

From the Presidency of the Competition Authority,

DECISION OF THE COMPETITION BOARD

(Investigation)

File number :2018-5-034

Decision Number :21-17/208-86

Decision Date :25.03.2021

A. MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE

Members : Arslan NARİN (Deputy Chairman), Şükran KODALAK, Ahmet ALGAN, Hasan Hüseyin ÜNLÜ,

B. RAPORTEURS: İmren KOL, Cihan BİLAÇLI, Esra KÜÇÜKİKİZ, Merve BİROĞLU,

Çiğdem KIR, Osman AYAR

C. APPLICANT: -Two applications with confidentiality request

D. UNDER INVESTIGATION

1. AİR KAPADOKYA Balonculuk Havacılık Tur. Rek. A.Ş.

Representative: Av. Osman FİDAN

Gevher Nesibe Mah. İstasyon Cad. No:25 Camlı İş Merkezi K:2/14

Kocasinan/Kayseri

2. Akben Turizm Seyahat ve Ticaret A.Ş.

Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-

Şişli/İstanbul

3. Arıkan Havacılık Ltd. Şti.

Representative: Av. Cihan KAYA

Orta Mah. Vatan Cad. No:19 Kat:1 Avanos/Nevşehir

4. Atmosfer Balonculuk Ticaret Turizm A.Ş.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81

06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-

Şişli/İstanbul

5. Başkent Havacılık Balonculuk Eğt. Tur. Rek. İnş. Taş. San. ve Tic. Ltd. Şti.

Göreme El Sanatları Çarşısı No:24 Göreme/Nevşehir

6. Blue Bosphorus Turizm ve Tanıtım Ltd. Şti.

Representative: Korkut AYDIN

Ergenekon Mah. Hidayet Sok. No:13 Kat:3 Şişli/İstanbul

7. Cihangirođlu Havacılık Balonculuk Reklamcılık Turizm Taş. ve Tic. Ltd. Şti.

Representative: Av. Erdem YİĖİT

Koç Kuleleri Söğütözü Cad. No:2, B Blok Kat:7 Daire:19 Söğütözü
Çankaya/Ankara

8. CO DMC Turizm ve Ticaret Ltd. Şti.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

9. DELUKS Turizm Sanayi ve Tic. A.Ş.

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

10. Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

11. Discovery Havacılık Turizm ve Ticaret Ltd. Şti.

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

12. DLX Seyahat Acentalıđı ve Tic. A.Ş.

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

13. Eretna Turizm İşletmeciliđi ve Tic. Ltd. Şti.

Gülbahar Mah. Büyükdere Cad. Gayret Apartmanı, Apt. No: 105/12
Şişli/İstanbul

14. EZ-AİR Havacılık Reklamcılık Turizm İthalat İhracat ve Ticaret Ltd. Şti.

Çavuşın Köyü, Köy Lojmanı Göreme Yolu, No:12 Avanos/Nevşehir

15. GNM Turizm Ticaret Ltd. Şti.

Representative: Av. Mert KARAMUSTAFAOĖLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-

Şişli/İstanbul

16. Gökyüzü Balonculuk Hizmetleri Taş. Tur. Tic. A.Ş.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

17. Göreme Balonculuk Genel Havacılık Reklamcılık Turizm San. ve Tic. A.Ş.

Representative: Av. Yeşim ERTUĞRUL

Koza Sok. No:59/4 Büyükesat Çankaya/Ankara

18. Göktürk Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.

Representative: Av. Dilek AKKOLLU UÇAR

Nispetiye Mah. Nispetiye Cad. Nispetiye Ap. A Blok No:28/14, 34340
Beşiktaş/İstanbul

19. Han Havacılık Balonculuk Turizm Nakliye ve Ticaret Ltd. Şti.

Temsilcisi: Av. Fazlı KOÇ

Yeni Mah. Lale Cad. No:27 Kat:3 Merkez/Nevşehir

20. Kapadokya Balonculuk Turizm Ticaret A.Ş.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

21. Kapadokya Kaya Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.

Kayseri Caddesi No:20 Ürgüp/Nevşehir

22. LE CO Deri Turizm Ticaret ve Sanayi A.Ş.

Representative: Av. Hamdi PINAR

Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara

Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

23. LIONCOX Turizm

Atatürk Mahallesi Güner Sokak 1/2B/89 Küçükçekmece/İstanbul

24. Maccan Balonculuk Havacılık Turizm Tic. Ltd. Şti.

Representative: C. Levent İNALLI

Bağlıca Bulvarı 1095. Sok. Hilal Park Konutları No:5/40 Etimesgut/Ankara

25. Mavi Ay Havacılık Balonculuk Turizm İth. İhr. San. Tic. Ltd. Şti.
Mehmet Dinler Bulvarı No:23 Ürgüp/Nevşehir

26. Namsan Turizm İşletmeciliği ve Ticaret Ltd. Şti.
Göztepe Mah. Batı Şehir Cad. No:2/2 K3 Plaza K:15 D:54 Batı Şehir Konutları,
Bağcılar/İstanbul

27. Özarslan Balonculuk Havacılık Reklamcılık Turizm Ticaret A.Ş.
Representative: Av. Yeşim ERTUĞRUL
Koza Sok. No:59/4 Büyükesat Çankaya/Ankara

28. Pelikan Havacılık Organizasyon Turizm Reklam Taşımacılık ve Tic. Ltd. Şti.
Representative: Av. Cihan KAYA
Orta Mah. Vatan Cad. No:19 Kat:1 Avanos/Nevşehir

29. Planet Turizm Taş. Otel. Yer. Hiz. ve Dış. Tic. Ltd. Şti.
Cumhuriyet Mah. 520 Sok. No:6 Avanos/Nevşehir

30. Royal Balon ve Havacılık İşletmeleri Turizm Tic. A.Ş.
Representative: Av. Ömer ATA
1459. Cad. Yeşilçay Evleri 28/1 Çukurambar/Ankara

31. Samanyolu Havacılık Balonculuk Eğitim Turizm. İnşaat Sanayi ve Tic. Ltd. Şti.
Representative: Av. Mert KARAMUSTAFAOĞLU
Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

32. Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş.
Adnan Menderes Cad. No:7/1 Göreme/Nevşehir

33. Sultan Balonculuk Havacılık Turizm A.Ş.
Representative: Av. Hamdi PINAR
Mustafa Kemal Mah. Dumlupınar Bulvarı 266 Tepe Prime A- Blok No:81
06510 Çankaya/Ankara
Representative: Av. Mert KARAMUSTAFAOĞLU
Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

34. Sultan Kelebek Turizm San. ve Tic. Ltd. Şti.
Representative: C. Levent İNALLI
Bağlıca Bulvarı 1095. Sok. Hilal Park Konutları No:5/40 Etimesgut/Ankara

35. Stüdyo Turizm Taşımacılık ve Ticaret A.Ş.
Representative: Av. Mert KARAMUSTAFAOĞLU
Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-
Şişli/İstanbul

36. Şeref Turizm ve Ticaret Ltd. Şti.
Representative: Av. Mert KARAMUSTAFAOĞLU

Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-Şişli/İstanbul

37. Şeref Tur Organizasyon İnşaat Petrol Sağlık Film İç ve Dış Ticaret Ltd. Şti.
Representative: Av. Mehmet Ali İLHAN, Av. Müjdat İLHAN,
Av. M. Esmahan AKBAY, Av. A. Firuze YELPAZE
15 Mayıs Mah. 559. Sok. İnba İş Merkezi Kat:1 No: 6 Pamukkale/Denizli

38. Tempel Turizm Yatırım A.Ş.
Esenkent Mah. Onur Güvener Cad. Necati Cumali Sok. Truva Evleri No:8
Esenyurt/İstanbul

39. THK Gökçen Havacılık İktisadi İşletmesi
Representative: Av. Ahmet SUNGUR
Atatürk Bulvarı No:33 Opera Altındağ/Ankara

40. Uluer Havacılık Turizm ve Ticaret Ltd. Şti.
Representative: Av. Mert KARAMUSTAFAOĞLU
Ferko Signature Büyükdere Caddesi No.175 Kat:3 34394 Esentepe-Şişli/İstanbul

41. Ürgüp Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.
Representative: Av. Mehmet EROL
Altunizade Mah. Kuşbakışı Cad. Aşuroğlu Sitesi D Blok D:6 Üsküdar/İstanbul

- (1) **E. SUBJECT OF THE FILE:** The claim that Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş. rented out the flights of hot air balloon businesses in the Cappadocia region and excluded competing undertakings from the market by refusing to provide balloon flight services to the customers of those hotels and agencies which were not owned by Dorak Turizm ve Gayrimenkul Yatırımları A.Ş.
- (2) **F. SUMMARY OF THE ALLEGATIONS:** In an application submitted to the Competition Authority (the Authority) on 02.08.2018, it is alleged that:
- The applicant was quoted a price of 100-150 US Dollars to ride a hot air balloon in the Cappadocia region of Nevsehir. It is claimed that all flights of hot air balloon businesses operating in the region are purchased by Dorak Turizm ve Gayrimenkul Yatırımları A.Ş (DORAK HOLDING) at a price of 65 US Dollars at the beginning of the season.
 - The applicant was informed that the undertakings would face a penalty of 1,000,000 US Dollars if they did not comply with this agreement, and therefore they could not change the price; however, the undertakings were told that they could issue invoices for the flights in question over the 35 US Dollar price notified to the government.
- (3) Another application submitted to the Authority on 27.09.2018, claimed that

- DORAK HOLDING has used leasing to control 14 out of 25 hot air balloon businesses in the Cappadocia region of Nevşehir, by abusing its dominant position in the region.
- Thus, DORAK HOLDING made it impossible for other hotels to participate in balloon tours with the exception of its own hotel and agency customers, leaving other hotels and tourism agencies unable to book balloon flights for their customers and losing them reputation, with customers being forced to use DORAK HOLDING's hotels and agencies.

The balloon businesses owned by or under the control of DORAK HOLDING through leasing were; Kapadokya Balonculuk Turizm Ticaret A.Ş. (KAPADOKYA BALON), Başkent Havacılık Balonculuk Eğt. Tur. Rek. İnş. Taş. San. ve Tic. Ltd. Şti. (İSTANBUL BALON), Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş. (UNİVERSAL BALON), Gökyüzü Balonculuk Hizmet Taşıma Turizm Tic. A.Ş. (RAINBOW BALON), Göktürk Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti. (SKYWAY BALON), Cihangiroğlu Havacılık Balonculuk Reklamcılık Turizm Taşımacılık ve Ticaret Ltd. Şti. (BROTHERS BALON), Uluer Havacılık Turizm ve Ticaret Ltd. Şti. (ANATOLIAN BALON), Atmosfer Balonculuk Ticaret Turizm A.Ş. (ATMOSFER BALON), Han Havacılık Balonculuk Turizm Nakliye ve Tic. Ltd. Şti. (BALON TURCA), Samanyolu Havacılık Balonculuk Eğt. Turz. İnş. San. ve Tic. Ltd. Şti. (TÜRKİYE BALON), Discovery Havacılık Turizm ve Tic. Ltd. Şti. (DISCOVERY BALON), Maccan Balonculuk Havacılık Tur. Tic. Ltd. Şti. (COMFORT BALON), and Sultan Balonculuk Havacılık Turizm Rek. A.Ş. (SULTAN BALON).and requested necessary action be taken under the Act no 4054.

- (4) **G. PHASES OF THE FILE:** The Preliminary Examination Report, dated 09.08.2018 and numbered 2018-5-034/II, was prepared in response to a confidential application submitted on 02.08.2018 and was discussed by the Competition Board (the Board), which took the decision dated 27.08.2018 and numbered 18-29/502-M to launch a preliminary inquiry under Article 40.1 of the Act no 4054 about the allegations in the file concerning DORAK HOLDING as well as KAPADOKYA BALON, Göreme Balonculuk Genel Havacılık Reklamcılık Turizm Sanayi ve Ticaret A.Ş. (GÖREME BALON), EZ-AİR Havacılık Reklamcılık Turizm İthalat İhracat ve Ticaret Ltd. Şti. (EZEL BALON), BROTHERS BALON, Sultan Balonculuk Havacılık Turizm A.Ş. (SULTAN BALON), ANATOLIAN BALON, SKYWAY BALON, Ürgüp Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti. (ÜRGÜP BALON), Pelikan Havacılık Organizasyon Turizm Reklam Taşımacılık ve Ticaret Ltd. Şti. (VOYAGER BALON), BALON TURCA, Kapadokya Kaya Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti. (KAYA BALON), Royal Balon ve Havacılık İşletmeleri Turizm Tic. A.Ş. (ROYAL BALON), ATMOSFER BALON, Sultan Kelebek Turizm San. ve Tic. Ltd. Şti. (BUTTERFLY BALON), THK Gökçen Havacılık İktisadi İşletmesi (THK BALON), DISCOVERY BALON, RAINBOW BALON, İSTANBUL BALON, Mavi Ay Havacılık Balonculuk Turizm İth. İhr. San. Tic. Ltd. Şti. (ASSIANA BALON), Arıkan Havacılık Ltd. Şti. (ATLAS BALON), AİR KAPADOKYA Balonculuk Havacılık Tur. Rek. A.Ş. (AİR KAPADOKYA BALON), TÜRKİYE BALON, UNİVERSAL BALON, COMFORT BALON, and Özarslan Balonculuk Havacılık Reklamcılık Turizm Ticaret A.Ş. (DELUXE BALON), all of which are operating in the Cappadocia region of the Nevşehir province.

- (5) The Information Note dated 28.09.2018 and numbered 2018-5-034/BN-01, which was prepared in response to another confidential application submitted on 27.09.2018, was discussed by the Board and it was decided that a preliminary inquiry should be launched concerning LE CO Deri Turizm Ticaret ve Sanayi A.Ş. (LE CO DERİ), İSTANBUL BALON, UNİVERSAL BALON, and RAİNBOW BALON, and that this preliminary inquiry should be merged with the ongoing preliminary inquiry launched in accordance with the decision dated 27.08.2018 and numbered 18-29/502-M
- (6) During the preliminary inquiry process, on-site inspections were conducted at:
- DORAK HOLDING, LE CO DERİ, AİR KAPADOKYA BALON, ATLAS BALON, VOYAGER BALON, İSTANBUL BALON, GÖREME BALON, KAYA BALON, ROYAL BALON, TÜRKİYE BALON, ANATOLİAN BALON, BROTHERS BALON, and Şeref Turizm ve Ticaret Ltd. Şti. (PİENTİ) on 09.10.2018;
 - ATMOSFER BALON, ÜRGÜP BALON, SULTAN BALON, BUTTERFLY BALON, ASSIANA BALON, RAİNBOW BALON, BALON TURCA, SKYWAY BALON, EZEL BALON, İSTANBUL BALON, and UNİVERSAL BALON, which are part of ESPECİAL GRUP on 10.10.2018.

In addition, interviews were conducted with (.....) and (.....) on 10.10.2018, with the Civil Aviation General Directorate (Sivil Havacılık Genel Müdürlüğü - SHGM) on 22.10.2018, with (.....), DORAK HOLDİNG, PİENTİ, and LE CO DERİ on 23.10.2018, and with officials from (.....) on 24.10.2018.

- (7) During the preliminary inquiry process, certain information and documents were requested from the undertakings. The requested documents were received into the Authority records on various dates with various reference numbers. In addition, some information and documents were requested from the SHGM Nevşehir Provincial Directorate for evaluation, and these requested information and documents entered into the Authority records on 07.11.2018, with the number 8052.
- (8) The Preliminary Inquiry Report dated 12.11.2018 and numbered 2018-5-034/ÖA based on the results of the preliminary inquiry was discussed during the Board meeting of 15.11.2018, and the decision no 18-43/687-M was taken to launch an investigation in accordance with Article 41 of Act No. 4054 on DORAK HOLDİNG, KAPADOKYA BALON, GÖREME BALON, EZEL BALON, BROTHERS BALON, SULTAN BALON, ANATOLİAN BALON, SKYWAY BALON, ÜRGÜP BALON, VOYAGER BALON, BALON TURCA, KAYA BALON, ROYAL BALON, ATMOSFER BALON, BUTTERFLY BALON, THK BALON, DISCOVERY BALON, RAİNBOW BALON, İSTANBUL BALON, ASSIANA BALON, ATLAS BALON, AİR KAPADOKYA BALON, TÜRKİYE BALON, UNİVERSAL BALON, COMFORT BALON, DELUXE BALON, LE CO DERİ, İSTANBUL BALON, UNİVERSAL BALON, RAİNBOW BALON, and LİONCOX Turizm (LİONCOX), to determine whether they violated Articles 4 and 6 of Act No. 4054.
- (9) In accordance with Article 43 of Act No. 4054, the investigation notification was sent on 30.11.2018, with the number 14768, and the written pleas of those undertakings

that received the notification letter indicating the initiation of the investigation were entered into the Authority's records within the legal timeframe.

(10) During the investigation process, on-site inspections were conducted at,

- THK BALON, DORAK HOLDİNG, RAINBOW BALON, SULTAN BALON, LE CO DERİ, KAPADOKYA BALON, AIR KAPADOKYA BALON, GÖREME BALON, DELUXE BALON, BROTHERS BALON, ATMOSFER BALON, ATLAS BALON, VOYAGER BALON, and EZEL BALON on 04.12.2018,
- BUTTERFLY BALON, BALON TURCA, ROYAL BALON, TÜRKİYE BALON, PİENTİ, COMFORT BALON, İSTANBUL BALON, UNİVERSAL BALON, ANATOLİAN BALON, DISCOVERY BALON, ÜRGÜP BALON, ASSİANA BALON, SKYWAY BALON, and KAYA BALON on 05.12.2018.

Additionally,

- interviews were conducted with Şeref Tur Org. İnş. Pet. Sağ. Film İç ve Dış Tic. Ltd. Şti. (GLORIUS DMC) and Taş Otel Turizm İşletmeciliği Tic. Ltd. Şti. (STONE CONCEPT) on 06.12.2018.

(11) During the investigation process, it was found that a significant portion of hot air balloon businesses in the Cappadocia region had leased their balloons to undertakings named LE CO DERİ and CO DMC Turizm ve Ticaret Ltd. Şti. (CO DMC), and it was determined that the hot air balloons were operated through a single channel. Furthermore, some tourism agencies not directly involved in the investigation were found to be potentially involved in this arrangement. In this regard, on 28.03.2019, with the Decision No. 19-13/175-M, an investigation were launched on tourism agencies DLX Seyahat Acentalığı ve Tic. A.Ş. (OPULENTİA), Blue Bosphorus Turizm ve Tanıtım Ltd. Şti. (BLUE BOSPHORUS), Akben Turizm Seyahat ve Ticaret A.Ş. (ITIR), Deluks Turizm Sanayi ve Tic. A.Ş. (DELUKS), TEMPEL, Namsan Turizm İşletmeciliği ve Ticaret Ltd. Şti. (NAMSAN), GNM Turizm Ticaret Ltd. Şti. (GNM), ERETNA, Planet Turizm Taş. Otel. Yer. Hiz. ve Dış. Tic. Ltd. Şti. (CLİMAX), Stüdyo Tur. Taş. ve Tic. A.Ş. (KRİZANTEM), which was combined with the investigation initiated with the decision dated 15.11.2018 and numbered 18-43/687-M.

(12) In accordance with Article 43 of the Act No. 4054, the investigation launched with the Board decision dated 28.03.2019 and numbered 19-13/175-M was notified to the undertakings concerned with a notification dated 05.04.2019 and numbered 4323, and the written pleas of the undertakings which received the notification letter concerning the launch of the investigation entered into the Authority records within the due period. One of the parties of the investigation, BLUE BOSPHORUS, failed to submit its first written plea.

(13) Within the scope of the investigation, on-site inspections were conducted at

- ERETNA, CLİMAX, DELUKS, and OPULENTIA on 09.04.2019,

- GNM, BLUE BOSPHORUS, and TEMPEL on 10.04.2019,
- NAMSAN, ITIR, and KRIZANTEM on 11.04.2019.

- (14) As part of the investigation, information on the prices and costs of undertakings operating as hot air balloon operators and tourism agencies was requested, as well as on their shareholder structures. In response, THK BALON stated that their hot air balloons were leased to Şeref Tur Organizasyon İnşaat Petrol Sağlık Film İç ve Dış Ticaret Ltd. Şti. (GLORIOUS DMC) within the scope of the “*Hot Air Balloon Agreement with the Purpose of Procuring Customers*” between February 12, 2018, and February 12, 2019. Due to the fact that THK BALON's hot air balloons procured customers through GLORIOUS DMC during the specified period, a Memorandum dated and 11.04.2019 and numbered 2018-5-034/BN-03 was submitted to the Board, requesting to add GLORIOUS DMC as a party to the investigation and to extend the investigation period for six months, and with the decision dated 18.04.2019 and numbered 19-16/223-M, it was concluded that an investigation should be launched on GLORIOUS DMC, that this investigation should be merged with the investigation launched in accordance with the Board decision dated 15.11.2018 and numbered 18-43/687-M, and furthermore that the investigations should be extended for a period of six months.
- (15) During the investigation process, various information and documents were requested from the undertakings and received by the Authority on various dates and with various reference numbers. The Investigation Report dated 15.11.2019 and numbered 2018-5-034/SR, together with its annexes, were submitted to the members of the Board and the parties involved in accordance with Article 45 of Act No. 4054, and the relevant letter requested the second written pleas of the parties of the investigation at the same time.
- (16) A 30-day extension to the second written plea periods, starting from their date of expiry as per Article 45 of the Act no 4054, was granted to DORAK HOLDING, LE CO DERİ, CO DMC, PİENTİ, ITIR, KRİZANTEM, DELUKS, OPULENTİA, GNM, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON, and RAINBOW BALON with the Board decision dated 12.12.2019 and numbered 19-44/740-M; to BUTTERFLY BALON and COMFORT BALON with the Board decision dated 19.12.2019 and numbered 19-45/761-M, to TÜRKİYE BALON and ANATOLIAN BALON DISCOVERY BALON with the Board decision dated 26.12.2019 and numbered 19-46/792-M, to THK BALON with the Board decision dated 26.12.2019 and numbered 19-46/776-M, and to KAYA BALON with the Board decision dated 02.01.2020 and numbered 20-01/2-M.
- (17) The second written pleas of the undertakings were received in the Authority records within the due period on different dates and with various numbers. Of the parties to the investigation, LİONCOX, ASSİANA BALON, EZEL BALON, İSTANBUL BALON, UNİVERSAL BALON, SKYWAY BALON, TEMPEL, ERETNA, CLİMAX, BLUE BOSPHORUS, and GLORIOUS DMC failed to submit their second written pleas.
- (18) The Supplementary Opinion dated 4.2.2020 and numbered 2018-5-034/EG was prepared based on the pleas of the undertakings, and was submitted to the members of the Board and the undertakings within the framework of Article 45 of Act No. 4054.

In response to the Supplementary Opinion, 27 of the parties involved in the investigation submitted their third written pleas to the Authority.

- (19) In accordance with Article 46 of Act No. 4054, the issue of holding a hearing was discussed during the Board meeting on 04.06.2020, and Board decision numbered 20-27/344-M was taken to hold the hearing on 11.08.2020. The hearing was postponed due to the COVID-19 pandemic, and was later held on 16.03.2021.
- (20) The final decision was rendered in consideration of the Investigation Report, Additional Opinion, collected evidence, written pleas and hearings as well as the contents of the file under examination.
- (21) **F. RAPPORTEUR OPINION:** The relevant Report came to the following conclusions:

1. Of the parties to the investigation,
 1. The DORAK GROUP Economic Entity comprised of DORAK HOLDING, KAPADOKYA BALON, ATMOSFER BALON, RAINBOW BALON, SULTAN BALON, ITIR, KRIZANTEM,
 2. GÖREME BALON and DELUXE BALON owned by the same group,
 3. İSTANBUL BALON and UNİVERSAL BALON owned by the same group,
 4. ANATOLIAN BALON and DISCOVERY BALON owned by the same group,
 5. SKYWAY BALON,
 6. KAYA BALON,
 7. BUTTERFLY BALON,
 8. COMFORT BALON,
 9. ROYAL BALON,
 10. TÜRKİYE BALON,
 11. BALON TURCA,
 12. EZEL BALON,
 13. VOYAGER BALON,
 14. ÜRGÜP BALON,
 15. ATLAS BALON,
 16. BROTHERS BALON,
 17. THK BALON,
 18. ASSİANA BALON,
 19. AIR KAPADOKYA

violated Article 4 of Act No. 4054 by object by engaging in price-fixing and market-sharing agreements/concerted practices in the hot air balloon market in the period before the common reservation and sales platform CO DMC; therefore, administrative fines should be imposed on the undertakings concerned in accordance with Article 16.3 of the Act No. 4054 and with Article 5.1(a) of the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Regulation on Fines),

2. Of the parties to the investigation,

1. The DORAK GROUP Economic Entity comprised of DORAK HOLDİNG, KAPADOKYA BALON, ATMOSFER BALON, RAINBOW BALON, SULTAN BALON, ITIR, KRIZANTEM,
2. PİENTİ,
3. GNM,
4. DELUKS,
5. OPULENTİA,
6. LE CO DERİ,
7. CO DMC,
8. İSTANBUL BALON and UNİVERSAL BALON owned by the same group,
9. ANATOLIAN BALON and DİSCOVERY BALON owned by the same group,
10. COMFORT BALON,
11. BROTHERS BALON,
12. BALON TURCA,
13. TÜRKİYE BALON,
14. SKYWAY BALON,
15. KAYA BALON,

violated Article 4 of Act No. 4054 by object by engaging in price-fixing agreements/concerted practices in the hot air balloon market during the common reservation and sales platform CO DMC; therefore, administrative fines should be imposed on the undertakings concerned in accordance with Article 16.3 of the Act No. 4054 and with Article 5.1(a) of the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Regulation on Fines),

3. Of the parties to the investigation,

1. TEMPEL,
2. NAMSAN,
3. BLUE BOSPHORUS,
4. Eretna, and CLİMAX owned by the same group,
5. GLOURİOUS DMC,
6. AIR KAPADOKYA,
7. ASSİANA BALON,
8. ATLAS BALON,
9. BUTTERFLY BALON,
10. GÖREME BALON and DELUXE BALON owned by the same group,
11. EZEL BALON,
12. ROYAL BALON,
13. THK BALON,
14. ÜRGÜP BALON,
15. VOYAGER BALON,

did not have sufficient information and evidence indicating that they violated Article 4 of Act No. 4054 during the common reservation and sales platform CO DMC, and therefore it was not necessary to impose administrative fines in accordance with Article 16 of Act No. 4054 on the undertakings concerned,

4. Of the parties to the investigation, LIONCOX did not have the nature of an undertaking and should not be held responsible for any violation under Act No. 4054,
5. The lease agreements directly concluded between LE CO DERİ and 11 hot air balloon operators, which are currently ongoing, as well as the currently ongoing agreements PİENTİ signed with UNİVERSAL BALON and İSTANBUL BALON, which allow operations through the platform, must be terminated in order to end the violation and reestablish a competitive environment; additionally, the joint reservation and sales platform operated under the name of CO DMC or any other name should be immediately discontinued.

I. EXAMINATION, GROUNDS AND LEGAL BASIS

I.1. Undertakings under Investigation:

(22) The following table includes the commercial titles names and known brand names of the balloon operators and travel agencies under investigation. The column labelled “Known Name” also represents the abbreviations used for the undertaking concerned in the decision¹. The table groups together undertakings within an economic entity.

Table 1: Undertaking Titles and Known Names of Investigated Entities

Group Name	Undertaking Title	Known name
DORAK GRUBU ²	Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş.	DORAK HOLDING
	Kapadokya Balonculuk Tur. Tic. A.Ş.	KAPADOKYA BALON
	Atmosfer Balonculuk Ticaret Turizm A.Ş.	ATMOSFER BALON
	Gökyüzü Balonculuk Hizmet Taşıma Turizm Tic. A.Ş.	RAINBOW BALON
	Sultan Balonculuk Havacılık Tur. Rek. A.Ş.	SULTAN BALON
	Akben Turizm Seyahat ve Ticaret A.Ş.	ITIR
	Stüdyo Tur. Taş. ve Tic. A.Ş.	KRIZANTEM
	Şeref Turizm ve Ticaret Ltd. Şti.	PİENTİ
	GNM Turizm Ticaret Ltd. Şti.	GNM
	DELUKS Turizm Sanayi ve Tic. A.Ş.	DELUKS
	DLX Seyahat Acentalığı ve Tic. A.Ş.	OPULENTIA
	Tempel Turizm Yatırım A.Ş.	TEMPEL
	Namsan Turizm İşletmeciliği ve Ticaret Ltd. Şti.	NAMSAN
	Blue Bosphorus Turizm ve Tanıtım Ltd. Şti.	BLUE BOSPHORUS
	Eretna Turizm İşl. ve Tic. Ltd. Şti.	ERETNA

¹ Hot air balloon operators under investigation are referred to by their brand names rather than their commercial titles. Thus, the brand names of the balloon operators carrying out hot-air balloon flights were used in order to make the documents obtained during the on-site inspection more understandable and make them easier to follow. Moreover, documents collected during the on-site inspection also show that some of the tourism agencies under investigation are referred to either by abbreviating their commercial names, and others with their brand names similar to balloon operators. Accordingly, in order to make the evidence more understandable and easily abbreviations found in the evidence have been used to make the evidence more understandable and traceable.

² The six undertakings mentioned in the table are all under DORAK GROUP, with DORAK HOLDING being the parent company of DORAK GROUP.

ERETNA GRUP	Planet Turizm Taş. Otel. Yer. Hiz. ve Dış. Tic. Ltd. Şti.	CLIMAX
	Şeref Tur Organizasyon İnşaat Petrol Sağlık Film İç ve Dış Ticaret Ltd. Şti.	GLORIOUS DMC
	LE CO Deri Turizm Ticaret ve Sanayi A. Ş.	LE CO DERİ
	Co DMC Turizm ve Ticaret Ltd. Şti.	CO DMC
	Göktürk Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.	SKYWAY BALON
GÖREME GRUP	Göreme Balonculuk Genel Havacılık Reklamcılık Turizm Sanayi ve Ticaret A.Ş.	GÖREME BALON
	Özarslan Balonculuk Havacılık Reklamcılık Turizm Tic. A.Ş.	DELUXE BALON
	Kapadokya Kaya Balonculuk Hav. Tur. Rek. Ltd. Şti.	KAYA BALON
	Sultan Kelebek Tur. San. ve Tic. Ltd. Şti.	BUTTERFLY BALON
ESPECIAL GRUP	Başkent Havacılık Balonculuk Eğitim Tur. Rek. İnş. Tşm. San. ve Ltd. Şti.	İSTANBUL BALON
	Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş.	UNIVERSAL BALON
	Maccan Balonculuk Havacılık Tur. Tic. Ltd. Şti.	COMFORT BALON
	Royal Balon ve Havacılık İşletmeleri Turizm Tic. A.Ş.	ROYAL BALON
	Samanyolu Havacılık Balonculuk Eğt. Turz. İnş. San. ve Tic. Ltd. Şti.	TÜRKİYE BALON
ULUER GRUP	Uluer Havacılık Turizm ve Ticaret Ltd. Şti.	ANATOLIAN BALON
	Discovery Havacılık Turizm ve Tic. Ltd. Şti.	DISCOVERY BALON
Group name	Undertaking Title	Known name
	Han Havacılık Balonculuk Turizm Nak. ve Tic. Ltd. Şti.	BALON TURCA
	EZ-AİR Havacılık Reklamcılık Turizm İth. İh. ve Tic. Ltd. Şti.	EZEL BALON
	Pelikan Havacılık Organizasyon Turizm Rek. Taş. ve Tic. Ltd. Şti.	VOYAGER BALON
	Ürgüp Balonculuk Havacılık Turizm Reklam Ltd. Şti.	ÜRGÜP BALON
	Arikan Havacılık Ltd. Şti.	ATLAS BALON
	Cihangiroğlu Havacılık Balonculuk Reklamcılık Turizm Taşımacılık ve Ticaret Ltd. Şti.	BROTHERS BALON
	THK Gökçen Havacılık İktisadi İşletmesi	THK BALON
	Mavi Ay Havacılık Balonculuk Turizm İth. İhr. San. Tic. Ltd. Şti.	ASSIANA BALON
	AİR KAPADOKYA Balonculuk Havacılık Turizm Reklamcılık A.Ş.	AİR KAPADOKYA

I.1.1. DORAK HOLDİNG

(23) DORAK HOLDİNG was established on 27.04.2011, and it operates as a holding company operating in various fields, including travel agencies, foreign sales offices, hotel and restaurant investments in the tourism sector; a bus fleet in the transportation sector; white marble and travertine quarries in the mining sector; balloon companies in the aviation sector as well as in ceramics³. Within the undertaking, there are four hot air balloon operators operating in the Cappadocia region: KAPADOKYA BALON, RAINBOW BALON, SULTAN BALON, and ATMOSFER BALON. The shareholding structure of DORAK HOLDİNG is presented in the table below.

Table 2 - DORAK HOLDING Shareholding Structure

Shareholders	Share Ratio (%)
Mehmet Ali SÖYLEMEZ	40.9400
Mustafa PİLAV	27.4700

³ <http://dorakholding.com.tr/tr/index.html> (Access date: 02.11.2018)

Ahmet Kaplan TAN	18.1800
Tan Turizm Havayolu Taş. A.Ş.	9.0900
Ahmet Serdar KÖRÜKÇÜ	4.3200
Nihat GÜLEŞEN	0.0001
Total	100.0000
Source: Response Letter	

- (24) Mehmet Ali SÖYLEMEZ, one of the shareholders of DORAK HOLDİNG, holds the position of co-founder in ATMOSFER BALON and RAINBOW BALON, and serves as a board member in KAPADOKYA BALON. Ahmet Serdar KÖRÜKÇÜ, on the other hand, is a board member and shareholder in Tan Turizm Havayolu Taşımacılık Bilgisayar Elektronik San. ve Dış Tic. A.Ş. (DORAK TOUR), ITIR, and DORAK HOLDİNG.

I.1.2. ITIR

- (25) ITIR was established in 2008 as a travel agency providing services to customers in the Chinese market for tours and various activities. DORAK HOLDİNG owns 75% of the company's shares, while the remaining 25% is owned by Serdar İBİŞ.

I.1.3. KRİZANTEM

- (26) KRİZANTEM was founded as a travel agency operating in the tourism sector. DORAK HOLDİNG owns 70% of the company's shares, and the remaining 30% are owned by Serdar İBİŞ.

I.1.4. PİENTİ

- (27) PİENTİ is a travel agency operating in the tourism sector since 1973, headquartered in İstanbul. It also has a branch located in Nevşehir. Currently, all shares of the undertaking are owned by Burak KOYUNCUOĞLU.

I.1.5. GNM

- (28) GNM was established as a travel agency operating in the tourism sector. The company's undertaking shares are distributed as follows: 50% owned by Mustafa Gökhan BULUT, 30% by Leyla KORKMAZ, 10% by Fatma Yüsrâ KORKMAZ, and 10% by Abdullah KORKMAZ.

I.1.6. DELUKS

- (29) DELUKS operates as a travel agency organizing cultural tour events. Currently, the undertaking's sole shareholder is Halise Güney LEVİ, and the Chairman of the Board is Sinan DUMAN.

I.1.7. OPULENTİA

- (30) OPULENTİA is a travel agency established in 2008 and operates in the tourism sector. Cengiz PEKÖZCAN owns 50% of the undertaking's shares, and 50% are owned by Yaşar TÜRKOĞLU.

I.1.8. TEMPEL

- (31) TEMPEL was established as a travel agency operating in the tourism sector. Taner AKTAŞ owns 63% of the undertaking's shares, with the remaining 37% owned by Atakan BOZYAYLA.

I.1.9. NAMSAN

- (32) NAMSAN is a travel agency offering services in hotel reservations, transportation, personalized holidays, travel arrangements, flight tickets, meeting, and conference organizations. Mehmet KABAKÇI owns 98% of the undertaking's shares, and 2% are owned by Soo Jin LEE.

I.1.10. BLUE BOSPHORUS

- (33) BLUE BOSPHORUS is a travel agency operating in the tourism sector. All of the shares of the undertaking are owned by Korkut Özal AYDIN.

I.1.11. ERETNA

- (34) ERETNA operates as a travel agency organizing cultural tours and congress events. All of the shares of the undertaking are owned by Alper ALP.

I.1.12. CLİMAX

- (35) CLİMAX is a travel agency operating in Türkiye since 1996, together with its tour operator partner ERETNA, which has a capacity of 30.000 travelers in the Korean market. The company has two offices in İstanbul and one in Cappadocia. All shares of the undertaking are owned by Alper ALP.

I.1.13. GLORİOUS DMC

- (36) GLORİOUS DMC is a travel agency operating in the tourism sector, and it procures customers for THK BALON's hot air balloons. The undertaking is entirely owned by İsmail Şafak KARAKAN.

I.1.14. LE CO DERİ

- (37) LE CO DERİ, established on 14.07.2017, was originally established for leather trading and later began marketing activities on behalf of balloon operators in the Cappadocia region. LE CO DERİ is known among balloon operator undertakings as CO DMC.
- (38) According to the Trade Registry Gazette of 19.112018, on 6.11.2018 a partial demerger took place within the undertaking, and LE CO DERİ transferred all of its branches/businesses operating in the leather trade to Santo Pelle Deri Turizm ve Sanayi A.Ş. (SANTO PELLE). The current shareholder structures for both of the undertakings according to the response letter submitted by the parties to the investigation are provided in the table below.

Table 3: Current Shareholder Structure of LE CO DERİ

Shareholders	Share Ratio (%)
Eylem ALP	(.....)
Burak KOYUNCUOĞLU	(.....)
Sinan DUMAN	(.....)
Total	100.0

Source: Response Letter Submitted by the Investigation Parties.

Table 4: Current Shareholder Structure of SANTO PELLE

Shareholders	Share Ratio (%)
Eylem ALP	(.....)
Burak KOYUNCUOĞLU	(.....)
Sinan DUMAN	(.....)

Total	100.0
Source: Response Letter Submitted by the Investigation Parties.	

- (39) According to the Trade Registry Gazette dated 12.06.2019, which includes the current information on LE CO DERİ, Eylem ALP is the Chairman of the Board of Directors, and Burak KOYUNCUOĞLU is the Vice Chairman of the Board of Directors. Eylem ALP also serves as the Middle East operations director at DORAK HOLDİNG.

I.1.15. CO DMC

- (40) Tan Fuarçılık Ltd. Şti., established on 12.06.2015, changed its title to CO DMC on 10.07.2017 with a General Assembly of Shareholders. CO DMC operates a platform used for booking balloon flights, accessible to all travel agencies, hotels, and tourism businesses (business to business-B2B). The current shareholder structure of CO DMC is presented below.

Table 5: Current Shareholder Structure of CO DMC

Shareholders	Share Ratio (%)
Ahmet Serdar KÖRÜKÇÜ	16.4
Mustafa Gökhan BULUT	16.4
Serdar İBİŞ	16.4
Burak KOYUNCUOĞLU	16.4
Alp Arslan TANER	16.4
Sinan DUMAN	6.4
Halise Güney LEVİ	5.6
Yaşar TÜRKÖĞLU	5.6
Mehmet Ali SÖYLEMEZ	0.4
Total	100.0
Source: Trade Registry Gazette dated 02.02.2018 and Response Letter Submitted by the Investigated Party.	

- (41) According to the information in the Trade Registry Gazette dated 15.11.2018, Osman Taha KÜÇÜK's directorship in the undertaking has ended, and Burak KOYUNCUOĞLU, a shareholder of the undertaking, has been appointed as the new director with individual authority.

I.1.16. KAPADOKYA BALON

- (42) KAPADOKYA BALON has been conducting tourist-oriented balloon flights since 1991. DORAK HOLDİNG owns 99.12% of the undertaking's shares, with 0.88% owned by Mehmet Ali SÖYLEMEZ.

I.1.17. ATMOSFER BALON

- (43) ATMOSFER BALON, established in 2007, operates in the field of tourist-oriented hot air balloon passenger transportation. DORAK HOLDİNG holds 99.97% of the undertaking's shares, and 0.03% are owned by Mehmet Ali SÖYLEMEZ.

I.1.18. SULTAN BALON

- (44) SULTAN BALON operates in the field of tourist-oriented hot air balloon passenger transportation. All of the company's undertaking shares are held by Mehmet Ali SÖYLEMEZ.

I.1.19. RAINBOW BALON

- (45) RAINBOW BALON operates in the field of tourist-oriented hot air balloon passenger transportation. DORAK HOLDİNG owns 99.25% of the undertaking's shares, and 0.75% are owned by Mehmet Ali SÖYLEMEZ.

I.1.20. SKYWAY BALON

- (46) SKYWAY BALON operates in the field of tourist-oriented hot air balloon passenger transportation and also provides flight training as well as tour and event organization services. Sevim KATRANCI owns 86.77% of the undertaking's shares, with the remaining 13.23% held by İbrahim Alper KATRANCI.

I.1.21. GÖREME BALON

- (47) The undertaking shareholding structure of GÖREME BALON, established in 1997, is presented in the table below:

Table 6: Current Shareholding Structure of GÖREME BALON

Shareholders	Share Ratio (%)
Erdal FIRAT	42.50
Halil ÖZARSLAN	15.50
Cengiz DEVECİ	10.00
Suphi KULAKSIZOĞLU	10.00
Merkez Anadolu Halıcılık Kuyumculuk Tur. San. ve Tic. A.Ş.	10.00
Dilhas Turizm Madencilik Halı Gıda Teks. San. Tic. A.Ş.	5.00
Çetin ATALAY	2.50
Hayri ÖZARSLAN	2.25
Seda ÖZARSLAN	2.25
Total	100.00

Source: Trade Registry Gazette dated 20.07.2017.

I.1.22. DELUXE BALON

- (48) The undertaking, established in 2011, conducts its activities under the brand name DELUXE BALON. The undertaking shareholding structure is presented in the table below:

Table 7: Current Shareholding Structure of DELUXE BALON

Shareholders	Share Ratio (%)
Halil ÖZARSLAN	55.00
Erdal FIRAT	21.25
Cengiz DEVECİ	5.00
Suphi KULAKSIZOĞLU	5.00
Merkez Anadolu Halıcılık Kuyumculuk Tur. San. ve Tic. A.Ş.	5.00
Dilhas Turizm Madencilik Halı Gıda Teks. San. Tic. A.Ş.	2.50
Seda ÖZARSLAN	2.50
Hayri ÖZARSLAN	2.50
Çetin ATALAY	1.25
Total	100.00

Source: Trade Registry Gazette dated 20.07.2017.

I.1.23. KAYA BALON

- (49) The undertaking, which started its activities in 2009, organizes tourist-oriented balloon tours and tourist-oriented jeep safari tours. Koray YÜKSEL holds 10% of the shares, with 40% owned by Murat ÇOBAN, and 50% by Seher HALICI.

I.1.24. BUTTERFLY BALON

- (50) The undertaking is engaged in hot air balloon transportation and tourism agency services, and 33.3% of its shares are owned by Ali YAVUZ, 33.3% by Mehmet DAŞDELER, 12.5% by Can TURGUT, 12.5% by Nil TURGUT, and 8.4% by Deniz TURGUT.

I.1.25. ISTANBUL BALON

- (51) Part of ESPECIAL GROUP, ISTANBUL BALON operates in the field of tourist-oriented hot air balloon passenger transportation. Erol ÖZSOY owns 91% of the undertaking's shares, and 9% are owned by Volkan AĞBULUT.

I.1.26. UNIVERSAL BALON

- (52) Part of ESPECIAL GROUP, UNIVERSAL BALON operates in the field of tourist-oriented hot air balloon passenger transportation. Erol ÖZSOY is the sole shareholder of the undertaking.

I.1.27. COMFORT BALON

- (53) COMFORT BALON has been providing hot air balloon flight services in the region since 2013. Before 13.06.2017, the shareholder structure of COMFORT BALON consisted of 25% Muttalip ALDEMİR, 25% Mehmet Ali SOYDEMİR, 20% Metin KAYHAN, 10% Seyit ÜNSAL, 7.5% İsmail SUCU, 7.5% Hüseyin YAYLA, and 5% Vural Kaan GÜL. On 13.06.2017, all shares of the undertaking were acquired by Erol ÖZSOY, the sole shareholder of UNIVERSAL BALON and a 72% shareholder of ISTANBUL BALON. Therefore, the undertaking was under ESPECIAL GROUP until that date. On 16.08.2018, all shares of the undertaking were acquired by Ali YAVUZ, a 33.3% shareholder of BUTTERFLY BALON.

I.1.28. ROYAL BALON

- (54) The company was established in 2010 and its primary business is hot air balloon transportation. Additionally, the undertaking operates hotel businesses under its umbrella. The shareholder structure of ROYAL BALON is presented in the table below:

Table 8: Current Shareholding Structure of ROYAL BALON

Shareholders	Share Ratio (%)
Dinler Turizm Ticaret A.Ş.	49.0
Mustafa DİNLER	19.0
Emin DİNLER	15.0
Yakup DİNLER	8.5
Mehmet DİNLER	8.5
Total	100.0

Source: Trade Registry Gazette dated 20.07.2017.

I.1.29. TÜRKİYE BALON

- (55) The undertaking operates hot air balloon activities under the brand name TÜRKİYE BALON and does not have any other business areas. Erdal YARIŞ owns 50% of the undertaking's shares, and the remaining 50% are owned by Murat ÇOBAN.

I.1.30. ANATOLIAN BALON

(56) ANATOLIAN BALON operates in the field of tourist-oriented hot air balloon passenger transportation. Until 25.06.2019, 70% of the shares of the undertaking were owned by Halil ULUER, and 30% by Mahmut Sami ULUER, whereas on the relevant date, all shares were acquired by Mehmet Atalay ÇEKGELOĞLU. According to the Trade Registry Gazette dated 03.09.2019, the undertaking made a decision to split on 15.08.2019. According to that decision, a new company named Dolunay Balonculuk Havacılık Turizm A.Ş. will be established to take over the shares of the undertaking.

I.1.31. DISCOVERY BALON

(57) DISCOVERY BALON operates in the field of tourist-oriented hot air balloon passenger transportation. Until 25.06.2019, 75% of the shares of the undertaking were owned by Mahmut Sami ULUER, and 25% by Fatihhan ULUER whereas on the relevant date, all shares were acquired by Mehmet Atalay ÇEKGELOĞLU. According to the Trade Registry Gazette dated 03.09.2019, the undertaking made a decision to split on 15.08.2019. According to that decision, a new company named Global Balonculuk Havacılık Turizm A.Ş. will be established to take over the shares of the undertaking.

I.1.32. BALON TURCA

(58) The undertaking operates under the brand name BALON TURCA and 80% of its shares are owned by Habil ULUER, 10% by Necmeddin Nurullah ULUER, and the remaining 10% by Abdullah ULUER.

I.1.33. EZEL BALON

(59) The undertaking, which started its flights in 1987, has 50% of its shares held by Bilge EZEL and the other 50% by Hasan EZEL.

I.1.34. VOYAGER BALON

(60) The undertaking, established in 2008, has 60% of its shares owned by Teyfik ÖLMEZ and 40% by Mehmet Halis AYDOĞAN.

I.1.35. ÜRGÜP BALON

(61) Established in 2008, 50% of undertaking's shares are owned by Yaşar DOĞAN and the other 50% by Metin AYDEMİR.

I.1.36. ATLAS BALON

(62) The undertaking, which started its activities in 2010, has all of its shares held by Mehmet Halis AYDOĞAN.

I.1.37. BROTHERS BALON

(63) The company, established in 2002, operates under the brand name BROTHERS BALON. Until 27.12.2017, 99% of the undertaking's shares were owned by Cihangir CİHANGİROĞLU, and 1% by Sermin CİHANGİROĞLU. According to the Trade Registry Gazette dated 11.01.2018, on the relevant date, all of the shares of the undertaking were acquired by Ahmet Ozan KÖRÜKÇÜ.

I.1.38. THK BALON

(64) The Turkish Aeronautical Association (Türk Hava Kurumu) was founded on February 16, 1925, under the name "Türk Tayyare Cemiyeti." The Association aims to establish

the aviation industry and promote the development of military, civil, sports, and tourist aviation. Balloons owned by THK BALON are operated by GLORIOUS DMC under the “Hot Air Balloon Agreement with the Purpose of Procuring Customers ” signed with GLORIOUS DMC.

I.1.39. ASSIANA BALON

- (65) ASSIANA BALON provides hot air balloon transportation, and is also active in reservation and accommodation services. All of the undertaking's shares were previously under the control of NT Yatırım Turizm Ticaret Ltd. Şti., owned by Nebil TAHİNCİOĞLU but on 19.09.2019, Erol ÖZSOY, a shareholder of ISTANBUL BALON-UNIVERSAL BALON, and Erdal FIRAT, a shareholder of GÖREME BALON, acquired all of the shares. Currently, 75% of the undertaking's shares are owned by Erol ÖZSOY, and 25% by Erdal FIRAT.

I.1.40. AIR KAPADOKYA BALON

- (66) AIR KAPADOKYA BALON only provides hot air balloon touring services, and 19% of its shares are owned by Vehbi KÖSE, 19% by Derviş ÖLMEZ, 19% by Osman ÖZBEK, 18% by Cemal YILDIRIM, 18% by Nuri KÖSE, and 7% by Nebi ÖZTÜRK.

I.2. Sector Information and Legal Regulations⁴

- (67) Türkiye has the world's largest commercial hot air balloon operation in terms of traffic, passenger numbers, and flight days. Over 70% of hot air balloon flights worldwide take place in Türkiye.
- (68) According to the data from the Ministry of Transport and Infrastructure, Directorate General of Civil Aviation (Sivil Havacılık Genel Müdürlüğü – SHGM), there are a total of 239 hot air balloons in 25 balloon businesses located in the Cappadocia/Nevşehir region. The region conducts flights on an average of 260 days per year, with around 90 flights per day, serving approximately 500,000 tourists annually⁵. The significantly higher number of annual flight days in Cappadocia compared to other flying regions worldwide and the fact that the number of flights conducted in a single day can only be matched in other countries during festivals highlight Türkiye's potential in this field⁶.
- (69) The table below provides the total number of people flown by undertakings operating in the region, based on the information requested from the undertakings:

Table 9: The total number of passengers flown by year on the basis of undertakings in the Cappadocia Region.

Undertaking ⁷	The Total Number of Passengers Flown by Year.			Total:
	2016	2017	2018	
AIR KAPADOKYA BALON	(.....)	(.....)	(.....)	40.010
ANATOLIAN BALON	(.....)	(.....)	(.....)	41.338
ASSIANA BALON	(.....)	(.....)	(.....)	29.298
ATLAS BALON	(.....)	(.....)	(.....)	14.143
ATMOSFER BALON	(.....)	(.....)	(.....)	122.681

⁴ The documents obtained from the meeting held at the Directorate General of Civil Aviation (Sivil Havacılık Genel Müdürlüğü – SHGM) have been utilized.

⁵ SHGM 2017 Activity Report.

⁶ <http://web.shgm.gov.tr/tr/haberler/5874-shurn> (Access Date: 19.12.2018).

⁷ The table has been prepared based on the information obtained from 24 balloon operators, excluding THK BALON.

BALON TURCA	(.....)	(.....)	(.....)	51.487
BROTHERS BALON	(.....)	(.....)	(.....)	22.764
BUTTERFLY BALON	(.....)	(.....)	(.....)	68.706
COMFORT BALON	(.....)	(.....)	(.....)	21.174
DELUXE BALON	(.....)	(.....)	(.....)	22.971
DISCOVERY BALON	(.....)	(.....)	(.....)	80.885
EZEL BALON	(.....)	(.....)	(.....)	8.329
GÖREME BALON	(.....)	(.....)	(.....)	155.472
ISTANBUL BALON	(.....)	(.....)	(.....)	69.759
KAPADOKYA BALON	(.....)	(.....)	(.....)	175.120
KAYA BALON	(.....)	(.....)	(.....)	205.262
RAINBOW BALON	(.....)	(.....)	(.....)	119.245
ROYAL BALON	(.....)	(.....)	(.....)	69.793
SKYWAY BALON	(.....)	(.....)	(.....)	83.851
SULTAN BALON	(.....)	(.....)	(.....)	18.501
TÜRKİYE BALON	(.....)	(.....)	(.....)	55.589
UNİVERSAL BALON	(.....)	(.....)	(.....)	57.992
ÜRGÜP BALON	(.....)	(.....)	(.....)	83.706
VOYAGER BALON	(.....)	(.....)	(.....)	78.399
FINAL TOTAL:	224.715	509.736	962.024	1.696.475

Source: Response Letters Received from the Undertakings.

(70) As seen in Table-9 prepared based on the information obtained from the undertakings, in the Cappadocia region, 224,715 people flew in hot air balloons in 2016, 509,736 people in 2017, and 962,024 people in 2018. The number of tourists flown in 2017 increased by 127% compared to 2016, and in 2018, there was an 89% increase compared to 2017. The number of people flying in 2016 and 2017 was significantly lower than in 2018. During that period, the number of foreign tourists coming to the region was lower, resulting in fewer people taking balloon flights.

(71) In addition to being globally recognized for hot air balloon flights, the Cappadocia region is also popular among both domestic and foreign tourists due to its diverse natural and scenic beauty. Therefore, for foreign tourists visiting the region, taking a hot air balloon ride is an additional activity that complements their interest in exploring the natural beauty of the area. Many foreign tourists visit the region with the intention of experiencing its natural wonders, and some of them choose to stay in the region for accommodation. The table below presents the total number of foreign tourists staying in Nevşehir province and the distribution of their nationalities, based on the information obtained from the Ministry of Culture and Tourism:

Table 10: Total Number of Foreign Tourists Staying in the Nevşehir Province

Countries	Total Number of Foreign Tourists Arriving at the Facility.		
	2016	2017	2018
FAR EAST COUNTRIES (People's Republic of China, Indonesia, Philippines South Korea, Japan, Cambodia, North Korea, Malaysia, Thailand, Vietnam, Singapore, Brunei, Laos, Taiwan, Bangladesh)	89.771	297.283	551.586
OTHER COUNTRIES	177.303	125.564	320.750
TOTAL:	267.074	422.847	872.336

Source: Information Obtained from the Ministry of Culture and Tourism.

(72) As seen in the table, the number of foreign tourists staying in Nevşehir was 267,074 in 2016, 422,847 in 2017, and 872,336 in 2018. In 2016, 34% of foreign tourists staying in Nevşehir were from the Far East, while this percentage increasing to 70% in 2017 and then decreased to 63% in 2018.

I.2.1. Allocation and Distribution of Hot Air Balloon Slots

- (73) Hot air balloon activities in Türkiye are conducted in accordance with the regulations and circulars issued by the SHGM under the Ministry of Transport and Infrastructure⁸. To increase safety measures and tighten controls following a number of accidents, SHGM established the Nevşehir Provincial Representation in 2013.
- (74) According to the “Cappadocia Region Balloon Flight Measures Circular” published by the SHGM and approved on 27.06.2019, balloon flights are conducted in two periods daily. In the first period, from 30 minutes before sunrise until 11:00 AM, a maximum of 105 balloons are allowed to fly simultaneously. In the second period, from local time 14:00 until 30 minutes after sunset (subject to compliance with Turkish Aeronautical Information Circular rules) and with favorable meteorological data, a maximum of 65 balloons are allowed to fly. How many balloon flights each undertaking may have during these periods is determined by the “Slot Implementation Directive for Hot Air Balloons in the Nevşehir Cappadocia Balloon Flight Area,” published by SHGM. A slot⁹ refers to the right of hot air balloons to use the airspace of the Nevşehir Kapadokya Balloon Flight Area at a specific day and time. The determination of each undertaking's slot rights for the following year takes into account factors such as the percentage of current slot rights used, the number of flight-worthy balloons in their fleet, the total number of passengers transported, and administrative sanctions applied to the businesses.
- (75) The Balloon Slot Directive dated 01.07.2013 states in Article 5 that a meeting will be organized by the SHGM in January each year, with the participation of relevant parties, to evaluate the past year and make decisions regarding the reallocation of slots. The Slot Implementation Directive in the Nevşehir Cappadocia Balloon Flight Area¹⁰, published on 21.06.2019, lists the criteria to consider for slot allocation as follows in Article 5: *“the Directorate General shall organize a sectoral review meeting by inviting slot service center officials, industry representatives, and other relevant organizations if necessary. During this meeting, an evaluation of the past year shall be conducted and the industry stakeholders shall provide their views and suggestions to the Directorate General about the reallocation of the slots. The Directorate General shall assess and adjust slot allocations based on the views and suggestions of the relevant industry stakeholders. The slot capacity in flight areas is determined taking into account flight safety, safety incidents, security, public order, and other related factors.”* Article 10 states the following: *“The allocation of the slots in the Cappadocia region shall take into account the number of airworthy days and the usage percentages of the businesses. The slot usage deviations of the businesses shall be calculated by multiplying the businesses' value of deviation from the average with the number of base slots allocated to them and then subtracting the product from the base slot number. If the slot usage deviation of the business is negative, this shall show that the business is using less capacity than the Sectoral Capacity Usage Ratio; if it is positive*

⁸ “Slot Implementation Directive for Hot Air Balloons in the Nevşehir Cappadocia Balloon Flight Area,” dated 29.09.2015; “Commercial Aviation Activities with Balloons Directive,” dated 02.07.2015; “Licensing Directive for Balloon Pilots,” dated 15.08.2014; the Circular on “Meteorological Evaluation of Balloon Flights in the Cappadocia Region,” dated 15.06.2016; the Circular on “Analysis of Balloon GPS Records,” dated 04.06.2014; and the Circular on “Precautions for Balloon Flights,” dated 13.06.2018.

⁹ Article 4/1(ö) of the “Slot Implementation Directive for Hot Air Balloons in the Nevşehir Cappadocia Balloon Flight Area,” dated 29.09.2015.

¹⁰ http://web.shgm.gov.tr/documents/sivilhavacilik/files/mevzuat/sektorel/talimatlar/2019/SHT-BALON_SLOT_Rev03_nihai.pdf

this shall show that the business is using more capacity than the Sectoral Capacity Usage Ratio. If, as a result of the slot usage analysis, a business is found to have unused slots, their base slot number value shall be reduced by 1 (one). Those businesