairy products mentioned in the document, the following observations are made: BİM increased the prices of two products on 02.12.2020. Afterwards, the prices of many Fairy products were increased by A101, CARREFOURSA and ŞOK on 03.12.2020, by MİGROS on 04.12.2020 Finally, CARREFOURSA and ŞOK changed the prices of a group of Fairy products on 05.12.2020. As shown in the table in detail, both previous and new prices and thus price changes were exactly the same for almost all overlapping products in competing undertakings.
- (326) In addition, as shown in detail under the relevant section, simultaneous or subsequent price changes concerning other products mentioned in the document on different dates are largely the same for overlapping packages/weights. For instance, it is understood that BİM, CARREFOURSA and MİGROS, on 09.12.2020, increased the prices of Ariel powder detergent 1.5 kg types simultaneously from 15.95 TL to 16.90-16.95 TL whereas A101 and ŞOK changed the prices on 10.12.2020 and 11.12.2020 respectively from 15.95 TL to 16.90 TL. The product is sold in all of the undertakings. Similarly, it was found that CARREFOURSA and MİGROS increased the prices

¹¹⁶ According to the information given by the undertakings, ŞOK and BİM did not sell the said products on the relevant dates.

simultaneously on 09.12.2020. The prices of Alo and Ariel with the same weight were exactly the same. A101 followed those undertakings concerning the overlapping products by means of making exactly the same price changes on 10.12.2020.

- (327) It is considered that those observations are a clear indication of the coordination among undertakings made by means of direct or indirect contacts about prices and price changes.
- (328) Depending on the information and documents given under the scope of **FINDING 19**, it is understood that in the correspondence chain within ŞOK on 10.04.2020, 17.04.2020 and 24.04.2020, first on 10.04.2020, UNILEVER proposed ŞOK an activity to be applied between April 11 and 17, 2020 for Algida, Carte D'or and Magnum ice cream products written in the table in the e-mail and it was known that A101¹¹⁷ would apply the same activity the next day. A week after that e-mail, in the correspondence within ŞOK on 17.04.2020, similar to the previous e-mail, it was stated that an activity proposal to be applied between April 18 and 24 2020 was made and A101 would apply the same activities. Lastly, in the ŞOK's correspondence chain, in the e-mail dated 24.04.2020, it was stated that UNILEVER proposed several activities to ŞOK to be applied between 25.04.2020 and 01.05.2020; A101 and MİGROS¹¹⁸ would apply the activities in question. Within this framework, coordination among undertakings was not limited to only prices and price increases/changes; seasonal campaigns and activities were coordinated by means of direct or indirect contact.
- (329) In the Whatsapp conversation between A101 Executive Board Member (.....) and A101 Category Director (.....) on 15.09.2020, it was stated that the price increases on UNILEVER products planned for the day before the correspondence could not be reflected to the stores in Ömerli region because of technical problems, BİM did not increase the prices due to that, they talked to UNILEVER but A101 was not informed that BİM would not increase the prices, then A101 reduced the prices of common UNILEVER products. First of all, depending on the said document, it is concluded that A101 and BİM were aware of each other's planned price change to UNILEVER products on 14.09.2020 and/or just before. On the other hand, it is understood that BİM postponed the price increase because A101 did not (could not) change the price in even one region; A101 responded to this situation by decreasing the prices of products found in common lists to previous levels. This is an example of a case where undertakings applied a punishment strategy immediately to ensure that the coordination regarding shelf/ticket prices and price changes would continue.
- (330) In the documents shown under **FINDING 21**, in the Whatsapp conversation on 07.02.2019, the message sent from the number saved as "(.....) Beypazarı", who is considered to be BEYPAZARI Chairman of the Board of Directors (.....) says that the competing firm increased the prices to 4.25 depending on BİM's "word" and wanted BİM to apply the same price. In addition, a photo of a shelf price ticket, which is considered to belong to A101 because of fonts and shelf colors, was shared. Although BİM official stated that they did not give a word for 4.25 TL and the issue (the new price to be applied) would be considered the next day, it was inferred from the correspondence that BEYPAZARI coordinated the price increase in the competing chain supermarket in line with BİM's guidance.

¹¹⁷ A101 was called Competitor A in the said e-mail chain.

¹¹⁸ MİGROS was called Competitor M in the said e-mail chain.

- (331) Depending on the other correspondence between 15.05.2019 and 17.05.2019 within the same finding, the following observations are made: ÇAĞDAŞ supermarket's price for Beypazarı mineral water in Ankara was 2.95 TL and that price disturbed BİM. After BİM organization committee and purchasing committee member (.....) sent another BİM employee (.....) a photo of Beypazarı mineral water display, the issue was notified to BEYPAZARI official (.....) and he was asked to look into the issue and *fix the price*. The process was monitored upon (.....)'s instruction. Finally, learning that ÇAĞDAŞ would end the campaign on Sunday, (.....) informed (.....) that ÇAĞDAŞ's prices *were fixed*. Those findings are another example of cases where big retail chains party to the investigation "*intervene*" to the prices of local supermarkets that did not increase prices or decreased prices by means of a supplier and ensured that "*prices are fixed*" - as seen in several documents given under the scope of FINDING 1.
- (332) Among the information and documents given under **FINDING 22**, in the Whatsapp conversation on 06.04.2020 between ŞÖLEN Senior Manager (.....) and BİM Purchasing Group Director (.....), a screenshot was shared. The screenshot, which was sent by ŞÖLEN Senior Manager to ŞÖLEN Senior Manager, showed an e-mail sent by Assistant CEO of ŞÖLEN and General Director (.....). The following statements were included in that e-mail: a phone call was made with (.....) and BİM officials on Wednesday (01.04.2020). Since BİM did not change the price of ŞÖLEN's Luppo product, MİGROS made a discount again and they requested the prices be increased immediately due to that "*vicious circle*". BİM would increase the price the following day. The said correspondence raises the suspicion that MİGROS and BİM coordinated price changes through ŞÖLEN concerning several Şölen brand products.
- (333) According to the e-mail sent by A101 Executive Board Member (.....) to a group of A101 employees which was among the information and documents given under the scope of **FINDING 23**, P&G was preparing for price changes and would give priority to A101; even if the order could not be made immediately, orders could be made to be delivered in April-May.
- (334) It is inferred from the Whatsapp conversation between P&G employees (.....) and (.....) on 16.07.2020, which is shown within the scope of **FINDING 23**, that MİGROS did not want to change prices if BİM *did not change* prices. Depending on the analysis of the data given by the parties to the investigation concerning P&G products on the relevant dates, the following observations are made: MİGROS changed the prices one day after the date of the document (on July 17) and BİM changed the prices four days after MİGROS (on 21 July). In terms of the overlapping product "Fairy Platinum 33 Tablets", both undertakings increased their prices from 34.95 TL to 37.95 TL; in terms of "Fairy Liquid Dishwashing detergent 650 ml, they increased the prices from 7.45 TL to 8.25 TL. MİGROS changed the prices of 16 other products whereas BİM changed the price of one other product at that time.
- (335) In the Whatsapp conversation between A101 managers (.....) and (.....) on 20.10.2020, which is shown within the scope of the same finding, they expressed their discontent because competitors did not change prices.
- (336) **FINDING 24** covers information and documents obtained during the on-site inspection showing that big supermarket chains pressured suppliers to coordinate shelf prices and/or price changes in the market and *fix the broken* prices in the market; they decreased the purchase prices in addition to the sales/shelf price as a penalty strategy if the broken prices *were not fixed*.

- (337) It is understood from the information and documents given within the framework of **FINDING 25** that some of the supermarkets intended to obtain competitively sensitive information such as competitors' future prices, price change dates, discount and activity campaigns, costs and inventories from common suppliers; thereby, they aimed to eliminate strategic uncertainty, which is one of the basic dynamics of competition, by making the market artificially transparent.
- (338) Competitors at both wholesale and retail level in FMCG sector generally call the cases where they apply the same prices for the same or substitute products "being indexed", "100 index" or "being (at) parity" . Thus, it is seen in the information and documents presented under **FINDING 26** that parties to the investigation controlled their shelf prices daily for most of the time and compared those prices by means of index tables of numerous products prepared frequently. It is understood from the analysis and observations made in the investigation that undertakings detected those undertakings who "*broke the index*" by means of those tables and took actions by requesting suppliers' intervention, having information about dates when the prices would be *fixed* or "*breaking prices/indexes*" until the prices were fixed.

I.3.1.3. Assessment according to Article 4 of the Act no 4054

- (339) Within this framework, in light of all analyses and findings about parties to the investigation A101, BİM, CARREFOURSA, MİGROS and ŞOK, the assessment of those as well as of relevant case law provisions, the following conclusions are made:
- A101, BİM, CARREFOURSA, MİGROS and ŞOK coordinated prices and price increases by either direct or indirect contact through common suppliers. Competitively sensitive information such as future prices, price change dates, seasonal activities and campaigns were also shared directly or through common suppliers. The undertakings used suppliers to intervene in the prices of those which discounted prices or which did not yet increase their prices when prices in the market in general were increasing, and ensured that they also raised their prices to the disadvantage of the consumers. The undertakings constantly monitored compliance with the collusion by quickly implementing discounts specific to a product and/or region and through the use of punishment strategies, including making out return invoices to the supplier when the competitors' prices did not increase. Thus, A101, BİM, CARREFOURSA, MİGROS and ŞOK violated Article 4 of the Act no 4054 by agreements or concerted practices that showed the characteristics of a hub-and-spoke cartel, aimed at fixing the retail prices of many products they offered for sale.
 - Those conducts are naked and hardcore cartels and cannot fulfill the exemption conditions listed in article 5 of the Act no 4054.
 - Accordingly, administrative fines should be imposed to A101, BİM, CARREFOURSA, MİGROS and ŞOK per article 16(3) of the Act no 4054.

I.3.2. Observations and Assessments Made Concerning SAVOLA

I.3.2.1. Assessment Concerning SAVOLA's Responsibility for the Cartel among Retailers

- (340) As stated above, European Union Law and Turkish competition law strictly prohibit all kinds of direct or indirect contact having as its object or effect of affecting competitors' market behavior or disclosing market behavior they have planned or decided to

implement. In addition, for the distinction of whether the consensus between undertakings is legal or illegal, the legal and economic context where the collusion takes place is taken into account rather than whether collusion is horizontal or vertical. There is no doubt that the undertakings who enable, mediate or facilitate naked and hardcore cartels especially fixing of prices and quantities, allocation of markets and customers, bid rigging, exchange of competitively sensitive information such as future prices, production and sales quantities can be held equally responsible for the infringements.

- (341) Agreements and concerted practices that are called hub and spoke cartel in competition law is one of the atypical cartel types. The information gathered by means of the hub is distributed to spokes and the coordination is made among undertakings in the downstream and upstream market¹¹⁹. In a hub and spoke cartel, undertakings exchange information in two ways and come to a mutual understanding. First, the retailers (spoke) in the downstream market reaches a common understanding through a common supplier (hub) in the upstream market. In the second way, the suppliers (spoke) in the upstream market reach a common understanding through a common retailer in the downstream market.
- (342) If the competitively sensitive information shared between the supplier (B) and the retailer (A) in a vertical relationship is forwarded to the competitors (C) in the upstream or downstream market through A or B, this may be a competition infringement¹²⁰. In order to talk about an infringement, the information flow through an undertaking in the vertical relationship should eliminate or reduce uncertainties by means of learning competitively sensitive information such as competitors' pricing strategies¹²¹. It is clear that in cases where information, sharing of which will constitute a competition infringement, such as future prices and price change dates, are shared through common suppliers or buyers, this condition will be fulfilled.
- (343) Hub and spoke cartel is a relatively new type of an infringement because it is atypical. Although seems vertical, it is a horizontal cooperation agreement in nature. There are two important decisions¹²² taken by the Competition Board related to the hub and spoke cartel approach, which are shaped upon the decisions taken in the United Kingdom and US. The decisions of the authorities and courts about hub and spoke cartels throughout the world are generally related to FMCG sector like this file and the number of similar files has been increasing recently¹²³.
- (344) Within this framework, the responsibility of SAVOLA for coordinating the prices of retail chains A101, BİM, CARREFOURSA, MİGROS and ŞOK as well as price increases and for exchanging competitively sensitive information such as price change dates, seasonal activities and campaigns should be evaluated in line with the legislation, case law and explanations given above.
- (345) As seen in the documents given under **FINDING 1**, SAVOLA, which is a supplier/provider, and retailers which are buyers have been constantly communicating

¹¹⁹ BARACK, O. (2016), Hub-and-Spoke Conspiracies

¹²⁰ Those practices may be called A-B-C information exchange in the literature. See YILDIZ, U. (2018), Rekabet Hukukunda ABC Bilgi Değişimi

¹²¹ DEMİR, K. (2019), Hub&Spoke Kartelinin Özellikleri – Uygulamanın Yeniden Satış Fiyatının Belirlenmesine Yönelik Tartışmalar ile İlgisi

¹²²Board decisions dated 16.12.2015 and no 15-44/731-266, dated 07.11.2016 and no 15-44/731-266, dated 16-37/628-279.

¹²³ For an example, see <https://globalcompetitionreview.com/hub-and-spoke/portugal-imposes-highest-ever-fines>

about shelf prices and price changes. It is observed in the said correspondence that retailers were always contacting each other about competitively sensitive information regarding SAVOLA products such as current or future prices, price change dates and seasonal discounts through SAVOLA.

- (346) Considering the correspondence obtained as a whole, it is seen that there are three-sided (two retailer and SAVOLA) or multi-sided communications. In addition, the following observations are made: Through SAVOLA, the market was organized and retailers exchanged information and coordinated prices. SAVOLA intervened in competing retailers' shelf prices in line with retailers' directions/requests. SAVOLA actively made attempts to coordinate retailers' prices and price change dates. In this way, SAVOLA capitalized on price changes/increases in the market. For instance, SAVOLA's determination in ensuring common prices among retailers is seen in the correspondence on 08.04.2019.
- (347) As seen in the correspondence on 10.09.2019, MİGROS shared its future price change (on 12.09.2019) with SAVOLA and SAVOLA said that it would be shared with A101 and A101 would act accordingly. Therefore, MİGROS gave the information to SAVOLA, knowing that the information would be shared with its competitors. SAVOLA shared MİGROS's information with its competitor. Also, it was highlighted in the correspondence that A101 would use the information in its strategic decisions.
- (348) In a normal functioning market, retailers are expected to determine resale prices in conjunction with purchase prices within the framework of their own dynamics and market conditions independently and avoid any direct or indirect contact having the object or effect of affecting existing or potential competitors' market behavior or disclosing their decided or planned market behavior. However, as seen in the correspondence, retailers shared current prices and beyond that future prices with SAVOLA despite the risk that the information might be given to competitors. Therefore, retailers knew and/or were in a position to know that SAVOLA could share the price information given by retailers with other competing retailers. Furthermore, competitors' pricing plans concerning were frequently shared and retailers requested that specially.
- (349) As analyzed above, the following observations are made: Retailers coordinated price changes in line with the information they obtained from SAVOLA about competitors' pricing behavior and plans. After the prices were changed, they immediately reduced the price to its previous level in case some competitors did not comply with the price change. In addition, when the competitors did not comply with the price change, they explored the reasons and expressed their discontent, directing SAVOLA to intervene. As a result, retailers constantly used the information they obtained through SAVOLA in their strategic decisions. Thus, it is understood that competitors were expected to behave in coordination and SAVOLA was informed beforehand to harmonize price change dates. As a result, competitors had the relevant information and positioned their sales prices.
- (350) For instance in the correspondence that began on 10.08.2018, MİGROS wanted SAVOLA to organize the whole market and said that the prices would be raised in this way. In the continuation of the correspondence, MİGROS expressed its discontent because ŞOK did not change prices and SAVOLA assured MİGROS that ŞOK would change prices. It is understood from the following parts of the correspondence that the Price changes by ŞOK and CARREFOURSA were ensured by obtaining the approval of ŞOK CEO. MİGROS was expected to change the prices. In addition, SAVOLA was asked for receipt, price label photos or shelf price information belonging to competitors

to check whether competing retailers increased the prices and after SAVOLA shared the said information MİGROS was satisfied.

(351) In addition to all those, the following facts are understood from the overall correspondence obtained during on-site inspection:

- As seen in the correspondence dated 13.11.2018, 13.02.2019 and 17.02.2020, undertakings concerned constantly monitored the cartel established among the undertakings and whether undertakings' will this end were put into practice.
- As seen in the correspondence dated 06.04.2020 and 20.04.2020, when there was a problem in practice or if the competitors did not increase the prices, price increases might be canceled.
- Moreover, as seen in the correspondence dated 08.11.2018 and 26.02.2019, retailers might punish SAVOLA because it failed to organize competing retailers' changes by means of making invoices of return/price difference.
- As seen in the correspondence on 03.10.2018, 11.02.2019, 24.06.2019, 23.10.2019, 13.01.2020, 27.02.2020, 25.03.2020, 05.04.2020, 06.04.2020, 07.04.2020, 20.04.2020, 08.02.2021, 17.02.2021, retailers tended to wait for each other not to be at a disadvantage, shared future prices and price change dates through SAVOLA, in case one of them changed the prices, others followed under the coordination by SAVOLA or SAVOLA tried to coordinate the price change at the same time.
- As seen in the correspondence dated 07.04.2020 and 20.04.2020, the competitor with lower price was asked to increase the price and the prices in the market were raised when competitors did the same by the mediation of SAVOLA.
- As seen in the correspondence dated 02.10.2018, 26.01.2019, 21.02.2019, 03.04.2020 and 18.08.2020, SAVOLA mediated for exchanging information about prices among competitors.
- In the correspondence dated 25.03.2020, 01.04.2020, 16.04.2020, 17.09.2020 and 21.10.2020, statements about *organizing the market* and acting in accordance in price changes were found.

(352) SAVOLA was used as a hub for the price agreements among undertakings and the market was organized as seen in many of the correspondence given above. For instance, in the correspondence on 13.01.2020, MİGROS wanted SAVOLA to *solve* A101 and ŞOK's prices and then it could change the prices. Similarly, in the continuation of the same correspondence on 16.01.2020, MİGROS informed SAVOLA about its price change date and SAVOLA was expected to forward this information to the market and organize other retailers. In the correspondence dated 16.04.2020, it is seen that CARREFOURSA and MİGROS defined the prices on the same date and the market was organized accordingly. MİGROS also wanted A101's prices to be organized. Migros was told that A101 would be organized accordingly. As seen in the correspondence, retailers shared, followed and monitor their prices, indirectly through SAVOLA and harmonized their prices.

- (353) In some cases, such acts occurred between two retailers and SAVOLA as seen in the correspondence dated 08.04.2019 and sometimes between all retailers¹²⁴ and SAVOLA.
- (354) For instance, as seen in the correspondence dated 08.08.2019, SAVOLA had a meeting with A101 and obtained information. Later, it directly shared that information with MİGROS and stated that if MİGROS increased the prices, A101 would do the same. In the continuation of the correspondence MİGROS is told that CARREFOURSA would change the prices. As seen in the correspondence on 10.03.2020, two competing retailers and one supplier/provider planned to organize the market.
- (355) The following observations have been made: SAVOLA took advantage of coordinating retailers' shelf prices and price changes as well as acting as a mediator for exchanging competitively sensitive information such as future prices, price change dates, seasonal activities and had motivation to affect market conditions with the information it had. As emphasized before, SAVOLA tried to organize the market regularly because when it organized the market, it directly benefited from the price increases. When it failed to organize the market, retailers complained about that and in some cases they punished SAVOLA by means of return invoices. Therefore, the coordination eliminated punishment risks. Consequently, SAVOLA acted consciously and willingly for ensuring and maintaining collusion in terms of its products' shelf prices and price changes and facilitated information exchange to a great extent. Those activities started in mid-2018 and lasted until February 2021, when the investigation was ongoing.
- (356) Consequently, it has been concluded that
- a. SAVOLA, together with A101, BİM, CARREFOURSA, MİGROS and ŞOK, violated article 4 of the Act no 4054 by means of agreements or concerted practices made in the form of an obvious hub and spoke cartel that aims to fix prices because the cartel aimed to enable and maintain the collusion/coordination between the aforementioned retailers for shelf prices and price changes with respect to SAVOLA's products and in this framework to mediate for sharing competitively sensitive information such as retailers' future prices and price changes concerning sales prices and price increases, and is equally and jointly responsible with the retailers for the violation.
 - b. Those conducts, which are naked and hardcore cartels, cannot fulfill the exemption conditions listed in article 5 of the Act no 4054, therefore a detailed evaluation is not needed thereupon,
 - c. Administrative fines should be imposed to SAVOLA per 16(3) of the Act no 4054.

I.3.2.2. Observations and Assessments Concerning Resale Price Maintenance by SAVOLA

I.3.2.2.1. Observations on Resale Price Maintenance

- (357) The e-mail with the subject "*Re: On Migros Snf Shelf Prices*" sent by SAVOLA employee (.....) to a group of SAVOLA employees on 24.01.2017 and collected during the on-site inspection conducted at SAVOLA, includes the following:

"(...)

At Migros Yudum Snf 5 lt Can is on the shelf for TL 27.50 while Migros Snf 5 lt Pet is TL 25.50.

¹²⁴ As seen in the correspondence what is meant by market is the five big retailers party to the investigation (A101, BİM, CARREFOURSA, MİGROS and ŞOK).

(...)"

- (358) The e-mail sent by the SAVOLA employee (.....) in response to the e-mail above states, "it's probably store-based (.....) did you check tr". The last e-mail in the chain is the response e-mail to SAVOLA employee (.....), sent by SAVOLA employee (.....), which includes the following: "(.....) Hi, unfortunately it's Türkiye in general, we're intervening."
- (359) The e-mail with the subject "Migros Regional Prices, Stores with Broken Prices," collected during the on-site inspection conducted at SAVOLA and sent by SAVOLA employee (.....) to a group of SAVOLA employees on 16.03.2017 includes the following statements and the table shown in the screenshot:

"For products with broken Migros regional shelf prices, the stores that saw and implemented the broken prices are in the table."

15.03.2017			16.03.2017			
Bölge	Yudum	Sırma	Bölge	Yudum	Sırma	
	Ayçiçek 5lt	Mısır 5lt		Ayçiçek 5lt	Mısır 5lt	
ADANA	32,9	32,9	ADANA	32,85	32,9	
ANTALYA	32,9	32,9	ANTALYA	32,9	32,9	
ESKİŞEHİR	32,9	32,9	ESKİŞEHİR	29.90	28.90	ÇAĞDAŞ
GAZİANTEP	32,9	32,9	GAZİANTEP	32,9	32,9	
İSTANBUL	32,9	32,9	İSTANBUL	31.90	31.90	KİPA
ANKARA	32,9	32,9	ANKARA	29.90	28.90	ÇAĞDAŞ
BURSA	32,9	32,9	BURSA	29.90	28.90	ŞAYPA
DENİZLİ	32,9	32,9	DENİZLİ	32,9	32,9	
DİYARBAKIR	32,9	32,9	DİYARBAKIR	32,9	32,9	
İZMİR	32,9	32,9	İZMİR	32,9	32,9	
KAYSERİ	32,9	32,9	KAYSERİ	32,9	31.90	
SAMSUN	32,9	32,9	SAMSUN	30.90	31.90	MAKRO
TEKİRDAĞ	32,9	32,9	TEKİRDAĞ	29.90	28.90	ONUR
TOKAT	32,9	32,9	TOKAT	32,9	32,9	

- (360) In the e-mail sent by SAVOLA employee (.....) to a group of SAVOLA personnel in response to the e-mail in question includes the following:

"(...)

(.....), you got the most important task here .. You need to raise çağdaş immediately. If these are shelf they are much too low..

(...)"

- (361) The e-mail with the subject "Yunus Egemden Shelf Prices," collected during the on-site inspection conducted at SAVOLA and sent on 16.02.2018 by SAVOLA employee (.....) to SAVOLA employee (.....), which is copied to SAVOLA employees (.....), includes the following statements and the table with product prices mentioned in the e-mail:

"Hello Mr. (.....),

Egemden shelf prices at Yunus Ümitköy, Balgat2, Okyanus, Akdere, Çakırlar 1 branches are as follows. They said the prices were like this because these stores

were open to online shopping. But Intense Flavor and Soft Flavor are on the shelves for 97.90 tl at other branches.

- Also 5L Can sku labels have Yudum instead of Egemden. I'd appreciate your help to revise them into Egemden.

...”

- (362) In the same e-mail chain, the e-mail with the subject “RE: on Yunus Egemden Shelf Prices,” sent on 16.02.2018 by SAVOLA employee (.....) to SAVOLA employee (.....) and copied to SAVOLA employees (.....) and (.....), includes the following statements:

“Hi (.....),

As you said, there are store-specific prices. This is due to competition, location-based customer profiles, internet sales, etc. So we have a limited ability to intervene. Riviera prices are normal 19.95 tl and 38.95 tl at other branches. For extra-virgin 5 lt cans, they'll fix soft into 94.90 and intense into 99.90. Get the guys to check please.

...”

- (363) The e-mail with the subject “C4 Yudum Egemden Soft flavor 1 lt Gdi Broken price,” collected during the on-site inspection conducted at SAVOLA, which was sent on 11.05.2018 by SAVOLA employee (.....) to CARREFOURSA employee (.....) and copied to CARREFOURSA employee (.....) and SAVOLA employee (.....), includes the following statements:

“... ”

The agreed-upon product price of the 1 lt soft flavor in the Gdi activity was 18.50 tl. The date was different as well and the activity is out now at 17.50.

This put us into a bind for activities with different prices planned.

I'd appreciate your support in revising it to 18.50 immediately and your quick response.

...”

- (364) The Whatsapp chat collected during the on-site inspection at SAVOLA, between SAVOLA employee (.....) and a MİGROS employee saved as “Migros (.....),” includes the following:

On 05.07.2018;

“Migros(.....): Good morning

I'll make the 5 lt dap price 34,95 tomorrow, fyi.

(.....): Morning. What about the others?

Migros(.....): Others are done already, this was an extra since the product was in the bim index.

(.....): When will you fix 4*1.25 and 1 lt soft flavor?

These prices are seriously harming me also

Migros(.....): 4x1.25 price will be fixed tomorrow as well

Though there's a lot of stock of 1 lt olive oil left over from the see and believe campaign, that's gonna continue for a while”

On 17.07.2018;

“(.....): (An image of a Yudum Sunflower Seed Oil 5 lt can was shared, which is considered to be from Onur market.) Onur Özen raised the price

Migros(.....): Do you have the receipt

(.....): I'll have them get one.

(An image of a receipt from Onur Market was shared, showing a 34.95 TL price for the product “Yudum Sunflower Seed Oil 5Lt”.)

Migros(.....): I fixed Istanbul

But there are problems in ankara eskisehir cagdas prices”

- (365) The following statements are in the rest of the Whatsapp chat from 03.10.2018, between SAVOLA employee (.....) and a MİGROS employee saved as "Migros (.....)":
- "(.....): Hi bro. Issue 1) Komili 5lt is below 35TL everywhere and you printed 4lt at 29.90TL ???
Issue 2)After you printed Yudum 5lt at 35.90 (.....) saw you and printed 36.90. There are no inserts at Çağrı.We're trying to raise our prices. Please support us.
Regards
Migros(.....): Bro, if the price is fixed until the insert starts, no problem, I'll print the price you say
Print
But cagdas etc are all 35.90
Komili's 33.90 price I'll have checked tomorrow
It may be weekend pricing
Old inventory, that is
(.....): (.....) is done and you start the next day as it is.
There's no room for surprises.
We'll be toast. At 35,90 you had your way. You promised 37,90 for this insert.*
- Migros(.....): You know we are not trying to print the cheapest but we do have to match the cheapest one
If there are no problems in prices until the insert is printed, we'll print 37,90
Good night, see you
(.....): Cheers mate. Thank you very much. Good night."*
- (366) The following were sent on 14.11.2018 in the Whatsapp group "Strategy team":
- "(.....):^{forwarded} I want narrow pet cost including 32.00 and can cost including 33 for 5 liters.
^{sent}I need deep cash register activity for 1 product.
Mr. (.....) we have to clarify recommended prices and costs for C4 december activity products (.....)'s request is as above
(.....): cost is easy
please set sale prices
in parallel to migros
start of december monthly including two inserts
(.....): Let's set them shall we say narrow 35.90, can 36.90
(.....): Your (.....) director's decision
(.....): Man, really, let's clarify whatever it is and manage this we're managing both customers. We have to manage the price as a single price so we don't give away a goal
By the way, Migros 22 November catalog shall have Komili 5 lt can at 32.90 tl"*
- (367) The following were sent on 14.11.2018 in the Whatsapp group "Strategy team":
- "(.....): (Image of the ŞOK insert where Yudum Sunflower Seed oil 5 lt is 35.75 TL and a shelf image where Yudum Sunflower Seed oil 2 lt is 11.90 TL)
(.....): Oh f.....
It says
3575
(.....): I couldn't believe it either
They printed 15 kuruş less
(.....): No wayyyy"*

f...¹²⁵

migros will do 34.90

this is bad

very bad

you messed up SOK

no way to miss this

(.....): So we'll ask them to make it 35.75 too. Migros doesn't mind it at 35.90, would they turn it into a problem at 35.75 ?

(.....): does Migros have any price with 75 kuruş

To God's ears

(.....): In that case they'll make it 35.90

(.....): super

talk it over

make sure nothing goes wrong.

I hope

nezir

by the way

(.....): we'll remind them they are not a discount market. They screwed us over too many times

(.....): soft activity is canceled by the way

no need for it

not necessary anymore

(.....): (quoted message: "soft activity is canceled by the way") crr

(.....): yes

(.....): Ok, I told (.....)."

(368) The following were sent on 27.01.2019 in the Whatsapp group "Strategy team":

"(.....): (Shelf images from various stores are shared.)

SOK sells Yoğunlar from 2190.

urgent intervention for this tomorrow

shelf labels should change

same with can!!!

(.....): They probably outsourced 5lt, it was gone in 4 days during the action"

(369) The e-mail with the subject "ydm snflw prices," collected during the on-site inspection conducted at SAVOLA, which was sent on 11.02.2019 by SAVOLA employee (.....) to A101 employee (.....) and copied to SAVOLA employees (.....), (.....) and A101 employee (.....), includes the following statements:

"Hello all,

Let's take advantage of the costs at hand for ydm snflw

these old prices should go up

we didn't raise them this month ofc but let's talk what to do next month

this month went up by another 3-4% points compared to the start of the month and there's no sunflower seed oil in the market cheers

..."

(370) The following were sent on 21.02.2019 in the Whatsapp group "Strategy team":

"(.....): (An image was shared for the Yudum Sunflower Seed Oil 5 Lt product discounted at CARREFOURSA's website.)

You dont know about this right

¹²⁵ Slang expression

(.....): I do, I talked with (.....) at the meeting, I said it appears directly when I open the site due to the Migros at Ankara regional and Local and that it was general He checked and said it seems so but you can't purchase when you select a store he wrote to marketing so I didn't feel the need to share here man

(.....): its everywhere

I saw it at the store one evening

check it tomorrow

All TR

(.....): While we were trying to fix Ankara...

(.....): 5 lt price will be fixed on Friday

at Carrefour

(.....): why did they do it

how come you only found out about it after I warned you

(.....): I did know about it before we discussed it at the meeting yesterday

As I wrote, he said it was for Ankara regional and then asked Marketing and marketing returned Today in detail

...

- (371) The e-mail with the subject "2lt yudum c4 migros shelf suggestion change21.90," collected during the on-site inspection conducted at SAVOLA, which was sent on 01.03.2019 by SAVOLA employee (.....) to undertaking employees (.....) and (.....) states:

"

...

2lt yudum c4 migros shelf suggestion change 21.90 please post it today

..."

The e-mail also includes an image taken from the "Sanal Market" application of MİGROS, showing a 20.90 TL price for Yudum Sunflower Seed Oil 2 L.

- (372) Later in the same chain, the e-mail sent by SAVOLA employee (.....) to CARREFOURSA employee (.....) on 01.03.2019 with the subject "FW:2lt yudum c4 migros shelf suggestion change21.90" states:

"

...

I'd appreciate your support on revising the recommended shelf price of the product below as 21.90 TL in your upcoming activity. The market will transition based on your response.

..."

- (373) On 13.05.2019, the Whatapp group titled "Strategy team" has the following:

"(.....): If Onur fixes the price tomorrow Migros will on Wednesday

(.....): Onur was done on May 11

Right now there's Komili 3350

(.....): I had a chat, it's 39.95

I asked for a receipt, once I have it 'll forward it to Migros and they'll fix that

(.....): Then Migros will make it 39.95. that's a problem too

(.....): (.....) says they won't transition to 43.50 tl

(.....): What shall we do

Onur needs to go up to 43.50

Mr (.....), we'd appreciate your help

Else the whole market will be effected

Şok is asking for offers based on the Migros price, they've seen it

- (374) The following statements are included in the e-mail with the subject “*RE: Yudum sunflower seed application list/October10/A101/reminder,*” collected during the on-site inspection conducted at SAVOLA, which was sent by SAVOLA employee (.....) to A101 employees (.....) and (.....), and was copied to SAVOLA employee (.....) on 07.10.2019.
“*Is there a mistake? I couldn't understand, Mr. (.....).
We prepared the cost according to 31.25 TL as per your request when we talked?*”
- (375) Further on in the same chain, the e-mail with the subject “*RE: Yudum sunflower seed application list/October 19/A101/reminder*”, which was sent on 07.10.2019 by A101 employee (.....) to SAVOLA Channel Sales Manager (.....) and A101 employee (.....), and which was also copied to SAVOLA employee (.....) included the following statements:
“*Hi,
The sale price was supposed to be 38.95. That's what we agreed, you'd maintain our margin accordingly.
Best Regards
...*”
- (376) The following statements are in the e-mail with the subject “*RE: Yudum sunflower seed application list/October 19/A101/reminder*”, which was sent on 15.10.2019 by A101 employee (.....) to SAVOLA Channel Sales Manager (.....) and A101 employee (.....), and was also copied to SAVOLA employee (.....), in response to the implementation of a price change for the 1.25 liter product in the price lists sent in the correspondence about the 4.5 liter products:
“*Hi,
Why did we transition 1.25?
Best Regards
...*”
- (377) In response to the aforementioned e-mail, SAVOLA employee (.....) sent an e-mail on 15.10.2019 with the subject “*RE: Yudum sunflower seed application list/October 19/A101/reminder*” to A101 employees (.....) and (.....) which was copied to SAVOLA employee (.....) to state the following:
“*Hello Mr (.....),
That's due to the upward trajectory of the exchange rates (based on cost increases)
We're transitioning to a 14.95 shelf price for 1 lt in the whole market.
...*”
- (378) The following statements and the screenshots of the Yudum brand products from the websites of CARREFOURSA's and MİGROS are included in the e-mail with the subject “*RE: ON SHELF PRICE TRANSITIONS,*” collected during the on-site inspection conducted at SAVOLA, which was sent by SAVOLA employee (.....) to a group of SAVOLA employees on 01.09.2020:
“*...
And 5 lt products will transition on Friday...
...*”
- (379) On 01.09.2020, SAVOLA employee (.....) attached the above e-mail to the mail he sent to MOPAŞ employee (.....) and made the following statements:
“*...*”

In summary, the inventories are very valuable and I believe that moving on with the recommended¹²⁶ prices we discussed before will be very meaningful and valuable during these times.

Your prices are 13.90 and 24.90 – 48.90

Planned Recommended 17.25 – 27.90 – 55.90 (Friday)

...”

- (380) In response, MOPAŞ employee (.....) sent the e-mail with the following statements to SAVOLA employee (.....):

“Director (.....)

Hello;

I am having trouble understanding why you are intervening in the prices which will go up on their own in an environment that is this unstable just to create panic.

Let the market do what it will.

Rival local chains are still selling sunflower seed oil for 39.95 tl.

...”

- (381) The following statements are included in the e-mail with the subject “*RE: On Savola Activity Offers,*” collected during the on-site inspection conducted at SAVOLA, which was sent by SAVOLA employee (.....) to A101 employees (.....) and (.....), and copied to SAVOLA employees (.....), (.....) and A101 employee (.....), on 01.09.2020:

“ ...

If recommended sales prices we specified are implemented in the relevant period returns will be taken from 10.55+vat.

Please confirm.

...”

- (382) Later in the same e-mail chain, on 30.09.2020, A101 employee (.....) sent an e-mail to SAVOLA employee (.....) and A101 employee (.....) that was copied to SAVOLA employees (.....) (.....), (.....) (.....) and A101 employee (.....) (.....), with the following statements:

“ ...

I conveyed our depth and margin rates. We’re in agreement so long as they are complied with

...”

- (383) The presentation titled “*NADISC. Takip Konular 04.12.2020,*” collected from SAVOLA employee (.....)’s computer during the on-site inspection at the SAVOLA premises, includes the following:

“ ...

We need to increase our market shelf prices in all channels and place them very close together.

...”

- (384) The e-mail sent by SAVOLA employee (.....), collected during the on-site inspection conducted at SAVOLA as part of the e-mail chain with the subject “*RE: Updated Shelf Price*”, dated 21.12.2020, includes the following statements:

“ ...

The Na-discount updated shelf prices you request have been checked in the field and they are in the table attached.

...”

¹²⁶ In the original text, the word is misspelled.

- (385) The e-mail sent by (.....) as a follow-up to the e-mail above includes the following:
“Thank you (.....), Komili products should be in trial at A101, could you add them as well. And can you inform us if they are put on the shelves, that’s important @ (.....) When will you raise the prices of the 5 lt can? Thank you.”
- (386) Further on in the same chain, the following statements are in the e-mail sent by SAVOLA employee (.....):
“@ (.....) When will you raise the prices of the 5 lt can? Hello (.....) The answer to that question is in the mail I sent at 16:00 which I have attached here. I think it’d be best if the question was answered by Director (.....)... That’s because we’ll see 79.90TL on Wednesday at Migros (except İstanbul-Ankara)...”
- (387) The following statements are in the e-mail sent by SAVOLA employee (.....) later in the same chain:
“Our channel already blew up, we just want to close the year now we have no exit we can’t buy product. We’re getting organized trade e-trade photos from everywhere we can’t convince anyone to keep inventory. The end of the year will affect us all!!! Director (.....), what you’re calling istanbul ankara sums up to 2000 ton for me!! I have neither costs nor applications. What outlet would buy product at over the shelf price of migros? What about istanbul ankara price?”
- (388) Lastly, the following statements are in the e-mail sent by SAVOLA employee (.....) later in the same chain:
“Director (.....), The answer to that question is also with Director (.....) as you know.. It’s amazing that you’re asking me this despite following and witnessing the operation yourself. Let me remind you once more, Migros got to 75.45 and remained at that price for 10 days but dropped there when we couldn’t manage to push the local to the same level. In short, if Director (.....) can get the relevant customers to 75.45 on Wednesday it’ll be 75.45TL, if he gets them to 79.90TL it’ll be 79.90TL... Also I’d say don’t forget to delete these mails...”
- (389) In the e-mail chain with the subject “RE: on shelf price matching” between SAVOLA and GROSERİ employees, collected during the on-site inspection conducted at SAVOLA, the first mail sent by GROSERİ employee (.....) to SAVOLA employee (.....) on 15.01.2021 includes a table with the following statements and the screenshot:
“Mr. (.....) Rival prices are as follows and matching will be done according to the rule. Please respond as soon as possible.”

		GROSERİ		ÇETİNKAYA		CARRÉFOUR		MİGROS		BRAVO	
STOKKOD	ÜRÜN İSMİ	RAF FİYATI	İND. FİYATI	RAF FİYATI	İND. FİYATI	RAF FİYATI	İND. FİYATI	RAF FİYATI	İND. FİYATI	RAF FİYATI	İND. FİYATI
01UN14007	YUDUM A.YAĞI 5LT TNK(4)	85,45		74,95		74,95		79,40		73,50	

- (390) Further on in the same chain, the e-mail sent by SAVOLA employee (.....) to GROSERİ employee (.....) on 18.01.2021 includes the following:

“(.....),
Let’s get the shelf price to 79.40
 ...”

- (391) Later in the same chain, the e-mail sent by GROSERİ employee (.....) to SAVOLA employee (.....) on 18.01.2021 includes the following statements:

“Mr. (.....)

According to the rule the second best price is Çetinkaya and we need to match carrefour’s price of 74,95.”

- (392) Further on in the same chain, the e-mail sent by SAVOLA employee (.....) to GROSERİ employee (.....) on 18.01.2021 includes the following:

“(.....),

Let’s make it 74.95 until 25.01.2021 and then we’ll update the price on the 26th.”

- (393) Later in the same chain, the e-mail sent by GROSERİ employee (.....) to SAVOLA employee (.....) on 18.01.2021 includes the following statements and the table in the screenshot:

“Mr. (.....);

According to the conditions below, the period between 19-25/01/2021 is taken into account, the difference of the 2nd discount will be returned to you as sales difference.

For your information.”

Sıra	Barkod	Stokkod	Ürün Adı	KDV	Yeni Alış Fiyatı	İnd1	İnd2	Yeni Satış Fiyatı
1	8690876011051	01UNI4007	YUDUM A.YAGI 5LT TNK(4).	8	82	13,08	12,28	74,95

- (394) Further on in the same chain, the e-mail sent by SAVOLA employee (.....) to GROSERİ employees (.....) and (.....) on 03.02.2021 includes the following:

“(.....),

I’ll okay the correspondence on rival matching but I saw that this price was not reflected to the prices the price is below and I also sent it to you over whsap as an image.

I have no idea why the application below was not done and let’s not have a reduction for this.

Let’s make it 79.95 until 15.02.2021 for the application attached. I hope we won’t have the same problem on the shelf again”

- (395) Later in the same chain, the e-mail sent by GROSERİ employee (.....) to SAVOLA employee (.....) on 03.02.2021 includes the following statements and the table in the screenshot:

“Mr. (.....);

According to the conditions below, the period between 04-15/02/2021 is taken into account, the difference of the 2nd discount will be returned to you as sales difference.

For your information.

P.S.: The stores will be warned for label check, fyi.”

Sıra	Barkod	StkID	Stokkod	Ürün Adı	KDV	Yeni Alış Fiyatı	İnd1	İnd2	Yeni Satış Fiyatı
1	8690876011051	498	01UNI4007	YUDUM A.YAGI 5LT TNK(4).	8	82	13,08	6,43	79,95

(396) Lastly, in the same chain, the e-mail sent by SAVOLA employee (.....) to GROSERI employee (.....) on 03.02.2021 includes the following statements:

“(.....),

Ok but let's not have the same situation on the shelf again, let's inform and check all stores.”

I.3.2.2.2. Assessment of Resale Price Maintenance

(397) As mentioned above, a large number of documents were found during the on-site inspections showing SAVOLA maintained the resale prices of retailers in the downstream. Observations and assessments on these documents are summarized below, where documents with similar content are handled together:

- As seen from the correspondences dated 24.01.2017, 11.05.2018, 14.11.2018, 27.01.2019, 01.03.2019, 15.10.2019, 01.09.2020, 21.12.2020, 15.01.2021 and 18.01.2021, SAVOLA directly intervened with the sale prices of the retailers specified in the documents and fixed their prices.
- Correspondences dated 05.07.2018, 07.10.2019 and 18.01.2021 show that retailers implemented or committed to implement prices in accordance with SAVOLA's price fixing and intervention.
- Similarly, as shown by the correspondences dated 16.03.2017, 01.12.2018 and 21.02.2019, SAVOLA closely monitored the retail shelf prices and hiked up the prices of those retailers where they were below the desired level.
- The correspondence dated 16.02.2018 show that even when it was not possible to intervene in all prices due to market conditions, resale price maintenance was still implemented through intervention with the prices of certain products.
- Correspondences dated 17.07.2018 and 13.05.2019 show that SAVOLA incentivized retailers, which were unwilling to change their prices by having other retailers transition their prices.
- Correspondence dated 30.09.2020 reveal that sometimes retailers were given incentives by providing them with advantageous purchase prices in order to ensure that the shelf prices were set at the levels desired.

(398) On the other hand, one point of note is the warning to delete relevant e-mails and other correspondences, included in the correspondence dated 21.12.2020 between managers handling different commercial channels under SAVOLA. It is believed that the concern here was to avoid creating evidence in case of a potential Competition Authority examination.

(399) Article 4 of the Act no 4054 provides: *“Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.”* According to this provision, it is sufficient for an agreement, concerted practice or decision of an association of undertakings to have the restriction of competition as its goal, i.e., to be anti-competitive by object, for it to be in violation of Article 4 of the Act no 4054, and it is not necessary to further show anti-competitive effect to prove violation.

(400) The examples listed in Article 4 as falling under the prohibition of the Article include *“Fixing the purchase or sale price of goods or services, elements such as cost and*

profit which form the price, and any condition of purchase or sale.” The relevant article covers competition restricting agreements and/or concerted practices between competing undertakings operating at the same level as well as agreements and/or concerted practices between undertakings at different levels of trade. In that context, SAVOLA’s fixing of the retailers’ resale prices is in line with the example given in the relevant sub-paragraph and thus falls under the scope of Article 4 of the Act no 4054.

- (401) Article 2 of the Block Exemption Communiqué on Vertical Agreements, no 2002/2 (Communiqué no 2002/2), which was issued based on Article 5 of the Act no 4054 titled “Exemption,” states that “*Agreements concluded between two or more undertakings operating at different levels of the production or distribution chain, with the aim of purchase, sale or resale of particular goods or services*” would be exempt from the application of Article 4 of the Act, provided they bear the conditions mentioned in this Communiqué. However, Article 4 of the same Communiqué includes certain restrictions that take agreements outside the scope of the exemption, which include “*Preventing the purchaser from determining its own selling price*”.
- (402) On the other hand, according to the Communiqué no 2002/2, “*The provider may determine the maximum selling price or recommend the selling price, on condition that it does not transform into a fixed or minimum selling price as a result of the pressure or encouragement by any of the parties.*” At the same time, in order to ensure that maximum or recommended sales prices notified to the buyer do not become minimum or fixed prices, price lists or packaging of the product must clearly indicate that the prices concerned are maximum or recommended prices.
- (403) Paragraph 18 of the Guidelines on Vertical Agreements state that resale price maintenance can be implemented directly or indirectly. Indirect resale price maintenance practices also take the relevant agreements outside the scope of the block exemption, as per Article 4.1(a) of the Communiqué no 2002/2. Setting the profit margin of the buyer, setting the maximum rate of discount that may be implemented by the buyer over a recommended price level, providing discounts to the buyer to the extent that the buyer complies with recommended prices or threatening the buyer with delaying or suspending deliveries or terminating the agreement in case the buyer fails to comply with those recommended prices, or the actual implementation of such penalties may be given as examples of indirect resale price maintenance. Paragraph 19 of the Guidelines on Vertical Agreements states that direct or indirect methods of resale price maintenance would be more effective where the prices implemented by the buyer can be monitored and controlled by the supplier. For instance, an obligation introduced on all buyers to report those who sell at prices different from the standard price lists would significantly facilitate supplier’s ability to control the prices implemented in the market.
- (404) In its recent decisions on the matter, the Board tends to find resale price maintenance to be in violation of Article 4 of the Act no 4054 by object, in line with the EU’s competition law practices.
- (405) For instance, in its *Sony Eurasia* decision¹²⁷, the Board noted that the statements in the documents collected during on-site inspections suggested that those dealers parties to the vertical agreement had their freedom to set their internet sales prices restricted by SONY, and that SONY thus fixed the resale prices of its dealers for online sales, emphasizing the fact that maintaining resale prices would not lead to any

¹²⁷ Board decision dated 22.11.2018 and numbered 18-44/703-345.

developments and improvements in the distribution network for SONY products or in the products and services offered by the technology stores. In response to SONY's claim that its various interventions on the resale prices of its dealers had a limited effect on the market as a whole, the Board concluded that resale price maintenance constituted a competition infringement by object.

- (406) On the other hand, after the Board's *Turkcell-3* decision of 06.06.2011 numbered 11-34/742-230 was partially annulled by the 13th Chamber of the Council of State decision dated 16.10.2017 and numbered E. 2011/4560, K.2017/2573, the additional work conducted resulted in the Board decision dated 10.01.2019 and numbered 19-03/23-10, which concluded that Turkcell maintained resale prices for airtime minutes and that constituted a competition infringement by object.
- (407) The case-law consistently presented by the Board in the recent years was also clarified in the legislation by the Communiqué no 2021/3 on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings That Do Not Significantly Restrict Competition (Communiqué no 2021/3) and the Communiqué no 2021/2 on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position (Communique no 2021/2), which counts the aforementioned practices among naked and hardcore violations.
- (408) As a result of the examinations conducted, a large number of correspondence by SAVOLA between the beginning of 2017 and the end of February 2021, including internal ones as well as those exchanged with retailers have been found. As shown by many documents, SAVOLA directly intervened with the final sales prices of retailers. Some of the correspondence show that retailers complied with SAVOLA's instructions and changed their prices in line with SAVOLA's demands. While price transitions were sometimes unsuccessful, it is observed that SAVOLA had a strong motivation to have the changes implemented and especially aimed to ensure coordinated price increases in all channels in which it supplies products, with the participation of all retailers. This argument is supported by the statement "*We need to increase our market shelf prices in all channels and place them very close together,*" found in a presentation file collected during the on-site inspection at the premises of the undertaking.
- (409) Similarly, it is gathered from the correspondence that the market was closely monitored and the retailers were frequently contacted to ensure that they transitioned to the *recommended* prices and *fixed* the *broken* prices. In fact, as seen in various correspondences, the unwillingness of some retailers to change their prices was eliminated by SAVOLA through various means and those retailers who prevented price switching/increases were convinced. Consequently, it was proven that SAVOLA fixed the sales prices of retailers through the uncovered evidence concerning the communication/cooperation and intervention it engaged in with that purpose.
- (410) An agreement falling under the scope of Article 4 of the Act no 4054 can be exempted from the application of the prohibition therein, provided it meets all of the conditions listed in Article 5.1 of the same Act. On the other hand, using resale price maintenance to fix the prices in the market, one of the most important factors of competition, is generally considered a restriction of competition by object and is not likely to receive exemption under Article 5 of the Act no 4054. This is because the practice in question is not expected to meet the criteria listed in Article 5.1(a) and (b), which are "Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services" and "Benefiting the

consumer from the above-mentioned". This point as well as the consideration of such infringements as infringements by object is reflected in the inclusion of resale price maintenance among the naked and hardcore violations in the Communiqués no 2021/2 and 2021/3.

- (411) It is found that consumers using SAVOLA products would encounter higher prices at the outlets due to a restriction of intra-brand competition and consumer welfare would thus be significantly reduced. In any case, SAVOLA, by following a strategy to "increase market shelf prices in all channels and place them very close together," engaged in practices aimed at maintaining the resale prices of retailers, which do not meet the criteria listed in Article 5.1(a) and (b) of the Act no 4054.
- (412) As a result, it is concluded that SAVOLA, in its function as a provider/supplier, violated Article 4 of the Act no 4054 by fixing the resale prices of undertakings operating at the retail level from the beginning of 2017 to February 2021, and therefore the undertaking in question should be imposed administrative fines in accordance with Article 16(3) of the same Act.

I.3.3. Observations and Assessments Concerning the Exchange of Information between Suppliers

I.3.3.1. Observations Concerning the Exchange of Information between the Suppliers

I.3.3.1.1. Observations in the Category of Cleaning and Hygiene

- (413) Firstly, many e-mails were found suggesting exchange of information with suppliers during the on-site inspections conducted at YUNUS. An examination of the contents of the correspondences make it clear that sales quantities and amounts, including those for competing products, were shared with suppliers sometimes individually and sometimes as a group. While the exchange was generally done on the request of the suppliers, data was also exchanged with undertakings that did not directly make such a request. The information concerned includes quantities and prices for each product package, based on YUNUS's register reports. Some of the documents collected at YUNUS's premises are presented below:
- (414) The e-mail with the subject "March-March 17 Sales" which was sent by COLGATE PALMOLIVE employee (.....) to YUNUS employee (.....) on 17.03.2020 includes the following statements:
- "Mr. (.....)
Could you share with me the sales of mouth care products between March 1 and March 17. (Showing numbers and sales price before VAT.)
Regards,"*
- (415) In the e-mail with the subject "REGISTER REPORTS FOR MARCH," sent by YUNUS employee (.....) to COLGATE PALMOLIVE employee (.....) on 10.04.2020 shares sales quantity and amount information for COLGATE PALMOLIVE as well as its rivals.
- (416) The e-mail with the subject "Category Discount Dates," sent by P&G employee (.....) to YUNUS employee (.....) on 24.03.2020 includes the following:
- "Hello (.....),
Could you please share the dates of all category discounts you're planning for the upcoming period in the cleaning group?
Thank you."*

- (417) The e-mail with the subject “*March Sales*,” which was sent by P&G employee (.....) to YUNUS employee (.....) on 03.04.2020 includes the following statements:
*“Hello (.....),
Could you please send me your March sales in the cleaning category together with those of the competitors?
Thank you.”*
- (418) The e-mail with the subject “*MARCH 2020*” sent by YUNUS employee (.....) to P&G employee (.....) on 15.04.2020 shares sale quantities and amounts for March in an Excel table which also shows those of the competing products.
- (419) The e-mail with the subject “*YUNUS Sales Data..*,” sent by UNILEVER employee (.....) to YUNUS employees (.....) and (.....) on 16.04.2020 includes the following:
*“To Whom This May Concern,
Could we please get this done, we’re the only ones left in Türkiye..
I need sales outputs for 2019 monthly
And sales outputs for 2020 monthly, including rivals’ (end of March)
We’ll be monitoring this regularly from now on..
These numbers are important for our actions budget, etc.
I’d appreciate your assistance,
Regards..”*
- (420) The e-mail with the subject “*RE: sales*” sent by UNILEVER employee (.....) to YUNUS employee (.....) on 17.04.2020 states:
*“Hello (.....),
I’d like the sales monthly, I need monthly sales data from 2019 to March 2020 separately,
Sorry for the inconvenience..”*
- (421) The e-mail with the subject “*May sales..*,” sent by UNILEVER employee (.....) to YUNUS employee (.....) on 02.06.2020 includes the following:
*“Hi Ms. (.....),
I need the May sales data for the following products,
Could you help me please..
Or you can send me all of May, I’ll take it from there..”*
The relevant e-mail also has a table attached with products by UNILEVER and rivals.
- (422) The e-mail with the subject “*may*,” sent by YUNUS employee (.....) to employees of P&G, HENKEL, HAYAT, ECZACIBAŞI, Baby Turco, Viking, Lila Kağıt, Eruslu, İpek Kağıt, Reckitt Benkiser, UNILEVER, COLGATE PALMOLIVE, EVYAP, Cen Bebe, Tat Kimya, ABC Deterjan on 05.06.2020 includes an Excel table for May with the products of all suppliers, and it also includes YUNUS’s sales quantities and amounts for the products concerned.
- (423) The e-mail with the subject “*may register reports* ,” sent by YUNUS employee (.....) to P&G employee (.....) on 05.06.2020 shares the sales quantities and amounts for P&G as well as its competitors.
- (424) These and many similar e-mails were found during the on-site inspection conducted at YUNUS, some of which were sent individually to the relevant supplier and some collectively to all suppliers. At the same time, all e-mails sent individually or collectively included excel tables with sales quantity and amount information for the rivals.
- (425) The on-site inspection conducted at COLGATE PALMOLIVE uncovered correspondence confirming the documents collected at YUNUS. It was observed that

studies were conducted based on the information sent by YUNUS, concerning the market shares, values and growth rates of COLGATE PALMOLIVE and competitors from January 2019 to August 2020.

- (426) The on-site inspection conducted at ECZACIBAŞI also found correspondence confirming the documents found at YUNUS. In fact, the e-mail with the subject "RE: SATIŞ," which was sent by ECZACIBAŞI Customer Manager (.....) to YUNUS employee (.....) on 13.09.2020 states:

"Hello (.....),

Could you share the 2019 July register reports please."

- (427) The e-mail with the subject "RE: on september register slips," sent by ECZACIBAŞI Customer Manager (.....) to YUNUS employee (.....) on 07.10.2020 includes the following statements:

"Ms. (.....) I may have misspoken I need register reports of the category including competitors.

The following categories would be enough for now. September 2019 - September 2020

02.0206.001.001 TOILET PAPERS

02.0206.001.002 PAPER TOWELS

02.0206.001.003 TABLE NAPKINS

02.0206.001.004 PAPER TISSUES

02.0206.001.005 BOX TISSUES

02.0206.001.006 WET TISSUES AND TOWELS"

- (428) The inspections conducted during the investigation process revealed that the suppliers also received information on the sales of competing products from various local store chains other than YUNUS. For instance, the e-mail with the subject "On Data Sharing for 2021" ÇAĞRI employee (.....) sent to himself/herself on 14.12.2020 includes the following statements:

"Dear Suppliers;

For years we have had a commitment to cooperating with all of our suppliers on the matter of data sharing.

In these days when the importance of data is increasing all the time we believe that data sharing must also have a value.

Accordingly, it has been decided that the following data sharing fees will be charged for any data requests in 2021.

In terms of data sharing, our suppliers will continue to receive the data for their category individually or together with their competitors, according to their choice.

The monthly data sharing fee will be 0.25% for those suppliers that ship directly (in the sense that they make out the invoice themselves), and 0.50% for those suppliers that ship via dealers/distributors.

These data sharing fees may be paid monthly or quarterly, depending on the choice of our suppliers.

I wish that retailing will be a profitable business for all of our shareholders in 2021."

(429) Later in the same chain, the e-mail with the subject “*RE: On Data Sharing for 2021,*” sent by ECZACIBAŞI employee (.....) to ECZACIBAŞI employees (.....), (.....), (.....), (.....) on 15.12.2020 includes the following statements:

*“Hi (.....),
We’re talking a cost of 1M TL. Actually, we currently have monthly register reports;
I think that may be sufficient.
Will the data include competitors?
This means ÇK increase, of course.
(.....)”*

(430) The e-mail with the subject “*RE: On Data Sharing for 2021,*” sent by ECZACIBAŞI employee (.....) to ECZACIBAŞI employees (.....), (.....), (.....), (.....) on 15.12.2020 in response to the previous e-mail includes the following:

*“Hi (.....),
That won’t be 1 M TL, this year will close at around 19 M TL, if that grew by 40%
next year, 0.5% of 26.6 M is around 133K (total of all categories)
It will include competitors, yes. They are not charging any fees for reporting right
now, since they will demand a fee next year we won’t be able to access any
information.”*

(431) The e-mail with the subject “*RE: On Data Sharing for 2021,*” sent by ECZACIBAŞI employee (.....) to ECZACIBAŞI employees (.....), (.....), (.....) on 15.12.2020 in response to the previous e-mail includes the following:

*“They want 0.5% for registry reports including competitors which I think would be
awesome if you could manage to get to 0.25% (from the direct customer quota); I
say let’s go forward with ÇK increase, that’ll be very helpful.
Does anyone in the team disagree?
(.....)”*

(432) The e-mail chain in question shows that ÇAĞRI would demand a fee to share the competitor information for a fee, which the retailers used to do free-of-charge, and that ECZACIBAŞI believed these data were important.

(433) On-site inspections conducted at EVYAP also showed that EVYAP collected information about itself and competitors from the retailers and used these information to create tables with turnover and price information

(434) The e-mail with the subject “*On Competitors Information 2*” sent by EVYAP employee (.....) to EVYAP employees (.....), (.....) and (.....) on 05.06.2020 includes the following statements:

*“Hi (.....),
It seems Baby Turco gained a lot of market share in the Ankara region in particular.
We need information on that from the outlets that sell our product.
As we talked on the phone, can we get the following information from Akyurt ,
YUNUS , Gimsa , Adese?
1. Customer based registry reports for April-May
2. Customer based percentage shares in the total diaper market for April-May
(including a comparison with previous months)
3. If there’s a special activity done in this period, the mechanics of that activity and
their contribution to the outlet
4. The terms of any special display, gondola, etc. agreements.
In addition, we’d find your comments about the outlets valuable as well.
I’d appreciate any help.”*

Best regards.”

(435) In response, the e-mail with the subject “*RE: On Competitors’ Info*” sent by EVYAP employee (.....) to EVYAP employees (.....), (.....) and (.....) on 08.06.2020 states the following:

“Mr. (.....),

It seems in Ankara it would be hard to re-enter if Evy baby is delisted,

For instance, Çağdaş

YUNUS nielsen scane Başgimpa nielsen scane Gimsa nielsen rest outlets show the Ankara reality,

Let’s do 3 mechanics,

For the SM channel 2-pack Jumbo 39.90 tl; limited sale 59.90 tl

For Gimsa introduction package (9.9): Right now at Gimsa our products show with the delist code due to performance.

We solved that with the director (.....) on PM

At Gross we’d like to continue with 19.90 Jumbo for 500 parcels,

And for YUNUS and Altunbilekler there’s a gift of Granule 400 gr or Activex 700ml pumpless product for free with 45 tl Evy baby purchases.”

The same e-mail also includes turnover, price and market share information of EVYAP and its competitors for the months of March, April and May at YUNUS, Başgimpa and Gimsa.

(436) The e-mail with the subject “*On Competitors’ Info,*” sent by EVYAP employee (.....) to EVYAP employees (.....), (.....), (.....), (.....), (.....), (.....) and (.....) on 19.06.2020 includes the following statements;

“Hello guys,

We need register reports from some customers.

Reports for Duru Değerli Yağlar shower gel, Antibacterial wet wipes, antibacterial gel and Hunca are required.

Groseri, MOPAŞ, ÇAĞRI, Hakmar, Merkez Market, Kiler Market, Halil Pekdemir, Tahtakale, YUNUS, Çağdaş.

I’d appreciate it if you could send me competitors’ sale prices, registry reports on numbers, and market shares from the above outlets, as well as the same information for our products.

Best regards.”

(437) The on-site inspection conducted at P&G shows that P&G closely monitored the retailers, collected shelf prices and gathered from the retailers quantity and sales amount information on P&G and its rivals.

(438) The e-mail with the subject “*28.12.2019 Shelf Prices*” sent by P&G distributor Özgün Gıda Kozmetik Satış Dağıtım Ticaret A.Ş. (ÖZGÜN) employee (.....) to P&G employees on 30.12.2019 includes the following:

“Dear all,

Public shelf prices are attached. Customer specific details are also in the attachment.

Pricing, promotion and final decision rests with the retailer.”

The excel table in the attachment shows the prices of the competitors’ and P&G’s products on a store-by-store basis.

(439) The e-mail with the subject “*Store Visit and Action Plans,*” sent by P&G employee (.....) to (.....), (.....), (.....), (.....) on 17.11.2019 and copied to the distributor employees includes the following statements:

"Dear Friends,

As we talked about and agreed in the one-to-one meetings last week, you all have opportunities to visit stores, perform competitor and market analyses and take action about our in-store promotions.

Starting tomorrow, I would like to receive a short summary e-mail from you for 5 stores per day.

It's enough to summarize our KBD, OOS and fair shelf/display share situation in the store and the current situation in accordance with the category expectations, adding your action items; I definitely don't want you to spend a lot of time on this e-mail, you can just post it on your phone from the store. After that I expect you to share the actions you took for the next steps you specified and the updated situation.

You can ask the SPV team and (.....) to accompany you for your store visits and check the progression of your actions together. I will also participate in your visits as my schedule allows.

I have full trust in the fact that you'll show the maximum attention to this subject.

Good luck,"

(.....)"

- (440) The e-mail with the subject "P&G Inventory and Sales," sent by the P&G employee (.....) to YUNUS employee (.....) on 11.03.2020 includes the following statements:

"Hello (.....),

Could you please share the P&G warehouse inventory of the cosmetics section as well as the February register reports in the cosmetics category (Toothpaste, Toothbrush, Shampoo, Hair conditioner, Razor Blades, Razors, Shaving Gels, Shaving Foams) including competitors? I've a meeting with (.....) today and he told me to request these from you beforehand.

Regards,"

- (441) The e-mail with the subject "YUNUS Online March Sales," sent by P&G employee (.....) to YUNUS employee (.....) on 09.04.2020 includes the following statements:

"Hi (.....),

Could you please share March register reports for online purchases in cleaning and cosmetics, including rivals? I'll share it with the company and I'll turn back to you within the day for our investments.

Thanks"

- (442) The on-site inspection conducted at HENKEL showed that the undertaking gathered competitively sensitive information on itself or its competitors from the retailers.

- (443) The e-mail with the subject "Product Listing," sent by HENKEL employee (.....) to HENKEL employee (.....) and HENKEL sales team on 06.01.2021 states the following:

"Hello,

The Active Products Including Rivals list is in the attachment. I'd request that you send the listings of our products until the end of the month. We'll ask for the rivals' listings from the field team.

Best regards."

- (444) Numerous e-mails sent by ÇAĞRI Purchasing Assistant (.....) to HENKEL employee (.....) shared excel tables including monthly sale quantities and amounts of the competing products.

- (445) The e-mail with the subject "MOPAŞ 1-12 MS," sent by HENKEL employee (.....) to HENKEL employee (.....) on 12.01.2011 includes the following statements:

"Hello (.....),

Our 12 month market share for MOPAŞ reached 27.42%. We closed 2020 with a market share of 28.44%.

In December, MOPAŞ register reports in the active categories reached a total of 2.7 mio TL.

P&G's december top 5 activity reached 540.311 TL in register reports."

In addition, the e-mail also includes tables with the monthly shares of HENKEL and its competitors for 2019 and 2020.

- (446) The e-mail with the subject "SPM Market Share" sent by UNILEVER employee (.....) to company staff on 31.03.2020 includes the following statements:

" ...

We're starting market share tracking for SPM direct customers.

I would like you to start collecting monthly SKU-based register reports for numbers and turnovers from the customers with regard to competing (incl. private label) products and our products for 2019 and 2020.

I'll share the formatting file with you tomorrow and ask you to send me the processed numbers from the customers in the requested format until the end of April 6. I wanted to let you know beforehand.

If there are any customers whose data we can't get please note that too.

" ..."

- (447) The e-mail sent in response by the UNILEVER employee (.....) to company staff including UNILEVER employee (.....) includes the following:

" ...

A B2B and market share tracking file is being set up for our (.....) and (.....) channels. I would appreciate it if, as a team, we could quickly gain this kind of discipline and help our colleagues by sticking with the quoted deadlines. Please prioritize requests related to this subject.

" ..."

- (448) The chain continues with an e-mail sent by UNILEVER employee (.....) to company staff including UNILEVER employee (.....) on 01.04.2020, which states the following:

" ...

The file attached has our products and competing skus where you can enter the monthly number and turnovers collected from the customers. Our customers' PL products are not included here but I'll ask you to add them at the bottom together with the sku name and highlight them. For instance, Happy Center softener. You don't need to open and fill the hidden columns, we'll fill them ourselves. You'll have to create a separate file for each customer.

As (.....) mentioned below, we're handling this project with a team of 4, but (.....), (.....) and (.....) will help me with the design and digital transfer work. For that reason you need to fill in the customer-specific data . If you need assistance with mapping the data you've gathered we are always here to help.

I'm sending an invitation for 11:00 tomorrow. You can attend if you need help with mapping, etc.

" ..."

- (449) The e-mail dated 01.04.2020, sent by UNILEVER employee (.....) in response to the same e-mail above has the files "SPM HC Kasa Çıktısı.xls", "SPM BPC Kasa Çıktısı.xls", "SPM Food Kasa Çıktısı.xls" attached, sharing register reports of price information for some products, including those of rival firms.

- (450) The same chain includes an e-mail sent by UNILEVER employee (.....) to company staff including UNILEVER employees (.....) and (.....) on 06.04.2020, stating the following

“ ...

We'll track customer-based register reports for quantity and turnover in a FU breakdown only for our products instead of SKU. The new files are attached. You can create a new sheet for each customer and share. (attachment: SPM Register Report file)

Also, we'd like you to enter brand-specific customer market shares (%) in the attached file. You can create a new sheet for each customer and share. (attachment: SPM market share file)

Please share the files with us until April 13. If you have any questions you can message us in the group we met on Teams.

Also, are there any customers with B2B systems whose data we did not get. We'd like information on that, please.

...”

- (451) The e-mail sent by UNILEVER employee (.....) to various UNILEVER employees on 21.05.2020 shares sales quantity and turnover information of UNILEVER products as well as market share information including those of the competitors' products in Excel files for different local stores (Ulu, Akyurt, Altunlar, Biçen, Burda, ÇAĞRI, Çağdaş, Ersan, Groseri, Hakmar, MOPAŞ, Gürmar, Onur, Öztaner, Şafak, Özkuruşlar) .

- (452) The e-mail with the subject “RE: _SPM Market Share,” sent by UNILEVER employee (.....) to UNILEVER employees (.....), (.....), (.....) and (.....) on 20.04.2020 includes the following statements:

“ ...

ÇAĞRI and MOPAŞ MS are attached, I could only finish turnover and quantity for ÇAĞRI on omo-rinso brands, so it wasn't done in time. This morning I accidentally deleted the file I spent whole day yesterday creating, that's why I'm behind the plan.

...

- (453) The e-mail with the subject “RE: SPM Market Share,” sent by UNILEVER employee (.....) to UNILEVER employees (.....), (.....) and (.....) on 16.04.2020 includes the following statements:

“ ...

REGISTER REPORTS

- *I sent a total of 15-month data for the register reports of ÇAĞRI-MOPAŞ cosmetics*
- *Ulukardeşler is only giving them for 2020. I sent 3 months worth of register report data.*
- *I have 15 months for Biçen cosmetics. Couldn't yet collect them in the FU format.*

MARKET SHARE

- *Ulu YTD can provide brand share but they can't break them down monthly so we say we don't receive data from Ulu.*
- *I have Biçen's but I'm still formatting them.*
- *I left ÇAĞRI-MOPAŞ market shares last. They don't provide brand share, I'll fill that table directly from the SKU data.*

(.....) Just now Groseri sent 15-months' worth of data for all three categories. I'll get them into our register report format. They already sent our market share.

...”

- (454) The following statements are in the e-mail sent in response by UNILEVER employee (.....) to UNILEVER employees (.....) and (.....), with UNILEVER employee (.....) copied,

“

Let me do mine before I forget:

REGISTER:

-Ersan 15 months

-Özkuruşlar 14 months (no march yet)

-Hakmar 15 months

-Şafak didn't give any data yet.

PP:

-Özkuruşlar 14 months (no march yet)

-Ersan, Hakmar, Şafak won't give this data.

...”

- (455) The e-mail with the subject “RE: SPM Market Share,” sent by UNILEVER employee (.....) to UNILEVER employee (.....) on 15.04.2020 includes the following:

“

Here's the information about data sharing by the customer root for Gazi-Şov-Altunlar-Onur-Burda :

Gazi and Altunlar said they can't share data.

Onur can't provide the 2019 data for the previous year, they only have register reports for 2020 Q1. No market share.

Burda and Şov sent their register reports, no market shares.

So we have 2019-2020 register reports for Burda and Şov, and 2020Q1 register reports for Onur. Do you want these data as only register report files, since there are no market shares?

...”

- (456) The e-mail with the subject “RE: SPM Market Share,” sent by UNILEVER employee (.....) to some company personnel on 24.07.2020 includes the following statements:

“

We would like your assistance in keeping to the dates we set.

We need the previous month's data before the 15th of each month, otherwise we can't publish them due to missing pieces.

Since there's the holiday in-between I'd like you to share register reports and market shares including July until August 15.

We worked hard together, let's publish them, implement them and see the results (.....) & (.....) and me are in the project, you can send your mails to us three.

...”

- (457) The relevant e-mail chain continues with an e-mail with the subject “FW:SPM Market Share Groseri,” sent by UNILEVER employee (.....) to UNILEVER employee (.....) on 16.10.2020, and it has excel files “SPM Kasa Çıktısı_GROSERİ_Hc.xlsx”, “SPM Kasa Çıktısı_GROSERİ_PC.xlsx”, “SPM Kasa Çıktısı_GROSERİ_FOOD.xlsx”, “(.....) SPM Pazar Payı_GROSERİ_FOOD.xlsx”, “(.....) SPM Pazar Payı_GROSERİ_PC.xlsx”, “(.....) SPM Pazar Payı_GROSERİ_HC.xlsx”, “(.....) NPD.xlsx” attached, which have register report prices for certain UNILEVER products as well as information on competing products' market shares.

- (458) An examination of the documents and findings collected during the on-site inspections in general shows that suppliers acquired commercial information on the competitors

from the downstream market, either by having their staff track shelf prices or by directly requesting information from the retailers. The information concerned include competitively-sensitive information such as total sales, sale amounts and sale prices. At the same time, it is also observed that the information acquired from the retailers were mostly provided by local retailers such as YUNUS, MOPAŞ and ÇAĞRI.

I.3.3.1.2. Observations in the Flour Market

- (459) The media file “(.....) ve 13 katılımcı daha ile arama yap.mp4” (“Call with (.....) and 13 more participants.mp4”), was taken from the computer of Consumer Products Sales Manager (.....) during the on-site inspection conducted at SÖKE UN and was understood to be a recording of an online meeting held on 05.11.2020. The examination of the file showed that the following conversation was held between Consumer Products Sales Manager (.....) and Central Anatolia Regional Manager (.....):

“

...

(.....): *At what price are the Katmer people selling to the outlet?*

(.....): *They're selling at the old price. Mr. (.....), let me put it this way. I talked with the guy too. They have prices between (.....). He sent me the list. Would you like me to send you Katmer's list? They haven't transitioned. They sent me two lists back to back. I'm sending it to you right now. (Sends the list to (.....) on the phone.)*

(.....): *What're they doing on the list?*

(.....): *(.....)%, reflected as (.....)% to customer (.....) The list I sent now is the new list they only just changed into. They started selling from these prices just now. There's also the last list they put out. Apparently they will start to pass this list on to their customers very soon, but as I said they just started to sell over the older list.*

(.....): *They are selling – that is will sell from (.....).*

...

(.....): *Very recent, very recent. The date here is the 26th.¹²⁸*

(.....): *26th. It's coming to what we said. So now the cheapest product will be at around (.....). So, it looks like this Katmer for example will sit at the (.....) range. Where Katmer is (.....), can (.....) be (.....)? It can.*

”

- (460) In addition, during the on-site inspection conducted at KATMER UN, the list price information of KATMER UN products for the dates 16.03.2020, 01.08.2020, 28.09.2020, 01.10.2020 and 02.11.2020 were taken from the representatives of the undertaking, as well as invoice samples of Gimsa Perakende Gıda San. ve Tic. A.Ş. (GİMSA), Hanif Pehlivanoğlu Mark. Gıda Paz. San. Tic. A.Ş. (PEHLİVANOĞLU) and ÇAĞDAŞ, who received products.

I.3.3.2. Assessment of Information Exchange in the Supply Market

- (461) Direct or indirect exchange of competitively sensitive information between undertakings is among the behaviors that may constitute a violation under Article 4 of the Act no 4054. Information exchange may be the subject of an agreement or concerted practice on its own, or it might be a part of another agreement or concerted practice.
- (462) Undertakings may become parties to an information exchange in various different ways. Two or more undertakings exchanging competitively sensitive information

¹²⁸ Referring to October 26.

reciprocally or via unilateral announcements is an example of direct information exchange, while sharing competitively sensitive information by means of associations of undertakings, market study companies or third-party undertakings in the up- or downstream market, depending on the concrete case, constitute examples of indirect information exchange. Whether direct or indirect, information exchange is generally addressed within the same perspective based on the importance of the information concerned, provided the results are the same.

- (463) The Guidelines explain that information exchange can lead to certain gains in efficiency; for instance, it can eliminate the problem of information asymmetry between the parties, and it can increase undertakings' efficiency by allowing them to compare themselves with their competitors. In addition, it can help undertakings reduce their inventory, transport perishable items to consumers faster or reduce costs stemming from demand instability.
- (464) At the same time, the same Guidelines note that information exchange can also lead to the restriction of competition, especially where it allows undertakings to gain information on the market strategies of their rivals; in that framework, if the exchange of information reduces uncertainty in the market through the sharing of competitively sensitive information and facilitates cooperation with a restrictive effect on competition, then it may constitute a violation under Article 4 of the Act no 4054.
- (465) Moreover, it is also stated that all types of information exchange whose object is to restrict competition would be considered as restrictive of competition regardless of its effects, that the legal and economic context in which the information exchange occurs would be taken into account when assessing whether it restricts competition by object, that an exchange information concerning future plans would be more likely to lead to restriction of competition by object as compared to the exchange of current data, and that the exchange of competitively sensitive information such as future prices, production or sales amounts by competitors would be considered the formation of a cartel under normal circumstance since this generally aims to fix prices or quantities, and that such exchanges of information would be very unlikely to meet the exemption requirements listed in Article 5 of the Act no 4054.
- (466) On the other hand, the potential competitive effects of an information exchange that does not constitute a violation by object must be examined within the framework of the specific characteristics of each concrete case. In order for an exchange of information to be found restrictive of competition by effect under Article 4 of the Act no 4054, it must have the potential to lead to negative effects on at least one of the competition parameters of price, output, product quality, product variety or innovation; when assessing the restrictive effects of the information exchange on competition, the characteristics of the relevant market and the features of the information exchange are taken into consideration.
- (467) The collection of information by suppliers on their competitors through the retailers observed within the framework of the file is not assessed to be in violation of Article 4 of the Act no 054 by object in light of the fact that the information collected was not future information and of the legal and economic context in which the behavior was conducted – despite the collected information consisting of competitively sensitive data such as sale prices and quantities.
- (468) When assessing the effect of the information exchange on competition, the Guidelines note that in addition to the nature of the information exchanged, the level of transparency of the market, the level of concentration in the market, the complexity of

the market, the stability of the market and the similarity of the companies would be the market characteristics to examine when determining whether it would render the market more favorable to coordination between competitors.

- (469) In relation to market transparency, information exchange can reduce uncertainties related to competition sensitive elements such as price, quantity, demand and cost by increasing transparency, and the lower the level of market transparency before the information exchange, the higher its competition distorting effect would be. An information exchange that does not contribute much to the market becoming more transparent would be less likely to restrict competition than an exchange that significantly increases transparency, therefore the determining factors for the likelihood that an information exchange will have restrictive effects on competition are the level of transparency in the market before and after the information exchange, and how the information exchange affects that level.
- (470) The market is certainly made more transparent and the uncertainties and risks of their commercial decisions are reduced when the suppliers gain information about their competitors through the retailers. On the other hand, documents collected during the on-site inspections show that suppliers also used their own field personnel to gather information from the retail outlets. However, while suppliers could only gather the shelf prices of their competitors when collecting information with their own field personnel, the information they received directly from the retailers also included the quantities sold, turnovers and promotions in addition to the competitors' shelf prices. While there is currently a certain level of transparency in the market, gathering competitively sensitive information on the rivals through the retailers would obviously increase the transparency level of the market.
- (471) With regard to the similarity of the firms, the Guidelines state that cooperative outcomes would be more likely in symmetrical markets. Where undertakings are similar in terms of costs, demand, market shares, product range and capacity, the possibility of coordination would increase since their competitive incentives would also be similar. In such a case, information exchange can help undertakings determine their differences and develop tools to eliminate these differences, thereby facilitating coordination.

1.3.3.2.1. Assessment of the Information Exchange in the Cleaning and Hygiene Category

- (472) There is a large number of product groups under the categories of cleaning and personal care. In that context, there is overlap between some undertakings in the cleaning category and its sub-categories, while some undertakings do not overlap in the personal care category and sub-categories thereof. One undertaking may be very strong in one category but have lower shares in others. However, investigated undertakings such as UNILEVER, P&G, ECZACIBAŞI, HENKEL, EVYAP and HAYAT in particular are operating with a large product portfolio, with mutual overlaps in many product categories, and that they are providing their products to the same consumer group. Thus, it may be claimed that these undertakings display a similar structure in terms of various parameters such as product range and demand.
- (473) In terms of the characteristics of the information concerned, the Guidelines state that the examination will look at if the information exchanged is competitively sensitive strategic information, market coverage level of the information, whether the information is individualized or aggregated, whether the information is up-to-date, the frequency of

the information exchange, whether the information is public and whether the information exchange itself is public.

- (474) On whether the information exchanged is competitively sensitive, the Guidelines emphasize that the exchange of strategic data which decreases the uncertainty in the market would be more likely to fall under Article 4 of the Act no 4054 than other types of information exchange, that sharing strategic data could have restrictive effects on competition by reducing the competition incentives of the parties, and that price- and quantity-related data are highly strategic information in general.
- (475) The information suppliers acquired through the retailers were exactly the kind of information covering the quantities sold, amounts sold and sale prices for each product and packaging, including those of the competitors. Even though the relevant undertakings were able to access shelf prices through their own staff by means of fieldwork, they went beyond that with the help of the retailers to access information on sale quantities, turnovers and market shares. Thus, it is clear that the competitively sensitive information acquired by the suppliers were indeed of a strategic nature.
- (476) In terms of the level of market coverage of the information exchange, the Guidelines state that the assessment of the restrictive effects of the information exchange on competition will take into account the degree of market coverage by the undertakings exchanging information, since those competitors who do not take part in the information exchange could be able to limit the competition distorting practices of the undertakings exchanging information. The assessment on the market coverage degree of the information exchange will depend on the specific facts of each case and the type of information exchange in question.
- (477) An overview of the tables in the section providing information on the supply markets shows that the undertakings participating in the information exchange through the retailers frequently co-existed in the cleaning and personal care categories and the subcategories thereof, and that they formed a significant portion of the market in each sub-category. For instance, the e-mail with the subject “*may*” was sent by a YUNUS employee on 05.06.2020 to P&G, HENKEL, HAYAT, ECZACIBAŞI, Baby Turco, Viking, Lila Kağıt, Eruslu, İpek Kağıt, Reckitt Benkiser, UNILEVER, COLGATE PALMOLIVE, EVYAP, Cen Bebe, Tat Kimya, ABC Deterjan employees and it included information on sale quantities and sale amounts for the month of May for the products of all suppliers. Just in terms of the main categories, the suppliers who received the aforementioned e-mail have a share of 60% in the personal care category and 70% in the cleaning category, at a minimum. Thus, undertakings that participated in the information exchange covered a significant portion of the market, which might make it easier to come to a common understanding between the suppliers. At the same time, it could also allow the parties to target undertakings deviating from the agreement or new entrants to develop suitable punishment strategies.
- (478) The number of the companies calculated in the “other” section under the cleaning and personal care categories that reached a certain share and could be statistically reported by NIELSEN was 1,310 in the personal care products category and 471 in the home cleaning products category. However, the large number of the undertakings in the “other” category does not necessarily mean that these undertakings could put sufficient competitive pressure on the undertakings participating in the information exchange. Nevertheless, it is hard to claim that the information exchange covered the entirety of the market. Moreover, the “other” section has very different shares in each

sub-category. For example, the “other” section has a share of 49-53% in paper products, while this ratio is around 1-5% for oral care products.

- (479) Having said that, it was established in the file that YUNUS shared information with nearly all of the suppliers in the upstream market. Thus, when determining the market coverage degree of the information exchanged, it is necessary to demonstrate the size of the downstream market (retail market) where the effects of the information exchange (potential cooperation) would be felt directly, in addition to the suppliers operating in the upstream (supply market). As shown by the on-site inspection documents given above, suppliers generally engaged in information exchange through local retailers. Even though certain local retail chains were mentioned by name in the on-site inspection documents, the shares of those companies which were included in the mutual correspondences sharing sale amount and sale quantity information for the competitors, namely YUNUS, ÇAĞRI and MOPAŞ, commanded the following shares in the total organized FMCG retailing sector:

Table 39: 2017-2019 Market Shares of The Retailers Which Provided Information to the Suppliers (%)

	2017	2018	2019
ÇAĞRI	(.....)	(.....)	(.....)
YUNUS	(.....)	(.....)	(.....)
MOPAŞ	(.....)	(.....)	(.....)

Source: FMCG Sector Inquiry Preliminary Report

- (480) As shown in the table, the total share of YUNUS, ÇAĞRI and MOPAŞ in organized FMCG retailing did not even reach (.....)% in 2019. There is little doubt that the share of the retailers in question would be much smaller within total FMCG retailing, where the organized and traditional channels are evaluated together. Therefore, if the retailers entered into a potential cooperation by sharing competitively sensitive information through the retailers, this would have a rather limited effect within the framework of the file. In fact, an exchange of information that only concerns a very small portion of the market would be very unlikely to have an appreciable effect on competition¹²⁹.
- (481) With relation to whether the information exchanged is individualized or aggregated, the Guidelines observe that any exchange of any data that is aggregated in such a way as to make the identification of individual data of a particular undertaking sufficiently difficult is much less likely to lead to restrictive effects on competition than exchanges of individualized data. The exchange of aggregated data would be unlikely to lead to restrictive effects on competition unless a generally concentrated, oligopolistic market structure is concerned. The exchange of individualized data, on the other hand, would make it easier for undertakings to arrive at a common understanding concerning the market on the one hand, while also allowing the parties to target undertakings deviating from the agreement or new entrants to develop suitable punishment strategies on the other hand.
- (482) An examination of the data gathered by suppliers on their competitors through the retailers show that this data was undertaking specific and detailed for each product and each packaging. As a result, the data exchanged within the framework of the file could make it easier for undertakings to come to a common understanding concerning the market on the one hand, and allow the parties to develop suitable punishment strategies by enabling them to target undertakings deviating from the agreement or

¹²⁹ PİŞMAF, Ş. (2012), İktisadi ve Hukuki Açından Teşebbüsler Arası Bilgi Değişimi, Competition Authority Expert Theses Series , No. 115, Competition Authority, Ankara.

new entrants on the other hand. With regard to the question of whether the suppliers tracked their competitors to respond to each other competitively and to provide the highest quality products to the consumers at the most suitable prices by comparing themselves with the rivals and raising the competition level in the market, it is concluded that they did not need individualized information for this purpose, and that category-based aggregated information would be sufficient for them to determine their own market position.

- (483) With regard to the recency of the data exchanged, the Guidelines note that the exchange of historic data is less likely to lead to a restriction of competition than the exchange of current or future data. This is because the exchange of historic data would be less likely to serve as an indicator for the future behavior of competitors or lead to a common understanding concerning the market.
- (484) An overview of the data exchanged under the file reveals that the undertakings gathered historic data from the retailers, and regularly asked the information of the previous month at the start of the current one in order to update the information in question. In fact, this point is obvious from the e-mails sent by UNILEVER employee (.....) to YUNUS employees and from many pieces of internal correspondence at UNILEVER. As a result, the recent information collected through the retailers in addition to the historic data could make it easier for undertakings to come to a common understanding concerning the market on the one hand, and allow the parties to develop suitable punishment strategies by enabling them to target undertakings deviating from the agreement or new entrants on the other hand.
- (485) In terms of the frequency of the information exchange, the Guidelines state that frequent exchanges of information make it easier for undertakings to come to a better common understanding in the market and monitor deviations from the agreement, thereby increasing the risks of a collusive outcome.
- (486) As shown in the documents collected during the on-site inspection, suppliers were able to receive immediate information from the retailers when needed, but otherwise generally received the information monthly. In that context, while the exchange was not very regular and the suppliers had trouble receiving the information at the time and in the detail they wanted according to the internal correspondence, it is nonetheless found that the frequency of the immediate and monthly exchanges of information were sufficiently high to arrive at a common understanding in the market between the suppliers, maintain that understanding, and facilitate the monitoring of any deviations.
- (487) With regard to whether the information exchanged is public, the Guidelines state that the exchange of genuinely public information is not generally expected to constitute an infringement under article 4 and that genuinely public information is information that is equally accessible to all competitors and customers in terms of costs of access. For information to be genuinely public, the cost for accessing it should not be higher for customers and undertakings not participating in the information exchange than for those who are parties to the exchange, therefore, since competitors would not choose to exchange data they can easily collect from the market under the normal circumstances, the exchange of genuinely public data is not frequently observed in practice. On the other hand, the ability to gather the information from the market, for instance from the customers, does not necessarily mean that such information constitutes market data readily accessible to competitors.
- (488) As explained above, suppliers are able to conduct fieldwork to collect information from the market through their own personnel. However, this information generally consists

only of shelf prices, and it seems unlikely that sale quantities, turnover data and market share information could be collected during field visits or via observations. On the other hand, retailers can provide information to the suppliers about their competitors, scaled down to each product packaging and with sale quantity, sale amount and sale price detail. The document collected during the on-site inspection at ECZACIBAŞI shows that ÇAĞRI would start charging to share information starting from 2021. This document also reveals ECZACIBAŞI's desire to ensure the continuity of the information concerned, since it includes details on the competitors. As a result, it is evaluated that the information on the competitors collected through the retailers cannot be characterized as public.

- (489) After the information exchange is evaluated in terms of its anti-competitive effects under Article 4 of the Act no 4054, it must be assessed under Article 5 of the same Act as well. At this stage, the information exchange is examined to see if it fulfills the conditions of ensuring efficiency gains, transferring these efficiency gains to the consumers, ensuring that competition is not eliminated within this transfer mechanism and ensuring that the information exchange in question is necessary for the transfer concerned.
- (490) On the subject of efficiency gains created by the information exchange, the Guidelines state that due to the market and company information they acquire as a result of information exchange, undertakings can allocate production towards high-demand markets or low-cost undertakings, that exchanging historic and current data related to market shares may provide benefits to both undertakings and consumers if it allows undertakings to present these data as an indication of quality of their products, and that information exchange that is genuinely public would help consumers reduce their search costs and make more informed choices.
- (491) On the subject of passing on the efficiency gains from the information exchange to the consumers, the Guidelines explain that the efficiency gains attained as a result of the information exchanged must be passed on to consumers in a way that outweighs the restrictive effects on competition. The lower the market power of the parties involved in the information exchange, the more likely it is that the efficiency gains would be passed on to consumers in a way that outweighs the restrictive effects on competition.
- (492) In line with the condition not to eliminate competition when passing on the efficiency gains acquired through the information exchange to the consumers, the Guidelines state that if competition is eliminated in a significant portion of the market as a result of the information exchange, then the agreement would be unable to benefit from the exemption under Article 5 of the Act mo 4054.
- (493) In order to meet the requirement that the information exchange be required to pass on the efficiency gains to the consumers, the parties concerned must prove that the information exchange carries the least risk of restricting competition when attaining the efficiency gains and passing them on to the consumer in terms of subject, aggregation, recency, openness to public, frequency and market coverage; in addition, the information exchange should not include any data other than those required to fulfill the conditions above. For instance, comparison purposes do not require the exchange of undertaking-specific individualized data since the efficiency gains expected from the comparison are achievable by anonymizing and aggregating the data to turn them into a kind of sector ranking. Therefore, the exchange of undertaking-specific data will not generally be accepted as required.

- (494) In that context, based on the information in the file, even if the information belonging to the competitors acquired by suppliers through the retailers were intended to be used as a means of increasing the competition level in the market by monitoring the competitors and providing a competitive response to them, the information exchange still would not meet the condition of being required for passing on the efficiency gains to the consumers. This is because the information concerned were shared without aggregation, in full detail based on competitors and products. Thus, it becomes impossible to agree with the view that making comparisons or providing competitive responses would be impossible without the information concerned. In fact, it is clear that the suppliers were able to continue their operations without getting information on their rivals from national multi-format retailers such as MÍGROS and CARREFOURSA, as well as from national discount retailers such as A101, BİM and ŞOK.
- (495) On the other hand, as mentioned above, the examination process did not acquire any documents or information showing that competitively sensitive information including future prices and amounts were shared as part of the relevant information exchange, which suggests the information exchange did not infringe competition by object. In terms of restrictive effects on competition, it could not be established that the information exchange concerned resulted in a price increase or any promotions and/or discount fixing, customer allocation or supply restrictions which would result in a price increase. However, suppliers did acquire very detailed and up-to-date information on their rivals, including prices and quantities. Despite this situation, an overview of the retailers used by the suppliers to exchange indirect information on their rivals reveals that the information was generally acquired through local retailers in particular, which, even in the most comprehensive sense, make up only (.....)% of the market.
- (496) Also, according to the information and documents acquired during the on-site inspections, the information in question were not always acquired from the retailers with the timing and detail requested, and did not have a long history and/or continuity for a majority of the suppliers. For instance, according to the inspections conducted at UNILEVER, the undertaking started to collect monthly sales data for its competitors from the local retailers at the end of March 2020, but could not attain continuity in the practice.
- (497) On the other hand, it is possible for the suppliers to increase the scale and scope of the information they acquired through the retailers, spreading it to the whole market in general. Thus, an agreement/collusion could be set up and maintained between the suppliers through information exchange or between retailers through the suppliers, and those deviating from the potential agreement/collusion could be punished. In the final analysis, other potential risks include the spread of the information exchange under examination among the other suppliers or to the market in general through the participation of other retailers.
- (498) Within this framework, it is concluded that the information exchange in question did not have an anti-competitive purpose in its current form, and it did not lead to any restrictive effects on competition in light of the duration and frequency of the exchange, its discontinuous nature and the fact that it involved a rather limited portion of the total market in particular. As a result, it is found that the undertakings parties to the information exchange in question did not violate Article 4 of the Act no 4054 by this practice. However, in order to prevent any potential competition infringements, it is decided that a letter of opinion should be sent to the investigated parties, reminding that all suppliers and retailers should act in accordance with the observation in this

decision and the explanations in the Guidelines concerning the exchange of information on their competitors in the same markets and related to the competitors of the parties in a vertical relationship, regardless of the market and field of operation.

I.3.3.2.2. Assessment of the Information Exchange in the Flour Market

- (499) The online chat between the company employees (.....) and (.....) dated 05.11.2020, collected during the on-site inspection at SÖKE UN's premises, and the documents and statements collected from KATMER UN as a result of an on-site inspection, it is clear that KATMER UN's list prices for 28.09.2020 and 02.11.2020 were procured, with some statements on whether the transition to the prices in these lists had been completed.
- (500) As mentioned before, the Guidelines emphasize that the exchange of strategic data between competitors to decrease the uncertainty in the market would be more likely to fall under Article 4 of the Act no 4054 than other types of information exchange, that sharing strategic data could have restrictive effects on competition by reducing the competition incentives of the parties, and that price- and quantity-related data are the types of data with the highest strategic content.
- (501) Following on from the on-site inspection at KATMER UN, the undertaking's response explaining the list prices for the relevant dates, received into the Authority records on 24.02.2021 with the number 15477, states the following:
- “ ...
- Our customers in Ankara are sent products at higher prices but discounted end-of-period return invoices are received.*
- Out-of-Ankara customers are sent products from the net net price and return invoices are not received.*
- As for price transitions, the new pricing lists are issued and notified to the customers on the same day.*
- After the notification of the new prices to the customers, the products are delivered from the old price for an average of one month.*
- 1 kg Flour (.....) list for 16.03.2020:*
- This is the list implemented in Ankara between March 2020-September 2020. Return invoices are received from customers between (.....)%.*
- 1 kg Flour (.....) list for 16.03.2020:*
- Issued for Ankara but was not implemented.*
- 1 kg Flour (.....) list for 01.08.2020:*
- Issued for out-of-Ankara. Implemented between August 2020-September 2020. Consists of net net prices. No return invoices are received.*
- 1 kg Flour (.....) list for 28.09.2020:*
- Implemented for out-of-Ankara. Still in active implementation. No return invoices. Flour is delivered to the customer over the net net price.*
- 1 kg Flour (.....) list for 28.09.2020:*
- Out-of-Ankara, goes to (.....) market. Return invoice received for (.....)%.*
- 1 kg Flour (.....) list for 28.09.2020:*
- List implemented in Ankara. Still in active implementation. Return invoices are received from customers between (.....)%.*
- 1 kg Flour (.....) tl list for 01.10.2020:*
- List issued for (.....) in Ankara. Never implemented. Beğendik market went bankrupt.*
- 1 kg Flour (.....) tl list for 02.11.2020:*

The list announced for out-of-Ankara customers. We did not implement the list when the dollar exchange rate dropped from 8.50 tl to 7.00 tl. This list was not implemented.

1 kg Flour (.....) tl list for 02.11.2020:

Issued for Ankara. We did not implement the list when the dollar exchange rate dropped from 8.50 tl to 7.00 tl. This list was not implemented.

...”

- (502) Within the framework of the explanations above, the table below includes detailed information on the names of the firms receiving the product, the names of the products, quantities sold, sales prices and the expected list prices.

Table 40: Information on the Firms KATMER UN Supplied Products and Price Information

Firm Receiving Product	Date of Invoice	Product Name	Unit Price (TL)	List Price on the Date Concerned
(.....)	21.10.2020	5 Kg Katmer Flour	(.....)	(.....)
(.....)	30.10.2020	2 Kg Katmer Flour (6-pack)	(.....)	(.....)
(.....)	30.10.2020	4 Kg Katmer Flour (4-pack)	(.....)	(.....)
(.....)	30.10.2020	5 Kg Katmer Flour (Kraft)	(.....)	(.....)
(.....)	04.11.2020	5 Kg Katmer Flour	(.....)	(.....)
(.....)	25.11.2020	1 Kg Whole Wheat Flour (12-pack)	(.....)	(.....)
(.....)	25.11.2020	1 Kg Katmer Flour (12-pack)	(.....)	(.....)
(.....)	25.11.2020	2 Kg Katmer Flour (6-pack)	(.....)	(.....)
(.....)	25.11.2020	4 Kg Katmer Flour (4-pack)	(.....)	(.....)
(.....)	25.11.2020	5 Kg Katmer Flour (Kraft)	(.....)	(.....)
(.....)	23.12.2020	1 Kg Katmer Flour (12-pack)	(.....)	(.....)
(.....)	23.12.2020	2 Kg Katmer Flour (6-pack)	(.....)	(.....)
(.....)	23.12.2020	4 Kg Katmer Flour (4-pack)	(.....)	(.....)
(.....)	23.12.2020	5 Kg Katmer Flour (Kraft)	(.....)	(.....)
(.....)	31.12.2020	1 Kg Whole Wheat Flour (12-pack)	(.....)	(.....)
(.....)	31.12.2020	5 Kg Katmer Flour	(.....)	(.....)
(.....)	06.01.2021	1 Kg Whole Wheat Flour (12-pack)	(.....)	(.....)
(.....)	06.01.2021	1 Kg Katmer Flour (12-pack)	(.....)	(.....)
(.....)	06.01.2021	2 Kg Katmer Un (6-pack)	(.....)	(.....)
(.....)	06.01.2021	5 Kg Katmer Flour (Kraft)	(.....)	(.....)
(.....)	07.01.2021	1 Kg Whole Wheat Flour (12-pack)	(.....)	(.....)
(.....)	07.01.2021	1 Kg Katmer Flour (12-pack)	(.....)	(.....)
(.....)	07.01.2021	2 Kg Katmer Flour (6-pack)	(.....)	(.....)
(.....)	07.01.2021	4 Kg Katmer Flour (4-pack)	(.....)	(.....)
(.....)	07.01.2021	5 Kg Katmer Flour (Kraft)	(.....)	(.....)
(.....)	20.01.2021	5 Kg Katmer Flour	(.....)	(.....)

- (503) In that framework, it is understood, from the online chat held at SÖKE UN on 05.11.2020, that KATMER UN's price lists¹³⁰ for 28.09.2020 and 02.11.2020 were acquired by SÖKE UN. However, according to the statements of the officials of the undertaking which agree with the statements in the documents and with the documents presented, the second list was shared with the market before the date of the discussion but was not yet implemented, with the list dated 28.09.2020 having been just recently

¹³⁰ During the on-site inspection conducted at KATMER UN another price list dated 01.10.2020 was found, which, according to KATMER UN's statement, was issued specifically for (.....) but could not be implemented due to the bankruptcy of the relevant undertaking.

implemented. In fact, KATMER UN stated that discounts were applied to the invoices after the delivery of goods, that customers were informed of the new list prices on the same day in case of a price transition, and that sales continued from the old price for an average of one month after the notification of the new price list. KATMER UN also provided sample invoices of the sales made to various prominent customers showing its claims.

- (504) With regard to the recency of the data exchanged, the Guidelines note that the exchange of historic data is less likely to lead to a restriction of competition than the exchange of current or future data. This is because the exchange of historic data would be less likely to serve as an indicator for the future behavior of competitors or lead to a common understanding concerning the market. As explained before, the acquired price list dated 28.09.2020 included historic data. As for the price list for 02.11.2020, it appears that this list was already shared with the customers by 05.11.2020, which is the date of the online conversation. Therefore, it is concluded that there was no infringements of competition by object under the file since no information or documents were found suggesting that competitors secretly exchanged competitively sensitive information such as future prices and quantities without the customers having access to this information.
- (505) In terms of the frequency of the information exchange, the Guidelines state that frequent exchanges of information make it easier for undertakings to come to a better common understanding in the market and monitor deviations from the agreement, thereby increasing the risks of a collusive outcome. On-site inspections conducted at KATMER UN and SÖKE UN did not reveal any findings to suggest the existence of a direct or indirect contact, communication or information exchange between the aforementioned undertakings before or after 05.11.2020, with the exception of the acquisition of the price lists included in the document of that date.
- (506) Even though SÖKE UN directly and/or indirectly acquired the list prices of KATMER UN, it is concluded that SÖKE UN's direct or indirect one-time acquisition KATMER UN's historic list prices and recent new price lists, which were already shared with the customers, was highly unlikely to lead to restrictive effects on competition. Thus, it was decided that the undertakings concerned did not violate Article 4 of the Act no 4054 by the information exchange under examination.
- (507) On the other hand, even though KATMER UN's list prices were acquired for one time, directly or indirectly via customers, any further regular exchange of competitively sensitive information, either unilaterally or mutually, is likely to significantly reduce the strategic uncertainty in the market going forward.
- (508) Consequently, it was decided that a letter of opinion should be sent to both KATMER UN and SÖKE UN, stating that they should act in consideration of the observations in this decision as well as the explanations in the Guidelines on the subject of exchanging competitively sensitive information.

I.3.4. Assessment Concerning Other Undertakings

- (509) As a result of the information and documents collected from the examinations conducted within the framework of the investigation on the retailers, the producers/suppliers providing goods to the retailers in the categories of food and/or cleaning/hygiene products, and the association of undertakings in the organized FMCG market, as well as the analyses and observations concerning the above, the investigation did not conclude that Article 4 of the Act no 4054 was violated by ÇAĞRI,

METRO, ÇAĞDAŞ, YUNUS, GRATİS, WATSONS, BEŞLER, HENKEL, BANVİT, SÖKE UN, KATMER UN, EVYAP, COLGATE PALMOLIVE, BEYPI, KÜÇÜKBAY, J&J, UNILEVER, NIVEA, DENTAVIT, ECZACIBAŞI, DALAN, NESTLE, P&G and GPD. Therefore, it is not necessary to impose administrative fines on the aforementioned undertakings and association of undertakings under Article 16 of the same Act.

- (510) At this juncture, with relation to P&G, while the documents collected suggests that the undertaking intermediated the exchange of competitively-sensitive information between A101, BİM and MİGROS in order to ensure collusion/coordination between the aforementioned undertakings for price changes related to its own products, the content of the evidence suggesting the occurrence of this potential practice twice in 2020 is neither clear nor supported by any other evidence to take the existence of a violation beyond reasonable doubt. Therefore, it is concluded that the aforementioned evidence is not sufficient to prove that P&G organized the market for its own products or ensured the necessary information flow between the retailers to set up and maintain collusion concerning the shelf prices and price changes of these products; thus, P&G was not found to be liable for any competition infringements on this matter, either.

I.4. Pleas and Their Assessments

I.4.1. Pleas Submitted by BİM, A101, ŞOK, MİGROS, CARREFOURSA, SAVOLA and P&G and Their Assessments

I.4.1.1. Pleas on the Procedure and Their Assessments

I.4.1.1.1. Joint Pleas on the Procedure and Their Assessments

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the Investigation Notification did not provide sufficient explanation of the allegations, and thereby restricted the undertakings' right to defense.

- (511) The Investigation Notification to BİM, A101, ŞOK, MİGROS and CARREFOURSA included sufficient information to allow them to understand the nature of the suspicion falling on the parties and present their counter-arguments, fulfilling the requirements of Article 43(2) of the Act no 4054 in that sense. On the other hand, according to Article 44 of the Act no 4054, the Board may not base its decisions on matters about which the parties were not informed or could not exercise their right to defense. It is impossible to agree with the undertakings' claim that their right to defense were restricted, especially in light of the fact that the observations and assessments related to the infringement of the Act were mature and clearly presented the allegations of violation and the grounds thereof, and that the parties were granted the right to submit two written pleas and attend a hearing as well as the right to access the file.

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the subject of the investigation was the examination of the pricing behavior of the retailers and suppliers during the COVID-19 pandemic, however, the preliminary inquiry report and the investigation report were completely different and the preliminary inquiry report was ignored.

- (512) The preliminary inquiry report is a preparatory procedure to determine whether an investigation should be launched on the relevant persons and organizations, and thus does not have any other legal outcome other than its effect on the decision whether an investigation should be initiated. Meanwhile, the investigation stage involves a process where information is collected to determine whether the undertakings involved violated

the Act no 4054 and then the file is finalized¹³¹. In that sense, the investigation stage is one in which assessments are made in light of the information, documents and evidence collected as a result of the extension of the examination in order to illuminate whether there was an infringement under the Act no 4054 beyond any reasonable doubt¹³². The Board decision dated 07.05.2020 and numbered 20-23/298-M set out the scope of the investigation as the determination of whether the relevant undertakings violated Article 4 of the Act no 4054, and did not specify any limitations on time. Moreover, according to Article 20(3) of the Misdemeanors Law, titled "Limitation Period for Investigations," there is an eight-year limitation period for investigations on misdemeanors requiring proportional administrative fines, such as those regulated by Article 16 of the 4054. Under the circumstances, the arguments in question are deemed groundless.

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the allegations were too vague, that the legal assessments were in violation of the principle of predictability, that the Investigation Report was heavily redacted making it impossible to argue against the findings and observations, and that any opportunity to defend based on potential advantageous evidence within the findings was also eliminated.

- (513) In parallel with the previous Authority practice, the parties received a version of the Investigation Report specifically prepared for each undertaking, with the trade secrets, confidential information or personal data in the documents in the Report as well as any findings and observations for each undertaking that did not serve as the grounds for allegations of infringement by that particular undertaking redacted. In that context, in order to ensure that undertakings' right to defense was not restricted, to the extent possible, those portions related to the undertakings themselves and needed to be taken into account in the defense process were not redacted. Moreover, in line with the requests made under the Communiqué no 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets, the undertakings were allowed access to any of the portions in the Investigation Report which were redacted for not serving as the grounds for the allegations of infringement concerning themselves¹³³.
- (514) The Report lists the examinations and observations concerning the undertakings in an objective manner, explains the legislative provisions and case-law that constitutes the grounds for these examinations and observations, and finally evaluates each observation in light of the aforementioned legislation and case-law provisions to establish that the relevant parties violated Article 4 of the Act no 4054 by agreements and concerted practices displaying the characteristics of an hub-and-spoke cartel, intended to fix the retail resale prices of many of their products.

- ŞOK and CARREFOURSA's argument that the lack of relevant product and geographical market definitions caused some matters in favor of the undertakings to go unnoticed, and therefore the decision not to define a relevant product and geographical market was mistaken.

¹³¹ Ankara 15th Administrative Court decision dated 13.07.2012 and numbered 2011/2550 E., 2012/1189 K.

¹³² 13th Chamber of the Council of State Decision dated 08.05.2012 and numbered 2008/8139 E., 2012/963 K.

¹³³ Access to file allowed in response to the relevant applications were not only limited to the aforementioned portions of the Investigation Report; instead, the undertaking was provided access to the entirety of the file.

(515) As clearly seen in the previous practices of the Board as well as the Commission (which were accepted with the established case-law of the courts), it is not necessary in every file to make a relevant market definition for the application of Article 4 of the Act no 4054¹³⁴. For investigations like the present case, which involve violations by undertakings that are clearly anti-competitive by object independent of the market definition, including cartels, there is no obligation to define a relevant market.¹³⁵ In that framework, defining the relevant market was not considered necessary, since it would not affect the findings collected as a result of the examinations and observations concerning the parties, or the conclusions reached by the assessments of these findings.

I.4.1.1.2. Individual Pleas on the Procedure and Their Assessments

- CARREFOURSA's argument that the investigation committee's appointment by the Office of the President instead of the Board was illegal, that the powers invested in the Board with the Act no 4054 could not be interpreted in a broader sense, and that this violated the right to due process.

(516) Just as all other transactions and actions of the Authority, the procedural transaction noted in the argument is subject to review by the administrative courts, and it passed under judicial review as part of various Board decisions without being found illegal. Thus, there is no violation of the right to due process.

- CARREFOURSA's argument that assistant competition experts participated in the on-site inspections at the premises of the undertaking but that it was illegal for assistant experts to conduct an inspection in accordance with the clear provisions of the regulation, that any evidence collected by an illegal inspection would be illegal themselves, and that it was impossible to charge the undertaking with any violations under these circumstances.

(517) While Articles 15 and 40 of the Act no 4054 have phrasing suggesting that on-site inspections would be conducted by experts, Articles 34 and 36 of the same Act setting out the status of the Competition Authority's professional staff as well as Article 4 of the Competition Authority Professional Staff Regulations clearly explain that assistant experts have the competencies of professional staff and are authorized to carry out the essential and continuous tasks required by the Authority services. In that sense, the phrase "expert" in Article 15 should be interpreted to mean "professional staff." In fact, the relevant argument has been brought before the courts numerous times by various undertakings during the Board's more than 20 years of history and was consistently found to be groundless¹³⁶. Consequently, argument that it is illegal to assign assistant competition experts to on-site inspections is not acceptable, since there is no doubt that assistant experts do have the duties and powers of professional staff.

- CARREFOURSA's argument that findings collected through MASAK, which is specialized in an area very different from competition law, cannot be used to prove competition infringement.

¹³⁴ Article 101(1) of the Treaty on the Functioning of the European Union, which serves as the source of Article 4 of the Act no 4054.

¹³⁵ Case AT.39574 — Smart Card Chips, para 214.

¹³⁶ For an example see 10th Chamber of the Council of State Decision dated 18.11.2003 and numbered E:2001/1441, K:2003/4468.

(518) The existence of a violation under the Act no 4054 can be proven via any kind of legally collected evidence and proof. Thus, information and findings duly acquired from real and legal persons as well as from public institutions and authorities have the characteristics of evidence. Besides, no observations and assessments are based on the information and documents acquired through MASAK.

- CARREFOURSA's argument that the conditions of the interim measures were not fulfilled and the process was applied incorrectly and illegally.

(519) The Board decision dated 07.05.2020 and numbered 20-23/298-145 on interim measures states the following with relation to the undertakings: *"during the time between the notification of the short decision and the conclusion of the investigation process under the file, the Authority must be informed about all price increases in food and cleaning products, in the format and within the period to be specified by the Authority."* Thus, the decision does not essentially impose any obligations other than the one involving the regular and timely provision of a piece of information, which can also be requested by the Investigation Committee within the bounds of the powers regulated under Article 14 of the Act. As a matter of fact, the measures in question were removed with the Board decision dated 22.10.2020 and numbered 20-47/648-M. On the other hand, it should be noted that in the suit filed by METRO to remove the relevant interim measures, Ankara 14th Administrative Court denied the request to stay of execution with its decision dated 16.07.2020 and numbered 2020/980 E., after which 8th Administrative Judicial Chamber of the Ankara District Administrative Court took its decision dated 17.09.2020 and numbered 2020/511 E. to dismiss the objection against the decision related to the stay of execution. Thus, the argument that the relevant interim measures decision was applied incorrectly and illegally is found to be groundless.

- ŞOK's argument that, with the exception of SAVOLA, none of the suppliers who were claimed to have intermediated the information exchange between the retailers was under investigation, which alone showed that the investigation was procedurally faulty.

(520) In line with the findings collected under the investigation the Board took the decision dated 26.04.2021 and numbered 21-23/271-M to launch an investigation on various undertakings operating as producers/suppliers, which were previously not under investigation as mentioned in the argument, and the examination process is ongoing. The Board concluded that, in light of the procedural proceedings and plea periods, it would be more appropriate to clarify the suspicions of violation concerning the relevant undertakings through a new investigation instead of adding them to the current one.

I.4.1.2. Substantive Pleas and Their Assessments

I.4.1.2.1. Arguments Related to the Hub-and-Spoke Cartel Allegations

- The argument that no direct communication was found between the parties and supporting elements were not included either; that the investigation failed to show that competitively sensitive information was shared with an aim to have it shared with other retailers; that the necessary elements for an hub-and-spoke cartel were not found; that increases in purchase prices and other costs that could have caused the price hikes in question were ignored and therefore the standard of proof for demonstrating the allegations of hub-and-spoke cartel was not met.

- (521) At this juncture, some information can be given about two recent decisions and numerous ongoing investigations by the Portuguese Competition Authority (Autoridade da Concorrência (AdC)), which are rather similar to the current case, both in terms of the relevant sector and in terms of the findings and conclusions. Within the framework of the investigation launched by AdC in 2016 on various undertakings concerning claims of resale price maintenance, the on-site inspections conducted in 2017 uncovered evidence suggesting the existence of hub-and-spoke cartels between some suppliers and prominent retailers involving the maintenance of retail sale prices of various food, drink, cleaning and cosmetics products, in response to which a total of 13 separate investigations were launched, each on one provider (hub) and many supermarket chains (spokes)^{137,138}. Currently, two of the investigations concerned have been concluded, with AdC taking the first hub-and-spoke cartel decisions in its history and imposing fines on six retailers and two separate suppliers.¹³⁹
- (522) AdC officials made a presentation¹⁴⁰ concerning the aforementioned decisions in the webinar titled “Hub-and-Spoke Cartel Cases,” organized by the International Competition Network (ICN) on March 2021 where they included the following examples¹⁴¹ of correspondence as strong evidence of hub-and-spoke cartels.

“4. Strong evidence of H&S Practice

EXAMPLE no. 1

Subject: Sales Price Alignment – 24.01

From: [Supplier]

To: [Retailer A]

Attached you can find the recommended sales prices for the price alignment scheduled for tomorrow –

24.01. [...]

I appreciate your collaboration in the implementation of these prices in your stores, bearing in mind that the prices stability is essential to the maintenance of the trade margins.

[...]

From: [Retailer A]

To: [Supplier]

Is this alignment also applicable to [Retailer B]?

From: [Supplier]

To: [Retailer A]

Yes, with the exception of [Product 1] and [Product 2]. Nonetheless these will still be aligned during the present week.

“EXAMPLE no. 2

¹³⁷ [https://one.oecd.org/document/DAF/COMP/WD\(2019\)86/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)86/en/pdf)

¹³⁸ <https://globalcompetitionreview.com/hub-and-spoke/portugal-imposes-highest-ever-fines>

¹³⁹ The investigations in question found that the infringements had been going on for around 10 years, and imposed administrative fines of around 6.5% of their turnovers on the suppliers (Sociedade Central de Cervejas and Prime Drinks), of around 3% to 7% of their turnovers on the retail chains (Modelo Continente, Pingo Doce, Auchan, Intermarché, Lidl and Cooplectnorte). Four of the retailers above (Modelo Continente, Pingo Doce, Auchan ve Intermarché) are parties of both investigations. https://www.internationalcompetitionnetwork.org/wp-content/uploads/2021/03/CWG_webinar_hubspeke_032021.pdf

¹⁴⁰ See the previous footnote.

¹⁴¹ The decision includes the presentations translated into Turkish from the English original.

Subject: Shopping [Product 1]
From: [Retailer A]
To: [Supplier]

[...]

Hereby I send [Product 1] shopping report of the 25th of May.

Considering the prices charged by some retailers, we verify that our stores are uncompetitive.

We appreciate **your attention and correction of this situation in the market.**

Alternatively, and in last case, we request promotional conditions to the benefit our clients with the best prices.

Look forward for your feedback.

[...]"

“EXAMPLE no. 3

RE: Comparison of [Retailer] receipts
From: [Supplier]
To: [Supplier]
CC: [Supplier], [Supplier Off-Trade¹⁴² Sales Director]

[...]

I'm being pressured by [Retailer A] with this promotion...this **jeopardizes our price recommendations.** [...]

From: [Supplier]
To: [Supplier]
CC: [Supplier], [Supplier Off-Trade Sales Director]

[...] **[Retailer A]'s email asks for the resolution of this problem until next Monday.** Is it worth trying to correct this situation?

From: [Supplier]
To: [Supplier]
CC: [Supplier], [Supplier Off-Trade Sales Director]

[Supplier Off-Trade Sales Member] **was able to change the prices.** She will send **the proof of receipt tomorrow.**

- (523) The similarity of the correspondence above to the various evidence gathered within the framework of the investigation, in terms of both content and phrasing, can be clearly observed. In addition, the statements in many communication evidence collected under the file are found to display the anti-competitive purpose of retail price maintenance much clearer than the examples above.
- (524) According to the information in the presentation concerned, the characteristics of the undertakings concerned, the sector and the products under investigation, and the evidence collected are very similar to the current investigation, with nearly identical arguments presented against the violations identified in AdC's investigations. The relevant portion¹⁴³ of the presentation is quoted below:

“5. Main arguments brought by the Undertakings

- *Practice described is economically irrational in the Portuguese Food Retail Market*
- *Absence of direct communication among retailers*
- *Retailers are free to decide their own retail prices*
- *Monitoring / Shopping is a legal and legitimate market expertise tool*
- *Price information exchanges qualify as genuinely public information*
- *Signaling price deviations is a negotiation argument to obtain better sell-in conditions*
- *Retailers reactions are normal, rational and competitive replies to market activity*

¹⁴² Trade unit for the retail channel.

¹⁴³ The decision includes the presentations translated into Turkish from the English original.

- *Absence of proof of intent*

- (525) The arguments above were not accepted by the AdC and, as noted before, fines were imposed on the parties.
- (526) Many findings in the file show that there was direct and/or indirect communication via the suppliers between the competitors aimed at coordinating prices and price changes and sharing competitively sensitive information such as future prices and dates of price changes. While the sole existence of such evidence of communication can be sufficient to prove the existence of an agreement and/or concerted practice with a restrictive effect on competition, the investigation also chose to confirm the implementation of the price movements mentioned in the documents for the products, also mentioned in the documents. In that context, it was shown in the current case that a series of agreements and/or concerted practices did occur, which were consistent with the definition of cartels under Article 3 of the Regulation on fines, carrying the features of an hub-and-spoke cartel from some aspects and those of a more *traditional* cartel from others.
- (527) In this framework, while the undertakings have argued that the claims of infringement were not sufficiently supported and that direct communication between the parties was not established, the argument that “*the file did not include any supporting factors*” cannot be acknowledged in light of the numerous findings showing the direct and indirect anti-competitive communication which took place between the undertakings, as well as the mostly exact occurrence of the price changes mentioned in those communications.
- (528) Moreover, there are documents showing direct communication between the undertakings as well. For instance the statements “...Mr. (.....) *we talked with Bim, they’re saying to wait until friday...*,” and
“[A101 1] - (.....): *We said we’d change the price*
[A101 2] - (.....): *To whom?*
[A101 1] - (.....): *Bim*”
in the Whatsapp correspondence collected from A101; the statement “(.....)¹⁴⁴: *They have changed today, A101 (.....)¹⁴⁵ is in fine fettle. They are changing now*”¹⁴⁶ collected from CARREFOURSA, or the notes from a meeting held at TIGEM whose participants included representatives from the retailers all show that it would be impossible to agree with the argument that no evidence of direct communication between competitors had been found.
- (529) Moreover, the following statements are included in the correspondence in the Whatsapp group titled “Strategy team”, which is considered to have occurred in December 2018 in light of the date¹⁴⁷ of the previous correspondence collected during the on-site inspection at SAVOLA and the price information¹⁴⁸ sent by A101,

¹⁴⁴ CARREFOURSA Executive Committee Member and General Director (.....).

¹⁴⁵ Then CEO of A101

¹⁴⁶ While A101 argues that such a meeting did not take place, the plea submitted by CARREFOURSA states that the persons concerned had gotten together on the relevant date for a social event.

¹⁴⁷ Before the correspondence in question, the last communication evidence whose date could be established was on 08.12.2018.

¹⁴⁸ According to the information provided by A101, it started to regularly list 1.25 L Yudum sunflower seed oil at the price of 14.25 TL on 07.01.2019, and 4.5 L Yudum sunflower seed oil at the price of 33.95 TL on 23.01.2019.

[SAVOLA 1] (.....): (.....)¹⁴⁹ called me, he says you've listed products to A101 and asks how did they accept those recommended prices, did they not know the business☺

I said not everybody is like you guys[...] (18.54)

[SAVOLA 2] - (.....): How do they know what shelf prices we'll give to A101. (19.30)

[SAVOLA 3] - (.....):(.....)(.....) (19.34)(.....) Do they though (19.35)

[SAVOLA 1] (.....): Honestly, I'm not sure but he said sunflower seed 4.5 pet was 33.50, and 1.25 It was 14.25 and I said it's not clear yet (.....) has a friend at A101 though¹⁵⁰ (19.38)

[SAVOLA 3] - (.....): btw (.....)¹⁵¹ called just now he said congrats, well done

☺

a101 mania (19.52)

- (530) The correspondences in question show that SAVOLA and A101 held meetings to arrive at a decision to regularly list Yudum brand 1.25 lt and 4.5 lt sunflower seed oil products at the A101 stores, but the prices of the products were acquired by ŞOK and MİGROS employees even before the listing was implemented, with the statements in the documents suggesting that the source of this information was not SAVOLA. This correspondence points to the existence of direct channels of communication between the undertakings in addition to the indirect one. Moreover, in light of the legislation and the previous practice, whether the communication between the undertakings was direct or indirect has no bearing when assessing the anti-competitive objects or effects of the communication concerned.
- (531) At the same time, one argument intended to emphasize that the elements of a hub-and-spoke cartel were not established through evidence noted "*none of the findings could show that retailer A shared its sensitive information with retailer B with anti-competitive purposes and with full knowledge and consent that these would be shared with retailer C.*" However, having received from their joint supplier the most competitively strategic information of its competitor related to future prices or dates of price changes, the retailer could or should predict that this information must have come from its competitor and that if it informed the supplier of its own strategic information, that information would or could also be shared with its competitors in turn. Besides, it is specifically requested in many communications that this information be shared with its competitors.
- (532) In fact, certain statements which were included in detail under FINDING 1 and quoted below as an example basically show that retailers purposefully provided the supplier information on future prices and price change dates, which are clearly competitively sensitive, for the express purpose of *organizing the other retailers and ensuring full coordination* in the market.

- On 10.08.2018;
[MİGROS]-Migros (.....): Nice bro if the market increases, there will be no problem :)

¹⁴⁹ The statement is understood to refer to ŞOK Dry Foods Purchasing Manager (.....).

¹⁵⁰ The statement is understood to refer to ŞOK Dry Foods Purchasing Manager (.....).

¹⁵¹ The statement is understood to refer to MİGROS Dry Staple Foods Product Group Manager (.....).

*Meanwhile, shelf prices will rise on Tuesday
On Monday everybody should be organized and change on Tuesday*

- On 28.08.2018;
*[SAVOLA]-(.....): Şok 1 L Yudum will be 10.95 on the shelf tomorrow. Please change tomorrow(.....) (.....) ¹⁵² approved it.
There won't be any problems.*
- On 13.02.2019;
*[A101]-A101(.....): We can't do anything until Şok has been dealt with (...)
Here is the situation for 1.25
If Şok raises the price until Friday, we won't change the shelf [price]
When it raises, we'll do 2*1.25 offer with a price of 14.25”*
- On 16.01.2020;
*“[MİGROS]-(.....) Migros: (.....) good morning
We are organizing price change on Friday can you organize a101 and other parties?
It will be on shelf Friday
[SAVOLA]-(.....): Good morning OK*
- On 16.03.2020;
*[SAVOLA]-(.....): Good morning you defined the new recommended shelf prices didn't you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....) told me that it'll be done today we are organizing the market accordingly.
[MİGROS]-(.....) Migros: (.....) hi, ok there is no problem with us the prices will be updated tomorrow
a 101 is important for us you should organize them
[SAVOLA]-(.....): Ok we are organizing them for Saturday for the second price change
Is 5 L plastic defined if there is something to be updated I can help now
[MİGROS]-(.....) Migros: 5 L plastic is defined the price will be updated orders will be made next Monday*
- On 06.04.2020;
*“[CARREFOURSA]-(.....) Carrefour: We also raised it we changed to the prices you told
When they did not change we reduced
If you make them change, we'll change*
- On 20.04.2020;
*“[MİGROS]-(.....) Migros: You said here that they defined you didn't inform us “when you didn't change we canceled that part” we were not informed we showed price on Saturday the guys did not change today is Monday they say it will be reflected tomorrow we won't change it beforehand again you should know C4 shows the price before us then we'll change accordingly
Ok let's wait for tomorrow 5 L will be reflected to shelf
[SAVOLA]-(.....): We are organizing for the same day but the change is not made or there is a problem when the change is not made to the same price they also defined if only you had made it always on Friday ok we'll talk later*

¹⁵² ŞOK top manager (CEO)

- In the correspondence between BİM and SAVOLA employees on 03.02.2020
*“Hello,
I made it 43.95 we request your support so that there is no lower price in the market as of tomorrow.”*

(533) The content of the chats above prove that the supplier mediated the coordination and the cartel as the hub and the retailers consciously participated in the cartel as the spokes. Even though the undertakings claim otherwise in their arguments, significantly more correspondence than those exemplified above are included in the file, as can be seen in the relevant sections of the decision.

I.4.1.2.2. Arguments Claiming that Characteristic Features of the Market Were Ignored

- **The argument that in files discussing direct or indirect cooperation between competitors, competition law examinations must take into account the features of the market concerned, which was not done for the current file. The share of organized retail sales in total food retailing was 43% in Türkiye, which meant that the food-retailing sector was not suitable for a cartel agreement since a competition restricting agreement between the undertakings in the current market structure was not rational and maintainable. There was significant competitive pressure on organized retailers coming from non-organized food retailers as well, creating intense price competition in the market. The market under investigation was highly transparent since, despite the lack of homogeneity in the products sold, undertakings could easily monitor their rivals' prices due to the wide variety of visual and printed means of communication and the strong technological infrastructure of the undertakings themselves. In addition, owing to the high transparency in the market, prices and dates of price changes ceased to be competitively sensitive information for the undertakings. The market was not conducive to information exchange and the correspondences essentially showed purchase price negotiations with the supplier, proving that the undertakings basically acted with an aim to compete. Retailers were under pricing pressure by the suppliers that could be considered resale price maintenance and the statements in the documents on price changes included estimates and predictions which could be easily calculated from the structure and functioning of the market. In markets with oligopolistic dependencies such as the one concerned, profits above the competitive level could be easily generated as a result of purely parallel behavior, without any agreements between the undertakings. The parallel pricing practices observed could be explained by following the market leader or barometric price leadership. The investigation did not include any assessments concerning the products sold with discounts during the COVID-19 pandemic, focusing its assessments on certain selected products instead of assessing the whole product catalog. As a result, there was no evidence or assessments that concretely proved coordination between the parties in relation with the allegations of concerted practice.**

(534) In the 13th Chamber of the Council of State decision no 2016/4902 E. 2019/4247 K., which is a guiding decision in terms of assessing the arguments of the parties, the Supreme Court states the following:

“The Court of Justice of the European Union (CJEU), in its Dyestuffs decision, defines concerted practice as a type of coordination that is created against the risks of competition and consciously maintained by the undertakings, but does not reach the level of agreement; in the Sugar

decision it is noted that it is legal for undertakings to rationally keep in pace with the current and predictable practices of their rivals, but that all types of direct or indirect communication with the object or effect of affecting the market behavior of current or potential competitors, or disclosing their future decision to the competitors would be considered concerted practice and would therefore constitute an infringement of competition.

Where undertakings engage in parallel conduct due to the structure of the market, it must be determined if this parallel conduct is the result of a collusion or concerted practice, taking into account factors such as whether the undertaking has reasonable, logical grounds for the behavior, whether the conduct performed in concert with other undertakings is to the advantage of the undertaking, whether there is a connection between the undertakings, whether methods of direct or indirect communication between the undertakings are used, and whether facilitating practices such as information exchange are performed.

According to Article 4 of the Act no 4054, it is sufficient for agreements, concerted practices or decisions of associations of undertakings to have the prevention, distortion or restriction as their object, and if such an object does exist, the presence of or evidence for the disruptive effects of such behavior on the market will not be necessary. In other words, where infringement of competition by object can be established, it is of minimum importance to determine the content of the allegedly anti-competitive actions and conduct. In fact, the above-referenced provisions of the Act no 4054 and the grounds thereof state, in summary, that actions and behavior, which have as their object the restriction of competition, are prohibited.

The exchange of future competitively sensitive information that are definitely significant for competition with another undertaking competing in the market would raise suspicions of infringement of competition by object. As a matter of fact, both the T-Mobile decision of the CJEU and the doctrine note that information exchange between competitors that can potentially remove uncertainties regarding future behavior must be considered anti-competitive. If the competitively sensitive information in question involves future prices or related strategic information, infringement of competition by object should be clear without the need for any further scrutiny. Besides, while it is possible to argue that exchange of information between the undertakings does not have an effect on the market, it must be acknowledged that the exchange of competitively sensitive information in question would affect the future decisions of the undertakings, unless proven otherwise. This was evaluated as a presumption against the undertakings in CJEU's Polypropylene and Sugar decisions.

Evidence of communication refers to evidence which show communication between the undertakings concerning elements of the agreement through meetings, phone calls, etc., but which do not include any information on the substance of the agreement. Some of the most common examples of this type of evidence are those that show participation in a specific meeting or event as well as meeting notes and internal correspondence that include information showing that the matters related to trade secrets were discussed with the competitors, but which do not prove the collusion on their own. It is generally accepted that the indirect evidence with the highest conclusive force are communication evidence.

The other type of indirect evidence is economic evidence, which is divided into behavioral evidence that show the undertakings did not compete in the relevant market, and structural evidence which establish that the market structure is conducive to forming and maintaining collusion. One of the most frequent types of behavioral evidence in practice is price increases implemented close together or simultaneously. It is noted that the behavioral evidence have the highest conclusive power among all types of economic evidence.

On the other hand, there are various opinions concerning under which category facilitating conduct such as exchanges of information should be addressed, since they are not considered sufficient to prove an infringement on their own despite facilitating the formation and maintenance of agreements that restrict competition, and therefore evaluated among indirect evidence. Some authors evaluate such practices as evidence similar to communication, creating a third category of indirect evidence, while other studies address this evidence among the types of economic evidence. The important function of such evidence in terms of the standard of proof is to "fill the gap" between explicit collusion and oligopolistic dependency, allowing separation of illegal collusion from purely parallel behavior.

When the principles set up by the European Union (EU) competition law practices related to the substantiation of a cartel through the use of communication evidence are examined, in accordance with the presumption, the foundation of which was laid with the Sugar decision and which

was expressed in the *Polypropylene* decision, where there is evidence for the existence of communication between undertakings for the purposes of eliminating uncertainties about future behavior, it is assumed that the parties of the concerted practice in question that continue to operate in the relevant market would take the information they exchanged with their competitors when deciding their own conduct. Based on the assumption above, it is possible to prove the cartel without looking at the market effects, if there exists communication that restricts competition.

The EU authorities' assessment of the meetings and discussions between competitors often emphasize the object of the communication between the parties. In that framework, it is assumed that participating in a meeting involving the discussion of competitively sensitive issues such as price and sale strategy would have the object of restricting competition. Consequently, participation in a meeting to restrict competition is considered sufficient proof to show that the undertaking is a party to the cartel, regardless of whether it complied with the decisions taken during the meeting. In the *Rhône-Poulenc* decision, it is concluded that the participants of a meeting organized with the object of restricting competition would be unlikely to act independent of the information they acquired during the meeting and thus mutual communication should be assumed to have occurred, without the necessity of each of the undertakings participating in the meeting to have engaged in implicit or explicit exchange of information.

For concerted practice to occur, coordination or cooperation between the undertakings must result from a direct or indirect connection between the parties. The main element of connection between companies is information exchange. In the *Züchner* case which involves a complaint filed by the applicant in response to many banks asking the same commission fees for the wire transfer they wanted to make to Italy, the CJEU ruled that it was not absolutely necessary for a connection to exist between the companies to come to a conclusion of concerted practice, and that only information exchange between the companies could be sufficient.

A more sensitive approach should be adopted towards information exchange, in particular due to the idea that, in oligopolistic markets, increasing market transparency would decrease the intensity of competition. In markets involving a homogeneous product, customers may be sensitive to very small changes in prices. While it is possible for one company to act differently than its competitors to gain significant benefits, all companies implementing a similar strategy is mostly due to an exchange of information among them.

In this context, if the market shows oligopolistic tendencies, it can be presupposed that an exchange of information between the companies will lead to parallel conduct and thereby to anti-competitive effects. Therefore, actual exchange of information among the companies in order to eliminate the factors that prevent the emergence of oligopolistic dependency may be considered under concerted actions.

Since the EU practice lacks a sophisticated additional factors system such as the one in the US practice, EU competition law treats meetings and communication between companies very strictly. In fact, in the US, organization of a meeting between firms means nothing beyond the fact that the undertakings had the "opportunity to collude". However if these meetings and exchanges of information are found to have occurred just before the parallel conduct, their impact on a conclusion for concerted practice or collusion increases in both schools of practice.

The emergence of market behavior with the characteristics of competition infringements directly after the information exchange increases the conclusive power of the evidence concerning the connection between the companies to prove concerted practices. Companies which take part in such connections to exchange information can no longer find harbor in the oligopolistic dependency arguments. This is because connection between companies is the most important factor distinguishing parallel conduct from concerted practices. Oligopolistic dependency theory does not require companies to communicate in this way for the emergence of parallel conduct.

The connection established by the companies remove them from the protection of oligopolistic dependency arguments. This is also the interpretation of the European Commission (Commission) in the *British Sugar* decision. In that decision, British Sugar's arguments that due to the oligopolistic nature of the market and its own price leadership, it was unnecessary for the company to conclude an agreement with other producers to maintain prices and that market conditions did not allow price competition in any case; it was noted that the information exchange between the undertakings showed the companies' joint intent to coordinate their pricing policies.

Additionally, it is clarified that the CJEU's comments in the Pioneer and Züchner cases showed that concerted practices could be established through indirect evidence. The Commission's interpretation in the PVC decision is in parallel. According to the Commission, the decision in concerted practice cases must frequently be taken based on indirect evidence due to the nature of the infringement, with the occurrence of the events comprising the infringement deduced from proven facts through reasoning."

- (535) Similarly, the following points are made by the Supreme Court in the decision of the 13th Chamber of the Council of State dated 11.12.2019 and numbered E. 2015/3353, K. 2019/4244.

"Direct evidence in competition law refers to the types of evidence which clearly show that an agreement has been concluded between the undertakings or persons acting on behalf of the undertakings. Therefore, the specified evidence include information showing that communication was established between the parties in order to settle on the elements of the agreement (subject, relevant market, price policy, methods for allocating revenues, methods for monitoring and implementation, etc.) as well as information on the content of the communication. The most common types of direct evidence are documents which show the common will of the parties to perform a certain infringing act (written documents, electronic mails, minutes of a meeting, etc.) and written or oral statements by the parties to the infringement, revealing how the collusion was set up and implemented. The written documents and party statements in question are at the top of the evidence hierarchy since they can prove the collusion concretely and clearly. The main sources of direct evidence are the documents submitted within the framework of leniency programs which allow undertakings parties to competition infringements to cooperate with competition authorities in order to receive full immunity or reductions in fines, and the documents collected during on-site inspections conducted at the premises of the relevant undertakings.

Evidence at the top of the hierarchy reduce the risk of errors in identifying illegal acts and those responsible, thereby eliminating any doubts regarding the degree of standard of proof. In that framework, the statements of primary parties, records of communication and documents simultaneous with the meeting created by the cartel parties are called "strong evidence" and are considered the golden standard in cartels.

Another criterion in determining the conclusive power of the evidence is the time they are created. In fact, evidence created before the decision to launch an investigation was taken (simultaneous evidence) have more conclusive power than evidence created after the investigation is initiated, i.e. they are more conclusive than the statements of the investigation parties and third parties. Simultaneous documents are considered to have a high level of conclusive power since, in the first situation, evidence are created directly after the cartel meetings or discussions of the undertakings and thus the information concerning the communication is transferred immediately on the one hand, and on the other such documents are generated during the cartel meeting or communication (or shortly thereafter) without any concern that they could be used as evidence against the undertaking in the future. In that sense, "simultaneous documents" created during the time period when the violation occurred, i.e. before the launch of the examination by the competition authority, are considered to be primary evidence.

On the other side, the more detailed the collected evidence is, in other words, the more information they provide concerning factors such as the subject, parties and effected markets of the collusion, the more conclusive power they are considered to hold. As a matter of fact, documents with the aforementioned details are evaluated under primary evidence since they have direct conclusive power.

The question of whether a piece of document collected from another undertaking or created by a competitor can be used as evidence against other undertakings is a frequent subject of discussion under the EU competition law practice as well. In that context, the General Court's Cimenteries CBR/Komisyon decision states that a simultaneous document can be used as evidence, regardless of its creator, and the CJEU denied the appeal against the decision. Thus, notes taken by one of the undertakings attending a cartel meeting which records the participation of the others or e-mails created simultaneously with the meeting or collusion can be used as an instrument of proof. At this juncture, the conclusive power of the evidence collected from those undertakings which participated in the cartel meeting or agreement related to the infringement, in other words, from undertakings which were parties to the collusion, is considered to be higher than those collected from third parties. As such, evidence concerning the collusion does not necessarily have to be collected

during the inspections at each of the undertakings parties to the cartel, and that identification of this type of document at any of the competitors would be sufficient. At the same time, due to the secret nature of the cartels, it is clear that evidence should not be expected to be uncovered at each undertaking since otherwise those undertakings that are most successful in destroying evidence would be rewarded.

(...)

An assessment made with regard to the type of infringement, cartels are a typical example of per se infringements. As a matter of fact, since it is very clear that such infringements are anti-competitive, mere demonstration of the presence of a collusion is considered sufficient to prove the behavior, with no further need to show its effects on the market and no justification accepted.

Within the scope of the evidence collected in the present case, it is clear that the undertakings investigated have been parties to an agreement with the object to maintain sale prices, which is listed under Article 4.2(a) of the Act no 4054 among conduct that particularly prevents, distorts or restricts competition. At this point, the existence of the collusion between the parties is sufficient and there is no need to further demonstrate the market effects thereof; however, the preliminary inquiry report found that the pricing behavior was implemented with the participation of all of the parties, even if for a short time, thus exposing the object and the effect aspects of the agreement. As such, the deviating conduct of the plaintiff company in terms of its compliance with the agreement, despite being a party to the collusion, does not eliminate the existence of the infringement. In fact, this factor was taken into consideration as a mitigating circumstance in setting the fine, which was imposed within the bounds of the principle of proportionality. In light of all of the factors above, the relevant claims of the plaintiff have been disregarded.

- (536) Essentially, the points made in the detailed decision of the Supreme Court above are similarly valid in the assessment of the observations and findings of the current file. Since dozens of evidence for direct or indirect communication between the parties were found and the price changes specified in the relevant communication evidences were implemented, it has been established that collusive price movements have occurred between the undertakings which could not be explained by pure oligopolistic dependency or pursuing the price leader, and it has been established that the market was organized and prices as well as price changes were coordinated through suppliers.
- (537) Moreover, in many of the findings, the price changes implemented by BIM, which is the claimed price leader in the market, occurred later than those of its rivals. Similarly, correspondence included in many of the observations are about retail sales price changes concerning products whose “*purchase price*” has not yet “*changed*”. At that juncture, in light of the assessments of the 13th Chamber of the Council of State on the nature of the evidence quoted above, it becomes clear that the statements in the correspondence collected during the investigation, which suggest that the retail sale prices would be increased in collusion with the competitors, constitute primary evidence.
- (538) On the other hand, in addition to the direct and indirect exchanges related to future prices and dates of price changes, it has been shown that competitively sensitive information such as rivals’ costs and inventory status could be/have been provided by the suppliers, as well. Under the present transparent market dynamics, the exchange of this type of information could lead to the coordination of competitive behavior of the competitors, and thus to the formation of restrictive effects on competition, by decreasing the motivation of the parties to compete.
- (539) In fact, the Guidelines note that an exchange of information between undertakings would be assessed as a cartel if it has the nature of an agreement whose object is to fix prices and quantities, and that any exchange of information to facilitate the cartel’s operation by monitoring compliance with the rules agreed upon would also be

considered a part of the cartel. Moreover, undertakings' exchanging competitively sensitive information among themselves, such as future prices, outputs or sale amounts are also considered to be a cartel, since this generally aims to fix prices or quantities. In that context, in light of the courts court decisions and the relevant explanations in the Guidelines, it is not possible to agree with the argument that information on prices, or even on future prices and dates of price changes had lost its competitively sensitive nature in the specific market due to various reasons. Particularly in the FMCG sector, the importance of the price for the consumer and its effect on their choices are very clear. Therefore, price still holds its place as the most important competition parameter among retailers, which is a point emphasized by the undertakings in their arguments as well. In fact, as noted in FINDING 26, retailers frequently monitor their rivals' prices and make comparisons using various indexing applications. Under the circumstances, claiming that future pricing information has lost its competitively sensitive nature would essentially mean ignoring the features and dynamics of the market under investigation. On the other hand, even though it is noted that there is intense competition between the undertakings in the market, the Preliminary Report of the Fast Moving Consumer Goods Retailing Sector Inquiry shows that the margins of the supermarkets in the recent years have been in an increasing trend, both for private label and branded products. Lastly, despite the argument that retailers have been facing pricing pressure from suppliers which might be characterized as resale price maintenance, since the largest five national chain stores are operating with more than 30.000 stores throughout Türkiye and they generate a turnover of over (.....) billion TL, it is assessed that they command a significant buyer's and market power.

I.4.1.2.3. Arguments Concerning the Standard of Proof of the Information and Documents

The argument that the assessment of existence of collusion between undertakings investigated should not be based solely on the parallels/similarities in price movements, that establishing the presence of an agreement or concerted practice between undertakings required mutual communication between the parties aimed at restricting competition which should be demonstrated through clear and consistent evidence. The correspondence concerned were merely internal correspondence and many findings lacked sufficient evidence to fulfill the requirement of proving that the undertaking concerned was a party to an anti-competitive agreement beyond a reasonable doubt. Moreover, the standard of proof set out in recent court decisions such as *Henkel*¹⁵³ and *Sahibinden*¹⁵⁴ were not met. A finding of infringement should not be based solely on correspondence collected from competitors since these correspondences did not reflect the facts. Some parties were charged with infringements referring to the harmonization of the price movements despite not having their name directly mentioned in the correspondence, which was against the law. In light of the competitive nature of the FMCG retailing market, market structure and operation could explain the relevant undertakings' determination of their pricing behavior based on their competitors' prices. This should not be used as the grounds for finding an

¹⁵³ 13th Chamber of the Council of State Decision dated 06.07.2021 and numbered E. 2021/969, K. 2021/2654.

¹⁵⁴ Ankara 6th Administrative Court Decision dated 18.12.2019 and numbered E .2019/946, K. 2021/2625.

agreement and/or concerted practice between the undertakings, and the mere mention of an undertaking's name in the correspondences concerned should not be sufficient to prove infringement.

- (540) As demonstrated by the established practice of the Commission and the Board, and as affirmed by court decisions, the evidence collected during the inspections reveal the practices and actions of the parties of the present case, the purpose of these practices and actions, as well as how and in what framework the events occurred. As such, they need to be assessed not in isolation from each other, but as a whole. In fact, the General Court's *PVC II* decision notes that items of evidence should be regarded not in isolation but in their entirety.¹⁵⁵
- (541) Meanwhile, there is no doubt that documents acquired from one undertaking can be used as evidence against others. As noted in the Council of State decision quoted above, "*At the same time, due to the secret nature of the cartels, it is clear that evidence should not be expected to be uncovered at each undertaking since otherwise those undertakings that are most successful in destroying evidence would be rewarded.*" In that context, what is important about the evidence in terms of conclusive power is not to whom the document belongs or where it was collected, but what it means in terms of content and nature, as well as its relationship, if any, with other evidence.
- (542) As noted in various court decisions, it is not necessary for each piece of evidence about to cartel to meet the standard of proof in isolation from all of the others; instead, the evidence must be "clear, convincing and consistent" when assessed all together. Additionally, it is not sufficient for undertakings to provide reasonable justifications for various individual evidence to prove that no infringement has taken place, but they must establish a counter to the conclusion arrived as a result of the evidence in its entirety. For instance, since it is difficult to find primary evidence for the entirety of the period between the start and end of the infringement especially in complex cartels, the cartel is assumed to be continuous in case there exist objective and consistent evidence sufficient to conclude that the infringement was maintained during the period about which no evidence exists. Thus, the conclusive power and nature of the evidence collected do not need to be at the same level throughout the existence of the cartel¹⁵⁶. At the same time, in light of the fact that the evidence under the file includes documents which clearly show the existence of the infringement beyond any reasonable doubt and that price changes mentioned in the correspondences did demonstrably take place in many cases, and in light of the court decisions mentioned above, it is not possible to agree with the arguments concerned.

I.4.1.3. A101, BİM, ŞOK, MİGROS and CARREFOURSA's Arguments in Response to the Findings and Their Assessment

Arguments under FINDING 1 and Their Assessment

The argument that the information under FINDING 1 did not indicate a hub-and-spoke cartel but an instance of resale price maintenance and that the correspondence in the documents showing communication between the retailer and the supplier similar to those found in the Board's *Groupe SEB*¹⁵⁷ decision. The present case involved an effort to get to the lowest shelf price based on the

¹⁵⁵ Cfl *Limburgse Vinyl Maatschappij NV and others v Commission*, Para. 529.

¹⁵⁶ OECD 2006, *Prosecuting Cartels without Direct Evidence*, p. 117.

¹⁵⁷ Board decision dated 04.03.2021 and numbered 21-11/154-63.

sales policy, and should not be assessed to suggest that the retailers exchanged information with the supplier for anti-competitive purposes or based its commercial decisions on competitively sensitive data shared by other, competing retailers with anti-competitive purposes. The documents in question showed the resale price maintenance conduct of the supplier, which holds a strong position in the cooking oil market, and some documents were even used as the justification for the resale price maintenance claims concerning SAVOLA.

(543) In light of the many statements under FINDING 1 such as

- in the Whatsapp chat between MİGROS employee (.....) and SAVOLA employee (.....)
 - [MİGROS]-Migros (.....): "...on Monday everybody should be organized and change on Tuesday..." (10.08.2018),*
 - [SAVOLA]-(.....): "on Monday we are changing to 39.95 TL shelf price." (10.08.2018),*
 - [MİGROS]-Migros (.....): "Ok, we'll have changed as of Tuesday" (11.08.2018),¹⁵⁸*
 - [SAVOLA]-(.....): "Carrefour
We are waiting for you.
Şok 1 L Yudum will be 10.95 on the shelf tomorrow. Please change tomorrow. (.....) ¹⁵⁹ approved it
There won't be any problems.
I need your help bro" (28.08.2018),¹⁶⁰*
- in the Whatsapp chat between SAVOLA employee (.....) and A101 employee (.....)
 - [A101]-A101 (.....): "Will you be coming at 3 pm today? Hi
I wrote Şok's price to Mr (.....)
We have to get information till tomorrow noon
Otherwise we'll break the price" (11.02.2019)*
 - [A101]-A101(.....): We can't do anything until Şok has been dealt with
(...)
Here is the situation for 1.25
If Şok raises the price until Friday, we won't change the shelf [price]
When it raises, we'll do 2*1.25 offer with a price of 14.25"*

¹⁵⁸ The plea submitted by MİGROS concerning the price changes mentioned in this correspondence and the following one dated 28.08.2018 notes that the price movements for the Yudum sunflower seed 1 L product should be examined since the sticker price of the relevant product was raised to 10.95 TL on 14.08.2018, long before the information sent on the rivals. However, the correspondences dated 10.08.2018 and 11.08.2018 show that the date of 14.08.2018 actually coincides with the Tuesday when the MİGROS employee indicated that they would change their prices and the remaining competitors should be *organized* in parallel. In fact, according to the data submitted by MİGROS under the investigation, MİGROS really did raise the Yudum sunflower seed oil 1 L product to 10.95.TL from 9.95 TL on Tuesday, 14.08.2018; later dropped the price back to 9.95 TL on 18.08.2018 in response to ŞOK's failure to transition their prices; and finally, after SAVOLA informed MİGROS that it confirmed ŞOK's price change with ŞOK's CEO on 28.08.2018, MİGROS raised the prices of the product to 10.95 TL on 29.08.2018, simultaneously with ŞOK's İstanbul and İzmir stores.

¹⁵⁹ ŞOK senior manager (CEO)

¹⁶⁰ While ŞOK's plea explains that on 29.08.2018, which is stated to be the date of ŞOK's price transition in the document, the sale price of the Yudum sunflower seed 1 L product was 9.90, according to the data previously submitted by the undertaking this price was valid for Ankara, and the undertaking switched to a price of 10.95 TL at its İstanbul and İzmir stores on the date in question, simultaneously with MİGROS. As a matter of fact, the prices were changed at the Ankara stores three days later, on 01.09.2018.

(13.02.2019)

- in the Whatsapp chat between SAVOLA employee (.....) and MĪGROS employee (.....)

[SAVOLA]-(.....): Good morning you defined the new recommended shelf prices didn't you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....) told me that it'll be done today we are organizing the market accordingly.

[MĪGROS]-(.....) Migros: (.....) hi, ok there is no problem with us the prices will be updated tomorrow

a 101 is important for us you should organize them

[SAVOLA]-(.....): Ok we are organizing them for Saturday

(16.03.2020)

- In the Whatsapp chat between SAVOLA employee (.....) and CARREFOURSA employee (.....)

*"[SAVOLA]-(.....) Dude what is this is it a joke
Why did you reduce the price*

This month we cannot deliver 1 product, for your information you don't know about the market I guess then you will say "my margin is low"

You removed it in the virtual market also you should change.

On the day when I said that the guys changed it

[CARREFOURSA]-(.....) Carrefour: We also raised it we changed to the prices you told

When they did not change we reduced

If you make them change, we'll change

(06.04.2020)

- In the Whatsapp conversations of 6-7.04.2020 among SAVOLA employees as well as among SAVOLA-BĪM employees and SAVOLA-CARREFOURSA employees

"[SAVOLA 2]-(.....): Those are Carrefour

They are changing to 47.95 for 5 L

As you see they changed for 4 L"

(06.04.2020)

"[BĪM]-(.....): C4 did not change"

(07.04.2020)

"[SAVOLA 2] - (.....): Good morning.

(.....)¹⁶¹ wrote (.....).

There will be big trouble

(...)

[SAVOLA 2] - (.....): (.....) Is Crr changing the price tomorrow?

We have to call back (.....)¹⁶²

[SAVOLA 1] - (.....): He does not answer. (.....)¹⁶³

[SAVOLA 2] - (.....): He'll reduce the shelf price then" (07.04.2020)

¹⁶¹ BĪM Purchasing Director (.....)

¹⁶² BĪM Purchasing Director (.....)

¹⁶³ CARREFOURSA employee (.....)

“[SAVOLA 1] - (.....): Bim changed the price for 5 L plastic, define 47.90 for 5 L can today when the market changes next week we’ll change to 49.90. It is important. Bim says c4 did not change. I hope they will not reduce later. When you change to 49.90, they will make 48.90 but do it 47.9 now. Bro you did not respond bim will reduce tomorrow otherwise [CARREFOURSA] - (.....) Carrefour: I just saw it, We’ll do nothing if migros does not change” (07.04.2020)

“[SAVOLA 1] - (.....): Let’s call (.....) ¹⁶⁴ [SAVOLA 2] - (.....): What about 4 L they did not change those [SAVOLA 1] - (.....): They changed 4 L bro [SAVOLA 2] - (.....): No bro no I urgently want a picture please [SAVOLA 1] - (.....): Bro it changed why are you saying no” (07.04.2020)

“[SAVOLA 1] - (.....): You changed 4 L today didn’t you [CARREFOURSA] - (.....) Carrefour: Yes we did” (07.04.2020)

as well as the case-law and explanations presented above, it has become clear that prices and price changes were coordinated between A101, BİM, CARREFOURSA, MİGROS and ŞOK through SAVOLA concerning cooking oil products of various brands supplied by SAVOLA itself, in other words, the “*market was organized*”. Similarly, through SAVOLA once more, information on future prices, dates of price changes, periodic activities and campaigns were exchanged. The prices of those undertaking amongst the aforementioned and even among local chain stores which made discounts or did not raise prices immediately were intervened through SAVOLA to get them to “*fix*” their prices. If the prices were not corrected, compliance with the collusion was maintained by means of various punishment strategies including “*price breaking*” and/or making out return invoices to the supplier. Consequently, the undertakings in question were parties to an agreement or concerted practice aimed at maintaining retail sale prices of the aforementioned products, which also carried the features of a hub-and-spoke cartel. When the evidence collected under this finding and the information and documents included in the other findings are evaluated in light of the legislation and the case-law, there is little doubt that the legal and economic context and consequently the nature/substance of the practices characterized as cartels in the present file were not at all similar to the violation comprising the subject matter of the Authority’s Groupe SEB decision.

- (544) According to the communication evidence collected, drawing a differentiation between SAVOLA’s actions and practices towards the five large retailers which were determined to be in a collusion for the relevant product and towards the other retailer chains for whom there is no such determination, and the consequent inclusion of two

¹⁶⁴ CARREFOURSA assistant general director.

separate infringement charges for SAVOLA clearly would not remove A101, BİM, CARREFOURSA, MİGROS and ŞOK's liabilities stemming from the horizontal violation that was established through conclusive evidence.

- The argument that ŞOK terminated its supply relationship with SAVOLA on 13.01.2020 due to the pricing pressure exerted by the latter and stopped listing SAVOLA's products, only engaging in periodic sales for those products, known as in&out sales, SAVOLA made attempts to be listed in ŞOK shelves once more but ŞOK was not willing due to the pricing pressures, which can be seen in the correspondence of 21.10.2020, the phrase "unless you fix your prices" in the e-mail concerned was not about the prices of ŞOK's competitors but ŞOK's purchase price from SAVOLA, and therefore ŞOK should not be held responsible for the finding concerned and the aggravating factor for the fine should be withdrawn.

(545) In the correspondence between SAVOLA employee (.....) and MİGROS employee (.....) on 28.08.2018, SAVOLA employee (.....) says "We're waiting for you. Şok 1 L Yudum will be 10.95 on the shelf tomorrow. Please change tomorrow. (.....)¹⁶⁵ approved it. There won't be any problems". On 29.08.2018, images of ŞOK stickers were set to the MİGROS employee to show the price in question was implemented. In fact, as mentioned above, the sticker price became 10.95 TL at the İstanbul and İzmir stores of the undertaking on the date concerned, with the Ankara stores changing their prices on 01.09.2018.

(546) On the other hand, with the ŞOK price sticker of the Yudum sunflower seed oil 1 lt product for August 2018 collected and moreover, with the purchase and sale price information and sale quantity of the relevant product on the dates in question previously submitted by the undertakings, the plea shares the purchase-sale prices and sale quantity charts for the "Yudum Ziyafet Sunflower Seed Oil 1 Lt" product to show that the sales of the Yudum brand were not too high and they were sold via periodic campaigns known as in&out. Since the chart does not include data for the period before March 2019, an examination of it gives the impression that there were no sales before that date. In light of the ŞOK stickers attached to the correspondences and the sale price and quantity information previously submitted under the file for the Yudum sunflower seed oil 1 L, this chart for a separate product under the Yudum Ziyafet brand, whose sales apparently started after 2019, does not make much sense. In addition, while the argument claims that the phrase "unless you fix your prices" referred to the purchase prices from SAVOLA, the exact phrase is "unless you fix your prices in the market", and it is understood from many documents that "your prices in the market" portion of the phrase refers to the retail sale prices of the stores. Thus, it does not seem possible to agree with the argument that ŞOK should not be held liable within the scope of FINDING 1.

Arguments under FINDING 2 and Their Assessment

- BİM, A101, ŞOK and MİGROS's argument that market dynamics were established over the below-market sale prices of three products (potatoes, onions, tomatoes) within the framework of the regulated sale arrangement of the government, and the relevant meeting and the resulting price increases were due to the fact that it had become commercially impossible to continue with the regulated sales process and the public officials did not provide a response. The

¹⁶⁵ ŞOK senior manager (CEO)

realities of the time period for the alleged violation was being completely dismissed and the undertakings even sold below their purchase prices. The price hikes in question were due to a return to “normal” market prices, and the differences between the competitors’ prices were ignored¹⁶⁶.

- (547) The following statements in the Whatsapp conversation between A101 employees on 03-04.04.2019, included under FINDING 2, show that A101 and BİM acted to jointly fix prices of potatoes, onions and tomatoes:

“[A101 1] -(.....): What are Bim/migros/şok doing?

[A101 2] -(.....): “Mr. (.....)

We talked with Bim, they’re saying to wait until friday...,” and

We talked to Bim they say let’s wait until Friday”

(03.04.2019)

“[A101 2] -(.....): Mr. (.....) hello

We are changing the prices of regulated sale products all over Türkiye except İstanbul

Potato 5

Onion 4

Tomato 7 other products are free for İstanbul

We are planning to change at the beginning of next week I am informing the regions like that

[A101 1] -(.....): Why?

[A101 2] -(.....): We said we’d change the price

[A101 1] -(.....): To whom?

[A101 2] -(.....): Bim

[A101 1] -(.....): Let’s see first that they did it then we’ll write

[A101 2] -(.....): They are defining it today

We can define too

[A101 1] -(.....): OK, let’s define

We can inform the regions

- (548) Under FINDING 2, it is also shown that after A101 and BİM agreed to fix the prices of potato, onion and tomato products on the aforementioned dates, the determined prices were implemented with a few kuruş of variance. The behavior involving A101 and BİM’s joint increase of the prices of the discounted products in order to avoid the risks of competition during the relevant period is not a conduct that can be justified by referring to the conditions of the day. In fact, regulated sales started on the initiative of some municipalities and public institutions in February 2019, with an aim to bring under control the increasing fruit and vegetable prices. The prices were thus brought down to 2-3 TL. Regulated sales were concluded in April 2019. The relevant document suggests that A101 and BİM jointly set the new prices for the relevant products after the regulated sale period, with an increase of up to 150%. This assessment is confirmed by the phrases “*But be careful about the language,*” “*Don’t say competitor,*” “*Don’t say ‘the decision taken by the senior management,’*” “*Let’s write it carefully,*”

¹⁶⁶ While MİGROS and ŞOK also made various arguments and explanations for FINDING 2, it must be noted that this particular finding did not serve as grounds for the infringement allegations about the undertakings concerned.

included further in the relevant document by the A101 manager. In any case, the arguments concerned are not sufficient to change the conclusion.

- (549) On the other hand, A101's arguments concerning the finding in question claims several times that the correspondences and price changes were taken out of context, twice stating that "*the Investigation Report twisted the correspondences in question.*" Throughout the investigation process, the Investigation Committee, every member of which is made up of public officials, have acted in full compliance with the rules of material law, professional ethics and the due diligence and care required by public office, in order to ensure the public interest the lawgiver invested in the application of the Act no 4054 and in line with the powers and duties granted under the same Act. In fact, with respect to the finding in question, the Investigation Committee first presented the correspondence in the evidence collected during the on-site inspection, and afterwards went further to make investigations, confirming whether the price changes mentioned in the relevant correspondences were actually implemented. Moreover, this allegedly *twisted* piece of correspondence was collected during the on-site inspection conducted at A101's premises. One copy of it was given to the undertaking concerned, and the phrases in the correspondence were included verbatim, together with any spelling errors. Under the circumstances, these arguments cannot be accepted under any circumstances.

Arguments under FINDING 3 and Their Assessment

- A101 and CARREFOURSA's argument that the relevant correspondence did not involve a communication directly between A101 and CARREFOURSA and thus it did not have the necessary conclusive power to prove the occurrence of such a meeting. To the contrary, this type of information exchange never occurred between the competitors, and the price change by BİM implemented on 19.11.2019 was followed by A101 the next day and by CARREFOURSA the day after to get the prices to the level of the leading undertaking. Therefore the relevant correspondence did not establish the presence of an anti-competitive agreement, but instead showed that the competitors were following each other's prices using public sources.

- (550) The following statements in the Whatsapp conversation between CARREFOURSA employees included in FINDING 3 show that CARREFOURSA General Director (.....) spoke with the then CEO of A101 (.....), in which they shared the information that A101 would also be changing their prices:

(.....) They have changed today, A101 (.....)¹⁶⁷ is in fine fettle. They are changing now. (19.11.2019)

(.....) I'll have it checked right now. (19.11.2019)

It is 3.45 and 3.75 we are changing (19.11.2019)

We are checking a few more stores" (19.11.2019)

In fact, CARREFOURSA confirmed in its plea that the relevant persons got together for a social event on the dates in question. Since it appears that A101 and CARREFOURSA received information about each other's price changes as a result of a meeting between their managers, it is not possible to agree with the argument that the start of the sales of private label 1 L full fat dairy products for the same price on the same date and low-fat dairy product for the same price one day apart could be explained by information they collected from public sources to change their prices.

¹⁶⁷ Then CEO of A101.

Besides, in light of the above-mentioned court decisions, such contact between competitors with relation to competitively sensitive information such as planned prices or pricing strategies constitute an infringement of competition by object.

Arguments under FINDING 4 and Their Assessment

- The argument that producers generally notified the dates of purchase price changes beforehand in the examined sector; moreover, the dates of price changes for retailers were predictable and therefore any statement in the relevant documents concerning price increases were simply predictions. The main factor in determining sale prices is the cost of the suppliers and this is the reality of the sector, consequently it should be considered normal to sometimes observe simultaneous price changes in the market. This was simply the undertakings reflecting the increase in their costs to the shelf prices and such a business practice should not be seen as anti-competitive conduct without any direct proof. In addition, statements related to the organization of the market simply concerned the producers informing the retailers on purchase price changes and some firms failing to comply with those dates of purchase price changes, therefore the relevant documents were misinterpreted.

(551) Using evidence collected from two different undertakings and price movements, FINDING 4 shows that competing undertakings got prior information about each other's price transition decisions via direct or indirect contact; therefore it is concluded that they ensured coordination or, with the term used in the relevant document, "*market organization*" throughout the market in general regarding the products comprising the subject matter in the correspondences included in the relevant document. It is concluded that the phrase "*market is organized*" in the correspondences under FINDING 4 does not refer the purchase price of the retailers from the suppliers, and instead, it refers to the sale prices of the retailers, i.e. shelf prices. In fact, this was also confirmed by the price movements seen after the relevant date, and rendering the arguments of the undertakings to that effect unacceptable. In addition, in an integrated assessment of the findings and evidence, it is not possible to agree with the argument that the statements in the documents concerning the simultaneous price increases and market organization were reflecting an inference based on predictions or unilateral conduct by suppliers.

Arguments under FINDING 5 and Their Assessment

-BİM, A101, ŞOK and MİGROS's argument that the TİGEM director at the time of the correspondence in Finding 5 organized a meeting to discuss the measures to be taken in order to fight with inflation, prevent price increases and ensure an uninterrupted supply of products, where issues and the administration's demands concerning egg and pulse vegetable prices were expressed. The meeting was only about responding to the questions and demands of the administration, and its subject was the information that prices would increase as a result of the common supply/cost shock. The relevant prices discussed during the meeting were not reflected in the market. Private label sunflower seed oil was functionally homogeneous and the price similarity was a natural outcome of price monitoring and harmonization in oligopolistic markets. These products may be seen as full substitutes of each other with almost infinite cross price elasticity between them, and thus similar levels of prices were quite normal in an economic sense. Identifying hardcore infringement based on purely economic evidence should not be possible under the circumstances. Also, the

meeting in question did not involve any exchange of future prices, and there would be no difference between finding out BİM's price change from the field before it was reflected on the stickers and learning it the following day from the shelves.

(552) Both under FINDING 5 and under the other findings, the practices were not examined to see whether there was communication before the parallel pricing behavior, but to see whether the price movements specified in the correspondences collected during the on-site inspections showing direct or indirect communication or other contact between the parties related to prices and/or price changes did actually take place. Thus, the charges of infringement are based on the communication evidence itself. In that sense, and in contrast to some of the arguments, there was no special focus on certain products and product groups; instead, these products and product groups were identified by the evidence collected during the on-site inspections. On the other hand, the examination showed that a large majority of the pricing behavior envisaged in the relevant correspondences did actually take place.

(553) In that framework, it is understood from the internal correspondence of 01.04.2020 uncovered during the on-site inspection at MİGROS that a meeting was held at TİGEM attended by competing retailers, and the phrases "*Bim says 5 L sunflower oil will be 43 tl. C4 also says they need support there will be an increase*" in the correspondence show that expectations of price increases in sunflower seed oil were shared during the meeting. Five days after the correspondence above, on 06.04.2020, a conversation within CARREFOURSA includes the following:

"Mr. (.....), I've just had the prices of sunflower that BİM will raise tomorrow. It will rise from 36.90 to 39.90.

I talked to (.....).

We are organizing the price just now."

which show that BİM's prices were known before the change. One day after this correspondence BİM and ŞOK, and the next day A101 and CARREFOURSA changed their prices for 1, 2 and 5 L private label sunflower seed oil products to the exact same price. Lastly, these undertakings were followed by MİGROS, with a difference of 5 kuruş. Another point of interest with regard to this finding is the fact that the prices of the parties in question for each packaging were exactly the same before the change; moreover, throughout the period of 01.01.2018 – 15.09.2020, when the undertakings were requested to submit daily data, the sticker price charts of the competing undertakings for the daily prices of the products were almost indistinguishable. Taken together with the evidence of communication included in the finding and in light of the other evidence as well as the quoted court decision and explanations, the price movements in question cannot be justified by a purely oligopolistic dependency argument. Thus, it is impossible to accept the argument that the violation charges were based solely on economic evidence or price movements.

- A101 and ŞOK's argument that Finding 5 did not include any correspondence to which ŞOK was a party or was mentioned, and concerted practice charges should not be based solely on price movements. ŞOK had not attended the meeting held at TİGEM, and the reason the price increase was implemented on the same day as BİM was that ŞOK's field sales teams had seen the change in the stickers of the competing store the previous day and sent photos of them to the relevant unit. In 2020, BİM generally used to implement price transitions on Tuesdays and BİM store personnel changed the stickers on Monday evening,

which was known by everyone in the market monitoring the field¹⁶⁸. Thus the price changes were done by collecting public information. In addition, if ŞOK were not held liable for the claims under FINDING 5, the aggravating factor concerning the duration of the violation would be eliminated. None of the correspondences referred in connection with A101 included any e-mails or chat messages by A101, and neither did these correspondences mentioned A101. The claim that future pricing information was shared at the TİGEM meeting was baseless and there was no justification for the claims of infringement with regard to A101.

(554) Ankara 2nd Administrative Court decision dated 25.11.2013 and numbered 2013/233 E. 2013/1737 K., which is closely related to the subject, examined the request that the relevant Board decision be annulled based on the claim that there was no evidence suggesting that the relevant undertaking attended the meeting mentioned in the Board decision dated 06.04.2012 and numbered 12-17/499-140, that the occurrence of the alleged meeting was not proved beyond a reasonable doubt, that the undertaking was not a party to any alleged agreement, that the price increases in the documents were not implemented. However, the Court dismissed the suit.

(555) In the grounds for its decision, Ankara 2nd Administrative Court states the following:

"The substance of the conflict is whether the documents collected at Kars Çimento and Yurt Çimento during the investigation and the price changes implemented following the alleged meeting showed an agreement between the market actors.

The case shows indications that there were meetings between representatives from ten cement producers extensively active in the East and Southeast Anatolia regions, but there are no camera recordings or other records showing all of the representatives in Ankara and at the same place. However, when the information and documents in the file are taken together with the investigation and inquiry reports serving as the basis of the decision as well as the the submitted pleas, it becomes clear that there is sufficient evidence to conclude collusive action by the cement companies in violation of Article 4 of the Act no 4054 on the Protection of Competition, and therefore to impose fines on the undertakings concerned. Under the circumstances, imposing a fine at 2% of its gross revenues on the plaintiff, whose participation in the anti-competitive agreement is clear, is not considered illegal.

and dismissed the case. The plaintiff appealed the aforementioned court decision before the 13th Chamber of the Council of State, where it claimed that

"The court decision lacked sufficient justification, fines should not be based on the meeting alleged in the investigation report whose occurrence is doubtful, it could not be proven that the investigated parties were at the same place in Ankara on 29/03/2010, no employee of the plaintiff was in Ankara on that date, the demand for cement went up quickly in April, the inventory of the plaintiff was insufficient, it is economically unavoidable that prices go up where demand cannot be met, due to a simultaneous increase of foreign demand in April domestic sale prices were harmonized, all of these were based on economic grounds and were not done as the result of an agreement, the demand could not be met since the plaintiff was unable to work at full capacity due to its newly-established facilities and the prices became market standard, parallel conduct without communication cannot be penalized, violation should not be found due to the presence of economic and rational justifications, however the Board decision ignored all of these points, dissenting opinions attached to the Board decision explained all of these points well, the Board decision misevaluated the economic data"

however, the court decision concerned was found to be compliant with the law and was upheld.

(556) As framed above, when the evidence included in the relevant finding is taken into consideration as a whole in light of the other evidence collected during the investigation

¹⁶⁸ The plea includes photographs taken by ŞOK's field personnel from BIM stores on 06.04.2020 at 20:12.

and the court decisions and explanations quoted above, it is concluded that the undertakings acted jointly in violation of the Act no 4054, and therefore the relevant arguments cannot be accepted. Moreover, even if the arguments related to FINDING 5 were accepted with respect to ŞOK and A101, this would not have made a difference as to the conclusion about the amount of the administrative fines to be imposed on the relevant undertakings, either in terms of the nature and scope of the violation, or in terms of its duration.

Arguments under FINDING 6 and Their Assessment

- A101, ŞOK, MİGROS and CARREFOURSA's argument that the relevant correspondence did not include any statements to show cooperation among competitors, and that the only reason for the price change was the supplier's switching its prices on the same date by publishing a price list, which increased their costs. On the first days of such price changes largely similar prices were formed, partly due to the influence of the leader players; however, the parallel structure in the market later disappeared again once the discounts, inserts and promotions kicked in.

(557) The e-mail under FINDING 6, sent by ŞOK employee (.....) to ŞOK Trade Director (.....) including the statements

“ ...

I completed the study about the price changes you wanted. We can talk about it. ...” (30.04.2020)

shares an Excel table in the attachment with the old and new sale prices of various products and notes that *simultaneous* price changes could be implemented with *competitor orange* for the Ace Klasik 2 L product, with *competitor blue* for Molfix Nappies, with *competitor orange* and *C4* for the Bingo Soft Concentrated 1440 ml product which was not listed by the other competitors; that purchase price for these products could be changed on May 20 by taking support for 15 days; that simultaneous price changes could be implemented with *competitor orange* for the private label Mintax soft soap, which is not listed at *competitors blue* and *red*, without suffering any margin losses. In addition, the finding also shows that, with the exception of the private label soft soap, there were exact or very similar increases in the prices of the products specified in the table concerned, implemented on the same or very close dates. Moreover, in light of the statements in the document suggesting that the purchase price changes would be implemented at a future date, it is not possible to agree with the argument that the cost increases were reflected to the shelf prices on the same or close dates.

- CARREFOURSA's argument that suppliers put sale price pressure on the retailers to have them implement their purchase prices and thus fixed their resale prices since the latter did not want to act first and were wary of the first-mover disadvantage; that the price increases were implemented due to supplier pressure. ŞOK's argument that the supplier verbally shared that the other retailers had been convinced to raise prices since ŞOK generally resisted such demands of price increase, however there was no consensus between ŞOK and its competitors on the matter of price increase. The information shared by the supplier mostly involved speculative information intended to convince, which ŞOK employees used as predictions in their internal correspondence. With respect to the claim of the finding, ŞOK did not share any information with its supplier in any of its correspondence and there was no correspondence in which

it received competitors' prices from the supplier, either. ŞOK only used the public information from the suppliers that was announced to all parties in its internal correspondence with an aim to monitor the price movements of the competitors for its own price transitions, which was completely natural.

- (558) As emphasized in the court decisions quoted before, a more sensitive approach must be taken towards information exchange, especially in oligopolistic markets, based on the idea that increased market transparency would reduce the intensity of competition. While it is possible for one company to act differently than its competitors to gain significant benefits, all companies implementing a similar strategy is mostly due to an exchange of information among them. If the market shows oligopolistic tendencies, it is expected that an exchange of information between the companies will lead to parallel conduct and to anti-competitive effects. In that context, documents under the relevant finding show that retailers used direct or indirect communication to implement pricing changes on the same or very close dates for those products included in the table, whose costs (purchase price) had not yet increased, at least for some of the companies. Thus, arguments and justifications suggesting that suppliers put price pressure to get purchase prices implemented, that they tried to fix the resale prices of the retailers and that retailers were forced to increase their prices due to that pressure are not found acceptable.

Arguments under FINDING 7 and Their Assessment

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the demand for increasing the product price came from the supplier but the actual increase was postponed until May 2020 as a result of negotiations. Shelf prices for Sensodyne products were increased because of an increase in costs and because the competitors increased their prices as well. There was no direct or indirect communication between the competitors about the price increase, and the relevant document did not include any evidence to prove that the supplier shared competitors' information either. The question of how and by what means the information in ŞOK's internal correspondence had been acquired was speculative. When its prediction that the competitors would increase prices did not come true, the undertaking sacrificed its own margins to return to the older prices, and assuming this was a punishment showed the extent to which market structure was ignored. The price change in question was not a form of punishment. BİM had the power to determine prices independent of its competitors so it was impossible to punish BİM by implementing the same prices with it. Instead, the prices were brought to BİM's levels in order not to lose the perception of the cheapest store.

- (559) Correspondences included in FINDING 7 state that MİGROS, coded as *Competitor M* and A101, coded as *Competitor A*, would increase their prices from 16.95 TL to 18.95 TL, with BİM, which was coded as *Competitor B*, would increase its price on Tuesday (on 05.05.2020). The correspondences also noted that ŞOK got the internal approval to change the price from 16.95 TL to 18.95 TL as of 04.05.2020. The chain continued on 06.05.2020 asking for approval to return the price in question to 16.95 TL, since BİM failed to transition their prices. Lastly, after BİM's implementation of the price increase in question, approval was requested to raise the price to 18.95 TL once more. In line with the statements in these documents and the price movements shown to have occurred during the time period in confirmation of the statements in question, the conclusion concerning the existence of a collusion between the undertakings with

relation to retail sale prices and punishment strategy implemented to maintain the collusion is unchanged.

Arguments under FINDING 8 and Their Assessment

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the increase in prices were entirely caused by passing the increases in purchase prices on to the shelf prices and that these increases were simultaneous because the suppliers generally declared the purchase price changes to all retailers on the same date. The undertakings received pressure from the supplier if they failed to change their prices. The statements in ŞOK's internal correspondence were actually estimates, and that on the specified date no transition was implemented for the price of the Eti Popkek product sold by MİGROS.

- (560) The correspondence referenced under FINDING 8 shows that new prices for the Oreo product would be *implemented on the shelves* on 13.06.2020 *simultaneously* with *Competitor A* (A101) and *Competitor B* (MİGROS), and that similar changes for various Eti Popkek products would be *implemented on the shelves* together with A101 and MİGROS on 15.06.2020, which is the following Monday. Meanwhile, BİM, coded as *Competitor B*, would *transition* its prices on Tuesday 16.06.2020. The table included in the relevant finding reveals that the price movements for the products in question were mostly carried out exactly as noted in the correspondence concerned. Thus, the arguments submitted do not change the conclusion that FINDING 8 is an indication of the extent of the coordination and collusion on prices, set up and maintained between the undertakings via direct or indirect contacts.
- (561) On the other hand, when the findings and evidence are assessed as a whole, it is not possible to agree with the claim that the statements in the relevant correspondence concerning competitors' prices and price changes were merely ŞOK's estimates.
- (562) It has been observed that MİGROS and CARREFOURSA's prices for Eti Popkek were around 1.15 TL on the date concerned and there were no price changes on that date for this product. However the findings concerning the Oreo product in particular, constitute strong evidence for the claims of violation.

Arguments under FINDING 9 and Their Assessment

- A101, BİM, ŞOK, MİGROS and CARREFOURSA's argument that the shelf prices increased due to the increase in the costs of the products listed under FINDING 9 and the consequent price increases of the other competitors, and that the conduct under the relevant finding was not anti-competitive.

- (563) When the documents, information and statements under FINDING 9 are assessed in conjunction with the findings and evidence under the file, it is not possible to agree with the relevant argument, especially in light of the conclusion that the relevant price increases, implemented simultaneously by all of the competitors for a large number of products and using the same amounts and rates, were coordinated through contacts/communication either directly, or indirectly through the common supplier.

- ŞOK's argument that the price changes for the products in FINDING 9 were not done on the same date as the other stores but on 24.06.2020, therefore the collusion claims did not reflect the reality. The statements in the internal correspondences were merely estimates, and that exchange of information based on estimates would not show collusion for products not even mentioned in the correspondence.

(564) Despite the argument that the relevant document is an internal correspondence, not only this does not make a difference in terms of the conclusive power of the document, but the document in question makes it evident that the details of the dates for the competitors' price changes were received from the supplier, and that the information in the correspondence were not merely internal estimates, as shown by the statements ". . . *We are informed that Competitor M will update on Monday, Competitor A will do it on Monday with 90% certainty, Competitor B will update the prices on Tuesday for the overlapping five products. . .*" In light of the existence of this document which shows information exchange concerning competitors' future prices and dates of price changes, it is concluded that the price transition occurring a few days later than the competitors would not have an effect in terms of the liability due to the alleged infringement.

Arguments under FINDING 10 and Their Assessment

- A101, ŞOK, MİGROS and CARREFOURSA's argument that the correspondence in FINDING 10 was an internal correspondence that did not prove there was communication between undertakings, that the shelf price change for the Haribo Şekerleme Sanayi ve Ticaret Ltd. Şti. (HARİBO) candies could be explained by the cost increases and that a price change that can be explained solely on economic grounds cannot be characterized as anti-competitive. The types and weight of the products compared were different, as were their rates of increase and prices, therefore it would not be appropriate to compare the relevant products. The price increases for the common products sold were also different. The statement "*organized on the same date as the market*" was an estimate for incoming national price transitions when taken together with the demands from the supplier for price increases, and the term "*organize*" was misunderstood since it was impossible for the retailers to organize price changes.

(565) When taken together with the fact that retailers implemented the price transition for various Haribo brand products on the same day (01.07.2020), the phrase "*Haribo: Organized on the same day as the market. Only the shelf price will be changed.*" in FINDING 10, included in the e-mail sent by Şok Purchasing Category Manager (.....) to senior manager (.....), indicates that the goal of organizing retail sale prices and pricing changes was once again achieved successfully. On the other hand, with respect to the products compared, the similar/same pricing for the relevant weight of Haribo candies and the simultaneous pricing changes makes it impossible to accept an argument focusing on the differences between product weights and/or price increase rates.

(566) It is clear that the phrase "*Organized on the same day as the market*" in the correspondence included under FINDING 10 did not refer to the suppliers' sale prices to retailers (retailers' purchase prices), but to the retailers' shelf prices, as explained directly in the relevant document as well. In fact, this was established through the price movements observed after the relevant date and therefore the undertakings' arguments in this vein are unacceptable. Besides, even though this would not make a difference for the final assessment, the emphasis on "*only shelf prices*" in the document shows that there was no purchase price (cost) increase at the time, and the e-mail sent by HARİBO included in ŞOK's plea states that a "*change in recommended shelf prices*" would be implemented on 10.07.2020, with a request to define the list (purchase) prices to the system on 15.07.2020.

Arguments under FINDING 11 and Their Assessment

- A101, BİM and ŞOK's argument that internal correspondence under FINDING 14 could not be evidence for coordination among competitors since the price increase in question was caused by the supplier's announcement of a national price increase, i.e. the increase in the costs of the product. Since the price change dates of the competitors were known in the market, the statements in the document were merely estimates. Rather than a hub-and-spoke cartel aiming to push the prices beyond the competitive level and to excessively increase profits, the assessed conduct should be seen as the implementation of the resale price maintenance provisions in the agreements between the stores and Şölen Çikolata Gıda Sanayi ve Ticaret A.Ş. (ŞÖLEN), which is a very large, strong and national supplier. The pricing changes did not occur as specified in the table included in the finding, therefore claiming an infringement was completely baseless.

- (567) When the phrase "... *The supplier says that Competitor B will update the price on Tuesday*" and statements concerning the price changes of the other competitors are assessed as a whole in light of the price movements examined within the scope of the finding and the assessments thereof, other findings and evidence collected under the investigation and the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination related to prices and price movements between A101, BİM and ŞOK during the relevant period for the products in question by means of direct or indirect communication. The arguments above, including the fact that some of the price movements specified in the document did not occur or occurred a few days later, does not change the conclusion.
- (568) On the other hand, as mentioned before, in line with the findings collected under the present investigation, the Board took the decision dated 26.04.2021 and numbered 21-23/271-M to launch an investigation on various undertakings operating as producers/suppliers, which were previously not under investigation as mentioned in the argument, and ŞÖLEN is one of the investigated parties.

Arguments under FINDING 12 and Their Assessment

- A101, ŞOK, MİGROS and CARREFOURSA's argument that there was no direct correspondence between undertakings, that there was a parallel increase in sale prices in line with purchase prices. Statements in the relevant correspondences concerning the organization of the market were related to the purchase prices of the suppliers, and these statements actually referred to a likely price change in the market due to the fact that Eti Gıda San. ve Tic. A.Ş. (ETİ) was a strong supplier which generally increased its sale prices throughout the whole market simultaneously. The prices implemented on 12.08.2020 were recommended sale prices suggested by the supplier.

- (569) The following statements are in the correspondences included under FINDING 12:
- "... Meanwhile, if Eti can organize the market for sales prices, I will share the form for price changes today."* (time: 13:30)
- "Price change form for 4 Eti products that are not listed in Competitor B is attached for your information."*
- We request your approval for changing the purchase and sales price together with Competitor A and Competitor M tomorrow..."* (time: 14:46)

In this context, it is evident that “*organizing the market*” refers to the fact that retailers had arrived at a common will concerning the relevant shelf/sticker price change through their common supplier. When the statements in the correspondences, price movements examined under the finding and the assessments thereof are considered as a whole in light of the other findings and evidence collected under the investigation and the court decisions and explanations noted above, the conclusion concerning the finding in question remains unchanged.

Arguments under FINDING 13 and Their Assessment

- (570) - **BİM, ŞOK, MİGROS and CARREFOURSA’s argument that BİM did not share any pricing information, that there was no direct or indirect agreement concerning prices, that the findings at hand only showed BİM’s price leadership, and that BİM served the function of a “barometric price leader” with its price increase for the Doğanay turnip juice 1 L product. MİGROS changed its prices 2-3 days after its competitors, and the price increase under the relevant finding was caused by the increase in the product cost. The price transition was due to the supplier’s announcing a new price list, and the statement in the documents was a prediction that the market would follow BİM’s price transition rather than an information exchange with competitors. It was quite natural for other undertakings to follow BİM due to oligopolistic dependency, and shelf prices lost their competitively sensitive status since they were monitored daily and the technological infrastructure allowed pricing changes to respond to the competing undertakings on the same date. Therefore, relevant correspondence did not include any information or documents proving collusion between the undertakings.**
- (571) The information and documents under FINDING 13 show that an internal correspondence by ŞOK, dated 08.09.2020, provided information about Competitor B (BİM) increasing its prices for the Doğanay turnip juice 1 L product and noted that the whole market would implement those prices the next day. In fact, the statements in the document are supported by the fact that the exact same price increases were implemented by BİM on 08.09.2020, by ŞOK and CARREFOURSA on 09.09.2020, and by MİGROS on 11.09.2020.
- (572) When the documents, information, statements and price movements under FINDING 13 are assessed as a whole in light of the other findings and evidence and the court decisions and explanations noted above, it is concluded that the finding in question indicated coordination between CARREFOURSA, BİM, MİGROS and ŞOK during the relevant period concerning prices and price changes for the aforementioned products through direct or indirect communication. The arguments above, including the fact that some of the price movements specified in the document did not occur or occurred a few days later, does not change the conclusion.
- (573) Specifically for FINDING 13, assuming that the argument presented with relation to the finding was accepted for BİM, since it implemented the first pricing change, this would not affect the conclusion reached for the undertaking in question, either for the nature and scope of the infringement, or for the period taken into consideration when setting the administrative fine.

Arguments under FINDING 14 and Their Assessment

- **A101 and ŞOK’s argument that the supplier of the relevant product asked for a price change to be implemented on 26.09.2020 throughout the market with an e-**

mail dated 24.09.2020, therefore it was predictable that the competitor would change its prices on the same date. The information exchange concerned did not fall under collusion, and the purchase price increases in the relevant popcorn product were passed on to the shelf prices. Thus, it would not be correct to make an assessment based on shelf prices.

- (574) When the statements “...*We are going to apply the shelf prices as 2 tl together with Competitor A tomorrow...*” and “...*The sales price is arranged with A for tomorrow...*” included in the correspondence and the price movements examined under the finding are assessed as a whole in light of the other findings and evidence and the court decisions and explanations noted above, it is concluded that the finding in question showed coordination between A101 and ŞOK during the relevant period concerning prices and price changes for the aforementioned products through direct or indirect communication, and therefore it is impossible to agree with the arguments submitted by the parties on this matter.

Arguments under FINDING 15 and Their Assessment

- (575) **A101, ŞOK, MİGROS and CARREFOURSA’s argument that the price increases for the relevant Redbull products were due to the increases in purchase prices and that undertakings changing their prices were monitored and the competitors similarly raised their prices, which was a consequence of the market realities. Red Bull Gıda Dağıtım ve Pazarlama Tic. Ltd. Şti. (REDBULL) was the leader in the energy drink market and the resale prices were implemented over the recommended prices due to the pressure exerted by the dominant supplier in the market, since, in case of non-compliance with the recommended prices, REDBULL could stop supplying product to the retailers. The phrase “*competitor A and we are changing tomorrow*” in the relevant correspondence was merely a prediction based on the similar dynamics of A101 and ŞOK. Making such an estimate had become easier since MİGROS and CARREFOURSA completed their price transitions before. Nevertheless, the fact that the price changes had happened at the exact same level was not a decisive and sufficient criterion for claiming collusive action at the retail level, and an infringement of this type should not be alleged¹⁶⁹ unless direct communication between the parties could be proven.**
- (576) The phrases “*The market has changed the shelf prices for Redbull products today. (...) our bargaining for purchase price still continues.*”, “...*M, C and local supermarkets have changed. Only competitor A and we are changing tomorrow...*” in the correspondences indicate direct or indirect contact between retailers concerning the coordination of retail prices and price change dates for Redbull products. In fact, as seen in Table 33, A101, CARREFOURSA, MİGROS and ŞOK made the exact same increase in the prices of Redbull brand products on very close dates, i.e. the old and new sale prices for all of the overlapping Redbull products, including those mentioned in the document, were exactly the same.
- (577) In that framework, when the statements in the document and the price movements examined under the finding are assessed as a whole in light of the other findings and evidence and the court decisions and explanations noted above, it is concluded that the relevant finding showed the existence of coordination between the undertakings concerned during the relevant period concerning prices and price changes for the

¹⁶⁹ A101, ŞOK, MİGROS, CARREFOURSA

aforementioned products through direct or indirect communication, and that it is not possible to agree with the arguments submitted by the parties on this matter.

Arguments under FINDING 16 and Their Assessment

- (578) **CARREFOURSA's argument that the finding assessment was conducted based purely on price changes despite the document not mentioning it, and that the reason of its price transition on the relevant dates was the supplier implementing a new purchase price around 1 month earlier, increasing the costs. It did not implement a price increase that month since market studies showed that competitors did not increase their sale prices despite increasing costs of the relevant products and the price competition was maintained. The price increase was implemented one day after market studies determined that the competitor changes its prices on 19.11.2020. ŞOK's argument that the relevant correspondences in the finding basically showed the supplier trying to convince ŞOK to change its prices, that MİGROS previously changed prices for the product in question and there was no direct communication between the parties. The products were incomparable due to their net weight, the price change dates were not the same, and they also learned from this report that the information provided by the supplier was not correct. MİGROS's price increase involved a different product than those offered by competing undertakings and was implemented 1 day before the internal correspondence of ŞOK. MİGROS's argument that the price transition at the relevant period was due to the increase in the purchase price being passed on to the sale price, and the prices implemented at the time were the recommended sale prices suggested by the supplier.**
- (579) A detailed examination of Table 34 shows that, while there was a level of differentiation for Pril brand rinse aid products, the price of the Pril Gold Gel Degreaser 900 ml was increased from 29.90 TL to 36.90 TL on 19.11.2020 by ŞOK and MİGROS, and on 20.11.2020 by CARREFOURSA, exactly as stated in the document. Therefore, the prices of the relevant product were changed on the same exact date and at the same rate by ŞOK and MİGROS, with CARREFOURSA following them one day later with the same price increase.
- (580) In that framework, when the documents, information, statements and price movements in FINDING 16 are assessed together with the other findings and evidence and the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination related to prices and price movements between CARREFOURSA, MİGROS and ŞOK during the relevant period for the products in question by means of direct or indirect communication. The arguments above, including the fact that some of the price movements specified in the document did not occur or occurred a few days later, does not change the conclusion.
- (581) Specifically for FINDING 16, assuming that the arguments presented noting that CARREFOURSA's name was not mentioned in the document and it raised its prices one day later in response to the increase in competitors' prices, this would not affect the conclusion reached for the undertaking in question, either for the nature and scope of the infringement, or for the period taken into consideration when setting the administrative fine.

Arguments under FINDING 17 and Their Assessment

- A101's argument that it only acted according to the rules of the oligopolistic market it was operating in by passing the cost increases on to the shelf prices and following MİGROS's price transition. The phrase "*Migros will change tomorrow*" in the correspondence concerned was merely a prediction of the steps a prudent merchant would take as a result of the increase in purchase prices and costs. MİGROS's argument that its price increase involved products different than those offered by CARREFOURSA and for the same type of products, MİGROS's new prices were 1 TL cheaper than those of CARREFOURSA; therefore, the prices implemented were not aligned and MİGROS's price change during the relevant period was merely passing the increase in the purchase prices on to sale prices. The prices implemented at the time were the recommended prices suggested by the supplier and, in some cases, were even lower than the recommended sale prices. CARREFOURSA's argument that the document under the relevant finding did not include CARREFOURSA's name, that the reason for the price change on 21.11.2020 was the supplier's announcement that it would transition to new purchase prices on 23.11.2020 and the resulting increase in costs. Only the sale prices were updated on 21.11.2020 since it was a weekend, and the purchase prices were also entered into the system on Monday, 23.11.2020. Discounts and promotions were implemented for the relevant Dardanel brand products in the later periods to increase competition.

- (582) The statement "*Mr (.....) there is a change in dardanel to be valid as of Sunday migros is changing tomorrow margin is not decreasing*" under FINDING 17 leads to the conclusion that there was direct or indirect contact between retailers concerning the price change dates of Dardanel brand products. New prices for Dardanel brand tuna varieties in Table 35 were implemented on 21.11.2020 by CARREFOURSA and MİGROS, which is the date following the correspondence itself, and one day later (the following Sunday) by A101. In addition, as detailed in the relevant table, nearly all¹⁷⁰ of the products that overlapped between the competing undertakings had the exact same old and new prices, and thus price transitions.
- (583) In that framework, when the documents, information, statements and price movements in FINDING 17 are assessed as a whole in light of the other findings and evidence as well as the court decisions and explanations noted above, it is concluded that the finding in question indicated coordination between A101, CARREFOURSA and MİGROS during the relevant period concerning prices and pricing changes for the aforementioned products through direct or indirect communication, and that the arguments above does not change the conclusion.

Arguments under FINDING 18 and Their Assessment

A101's argument that the relevant correspondence did not include any statement on direct or indirect communication between competitors, that it was very natural for one company to follow the price increases of the other competitors in a market where the prices tended around the same level and were repressed, that the price change was first implemented by the other competitors and that A101 monitored the change through public sources to follow the market

¹⁷⁰ For only one of the products in the table MİGROS implemented a price that is 1 TL lower than the prices of A101 and CARREFOURSA.

leader on the next day. BİM's argument that the situation observed for the tablets and private label bleach products was not an anti-competitive conduct aimed to push the prices above the competitive level and excessively increase profits, instead it was the barometric price leadership behavior common in the relevant markets. BİM's price increase in the Fairy Washing-up Liquid and Fairy Platinum 33 tablets served the function of "barometric price leadership," such a price leadership was a frequently observed conduct that is unavoidable in the competitive process. BİM decided to increase its sale prices completely independently due to the increases in costs. The price levels and transitions for Ariel Powder Detergent 1.5 kg and some other products could be explained by the resale price maintenance and most favored customer provisions in the agreements and practices signed between large suppliers and stores. ŞOK's argument that the phrase "*simultaneous price increase*" in the relevant finding, related to the Fairy brand washing-up detergents, was simply an estimate suggesting the competitors would respond to BİM's price increase. An examination of the dates of the price transitions showed that ŞOK's estimate did not bear out with MİGROS and A101 increasing their prices on different dates than those estimated. The Fairy brand products in question were too different from each other to bear comparison in spite of the allegations of coordination related to them. The phrase "*prices for other products will increase simultaneously*" in the internal correspondence was an estimate caused by the misleading and manipulation of the supplier. The products in question were supplied by different undertakings and thus information exchange through the suppliers would be impossible. The only reasonable explanation for the price changes on the relevant dates were oligopolistic market dependency and a motivation to follow the leader. CARREFOURSA's argument that the reason for the price increases for the relevant products was the announcement of a new pricing list by the supplier and the resulting cost increases. The new purchase prices of the supplier entered into the system but the sale prices were not raised in order to remain competitive in the market since market studies did not observe a corresponding price increase by the rivals. P&G put pressure to switch to new shelf prices and maintain resale prices, and as a result of the resale price maintenance pressure exerted by P&G, which has significant power in the market, CARREFOURSA was forced to change its prices in case P&G potentially refused to supply products, since its market power was low. MİGROS's argument that there was nothing in the relevant finding to suggest that the information concerning MİGROS's price increase came from MİGROS itself. MİGROS passed on the purchase price increases to its sale prices and took into consideration the recommended prices of the suppliers when setting prices. MİGROS changed its prices after its competitors for most of the products examined, after observing their prices and this information in the correspondence could have been suggested by the undertaking's employees or it could be a piece of information whose source was not MİGROS and was suggested by P&G just to get ŞOK to switch to the new price since there was no findings to show that MİGROS provided such information to P&G, to ŞOK or to other retailers. MİGROS's price changes occurred on different times in contrast to the correspondence. MİGROS was not in an anti-competitive agreement or concerted practice with its competitors to increase the prices of the relevant products, directly, indirectly or through P&G.

- (584) The e-mail sent by the ŞOK Category Expert (.....) to Trade Director (.....) and (.....) on 02.12.2020 includes the following statements:
“Competitor red increased the prices of Fairy washing up liquid and Fairy Platinum dishwasher 33 tablets. Depending on your approval, prices for other products will increase simultaneously with competitor blue and orange tomorrow. They will be registered in the system in light of the approval.”
- (585) This correspondence within ŞOK, dated 02.12.2020, states that there was a price increase in competitor red (BİM) for Fairy Washing Up Liquid and Fairy Platinum 33 tablets, and that price increases would be implemented the next day for the products mentioned in the document, following the approval of the ŞOK trade director, simultaneously with competitor blue (A101) and orange (MİGROS). In fact, as detailed in Table 36, following BİM's price increase for the relevant two products on 02.12.2020, the prices of numerous Fairy branded products were raised by A101, CARREFOURSA and ŞOK on 03.12.2020, and by MİGROS on 04.12.2020. Lastly, CARREFOURSA and ŞOK changed the prices of another group of Fairy products on 05.12.2020. In that framework, old and new prices and thus the rates of the price changes were exactly the same for the competing undertakings in a majority of the overlapping products.
- (586) In addition, in terms of the other products mentioned in the document, simultaneous or successive price changes implemented on various days were shown to be mostly the same for the overlapping packages/net weights. As an example, for the Ariel Powder Detergent 1.5 kg, which was offered by all of the undertakings, BİM, CARREFOURSA and MİGROS raised the prices simultaneously from 15.95 TL to 16.90-16.95 TL on 09.12.2020, followed by A101 and ŞOK, respectively on 10.12.2020 and 11.12.2020, who raised their prices from 15.95. TL to 16.90 TL. CARREFOURSA and MİGROS implemented simultaneous price increases in Alo and Ariel products on 09.12.2020 where old and new prices were exactly the same for the overlapping net weights; A101 followed these undertakings on 10.12.2020 by implementing the exact same price changes for the overlapping products.
- (587) Considering the evidence for direct or indirect communication between the competitors for the relevant products and the existence of largely similar price changes in the overlapping packages/net weights implemented simultaneously or successively on dates very close to the aforementioned evidential correspondence, it is concluded that these price increases on the same/close dates cannot be explained purely by an oligopolistic market structure, by oligopolistic dependency or by estimates of the competitors' behavior. Besides, a large number of additional evidence for communication concerning many different products were also uncovered within the scope of the file.
- (588) The argument that some of the products in the documents were incomparable with each other since they had different packaging/net weight is found to be groundless, as well. For instance, according to the information presented in Table 36, Fairy brand washing up liquid was sold by ŞOK in a 750 ml packing for 10.65 TL, while its competitors A101, BİM, CARREFOURSA and MİGROS sold the same product in 650 ml packaging for 9.25 TL. Thus, the unit price for both products is 14.2 TL for the liter.
- (589) In that framework, when the documents, information, statements and price movements in FINDING 18 are assessed together with the other findings, evidence and the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination related to prices and price transitions between the five leading competing retail chains during the relevant period for the products in question by

means of direct or indirect communication. The arguments above, including the fact that some of the price movements specified in the document did not occur or occurred a few days later, does not change the conclusion.

Arguments under FINDING 19 and Their Assessment

- **A101, ŞOK and MİGROS's argument that the campaign mentioned under FINDING 19 was carried out unilaterally as a result of a rational decision, with the support of the firm. There was no assessment under the finding about how the information exchange between the competitors took place and on what grounds the price promotion was seen as anti-competitive conduct that would harm the final consumers. The claims of coordination in periodic campaigns and activities through direct and indirect contacts stemmed from a general lack of knowledge on how campaign and activity prices were formed within the market, and claiming competitors conducted joint campaigns by exchanging information on campaigns and activities was not in line with the market dynamics. The information "*Competitor A will apply the activity*" in the relevant correspondence was taken from A101's Instagram page which is a public source, and MİGROS's activities were also monitored from the social media announcements and notified to the higher management¹⁷¹. Therefore, the claims in this context did not indicate an infringement of competition.**

- (590) The documents show that ŞOK had information concerning three separate one-week campaigns, organized for three consecutive weeks, with relation to various Algida, Carte d'Or and Magnum brand products, where it was stated that its competitors would take part in these campaigns/activities, even before the activities started. The issue of note is that, when taken together with the other evidence collected within the framework of the investigation, there seems to be lots of direct or indirect contact between competing retail chains concerning future prices and price changes in the form of increases or periodic discounts, which comprise the type of information with the highest strategic importance from a competitive standpoint. That price promotions would not harm the consumers is beside the point. This is because the competitors are expected not to inform each other on their pricing behavior either way.
- (591) In this respect, when the documents, information and statements in FINDING 19 are assessed as a whole in light of the other findings and evidence as well as the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination between the undertakings in question during the relevant period concerning prices and dates of price changes through direct or indirect communication, and that the arguments above does not change the conclusion.
- (592) Assuming that the relevant finding would not have an anti-competitive object or effect since the document in question involved planned discounts, this would not affect the conclusion reached for the undertaking in question, either for the nature and scope of the infringement, or for the period taken into consideration when setting the administrative fine.

Arguments under FINDING 20 and Their Assessment

- **A101 and BİM's argument that no information on old and new prices were provided for UNILEVER products, that there was no evidence showing a**

¹⁷¹ While this claim was put forward by ŞOK, it was impossible to determine the dates on which the screenshots of the campaign images submitted were taken and therefore no concrete information on the dates of the screenshots was provided.

simultaneous rate of increase for prices which had been trending at the same level previously, and that even if such information were provided, an assessment must be made on whether prices which were first increased and then reduced fell under the resale price maintenance or most favored customer clauses. During the time of the relevant correspondence, there was an increase of 10% in the prices of the UNILEVER products on average, which was passed on to the shelf prices by A101. However, they were later brought to the previous levels since the competitors did not implement the price change, harming A101's brand perception. Thus, A101 waited for the price leader to complete its price transition throughout Türkiye, as a result of which A101 punished itself rather than the competitors during the period it failed to increase its prices.

(593) The following statements are included in the document concerning the Whatsapp chat between A101 Executive Board Member (.....) and A101 Category Director (.....) on 15.09.2020:

(.....): Bim did not change lever prices.

We had problem in transfer.

We cannot get return from L

The prices did not change in Ömerli warehouse

(.....): How? I don't get it The change was supposed to be yesterday wasn't it?

Why didn't BİM change?

Didn't we notice it yesterday? I don't understand

(.....): We did but it was not solved.

Bim put our region as an excuse.

(.....): I don't understand it did it put it as an excuse that the prices did not change in one region?

Didn't the prices change in only one region?

Why didn't you tell me we should have talked

(.....): It did not flow in the warehouse feeding Bim's neighborhood.

(.....): Are we sure that it is only one region?

(.....): Let me check by taking the average of yesterday's sales.

(.....): When did we define?

(.....): We defined it on Friday for Monday.

(...)

Shall we withdraw the prices

We think they will change on Friday

(.....): We are withdrawing them after half an hour. Let's withdraw the common products with bim after exactly 30 minutes unless you hear from me.

(594) According to the document, A101 and BİM were aware of the price increases each other planned to implement for UNILEVER products on 14.09.2020 and 15.09.2020 respectively. The statements in the document show that A101 entered the new prices to the system on Friday, 11.09.2020, to take effect on Monday, 14.09.2020. However, due to a technical issue, the new prices were not transmitted to A101's stores in the Ömerli region and BİM refused to implement the price increase on 15.09.2020 on those grounds. Thus, it is clear that A101's failure to implement the price transition for a single region was sufficient reason for BİM to postpone its own price increase, and the statements in the rest of the document show that A101 responded to the situation by immediately dropping the prices of the overlapping products to their previous levels.

(595) There has been no change in the opinion that the relevant document is an example of the contact through direct or indirect means between the relevant undertakings with an

aim to coordinate shelf/sticker prices and price transitions, as well as of the punishment strategy that they immediately implemented in order to ensure continuing coordination.

- (596) While the argument states that A101 punished itself and not its competitors during the period it did not increase its prices, since this discount directly targeted those products which were listed in common with BİM, which did not increase its prices on the specified date, and since these were the only ones among the price-transitioned UNILEVER products that were brought back to their previous levels, it is impossible to agree with the argument.
- (597) In this respect, when the documents and statements in FINDING 20 are assessed as a whole in light of the other findings and evidence as well as the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination between the undertakings in question during the relevant period concerning prices and dates of price changes through direct or indirect communication, and that the arguments above does not change the conclusion.

Arguments under FINDING 21 and Their Assessment

- **A101's argument that in order for the correspondence under FINDING 21 to constitute an anti-competitive information exchange, there had to be communication between BEYPAZARI and A101 suggesting that if A101 increased its prices BİM would increase theirs as well and it had to be proven that A101 had increased its prices on these anti-competitive grounds. However, the relevant finding did not include any such assessment. BİM's argument that, as made obvious by the documents in the relevant finding, BİM did not respond positively to BEYPAZARI's price increase demand and implemented the requested increase around three months after the correspondence. The correspondence relating to ÇAĞDAŞ's prices involved the sharing of public shelf price information with the supplier for purchase price negotiation purposes and BİM did not ask the supplier to intervene with ÇAĞDAŞ. There was no hub-and-spoke cartel intending to push the observed prices above the competitive level and to excessively increase profits, and the content of the documents showed a negotiation for purchase prices between BİM and BEYPAZARI, which is a large national supplier.**

- (598) The correspondence includes the following statements:

*"(.....) beypazari: Mr. (.....)¹⁷² good morning. The competitor made 4.25 today for your information
hello mr (.....) depending on your word I had it changed to 4.25 this morning in the competing firm. I request that you make it 4:25 tomorrow morning otherwise we cannot take the prices to this level again for your information. thank you."*

The correspondence shares a shelf sticker, apparently from A101 based on the fonts and shelf colors, noting that the competing firm raised the prices to 4.25 TL on BİM's "word" and asks BİM to also transition to this price. In the same context, there has been no change in the conclusion that the price increase implemented by the competing chain store was coordinated by BEYPAZARI, on the request of BİM¹⁷³. It is not possible

¹⁷² BİM employee (.....)

¹⁷³ In fact, BEYPAZARI is among the parties of the *ex officio* investigation launched by the Board in accordance with the findings collected under this investigation, with the decision dated 26.04.2021 and numbered 21-23/271-M.

to agree with the arguments in light of the clear statements included in the documents and the price sticker shared.

- (599) In this respect, when the documents and statements in FINDING 21 are assessed as a whole in light of the other findings and evidence as well as the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination between the undertakings in question during the relevant period concerning prices and dates of price changes through indirect communication, and that the arguments above does not change the conclusion.
- (600) On the other hand, the correspondence between BİM employees as well as between BİM and BEYPAZARI employees intended to correct the prices for BEYPAZARI brand mineral water implemented in Ankara by ÇAĞDAŞ during the relevant dates, and especially the statements "... *Beypazarı's owner Mr (.....) swears with a slang word using his own name too that there is no one who buys at a lower price than us ☺ he will send me certain information and corrected price...*" and "*Çağdaş's price was fixed*" between the BİM employees constitute another example for the type of conduct by large retail chains under investigation, intended to "fix" the prices of those undertakings among the local chain stores that implemented discounts or did not yet increase their prices by "*intervening*" in those prices through the supplier – as reflected in various documents included under FINDING 1. On the other hand, it is clear that the statements in the documents do not indicate any kind of purchase price negotiations.

Arguments under FINDING 22 and Their Assessment

- (601) **MİGROS's argument that the relevant document only mentioned its name and thus the finding that it was in communication with its competitors was based on an assumption. It was concluded that it required its competitors to transition their prices to comply with ŞÖLEN's request to change prices, insisting on the transition to ensure its prices were not above those of its competitors. Afterwards, it raised its prices once ŞÖLEN gave assurances that the other competitors would implement price transitions as well, but later lowered them again when BİM refused to raise prices so as not to sell the products at higher prices than its competitors. BİM's argument that the issues encountered in product delivery when BİM failed to implement the requested increase showed that BİM did not intend to transition its prices and resisted this change. However, it was forced to increase prices when products were nearly sold out in many regions. The observed prices were not due to a hub-and-spoke cartel intended to raise the prices above the competitive level and to excessively increase profits. Instead, they may constitute an application of the resale price maintenance or most favored customer clauses against BİM. BİM faced ŞÖLEN's anti-competitive pressure to fix resale prices and thus complied with ŞÖLEN's demand, and the lack of any competition infringements allegations against ŞÖLEN led to an unrealistic interpretation that the anti-competitive coordination was between BİM and MİGROS.**
- (602) As mentioned before, it is hard to agree with the argument that BİM and MİGROS, two large retail chains with a total of around 10 thousand stores and high turnovers, would face pressure from suppliers to change their prices. On the contrary, the file includes various documents showing the pressure retailers sometimes exerted on the suppliers.
- (603) On the other hand, the statements, "*I made a request because they did not change the shelf price. Migros made a discount again because they did not increase Luppo prices. We wanted them to increase the price immediately due to this vicious circle. They will*

change tomorrow” in the document under FINDING 22 show that instead of a pricing change due to the ŞÖLEN’s pressure, the competing retailers contacted each other through ŞÖLEN to ensure coordination concerning the retail sale prices and price transition dates for the branded products of the relevant manufacturer. In this respect, when the documents and statements in question are assessed as a whole in light of the other findings and evidence as well as the court decisions and explanations noted above, it is concluded that the relevant finding indicated coordination between the undertakings in question during the relevant period concerning prices and dates of price changes through indirect communication, and that the arguments above does not change the conclusion.

- (604) At this juncture, it should be noted that ŞÖLEN is one of the undertakings about which the Board launched an *ex officio* investigation with the decision dated 26.04.2021 and numbered 21-23/271-M, in accordance with the findings of the current investigation.

Arguments under FINDING 23 and Their Assessment

-A101, BİM and ŞOK’s argument that the relevant correspondence was not about exchanging future price information but about complaining from the volatility or stability of competitors’ prices since the most important factor in shelf prices were purchase prices. Documents under the finding did not show BİM sharing any pricing information and Fairy products were sold for the same price at MİGROS and BİM both before and after the price increase. Prices remaining at the same level indicated contracts with provisions such as resale price maintenance or most favored customer clauses. MİGROS gave its pricing decisions on its own and independently of its competitors, either implementing the price increases for the products mentioned in the documents before the competitors due to the increase in the purchase price or refusing to raise the prices at all.

- (605) It was concluded that FINDING 23 was insufficient to prove that A101, BİM and MİGROS were in a coordination concerning the P&G products in the correspondences, set up through an information exchange, either directly or indirectly via P&G.

Arguments under FINDING 24 and Their Assessment

- BİM’s argument that prices of all of the products on the market were monitored by conducting field studies to allow negotiation concerning purchase price transitions. Its dialog with the supplier involved efforts aimed at preventing or delaying purchase price transitions during the relevant period. The purchase price for the relevant product was completed on 07.01.2020 and BİM shouldered all of the difference in costs by implementing the shelf price transition six days later on 13.01.2020. The price change for Pepsi branded products that was decided internally was later discarded due to the competitive prices in the market. MİGROS’s argument that while numerous on-site inspections were conducted both at MİGROS and at the premises of the suppliers, correspondence similar those under the relevant finding were not found during any of these inspections. CARREFOURSA’s argument that the documents did not include a statement indicating infringement of competition by object, that there was no price change for private label dairy products on 07.01.2021, and that the price change was implemented seven days later on 14.01.2021. The price change in question was due to the increases in costs, which were not immediately passed on to the prices. Instead, prices were raised after market studies showed that the competitors increased their prices.

- (606) While the information and documents included under FINDING 24 were not essentially used as the grounds of infringement charges for any of the undertakings, they are important for assessing the information, documents and evidence under the other findings and for shedding light on the structure of the fast moving consumer goods retailing sector, which is found to be problematic in terms of competition law under the current situation.
- (607) This is because the documents under the relevant finding include statements pertaining to the pressure leading large supermarket chains put on suppliers to coordinate shelf prices and/or price transitions in the market and to get the *broken* prices in the market *fixed*, as well as statements showing that, as a punishment strategy, they could reduce not only sale/shelf prices but also purchase prices if the market did not transition to the new price and/or the *broken* prices were not *fixed*.

Arguments under FINDING 25 and Their Assessment

- **BİM's** argument that the document assessed under FINDING 25 concerned the decision-making process for price transition or net weight change of an exclusive product for BİM, manufactured at a special net weight, due to cost increases. It mentioned the need for a purchasing committee decision since the net weight would change. A projection of the predictions and estimates prepared as an outcome of the field studies conducted by BİM were provided when informing the purchasing committee. The relevant prices were merely market predictions, and the table included under the finding did not have any information on BİM's prices. The price transition the supplier conveyed to the competitor was about the purchasing prices, and the title "REPLY TO BİM" actually concerned an action planned by the competitors against BİM's pricing policies. The pricing information about okra prices was public, and that the undertaking did not take part in an infringing dialog. **MİGROS's** argument that it did not have competitively sensitive information about its competitors, that the information included on MİGROS's behalf in the alleged exchanges were not correct, and that the information included on its behalf was in no way provided from within the undertaking. **CARREFOURSA's** argument that the undertaking having a common goal of infringement with any other undertaking could not be proven. UNILEVER's efforts aimed at pleasing and providing competitive advantage to BİM, which is its largest customer with significant buyer power, could be observed. The product listing of 04.05.2020 sent by UNILEVER to CARREFOURSA had a purchasing price of 35.15 TL and a recommended shelf price of 43.90 TL for the 5.5 kg Omo products, which, even if sold with a margin of 5% over the purchase price, would require a shelf price of 40.05 TL. Thus, the document revealed BİM's cost advantage.

- (608) Similar to FINDING 24, the information and documents provided under FINDING 25 are not intended to be the grounds of an allegation of infringement for any of the undertakings. However, the information and documents under this finding show that supermarket chains engaged in activities intended to procure competitively sensitive information of the rivals from the common suppliers, including future prices, dates of price transitions, discounts and activity campaigns, costs and inventories. In that framework, it is concluded that the relevant activities intended to artificially make the market more transparent in order to eliminate the strategic uncertainty in the market, which is one of the essential dynamics of competition.

- (609) When the information, documents and evidence under the other findings are taken into consideration, and in line with the assessment that such activities should be strictly avoided in the FMCG sector in order to establish an effective and healthy competition environment, both at the wholesale and the retail level, it is concluded that a letter of opinion should be sent all investigated suppliers and retailers advising them that they act in consideration of the observations in this decision and the explanations in the Guidelines with regard to the exchange of competitively sensitive information belonging to their competitors in their own market as well as the competitors of those parties with which they have vertical relationships.

Arguments under FINDING 26 and Their Assessment

- **BİM's** argument that monitoring competitors' prices and making comparisons were normal parts of the business and competition environment and should not cause any competition infringement concerns. None of the documents involving **BİM** in the relevant finding included statements concerning intervening with "*index breaking*" firms. **MİGROS's** argument that the phrase "*objection to prices*" in the e-mails referred to an internal objection mechanism for the marketing department to check the correctness of the data provided to **MİGROS** by independent research companies or **MİGROS** store employees concerning shelf prices of the competing stores, after their assessment within the company, with an aim to determine the most competitive, optimum prices in the market. **CARREFOURSA's** argument that the price information for competing products collected from the field were used to determine its own shelf prices, and the relevant document did not include any phrases or statements indicating **CARREFOURSA** was acting in concert with its competitors to infringe competition by object. Therefore, the evidence in question should not be considered an indication of an anti-competitive agreement, either on its own or in connection with other evidence.

- (610) Documents under FINDING 26 show that the investigated parties generally monitored each other's shelf prices daily and compared those prices via index tables, which were prepared with high frequency for a large number of products. When assessed in connection with the findings collected during all of the examinations and observations conducted under the investigation, it was concluded that the undertakings used these index tables to identify "*index breaking*" competitors and took action against them by demanding supplier intervention, by getting information on when the price would be *fixed*, and by "*breaking prices/index*" until the prices are fixed. In other words, the aforementioned index tables were used to monitor the continuing coordination between the investigated undertakings, which was set up through anti-competitive direct or indirect contacts.
- (611) On the other hand, competitors can obviously procure and monitor each other's prices through public resources and take position accordingly as a reasonable and legitimate market practice, provided they avoid any violations of the kind set out under this investigation, and thus any direct or indirect contact which would lead to the coordination of competitive behavior, either by object or by effect.

I.4.1.4. SAVOLA and P&G's Arguments and Their Assessment

I.4.1.4.1. SAVOLA's Arguments and Their Assessment

- The argument that the particular structure of the FMCG sector and the cooking oil category was ignored, and each relevant market/category should have been

separately analyzed instead of assessing the FMCG sector as a whole. Just market share data was used in those categories where only the relevant undertakings were active, with no evaluation conducted concerning the cooking oil sector and its dynamics. Unlike the rest of the FMCG sector, SAVOLA operated in a commodity market that is dependent directly on raw materials, whose most important feature was short inventory times. Thus, prices were formed largely by the price of the raw materials and the supply of raw materials was dependent on uncertain external factors such as the climate. Products intended to meet very different needs and produced from very different raw materials via different production and supply chains were collected under a single FMCG umbrella. Trying to collect retailing under such a single umbrella ignored the specific supply, pricing and customer dynamics of each product market.

(612) As shown by the practices of the Board and the Commission [which were approved by the established case-law of the courts], the application of Article 4 of the Act no 4054 does not require to make a relevant market definition in each file¹⁷⁴. As is the case for the present file, there is no obligation or requirement to define the relevant market in investigations concerning those types of infringements by undertakings which are, regardless of the market definition, clearly anti-competitive by object, including cartels.¹⁷⁵ In that framework, defining the relevant market was not considered necessary, since it would not affect the findings under the file, or the conclusions reached by the assessments of these findings. This is because the documents under the file clearly show coordinated behavior between undertakings. Moreover, since undertaking conduct with characteristics of naked and hardcore violations under the Act no 4054 and its secondary legislation is considered to be an infringement of competition by object, it is not necessary to make a separate assessment as to the presence of market effects before deciding that a violation has occurred. Therefore, analyzing the market structure in sunflower seed oil and olive oil would not change the outcome.

- The argument that the cooking oil market was a fragmented one with high household penetration and price sensitivity, where brand dependency and market barriers are low. Retailers were important and strong players in the category, thanks to their own high penetration and to the strong market share of their private label brands. Thus, were regularly able to put pressure on the suppliers to provide product independent of all cost/pricing conditions. The share of the sales to the five chain stores (A101, BİM, ŞOK, CARREFOUR, MİGROS) within SAVOLA's total share was constantly increasing, and taking part in the sales channel concerned, with its constantly increasing number of stores, was very important and difficult for suppliers.

(613) While this argument does not change the assessment that SAVOLA acted in coordination with the retailers to commit an infringement aimed at increasing SAVOLA's cooking oil prices, the buyer power of the discount markets and chain stores have been taken into consideration as a mitigating factor when setting the administrative fines imposed on SAVOLA.

- The argument that any discount store could have sufficient buyer power to significantly affect the balance and profitability tables of a company, that

¹⁷⁴ Thus Article 101(.) of the Treaty on the Functioning of the European Union

¹⁷⁵ Case AT.39574 — Smart Card Chips, para 214.

discount markets and national chain stores could use their market power as buyer power against their suppliers, and that SAVOLA received supplementary invoices drawn by retailers many times due to the pricing policies of discount markets and national chain stores. When chain stores observed other markets selling a product at cheaper prices to consumers, they tended to drop their sale prices to or below the level of the sale prices of other stores regardless of SAVOLA's list prices for the relevant products. These markets then drew supplementary invoices for SAVOLA at the amount of the discount they implemented, without reducing their own profit margins.

(614) As explained in the Preliminary Report for the Fast Moving Consumer Goods Retailing Sector Inquiry, discount market and chain stores hold significant market power together. However, this does not justify SAVOLA serving as a mediator for the indirect information exchange between the relevant stores concerning future prices and price transition dates. Moreover, as shown by numerous documents, in addition to mediating the coordination between the retailers, SAVOLA has also intervened directly in the sale prices of some retailers and fixed the resale prices of the retailers in question. However, the buyer power of the discount markets and chains stores have been taken into consideration as a mitigating factor when setting the administrative fines imposed on SAVOLA.

- **The argument that cooking oil was a commodity market with low profitability that is dependent on raw oil costs, and the nature of business required increases in costs to be passed on to the list prices as fast as possible. Products in the cooking oil category were affected by climate conditions, global pandemic and the unpredictable dynamics of the supply markets which caused changes in production costs. More than 75% of the costs were raw oil expenses, and any changes directly affected the listing prices. Pricing at the global commodity markets and exchange rate changes also played a decisive role in costs. The pandemic conditions and the devaluation pushed raw oil prices upwards, with the increase in packaging costs and funding expenses affecting total costs. Unlike the other FMCG categories, producers in the cooking oil category - including SAVOLA - generally operated with low profitability, and SAVOLA's net profits from domestic sales had been continuously dropping since 2017.**

(615) There are no allegations of infringement solely involving the increase in SAVOLA's own list prices. There is no doubt that suppliers can increase their list prices within the natural flow of business life, due to increases in costs. However, as clearly seen from the documents under FINDING 1 in particular, it has been observed that SAVOLA ensured coordination of prices and price transitions between retailers for cooking oil products and helped them exchange competitively sensitive information on future prices, dates of price transitions, periodic activities and campaigns.

- **The argument that the finding of a hub-and-spoke cartel required three criteria involving supplier A providing retailer X its future pricing information with an aim to affect the market behavior of competing supplier B, retailer X transferring this pricing information to B, and B setting its own pricing policy using this information, which it believed (was fully convinced) belonged to competing firm A, and that the undertakings must show intentional and common will to act in concert.**

(616) The large number of correspondences under the file, some examples of which are provided below, show that the retailers intentionally used SAVOLA to ensure

coordination between them, and that SAVOLA, in turn, ensured the information flow between the retailers, with all of the parties benefiting from the increased prices as a result of the price transition. For instance, the correspondences collected include the following statements:

- On 10.08.2018;
*[MIGROS]-Migros (.....): Nice, bro if the market increases, there will be no problem :)
Meanwhile, shelf prices will rise on Tuesday
On Monday everybody should be organized and change on Tuesday”*
- On 13.02.2019;
*“[A101]-A101(.....): We can’t do anything until Şok has been dealt with (...)
Here is the situation for 1.25
If Şok raises the price until Friday, we won’t change the shelf [price]
When it raises, we’ll do 2*1.25 offer with a price of 14.25”*
- On 16.01.2020;
*“[MIGROS]-.....) Migros: (.....) good morning
We are organizing price change on Friday can you organize a101 and other parties?
It will be on shelf Friday
[SAVOLA]-.....): Good morning OK*
- On 16.03.2020;
*[SAVOLA]-.....): Good morning you defined the new recommended shelf prices didn’t you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....) told me that it’ll be done today we are organizing the market accordingly.
[MIGROS]-.....) Migros: (.....) hi, ok there is no problem with us the prices will be updated tomorrow
a 101 is important for us you should organize them
[SAVOLA]-.....): Ok we are organizing them for Saturday for the second price change
Is 5 L plastic defined if there is something to be updated I can help now
[MIGROS]-.....) Migros: 5 L plastic is defined the price will be updated orders will be made next Monday*
- On 06.04.2020;
*“[CARREFOURSA]-.....) Carrefour: We also raised it we changed to the prices you told
When they did not change we reduced
If you make them change, we’ll change”*
- On 08.02.2021;
*“[SAVOLA 1]-.....): Did migros answer, A101 is asking (...)
[SAVOLA 2]-.....): I talked to them, Wednesday morning is certain*

- The argument that claiming SAVOLA benefited from the price transitions was a rather superficial interpretation of the market, which could only result from ignoring the dynamics of the cooking oil market. SAVOLA actually suffered losses in the channels of the discount markets and chain stores since it could

not implement the new list prices with the relevant retailers and was forced to pay the supplementary invoices drawn by the retailers. If SAVOLA had intentionally participated in certain organizations with these channels and retailers in line with its interests, it would be expected to show higher profits but this was not the case. SAVOLA faced overdue payments, supplementary profit invoices, turnover loss invoices, and supplementary price invoices in these markets, in particular, suffering losses from the sale it made to the five retailers facing hub-and-spoke cartel allegations (A101, BİM, CARREFOURSA, MİGROS and ŞOK) while it profited from the sales it made to those retailers who do not face cartel charges. This fact alone clearly showed that participating in the infringement would be of no benefit to the undertaking, and that this cartel allegation was neither meaningful nor in line with the ordinary flow of life.

- (617) It is not claimed that every attempt at price transition through SAVOLA was successful, and neither is it required to show harmful outcome to arrive at a conclusion of violation concerning an agreement or concerted practice that is clearly restrictive of competition by object. Moreover, it is observed that SAVOLA made quite a large number of attempts/contacts for that purpose and there were successful retail shelf price transitions through SAVOLA. While it could have suffered more losses if the contacts in question had not been made, as argued by the party, SAVOLA could have minimized its losses thanks to the successful price transitions. This shows that SAVOLA benefited from the cooperation concerned in a relative sense. In the final analysis, the fact that SAVOLA was suffering losses on average due to the sales it made to the retailers in question does not remove the existence of the coordinated conduct with an anti-competitive purpose concerning price transitions, nor does it justify the illegality of such conduct.
- (618) On the other hand, the statement "*We need to increase our market shelf prices in all channels and place them very close together*" in the presentation file "*NADISC. Takip Konular 04.12.2020*," collected during the on-site inspection at SAVOLA is believed to be significant in terms of showing SAVOLA's motivation for the subject.

- The argument that within the competitive dynamics of the market, the pressure exerted by the retailers showed that SAVOLA's effort and goal of ensuring the implementation of list prices could not go beyond recommendations, and that SAVOLA did not have sufficient market or portfolio power to intervene in the retailers' prices. The correspondences related to the shelf prices were in fact a form of negotiation for getting the list prices implemented, and future prices were intended to implement the list prices as far as SAVOLA was concerned, rather than the formation of a cartel consisting of buyers and the seller.

- (619) The correspondences dated 24.01.2017, 11.05.2018, 14.11.2018, 27.01.2019, 01.03.2019, 15.10.2019, 01.09.2020, 21.12.2020, 15.01.2021 and 18.01.2021 show that SAVOLA directly intervened with the sale prices of the retailers mentioned in the documents and fixed the prices of the retailers concerned. Therefore, it is not possible to agree with the argument that SAVOLA did not have sufficient market and portfolio power to intervene with the retailers' prices and that the relevant correspondences were actually a form of negotiation to get the list prices implemented. There is no doubt that SAVOLA mediated the exchange of future price information between retailers with the intention of the implementing the list and/or shelf prices. However, outlets must independently make this decision on their own free will in the decision-making processes for the relevant practice. Yet, as observed in the documents collected during

the on-site inspection, there was joint/collective action in list and/or shelf price transitions to avoid the risks introduced by competition and SAVOLA mediated the coordinated actions of the retailers to ensure the required communication and coordination, and as noted in numerous documents, it “*organized the market*”. At the same time, the buyer power of the retailers were taken into account as mitigating factors when setting both of the administrative fines imposed on SAVOLA.

(620) Moreover, the Council of State’s decision numbered 2016/4902 E., 2019/4247 K. highlights that the exchange of future prices or related strategic information between competitors reveal infringement of competition by object in a way that requires no further analysis, that and while it is possible to suggest exchanges of information between undertakings may have no effect on the market, it must be accepted that the exchange of competitively sensitive information concerned would affect the future decisions of the undertakings in the market, unless proven otherwise. Therefore, having clearly established, through court decisions as well, the infringement of competition by object as a result of the exchange of future information between competing undertakings mediated by SAVOLA , it has been shown that undertakings acted in coordination and thus went beyond their independent decisions to increase prices.

- The argument that retailers could easily monitor each other’s instant prices, campaign changes and updates since the prices of all of their products were in their online sales channels except for BIM, that these online platforms could include price changes for the next few weeks in addition to the instant prices, and that prices could become parallel with or without the presence of SAVOLA in a transparent market where such data could be accessed so easily. There was no assessment/evidence that the prices were set at a non-competitive level as a direct result of the information exchange. The allegation that SAVOLA’s negotiation correspondences to get the list prices implemented caused an anti-competitive information exchange were against certain case-law by the Board with nearly the same dynamics. SAVOLA did not benefit from an increase in the shelf prices of its products. On the contrary, SAVOLA’s market share fell down as the product prices increased so increasing prices would not benefit SAVOLA in any way.

(621) The fact that the market is rather transparent does not justify retailers exchanging future pricing information through their suppliers. Moreover, the information exchanged via the supplier is significantly beyond what can be acquired through public resources. This is because a large portion of the information exchanged was future information, as shown by the correspondences some examples for which were included above. It is not possible for any undertaking to acquire future sale and shelf prices of the competing retailers from public resources, with the exception of campaign inserts. On the other hand, future sale price information in online sale channels are only provided for discounted products, and does not include the shelf prices for all products sold at the stores.

(622) Therefore, having clearly established the infringement of competition by object as a result of the exchange of future information between competing undertakings, it has been shown that undertakings acted in coordination and thus went beyond their independent decisions to increase prices. Based on the fact that all of the undertakings participating in the information exchange were aware of the correspondences in the documents acquired under the file, the assessments and conclusions made

concerning the case may be different from past Board decisions involving other circumstances.

(623) Even though it is stated that increasing shelf prices of the SAVOLA products did not benefit the company and instead SAVOLA's market share dropped as the product prices went up, the correspondences dated 16.03.2017, 01.12.2018 and 21.02.2019 show that SAVOLA closely monitored the retail shelf prices and hiked up the shelf prices of those retailers who were below the desired level; similarly the statement "*We need to increase our market shelf prices in all channels and place them very close together*" in the presentation file "*NADISC. Takip Konular 04.12.2020,*" makes it clear that this was specifically intended by the undertaking, in contrast to the arguments submitted.

- The argument that retailers refused SAVOLA's new list prices based on the shelf prices of other retailers, that they expected other retailers to purchase first over the new list prices, that when SAVOLA wanted to increase its own list prices this increase was not reflected to the shelf prices of the retailers based on the business decisions of each retailer, that SAVOLA was unable to convince retailers to even comply with their purchase agreements (list price transition) and faced delisting and supplementary invoicing threats from retailers, that retailers set their own profit margins/category profitability as well as their shelf prices completely on their own, that retailers were also able to closely monitor each other's prices and harmonize their prices in markets in which SAVOLA was not active, that the claim SAVOLA affected the prices on its own was not realistic in light of SAVOLA's market and portfolio power, that price parallelism stemmed from the rather transparent market structure rather than any particular effort to monitor or coordinate.

(624) The documents show that when it was unable to convince retailers (A101, BİM, CARREFOURSA, MİGROS and ŞOK) to transition their purchase and/or shelf prices individually, sometimes SAVOLA mediated a collective price transition by the retailers. That retailers closely monitor each other's prices and harmonize their prices in markets where SAVOLA is not active does not eliminate SAVOLA's liability within the scope of the investigation.

(625) Regarding the hub-and-spoke information exchange, there has been no claim that SAVOLA affected the price on its own. However, as shown by the documents included in the resale price maintenance section of the decision, it is clear that SAVOLA directly intervened in the prices numerous times.

(626) Documents collected during the on-site inspection show that undertakings exchanged future prices and sale information among themselves and organized the market in a coordinated manner. Thus, while it may be reasonable to explain price parallelism solely by market transparency in certain situations where there is no evidence of communication, the explicit exchange of such strategic information among the undertakings makes this type of argument groundless.

(627) **The argument that no analysis was conducted regarding the effects of the practices in the allegations of infringement or whether they had any effect at all, and, in contravention of the previous case-law, the lack of severe damages likely to be encountered as a result of the alleged infringement was not evaluated. Some of the past Board decisions analyzed the effects of the infringement on the market as low or non-existent and these decisions merely warned the undertakings as per Article 9(3) of the Act no 4054. SAVOLA's insignificant**

market power, retailers' high buyer power and transparency of the FMCG market were not taken into consideration, and any price movement for SAVOLA products at these five retailers affected a very small portion of the market. Even when restriction of competition by object is assumed, SAVOLA's market share and power remained low and thus, in accordance with the case-law, Article 9(3) of the Act should be applied under the circumstances and a letter of opinion should be sent to SAVOLA explaining how to settle the issue.

- (628) Article 4 of the Act no 4054 prohibits agreements or concerted practices between undertakings which have the object or effect of preventing, distorting or restricting competition. However, price fixing is a naked and hardcore violation, and there is no doubt that it infringes competition by object. Thus, it is not necessary to separately show the effects of the conduct under investigation in order to establish that an infringement has taken place, if that conduct constitutes a infringement of competition by object. This is because an agreement/concerted practice which is restrictive of competition by object would clearly constitute a competition infringement under Article 4 of the Act no 4054, regardless of the extent to which it was implemented or of the effect it had.
- (629) While there are some files where the Board chose to send an opinion under Article 9.3 of the Act despite suspecting a violation of the Act no 4054, these decisions were taken under certain circumstances due to concerns of procedural economy, at the end of a preliminary inquiry process to assess whether launching an investigation was necessary. By their nature, these decisions arrived at a conclusion of whether launching an investigation was necessary, not whether the Act was violated; therefore, rendering an opinion under Article 9(3) of the Act does not necessarily mean that the Act was violated (or vice versa). On the other hand, an investigation process launched to determine if there was a violation of the Act no 4054 requires a decision on whether the practices under investigation actually violated the Act (assuming that the commitments mechanism was not used). Circumstances under which undertakings found to have violated the Act no 4054 could avoid administrative fines (such as full exemption from administrative fines due to leniency provisions) are regulated separately, and Article 9(3) of the Act is not a mechanism intended to serve this purpose.

- The argument that even one of the chain stores allegedly in cooperation with SAVOLA had a market share significantly larger than what was accepted for buyer power in the *Duru Bulgur* decision, which similarly involved the FMCG retailing sector, and that while evaluating documents similar to those presented with relation to the violations allegedly committed by SAVOLA, the Board decided not to launch an investigation in the *Duru Bulgur* decision.

- (630) The Board's *Duru Bulgur* decision dated 08.03.2018 and numbered 18-07/112-59 was annulled by the Ankara 13th Administrative Court decision numbered 2020/315 E., 2020/1569 K. The appeal request against the decision of the first instance court was dismissed with the 8th Administrative Chamber of the Ankara District Administrative Court decision numbered 2021/222 E., 2021/580 K., and the file is currently under appellate procedure. At the same time, an investigation has been launched in accordance with the provision in Article 28 of the Administrative Jurisdiction Procedures Law, titled *Outcomes of decisions* which states that the administration is obligated to act without delay in compliance with the decisions of the Council of State, district administrative courts, administrative courts and tax courts concerning the

substance or suspension of execution, and that this period cannot exceed thirty days following the notification of the decision to the administration. This investigation is currently ongoing.

- (631) Consequently, *Duru Bulgur* decision dated 08.03.2018 and numbered 18-07/112-59 cannot serve as a precedent for the investigated conduct of SAVOLA, since, in addition to currently being annulled, the decision was taken as a result of a preliminary inquiry process which has different legal objectives and characteristics than an investigation process, and since it only involved a conclusion that an investigation should not be launched concerning the undertaking rather than a conclusion on whether or not Duru Bulgur violated the Act no 4054.

- The argument that SAVOLA neither had sanctioning power against retailers, nor portfolio power, nor market power. It did not exert pressure on the retailers to ensure that their shelf prices did not fall under those recommended by SAVOLA, and there was no punishment/reward mechanism implemented to that end or sanctions imposed. SAVOLA set list prices to protect its own margins and shared its recommended shelf prices with the retailers, after which the retailers were free to sell the product at, below or above the recommended shelf prices. There was no system in place to prevent this choice. In addition, no impact analysis was conducted concerning the resale price maintenance allegations.

- (632) As seen in the correspondences dated 16.03.2017 and 21.02.2019, SAVOLA closely monitored the retail shelf prices and hiked up the prices of those retailers where they were below the desired level. Similarly, there are numerous documents showing that SAVOLA directly intervened with the retailers' sale prices and maintained the prices of these retailers. For instance, on 01.09.2020, the following statements are included in the e-mail sent by SAVOLA employee (.....) to MOPAŞ employee (.....):

"(...)

In summary, the inventories are very valuable and I believe that moving on with the recommended¹⁷⁶ prices we discussed before will be very meaningful and valuable during these times.

Your prices are 13.90 and 24.90 – 48.90

Planned Recommended 17.25 – 27.90 – 55.90 (Friday)

..."

- (633) In response, MOPAŞ employee (.....) sent the e-mail with the following statements to SAVOLA employee (.....):

"Director (.....)

Hello;

I am having trouble understanding why you are intervening in the prices which will go up on their own in an environment that is this unstable just to create panic.

Let the market do what it will.

- (634) On the other hand, it is believed that the warning to delete relevant e-mails and other correspondences included in the correspondence dated 21.12.2020 between managers handling different commercial channels under SAVOLA shows intent on the part of SAVOLA.

- (635) According to Communiqués no 2021/2 and 2021/3, resale price maintenance is characterized as a naked and hardcore violation and is considered to be an

¹⁷⁶ In the original text, this word is misspelled.

infringement of competition by object. Thus, conducting an impact analysis is not required to conclude that a violation has taken place. In fact, the recent *Anadolu Elektronik*¹⁷⁷, *Consumer Electronics*¹⁷⁸, *Sony*¹⁷⁹, *Turkcell*¹⁸⁰ and *Fuel*¹⁸¹ decisions of the Board concluded that the resale price maintenance found in those cases restricted competition by object. On the other hand, the point that the retailers' buyer power may have restricted the negative effects of SAVOLA's practices related to resale price maintenance on competition was taken into consideration as a mitigating factor when setting the administrative fines to be imposed on the undertaking.

- The argument that SAVOLA's unilateral correspondence with retailers concerning shelf prices were negotiations to ensure the implementation of the list prices, that SAVOLA was unable to affect the list prices of its products let alone setting their shelf prices due to buyer power, that even if the new list prices were not accepted SAVOLA still had to accept discount and supplementary invoice demands in order to maintain its business relationships with and keep its place on the shelves of the five retailers, who had significant buyer power and household consumption share.

(636) It is observed that SAVOLA intervened with the prices of local retail chains such as ÇAĞDAŞ, YUNUS, MOPAŞ and GROSERİ in addition to those of the five large retailers. In addition, an examination of the content of the correspondences concerned shows that there were direct intervention in and correction of the prices rather than a process of negotiation.

- The argument that, as can be seen from the correspondence sent by A101 to SAVOLA on 26.02.2019, retailers threatened to invoice their own losses to SAVOLA, that SAVOLA stated it was impossible to supply at the relevant prices, that SAVOLA and the retailer was discussing the list price SAVOLA was asking rather than the shelf price in the same correspondence, and that retailers mostly did not implement the list prices announced by the suppliers, which remained only on paper.

(637) As mentioned above, the Preliminary Report of the Fast Moving Consumer Goods Retailing Sector Inquiry showed that discount markets and chain stores held significant buyer power. Documents collected during the on-site inspection reveal that retailers exercised this buyer power by drawing supplementary invoices to pass the relative losses they suffered on to the supplier in some situations. However, this does not justify SAVOLA serving as a mediator for the information exchange between the markets concerned. On the other hand, the prices concerned in the correspondence seem to be shelf prices. This is because if the prices in question had been purchase prices, then A101 referred to in the correspondence could only determine broken prices if it knew the purchase prices or margins of the competing retailers, and therefore the prices mentioned in the correspondence must be shelf prices. At the same time, the buyer power of and pressure exercised by A101, BİM, ŞOK, CARREFOURSA and MİGROS were taken into consideration as a mitigating factor when setting the administrative fine imposed on SAVOLA.

¹⁷⁷ Board Decision dated 23.06.2011 and numbered 11-39/838-262.

¹⁷⁸ Board Decision dated 07.11.2016 and numbered 16-37/628-279.

¹⁷⁹ Board Decision dated 22.11.2018 and numbered 18-44/703-345.

¹⁸⁰ Board Decision dated 10.01.2019 and numbered 19-03/23-10.

¹⁸¹ Board Decision dated 12.03.2020 and numbered 20-14/192-98.

- SAVOLA's argument that updating the product price by increasing the list prices provided to the retailers was called "price transition," that such price transitions required time for retailers to implement the new list prices. Updating the recommended shelf prices to provide them to the retailer and requesting the implementation of the new list prices for the purchases of the retailers were also called "price transition," and, as shown by the case file, retailers refused to implement SAVOLA's recommended shelf prices many times, setting their own shelf prices different from the recommended ones. The supplier monitoring the shelf prices of its own products did not, on its own, show that it intervened in the resale prices of the retailers.

(638) It is obvious that the phrase "price transition" in the correspondences refers to the transition/increase of shelf prices. In fact, on 07.09.2019, in the Whatsapp group "Strategy team," SAVOLA employee (.....) shared a screenshot of the Whatsapp conversation with an A101 employee, who was saved under the name "A101 (.....)," which includes the following statement (.....): "Good morning boss. Migros shelf price for 5 L can is 44.95 TL we are waiting for you for the price transition..." This correspondence clearly shows that "price transition" refers to the transition of the shelf price.

(639) There has been no claim that every price transition mediated by SAVOLA was successful. However, it is obvious that some price transition attempts were met with success. For instance, the following statements concerning retailers' implementation of the recommended shelf prices draw the attention in the screenshot of the Whatsapp chat between SAVOLA employee (.....) and a MİGROS employee, saved under the name "(.....) Migros," which was shared in the Whatsapp group "Strategy team" on 16.04.2020

"(.....): Good morning you defined the new recommended shelf prices didn't you? C4 defined the same day. I want to confirm so that there is no problem Mr. (.....) told me that it'll be done today we are organizing the market accordingly.

(.....) Migros: (.....) hi, ok there is no problem with us the prices will be updated tomorrow

a 101 is important for us you should organize them

(.....): Ok we are organizing them for Saturday for the second price change

Is 5 L plastic defined if there is something to be updated I can help now

(.....) Migros: 5 L plastic is defined the price will be updated orders will be made next Monday

These statements clearly show that both retailers' compliance with shelf prices and price transitions refer to shelf prices.

(640) According to the documents, SAVOLA did not simply monitor the implementation of the shelf prices in the market, but actively intervened in and corrected the prices. As a matter of fact, this situation can be observed from the correspondences dated 16.03.2017, 01.12.2018, and 21.02.2019.

- The argument that when the e-mail chain starting with the e-mail "RE: Savola June 17 Recommended Shelf Sales Prices" is taken into account as a whole, it showed that SAVOLA fought quite hard to transition to a list price that could meet its own costs, and that SAVOLA sometimes faced supplementary invoices even when it did transition to new list prices. A retailer stating that it would implement the recommended sale price did not mean anything other than the

retailer accepted to purchase over the new list price for SAVOLA, and SAVOLA's price increases in 2020 were directly related to the increase in its costs.

(641) An examination of the relevant e-mail chain shows that it only included recommended shelf prices, and that while the e-mails mentioned new recommended shelf prices were due to increasing bulk product prices, the correspondence did not include a description of the purchase prices at all. On the other hand, when addressed as a whole, the documents collected during the on-site inspection show that when SAVOLA wanted to pass the list price increases stemming from increasing costs or other reasons on to the retailers and thus to the shelves, it chose to exchange information among all of the retailers to get them to change their prices altogether if it was unable to implement the price change on a single retailer. These practices, which almost became ordinary for the market, cannot serve as a legitimate justification for retailers who are unable to transition the purchase price. This is because these practices eliminate the independent choices of the undertakings in the price formation process, leading to the formation of the shelf prices of the relevant products around a common understanding. This is a violation of the Act no 4054. The file does not include any assessments concerning the list prices of the suppliers, i.e. purchase prices of the retailers, and it endeavors to determine whether shelf prices were fixed as a result of an information exchange between the undertakings in a coordinated way, regardless of the source.

- The argument that despite claims of using the FMCG Sector Report, buyer power and its economic analysis were ignored, with no detailed analysis of the retailers' buyer power conducted, creating a gap in the assessment. Retailers exerted pressure on SAVOLA by using their buyer power, that SAVOLA was unable to resist their buyer power but retailers could maintain their sales without buying products from SAVOLA.

(642) While the presence of buyer power does not change the infringing nature of SAVOLA's anti-competitive conduct, the buyer power held by the retailers, and by the five large ones in particular, were taken into consideration as a mitigating factor when determining the administrative fines imposed on the undertaking.

- The argument that imposing separate administrative fines on SAVOLA for the same conduct based on allegations of participating in a hub-and-spoke cartel and maintaining resale prices violated the principle of *ne bis in idem*. The five pieces of evidence used for both resale price maintenance and hub-and-spoke cartel allegations were the same and the same conduct was concerned in both resale price maintenance and hub-and-spoke cartel violations. The principle of *ne bis in idem* should be applied in light of the fact that SAVOLA's relevant conduct had occurred at the same time period and in the same market. Past practices of the Board and the Council of State also showed that SAVOLA should not be imposed repeated fines on the grounds of forming a hub-and-spoke cartel and of maintaining resale prices. Application of the *ne bis in idem* principle was compatible with the Regulation on Fines and the Board's previous practices. SAVOLA's communication with the retailers and conduct did not constitute more than one independent "act".

(643) The main justification for the allegation of two separate violations and the consequent imposition of two separate administrative fines on SAVOLA is the fact that the practices forming the grounds of the allegations were fundamentally different in nature and substance. In fact, on the one hand, SAVOLA participated in a fundamentally horizontal price agreement with the characteristics of a hub-and-spoke cartel by

mediating the formation and maintenance of collusion/coordination between five large retailers in the downstream market related to shelf prices and price transitions of its own products, and the exchange of competitively sensitive data including future prices and price transition dates of the retailers. On the other hand, it engaged in practices at the vertical level, aimed at directly maintaining the resale prices of local retail chains such as ÇAĞDAŞ, YUNUS, ONUR, MOPAŞ and GROSERİ, concerning which there are no findings suggesting participation in the collusion. Moreover, SAVOLA was also observed to attempt individual interventions with the prices of large retail chains individually.

- (644) At the same time, while there is no obstacle to the use of different aspects of one piece of evidence as an instrument of proof for different allegations of infringement, the file chose to prove each alleged violation against SAVOLA through different evidence.
- (645) At this juncture, it must be noted that identifying two separate infringements of different nature (horizontal-vertical) committed by SAVOLA within the framework of a single ongoing investigation would not prevent the imposition of multiple administrative fines on the undertaking due to these two infringements. As a result, it is not possible to agree with the argument that imposing two separate administrative sanctions on SAVOLA for the separate infringements identified under the investigation is in conflict with the *ne bis in idem* principle.

I.4.1.4.2. P&G's Arguments and Their Assessment

- The argument that the allegations based on a total of three documents did not reflect the truth. The relevant documents were in conflict with the market realities and did not demonstrate a hub-and-spoke violation participated by P&G or any other violation. The assessments showed that the retailers set up a cartel by direct communication amongst themselves, which was active both before and after the dates of the relevant documents brought against P&G. The cartel covered a large product portfolio from biscuits to detergents, and it was illogical to suggest that the retailers engaged in indirect information exchange through P&G when they already had direct communication. The documents against P&G did not meet the five *sine qua non* requirements of a hub-and-spoke cartel, and they failed to meet the standard of proof.

- The argument that A101's internal correspondence of 10.04.2020, brought as evidence against P&G, did not in any way mention shelf prices. The word "*priority*" in the document actually referred to (.....). P&G did not discriminate against any discount markets, and the document concerned did not have similar characteristics to the documents in FINDING 9.

- The argument that the document between P&G employees, dated 16.07.2020, did not include anything to suggest P&G mediated price transitions between retailers, and BİM did not provide its future price information to P&G even in the phrasing of the document, and neither did P&G provide such an information to MİGROS. (.....)'s statement "*honestly pal we couldn't talk I don't know*" in the document made it clear that P&G employee (.....) told MİGROS that BİM would change its prices without getting any actual information from BİM, reflecting a bilateral discussion between P&G and MİGROS. This piece of information provided by (.....) was actually intended to get rid of MİGROS and to stop the pressure exercised by the latter. The situation expressed via slang by (.....) in the content of the discussion was actually a significant indicator of the pressure put on suppliers by the retailers. FINDING 24 included the pressure exercised by

retailers on the suppliers separately, and if an allegation were to be brought based on the content of the discussion concerned, it should have been brought against the retailers rather than the suppliers, who always faced pressure from the retailers. The document was not a piece of information received from the retailer and thus proved that P&G did not mediate the exchange of the price information. Also, the information provided to MİGROS in the document reflected the personal opinion of the P&G employee predicting an increase in BİM's shelf prices. This opinion was based on the fact that A101 and ŞOK had changed their shelf prices one day before the date of the discussion and the fact that BİM would eventually have to pass the increasing costs on to its shelf prices, since the price protection implemented for the price transition had ended around 15 days before the date of the discussion. Another misinterpreted point in the document was the claim that P&G had convinced MİGROS to change its prices despite the latter's unwillingness. Two of the large players in the market, namely A101 and ŞOK, had transitioned the previous day, that the (.....)'s statement "*Migros sidesteps saying if bim will not change bla bla*" in the discussion referred to an exchange of ideas between the supplier and its retailer (MİGROS), concerning whether the market leader BİM would also change its shelf prices. It was reasonable within the ordinary flow of business for MİGROS to raise its prices to the same level since A101 and ŞOK had implemented a price transition before the date of the discussion, and that this had no connection with P&G at all.

- The argument that the A101 internal correspondence of 20.10.2020 was actually a discussion between A101 employees in which A101 executive board member was angry with the category manager due to wrong pricing and the category manager tried to pass the mistake on to the supplier. A101 category manager had based his own pricing decision on a misunderstanding of a dialog with P&G, and was therefore reprimanded by the A101 executive board member. There was no discussion between A101 and P&G and such a discussion was not supported by any other documents either. The price transitions comprising the subject matter of the document showed that MİGROS changed the prices of the *Fairy* products on 14.10.2020 and CARREFOURSA on 15.10.2020, followed by A101 and ŞOK on 19.10.2020. However they did not notice that MİGROS had dropped its prices to the previous level on 18.10.2020. For the *Ariel 1.5 Kg* product, MİGROS implemented a price transition on 14.10.2020, CARREFOURSA on 16.10.2020, followed by A101 and ŞOK on 19.10.2020, but they presumably failed to notice MİGROS returning to the previous price on 16.10.2020 once again. P&G could not be held responsible for this misevaluation of the price transitions by an A101 employee. The phrase "*How couldn't they make Migros change?*" actually proved that there was no hub-and-spoke cartel, since it proved there was no consensus between A101 and MİGROS on prices and P&G did not mediate in harmonizing anything with MİGROS. There were doubts concerning the credibility and believability of the statement "*We also asked about it yesterday they said there is no problem and now they say we cannot contact them*" in the document .

- (646) In the decision of the 13th Chamber of the Council of State numbered 2015/3353 E. and 2019/4244 K., the court makes a ruling on the matter of whether a document collected from one undertaking or created by a competitor could be used as evidence against other undertakings, stating that the evidence for the collusion did not need to

be collected at each undertaking, that uncovering such documents at one of the competitors would be sufficient, that finding evidence at each undertaking should not be expected due to the secret nature of cartels, and doing otherwise would mean rewarding those undertakings that are most successful at destroying evidence.

- The argument that the Investigation Report did not include allegations of hub-and-spoke cartel against P&G with any retailers other than A101, BİM and MİGROS, but the conclusion first referred to the cartel allegedly set-up between A101, BİM, CARREFOURSA, MİGROS and ŞOK, and then went on to claim that “SAVOLA and P&G also [committed violations] with regard to their own products together with the aforementioned retailers...”, that this statement negatively affected the right to defense and required clarification.

- The argument that, with regard to the assessment on the information exchange between the suppliers, P&G did not acquire any data from the retailers on the future actions and plans of its competitors and all data received from the customers included only past sales data, which was collected for the purposes of raising competitive power.

(647) In line with all of the information, documents and observations within the framework of the investigation and in order to prevent any potential competition infringements, it is decided that, a letter of opinion should be sent to the investigated parties, reminding that all suppliers and retailers should act in accordance with the observation in this decision and the explanations in the Guidelines concerning the exchange of information on their competitors in the same markets and related to the competitors of the parties in a vertical relationship, regardless of the market and field of operation.

- The argument that P&G requested to see all assessments and evidence concerning the retailers but was allowed very limited access and was unable to fully and completely clarify the content of the cartel since it was not allowed access to the statements of the retailers on the other side of the hub-and-spoke cartel. As such, its right to defense was restricted. In addition, mitigating factors such as providing assistance to the examination should be taken into consideration if P&G was to be imposed administrative fines.

(648) Within the framework of the right to access the file, P&G requested almost all of the documents used in the Investigation Report, regardless of their relevancy to P&G itself, as well as documents which were not used in the Investigation Report, the full Investigation Report itself, and the written responses of the parties of the investigation. Concerning this request, the Board decided

- To provide the undertaking with the reproduced copies of the information and documents that serve as the basis of the allegations of infringement directly related to the undertaking or of the assessments on the information exchange between various suppliers, after these are purged of trade secrets, confidential information or personal data; but to only allow access to certain documents attached to the aforementioned correspondences, such as Excel tables, at the Authority headquarters without any electronic or mechanical reproduction due to the high level of trade secrets, confidential information or personal data included in their content;
- To provide the undertaking with the reproduced copies of FINDING 9 and related assessments as well as the e-mail correspondences serving as their

basis, after they are purged of trade secrets, confidential information or personal data

- To provide the undertaking with the reproduced copies of FINDING 18 and related assessments, which do not serve as the basis for the infringement allegations against the undertaking but which include findings on the investigated parties and other undertakings concerning the products of the undertaking, after they are purged of trade secrets, confidential information or personal data
- To deny the remaining access requests on the grounds that the requested documents were not created or collected by the Authority concerning the undertaking, that they did not constitute exonerating or incriminating evidence, or they included top level trade secrets and other confidential information about other undertakings or persons.

As a result, it is not possible to agree with the investigated party's argument that its right to defense was restricted.

- The argument that the products used in the infringement allegations against P&G were only two of a total of 2,626 SKUs whose prices were changed and that the share of the relevant products in P&G's sales were %(.....) for Fairy 650 ml and %(.....) for Fairy 33 tablets.

(649) Some of the points raised by P&G in its arguments are addressed above, and no further assessment is deemed necessary concerning the other arguments, which basically claim that there was no infringement of the Act no 4054, since it was concluded that the evidence collected on the undertaking was insufficient to prove that it had violated Article 4 of the Act no 4054.

I.4.1.5. Arguments concerning the Administrative Fines and Their Assessment

- The argument that the investigated practices did not indicate a hub-and-spoke cartel and should be classified as resale price maintenance or information exchange; thus, the fine should be set within the framework of the other violations. The potential violation allegations concerned a limited number of products and the income from their sales constituted only a small portion of the total sales revenues. This should be taken into account as a mitigating factor when setting the fine or the fine should be calculated over the turnover of these product groups. The commitment of the potential infringement as a result of the pressure received from the other undertakings and the cooperative stance during the investigation process should also be taken into account as mitigating factors.

(650) As many findings show, the practices of the undertakings were intended to fix the retail sale prices of many products they offered for sale, and they have the characteristics of a cartel with hub-and-spoke features. Thus, it is not possible to agree with the argument that the violations identified should be addressed under resale price maintenance or under other types of violations due to the information exchange.

(651) In line with the argument that the infringement allegations only concerned a limited number of products, that their income constituted a small portion of the total sales, and that this should be taken into consideration as a mitigating factor, the assessment noted the fact that the products concerned only represented a small portion of the retailers as a mitigating factor under Article 7.1 of the Regulation on Fines.

(652) Regarding the argument that the administrative fine to be imposed should be calculated over the turnover of the product groups comprising the subject of the infringement, it was impossible to agree with this argument since the Act no 4054 states that the administrative fines would be set over the gross income and does not make a distinction in terms of the income generated from the relevant product market on this matter.

(653) It was also impossible to agree with the argument that the infringement was caused by the pressure exercised by the suppliers, either. This is because, as mentioned above, the retailers which were found to have violated the Act no 4054 were also evaluated to have buyer power.

(654) Lastly, it is not possible to consider the cooperation shown during the investigation process as a mitigating factor. In fact, the undertakings have not engaged in any cooperation beyond what they were legally obligated to do, either during the on-site inspections or during the processing of the file.

- The argument that the scope of the investigation concerned the COVID-19 pandemic process and therefore any findings or allegations of infringements should fall outside of the scope of the file if they belong to a period before 11.03.2020 when the first case of COVID-19 was observed in Türkiye. Therefore, since the first evidence serving as the grounds for a finding against A101 was from 25.03.2020 and the last such evidence was from 17.02.2021, the opinion that the fine should be increased by one half since the infringement lasted for more than a year but less than five years lacked justification.

(655) With its decision dated 31.03.2020 and numbered 20-17/242-M, the Board decided to launch a preliminary inquiry to determine if the Act no 4054 was violated by the chain markets in the food and cleaning products retailing business as well as by those undertakings at the production and wholesale level who supplied them through their pricing activities during the Covid-19 pandemic. As a result of the preliminary inquiry conducted in that framework, the file moved on to the investigation stage in order to deepen the examination.

(656) As a matter of fact, the Board's investigation decision dated 07.05.2020 and numbered 20-23/298-M set out the scope of the investigation as the determination of whether the relevant undertakings violated Article 4 of the Act no 4054, and did not specify any limitations on time. Moreover, according to Article 20(3) of the Misdemeanors Law, titled "Limitation Period for Investigations," there is an eight-year limitation period for investigations on misdemeanors requiring proportional administrative fines, such as those regulated by Article 16 of the 4054. Under the circumstances, it is not possible to agree with the argument in question.

- The argument that among those findings related to BIM, only the period between the first and last documents included in FINDING 1 was longer than one year, that the documents under this finding did not have evidential value, that these documents did not set up link of succession to allow addressing the duration of the infringement as a whole, and that none of the other documents involved a duration longer than one year. Most of the findings concerned periods on the scale of days or weeks, and any potential violation should not be considered to have lasted longer than a year.

(657) An integrated evaluation of the documents show that each correspondence was a piece of the common goal followed by the undertakings. As mentioned before, since it

is difficult to find primary evidence for the entirety of the period between the start and end of the infringement especially in complex cartels, the cartel is assumed continuous in case there exist objective and consistent evidence sufficient to conclude that the infringement was maintained during the period about which no evidence exists. Thus, the conclusive power and nature of the evidence collected do not need to be at the same level throughout the existence of the cartel.

- ŞOK's argument that the difference between the starting and ending dates of the alleged infringement, respectively determined as 28.05.2018 and 17.02.2021 under the investigation, could not be established. The discussion dated 28.05.2018 was not related to ŞOK, and the conversation of 14.08.2018, which is allegedly about ŞOK, was carried out without ŞOK's information. There was no evidence to prove that ŞOK was aware of the conversation. No claims were raised in the investigation against suppliers other than SAVOLA and P&G concerning the hub-and-spoke cartel allegations, therefore it was not possible to claim that the infringement continued after the notification of the investigation based on the relevant documents. Since there was no infringement under the file, the case should be concluded by sending a letter of opinion under Article 9(3) of the Act no 4054.

- (658) In accordance with the legislation and the case-law, an integrated approach has been adopted for the process of identifying the infringement, concerning the assessment of the information, documents and evidence collected. On the other hand, in the decision of the 13th Chamber of the Council of State numbered 2015/3353 E. and 2019/4244 K., the court makes a ruling on the matter of whether a document collected from one undertaking or created by a competitor could be used as evidence against other undertakings, stating that the evidence for the collusion did not need to be collected at each undertaking, that uncovering such documents at one of the competitors would be sufficient, that finding evidence at each undertaking should not be expected due to the secret nature of cartels, and doing otherwise would mean rewarding those undertakings that are most successful at destroying evidence.
- (659) As mentioned before, in line with the findings collected under the current investigation, the Board took the decision dated 26.04.2021 and numbered 21-23/271-M to launch an investigation on various undertakings operating as producers/suppliers, which were previously not under investigation as mentioned in the argument, and the examination process is ongoing.
- (660) The investigated parties were notified that examinations related to the hub-and-spoke cartel had been and would be conducted within the framework of the file as well.
- (661) The file concluded that the undertakings violated Article 4 of the Act no 4054 through certain agreements and concerted practices comprising naked and hardcore infringements which showed the characteristics of a hub-and-spoke cartel, and directly affected a large number of consumers with an aim to maintain the retail prices of many products they offered for sale. In response to the argument that Article 9(3) of the Act no 4054 should be applied in response to the establishment of this infringement, it is not possible to execute the above-mentioned Article of the Act no 4054 in this case for the reasons explained.

- The argument that CARREFOUR's lack of market power, the lack of any damages expected from a potential infringement, the likelihood that the fine could lead to the economic destruction of CARREFOURSA, and the fact that the behavior examined under the investigation lasted shorter than one year should

be taken into consideration when setting the base fine, and the fine should thus be set from the lower limit.

(662) Since the investigation showed that leading retail chains violated Article 4 of the Act no 4054 through certain agreements and concerted practices comprising naked and hardcore infringements that showed the characteristics of a hub-and-spoke cartel and directly affected a large number of consumers with an aim to maintain the retail prices of many products they offered for sale, it is not possible to agree with the argument that no harm was expected from a potential violation. Similarly, it has been shown beyond any reasonable doubt that the infringement lasted longer than one year.

I.4.2. Arguments of the Other Undertakings and Their Assessments

- **KATMER UN** stated that it did not exchange prices, conclude an anti-competitive agreement or exchange information on its market strategy with competitors. When it made a price transition, it communicated the new list to customers on the same day and continued to deliver products at the older price for a month after which it implemented the new price. **GRATIS** noted that the retail market of ordinary cosmetics and personal care products in which it operated displayed a competitive structure with low barriers to entry, that there was no evidence or findings of violation about them, and that they were not parties to any agreements or concerted practices.

- **WATSONS** stated that they did not intend to increase prices, that they opposed any requests for price increases received from their suppliers, that **WATSONS** was not in collusion with its competitors and did not engage in any anti-competitive conduct,

- **BEŞLER, BANVİT, METRO** stated that they did not violate the Act no 4054, that the prices were set independently on rational grounds, that they were not parties to a collusion,

- **ECZACIBAŞI** stated that the information exchange in the correspondences between itself, **YUNUS** and **ÇAĞRI** was not done with anti-competitive purposes, that the duration was limited and the information concerned covered a very limited portion of the total market, that a violation of Article 4 of the Act no 4054 should not be found as a result of this exchange of information, that **ECZACIBAŞI** did not engage in conduct that would require the Board to send a letter of opinion.

- **HENKEL** noted that the correspondences and the information ultimately exchanged by the local retailers were not used against the competition in the market either by object or by effect. There was no information, documents or findings to indicate that the information exchange in question involved sharing competitively sensitive information such as future prices or quantities, and the information exchanges examined did not have an effect on the market.

- **YUNUS** stated **YUNUS** acted in accordance with consumer choices and unilateral company policies with respect to the important factors of the retail market such as price, product variety, service, shelf order and quality in every region where it was active. There were no barriers to entry in the FMCG market, with the traditional channel having significant importance in the market and exerting competitive pressure on the organized market. Online platform retailing for FMCG products showed appreciable development in the last 2-3 years and these players should be taken into account for the analyses into the competitive

structure of the FMCG retailing market. YUNUS had changed its policies to only fulfill information requests from the supplier by providing information on the supplier in question.

- EVYAP stated that its prices during the COVID-19 pandemic did not differ from its prices before the pandemic to disadvantage the consumers. In addition to avoiding any conduct to harm the consumers, the file also did not have any evidence suggesting EVYAP had engaged in any activities in violation of the legislation. EVYAP did not impose any sanctions if its recommended prices were not implemented and did not threaten retailers with refusing to supply or forcing them to purchase more products. Since it did not intervene with the retailers' sales prices, it would be very difficult for EVYAP to restrict competition using the information it collected from such a small portion of the market. As mentioned in the Authority's Preliminary Report for the FMCG Retailing Sector Inquiry, the power balance in the FMCG sector could easily change due to buyer power and thus it was hard for suppliers to exert pressure on the retailers to increase their prices. The market trend was for the retailers to put pressure on the suppliers in order to decrease prices.

- SÖKE UN stated that the price lists in question constituted older information shared with the market and that since both of the price lists had been shared with the customers they did not constitute future information. Since relevant price lists had been already shared with the market and therefore did not concern future information, and since there was no information or findings to suggest that future competitively sensitive information was secretly exchanged between the parties, there could be no competition infringements by object. The wheat flour market SÖKE UN operated in was transparent and the exchange of old information could not increase the transparency in the market. SÖKE UN's market share remained negligible (%(.....)), the level of concentration in the market was quiet low, and the rate of capacity utilization remained around %(.....). The capacity surplus concerned was a factor that put competitive pressure on the undertakings in the market and reduced the likelihood of coordination. There was intense negotiation in the wheat flour market where SÖKE UN was active, making the market transparent to allow observation of the undertakings' operations and price movements. SÖKE UN and KATMER UN's operative structures and the differences in their shelf prices confirmed that these undertakings did not have symmetrical properties. The market's unstable structure was displayed by the relatively low and fluctuating market shares of the undertakings, the lack of barriers to entry, and the variability of the demand pattern. In light of the features of the flour market, the exchange of past information which did not restrict competition in the flour market by object was not likely to lead to restrictive effects on competition.

- NESTLE explained that launching an investigation on NESTLE did not have any legal justifications since NESTLE did not hold market power in any product or category under investigation. Its only product falling under the scope of the investigation was the flavored milk product Nesquik, which had a relatively low market share (for 2019, %(.....) in the general milk market and %(.....) in the flavored milk segment). During the investigation period (March 1 – May 12, 2020) there had been no increase in the prices of its flavored milk product (Nesquik), and NESTLE was not the category captain or leader for any retailer in any of the products examined under the investigation.

- **J&J** noted that it only received the section of the Investigation Report which included information and assessments on the information exchange between suppliers and therefore it reserved the right to submit its pleas concerning the other sections. The section provided to it included findings and assessments on undertakings operating in the “Cleaning and Hygiene Category” but did not have any communications or assessments referring to J&J, thus the Board should decide that J&J had not violated the Act no 4054.

(663) Since it was concluded that the other undertakings investigated had not violated Article 4 of the Act no 4054, conducting a detailed assessments of their arguments above denying any violation of the Act no 4054 was deemed unnecessary.

- **METRO’s** argument that it should receive a version of the Investigation Report concerning chain stores, containing the allegations of infringement and findings against chain stores.

(664) The Investigation Report notified to METRO includes all information and assessments on the undertaking concerned. At the same time, the rest of the Report which includes findings and assessments on other undertakings does not include any findings on METRO. Thus, it is not possible to agree with the argument that METRO should have received a version of the Report concerning chain stores and containing allegations of infringement and findings against chain stores.

(665) Article 44(2) of the Act no 4054, titled “Collecting Evidence and Informing the Parties,” states that “*Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any documents drawn up within the Authority concerning them, and if possible, a copy of any evidence obtained.*” In this context, Article 6 of the Communiqué no 2010/3 includes the provision “*Within the scope of the right of access to the file, the parties can have access to any document that has been drawn up and any evidence that has been obtained by the Authority concerning them, except for intra-Authority correspondences and those that include trade secrets and other confidential information about other undertakings, associations of undertakings and persons,*” which specifies that the parties are allowed access to the documents and evidence on themselves. In that framework, parties under investigation may request access to the file before the hearing stage.

- **ECZACIBAŞI’s** argument that the register report information acquired from **ÇAĞRI** and/or **YUNUS** was not aimed at restricting competition. The reason for acquiring the register reports was to understand consumer choices and thereby trends of demand in order to be more competitive in the market and to analyze the market in order to provide consumers with sustainable, high-quality services. For this particular case, collecting the relevant information from the retail/dealer channel was one of the safer ways of collecting this information, provided it was not by procured directly from the competitors. In light of the Board decisions, the occasional acquisition of register slip information from a small number of local retailers could not be characterized as exchange of competitively sensitive information under Article 4 of the Act no 4054.

- **NIVEA’s** argument that imposing an obligation on all suppliers and retailers to avoid exchanging information on their competitors in the same market or on the competitors of the parties with which they have a vertical relationship, and to share information only about themselves with those parties with which they are in a vertical relationship was lacking legal grounds since there was no findings

of infringement against NIVEA and since the obligation was solely intended to “prevent potential competition violations.” This approach would prevent the pro-competitive effects of benchmarking and market studies. The obligation covered all suppliers and retailers under investigation while the findings and observations concerned only specific retailers and suppliers and thus it was not in line with equitable principles. This approach was in violation of the principles set out in the Guidelines on Horizontal Cooperation Agreements. The arguments concerning the nature of the exchanged information was mistaken and ignored the characteristics of the supply market. In order to conclude that the information exchange (falling outside the scope of the cartel) could restrict competition and therefore an obligation should be imposed to eliminate competitive concerns, the information exchange in question should lead to a collusive outcome or to an anti-competitive foreclosure of the market where the information exchange took place and/or a relevant downstream market to competitors. Competition Authority had the burden of proof to demonstrate the necessity of such an obligation to eliminate the potential concerns under competition law, yet there was no analyses conducted to show such necessity. Market studies could lead to some significant efficiency gains and collecting certain information about the competitors from the market allowed an increase in the level of competition in the market. Where one of the parties provided substantial and strong evidence for efficiency gains, the Board should examine such evidence instead of ignoring the claims without any explanations or justifications. Competition Authority made assessments concerning the efficiency gains and whether exemption conditions were fulfilled, even in investigations on hardcore cartel investigations with severe restrictions.

- COLGATE PALMOLIVE’s argument that the information they had access to did not cover the entire market or all of the competing products. The data received from YUNUS including the information of all of YUNUS’s suppliers only contained sale quantities and amounts, so they could only be used to calculate the past market shares of COLGATE PALMOLIVE’s rivals for (i) YUNUS and (ii) the limited product range that it sold. Therefore, the information provided as part of COLGATE PALMOLIVE’s relationship with YUNUS was unlikely to have even a small effect on market competition. The documents assessed concerning COLGATE PALMOLIVE were only related to the information acquired from YUNUS and there were no documents to indicate that COLGATE PALMOLIVE had access to future data. The information provided to COLGATE PALMOLIVE were retroactive and in no way included competitively sensitive data. Pricing in the FMCG sector was very dynamic with constantly changing prices and the sector frequently made use of daily, even hourly promotions and campaigns. In light of the dynamics of the sector, retroactive data belonging to the previous month or the previous few weeks should be considered past data. COLGATE PALMOLIVE was not considered a leader undertaking in any of the product categories, and did not insist on receiving data on the suppliers. It did not have significant market power in any of the categories defined and due to its high buyer power in the relevant markets, retailers had significant advantages in their negotiations with the suppliers. Retailers that sold private label products became competitors to the suppliers and could position themselves better against brand-owning suppliers. COLGATE PALMOLIVE adopted an independent pricing strategy based on the unilateral decisions it took, and sending a letter of opinion would completely and categorically prohibit nearly all

data flow from the retailers to the suppliers. This would eliminate pro-competitive benefits such as quality assessments of products and efficiency gains in costs and production, and could prevent the efficiency increasing outcomes expected from the access to and collection of certain types of competitors' data from third parties (i.e. undertakings operating in the vertically related markets) in light of the dynamics of the FMCG sector, which includes cleaning and hygiene products. The exchange of competitors' scanned registry report data was a practice generally accepted in the European Union and the United States and was critically important for efficient category management. Data utilization became even more important in the FMCG sector, which saw new improvements every day.

- UNILEVER's argument that retailers' communication of their past prices and sales quantity data to suppliers without any exchange of information between competitors did not have any anti-competitive objectives, and neither did it have a restrictive effect on competition in light of its duration and the fact that the information concerned covered a very limited section of the market. UNILEVER only collected data on the market share and sales amounts/quantities of competitors from a limited number of its retailer customers and used these data to position itself more competitively against its rivals. There was no information or documents amongst the large number collected during the investigation on information exchange to indicate any other objective. As mentioned in the Guidelines, a conclusion must be drawn concerning the extent to which information exchange in the market would facilitate a cooperative outcome in the market. Acquiring undertaking-specific data provided market players with various efficiencies, allowing them to position themselves in a more competitive position which would not be possible with aggregated data. It was impossible to agree with the assessment that the data collected led to an appreciable increase in the level of transparency in the market. UNILEVER's field team monitored retail prices as well as competitors' promotions for consumers, but the information such as total turnover, total sales and market share of the other undertakings at the retail level was not directly observable. However, it was possible to easily, comfortably and reliably acquire sales quantity, sales amount and market share data for competitors covering the whole market from companies like IPSOS and NIELSEN that conduct market studies for a fee, broken down into relevant product markets, product categories and channels for various time periods. Therefore, it should be accepted that the market share, total turnover and sales volume data for undertakings were transparent in the FMCG sector. Acquiring the relevant data from some exceptional customers constituting a small portion of the market would not cause a significant increase in the level of transparency in the market. In terms of identifying those who deviate from a hypothetical common understanding and thus maintaining the collusion, market share and total sale volume/turnover information collected from the retailers would not create more transparency than what is provided by the market study companies. In that context, price, sales volume and market share data at the retail level in the FMCG market had a relatively low strategic importance and acquiring such data would not lead to any additional transparency. There were many players and many product groups under the category of cleaning and personal care, and these were competitive, dynamic and complex markets with low barriers to entry. The information UNILEVER collected from the retailers actually increased the competitive level of the market

and led to the provision of highest quality products to the consumers at the best prices. It was impossible to agree with the observation that category-specific data was sufficient for an undertaking to determine its own position and collecting competitors' data would not fulfill the "necessity" requirement. Arriving at a categorical evaluation on information exchange and sending an opinion based on that evaluation would not help maximize competition. The Board decisions on information exchange showed that collecting undertaking-specific information was not categorically prohibited and the Board granted negative clearance/exemption to this practice many times. The Board's TAID decision granted negative clearance to the brand-specific and monthly exchange of retail sales numbers. Introducing a categorical prohibition of the collection of undertaking-specific data on competitors from customers would conflict with the approach in the previous Board decisions.

- (666) These issues raised in the arguments were previously addressed in detail above. In fact, detailed information was provided concerning the nature, duration and elements of the information exchange in question. An examination of the data gathered by suppliers on their competitors through the retailers show that this data was undertaking specific and detailed for each product and each packaging. As a result, the data exchanged within the framework of the file could make it easier for undertakings to come to a common understanding concerning the market on the one hand, and allow the parties to develop suitable punishment strategies by enabling them to target undertakings deviating from the agreement or new entrants on the other hand. This is because the data exchanged were not aggregated but instead detailed for each specific undertaking.
- (667) An overview of the recency of the data exchanged reveal that the undertakings gathered historic data from the retailers, and regularly asked the information of the previous month at the start of the current one, in order to update the information in question. As a result, the recent information collected through the retailers in addition to the historic data could make it easier for undertakings to come to a common understanding concerning the market on the one hand, and allow the parties to develop suitable punishment strategies by enabling them to target undertakings deviating from the agreement or new entrants on the other hand.
- (668) In terms of the frequency of the information exchange, the Guidelines state that frequent exchanges of information make it easier for undertakings to come to a better common understanding in the market and monitor deviations from the agreement, thereby increasing the risks of a collusive outcome. As shown in the relevant documents, suppliers were able to receive immediate information from the retailers when needed, but otherwise generally received the information monthly. Similarly, the conversations between the employees of the undertakings show that particular attention was paid to ensuring regular data flow. Additionally, it is evaluated that the information on the competitors collected through the retailers cannot be characterized as public.
- (669) UNILEVER notes that the relevant data could be currently procured from IPSOS and NIELSEN. The responses sent by NIELSEN and IPSOS explain that while they can provide information on sales turnover, sales volume and average price, detailed up to the SKU level, these data are aggregated and anonymized, with methods such as (i) (.....) (ii) (.....) (iii) (.....) (iv) (.....) being used in their collection. Estimations can be prepared in exceptional circumstances via the (.....) method but they cannot provide

retailer-specific value and volume information on the basis of SKUs. While SKU-based reports include sales income and sales quantities, this is done through data aggregated via (.....) and (.....), provided through consumer statements. In that sense, it has not been confirmed that the data acquired from an individual retail store could also be procured from the aforementioned market study companies as well.

- (670) Thus, the reporting/data services provided by the relevant companies are created using fully aggregated and anonymized data sets. In that framework, it is not possible to accept the argument that the relevant data/reporting were also provided by market study companies.

I.5. Assessment within the Framework of the Regulation on Fines

- (671) Article 16.3 of the Act no 4054 includes the provision: *“Those who engage in conduct prohibited by articles 4, 6 and 7 of this Act will be imposed administrative fines up to ten per cent of the gross income of the undertaking and associations of undertakings or of the members of such associations of undertakings to be imposed a penalty as generated until the end of the previous financial year, or, in case the former cannot be calculated, until the end of the financial year that is closest to the final decision date, as determined by the Board.”*
- (672) The examinations and assessments under the investigation concluded that Article 4 of the Act no 4054 was violated by A101, BİM, CARREFOURSA, MİGROS and ŞOK through agreements of concerted practices in the nature of cartels showing hub-and-spoke characteristics, intended to maintain the sales prices of many products they offered for sale, and by SAVOLA through participating in these hub-and-spoke cartels or concerted practices intended to maintain retail sales prices by mediating the exchange of competitively sensitive information for its own products and also by maintaining the resale prices of undertakings operating at the retail level. Accordingly, the undertakings concerned should be imposed administrative fines under Article 16.3 of the Act no 4054, and the administrative fine to be set should be assessed within the framework of the Regulation on Fines, adopted in line with the last paragraph of Article 16 of the Act.
- (673) Article 4 of the Regulation on Fines sets out the procedures for setting the administrative fines to be imposed on undertakings. Article 5 of the Regulation on Fines specifies how the base fine should be determined, and according to its first paragraph, when calculating the base fine, for cartels a rate between 2% and 4%, and for other violations a rate between 0.5% and 3% of the annual gross revenues of the undertakings parties to the violation, as determined by the Board, must be taken as the basis for the fine. In that framework, the first step is to evaluate the legal nature of the violation identified.
- (674) Article 3 of the Regulation on Fines defines “cartels” as *“concerted practices or arrangements between competitors restricting competition implemented with relation to price fixing; allocation of customers, suppliers, regions or trade channels, restriction of supply amounts or imposing quotas, and bid rigging.”* Since the agreement/concerted practice uncovered between A101, BİM, CARREFOURSA, MİGROS, ŞOK and SAVOLA carried the characteristics of a cartel, the base fine for the undertakings in question should be set between 2% to 4% of their annual gross revenues.
- (675) In addition, according to Article 5(2) of the Regulation, matters such as *“the market power of the undertakings or associations of undertakings concerned and the gravity*

of the damage which occurred or is likely to occur as a result of the violation” must be taken into consideration in the determination of the base fines. In light of the points listed above, the rate of the base fine is determined as (.....)% for the violation committed by the above-mentioned six undertakings.

(676) Article 5(3) of the Regulation on Fines specifies that the duration of the infringement must be taken into consideration when setting the base fine. According to the provision of this Article, the amount of the base fine should be increased by half for violations lasting longer than one year and by one fold for violations lasting longer than five years. When the liability of the undertakings are examined within this context, it is observed that

- i. For A101, in line with FINDINGS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20 and 21,
- ii. For BİM, in line with FINDINGS 1, 2, 4, 5, 7, 8, 9, 11, 13, 18, 20, 21 and 22,
- iii. For CARREFOURSA, in line with FINDINGS 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17 and 18,
- iv. For MİGROS, in line with FINDINGS 1, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19 and 22,
- v. For ŞOK, in line with FINDINGS 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 19,

the violation lasted for longer than one but shorter than five years; while SAVOLA's infringing conduct lasted from mid-2018 to February 2021, which means that the violation also continued for a period longer than one, shorter than five years for SAVOLA as well.

(677) Consequently, the rate of the base fine has been set at (.....)% for A101, BİM, CARREFOURSA, MİGROS, ŞOK and SAVOLA, after an increase by one half of the rate of (.....)%, in accordance with Article 5(1)(a) of the Regulation.

(678) While there are no aggravating factors to take into consideration under Article 6 of the Regulation on Fines in relation to the infringement identified, the low share of the turnover of the product groups comprising the subject matter of the violation within the total turnovers of A101, BİM, CARREFOURSA, MİGROS and ŞOK have been taken into account in line with Article 7(1) of the Regulation, and the fines imposed on the undertakings are reduced by two fifths, ending up with the rate of (.....)%. With respect to the rate of the fine to be imposed on SAVOLA for the infringement in question, the buyer power of the retailers participating in the infringement and their resulting potential pressure on SAVOLA are taken into account to implement a reduction of two fifths under Article 7(1) of the Regulation, bringing the rate of the fine to (.....)% for this undertaking.

(679) As detailed above, it is also concluded that SAVOLA violated Article 4 of the Act no 4054 by maintaining the resale prices of the undertakings operating at the retail level. This is in line with the definition of “other violations” included under Article 3 of the Regulation on Fines. As a result, the rate of the base fine has been set as (.....)% within the framework of Article 5.1(b) of the Regulation on Fines, in view of the second paragraph of the same Article.

- (680) Since SAVOLA's infringing conduct lasted from the start of 2017 to February 2021, that is to say, for a period that is longer than one and shorter than five years, the rate of (.....)% was increased by one half under Article 5.3(a) of the Regulation, setting the rate of the base fine at (.....)%.
- (681) There are no aggravating factors to consider under Article 6 of the Regulation on Fines for this violation, but the buyer power of the organized retailers in general and of the chain markets and large discounts stores in particular, which could limit the effect of SAVOLA's infringing activities on competition as a mitigating factor, have been taken as a mitigating factor, with a two-fifth reduction implemented in the administrative fine to be imposed on the undertaking in accordance with Article 7(1) of the Regulation on Fines, arriving at the rate of (.....)%.
- (682) Article 16(3) of the Act no 4054 specifies that an administrative fine should be imposed on undertakings that have violated the Act no 4054 based on their annual gross revenues generated by the end of the financial year preceding the final decision, or, if this could not be calculated, generated by the end of the financial year closest to the date of the final decision as determined by the Board. Accordingly, turnover information for the year 2020 has been taken into account in the calculation of the fine.

K. CONCLUSION

- (683) According to the Report prepared and the Additional Opinion, evidence collected, written pleas, the statements made during the hearing and the scope of the file examined regarding the investigation conducted per the Board decision dated 20.06.2019 and numbered 20-23/298-M, it has been decided UNANIMOUSLY that
- I. a) Yeni Mağazacılık A.Ş., BİM Birleşik Mağazalar A.Ş., CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş., Migros Ticaret A.Ş. and Şok Marketler Ticaret A.Ş. ensured the coordination of prices and price increases by either direct or indirect contact through common suppliers. Competitively sensitive information such as future prices, price increase dates, seasonal activities and campaigns were also shared directly or through common suppliers. The companies used the suppliers to intervene with the prices of those undertakings which discounted prices or which did not yet increase their prices when prices in the market in general were increasing, and ensured that they also hiked their prices to the disadvantage of the consumers. Where the competitors' prices did not increase, the undertakings constantly monitored compliance with the collusion by quickly implementing discounts specific to a product and/or region and through the use of penalizing strategies, including making out return invoices to the supplier. Thus, the aforementioned undertakings violated Article 4 of the Act no 4054 by agreements or concerted practices that showed the characteristics of a hub-and-spoke cartel, aimed at fixing the retail prices of many products they offered for sale.
 - b) In addition to the aforementioned undertakings, Savola Gıda ve San. Tic. A.Ş., a supplier among the parties to the investigation, violated article 4 of the Act no 4054 by means of agreements or concerted practices made in the form of an obvious hub and spoke cartel that aims to fix retail prices because the cartel enabled and maintained the collusion/coordination between the aforementioned retailers for shelf prices and price changes with respect to its own products and

in this framework mediated for sharing competitively sensitive information such as retailers' future prices and price change dates, and is equally and jointly responsible with the retailers for the violation.

- c) According to the third paragraph of Article 16 of the Act no 4054 and Article 5(1)(a), 5(2), 5(3)(a) and 7(1) of the Regulation on Fines to Apply in cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, depending on the annual gross revenues which generated at the end of the fiscal year 2020 and which is determined by the Board, the following administrative fines shall be imposed:

1. On BİM Birleşik Mağazalar A.Ş., 958.129.194,39-TL at the rate of (.....)%;
2. On CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş. 142.469.772,07-TL at the rate of (.....)%;
3. On Migros Ticaret A.Ş., 517.672.762,75-TL at the rate of (.....)%;
4. On Savola Gıda ve San. Tic. A.Ş. 22.210.998,63-TL at the rate of (.....)%;
5. On Şok Marketler Ticaret A.Ş. 384.369.037,15-TL at the rate of (.....)%;
6. On Yeni Mağazacılık A.Ş. 646.582.329,39-TL at the rate of (.....)%;

- II. a) Savola Gıda ve San. Tic. A.Ş., which is a provider/supplier, violated article 4 of the Act no 4054 by means of determining resale prices of undertakings operating at retail level,

- b) Therefore the said undertaking shall be imposed an administrative fine of 11.105.499,32-TL at the rate of (.....) %, by discretion, of the annual gross revenues generated at the end of the fiscal year 2020 as determined by the Board, according to the third paragraph of Article 16 of the Act no 4054 and Articles 5(1)(b), 5(2), 5(3)(a) and 7(1) of the Regulation on Fines to Apply in cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position.

- III. a) It is not necessary to impose administrative fines on the undertakings titled

- 1.Çağrı Gıda Temizlik Maddeleri İnşaat Sanayi ve Ticaret A.Ş.
- 2.Metro Grosmarket Bakırköy Alışveriş Hizmetleri Tic. Ltd. Şti.
- 3.Yeni Çağdaş İhtiyaç ve Gıda Maddeleri İnş. Tic. Ltd. Şti.
- 4.Yunus Market İşletmeleri Ticaret A.Ş.
- 5.Gratis İç ve Dış Tic. A.Ş.
- 6.A.S. Watson Güzellik ve Bakım Ürünleri Tic. A.Ş.
- 7.Karizma Beşler Et Gıda Sanayi ve Tic. A.Ş.
- 8.Türk Henkel Kimya San. ve Tic. A.Ş.
- 9.Banvit Bandırma Vitaminli Yem San. A.Ş.
- 10.Söke Değirmencilik San. ve Tic. A. Ş.
- 11.Katmer Un İrmik San. ve Tic. A. Ş.
- 12.Evpaş Evyap Paz. ve Tic. A.Ş.
- 13.Colgate-Palmolive Temizlik Ürün. San. ve Tic. A.Ş.
- 14.Beypi Beypazarı Tar. Ür. Paz. San. Tic. A.Ş.
- 15.Küçükbay Yağ ve Deterjan Sanayi A.Ş.
- 16.Johnson and Johnson Sıhhi Malzeme San. ve Tic. Ltd. Şti.
- 17.Unilever Sanayi ve Ticaret Türk A.Ş.
- 18.Nivea Beiersdorf Kozmetik San. ve Tic. A.Ş.
- 19.Dentavit Sağlık Ürünleri Tic. Ltd. Şti.

20. Eczacıbaşı Tüketim Ürün. San. ve Tic. A.Ş.

21. Dalan Kimya End. A.Ş.

22. Nestle Türkiye Gıda Sanayi A.Ş.

23. Procter&Gamble Tüketim Malları San. A.Ş.

since there are no findings to show that the Act no 4054 was violated by the undertakings concerned or by the Association of Food Retailers,

- b) In addition, the Presidency shall be empowered to ensure that a letter of opinion is sent to all suppliers and retailers that are the parties of the investigation about the issues they should take into account in exchanging competitively sensitive information either concerning their competitors in their own markets or concerning the competitors of the parties in a vertical relationship,

with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision.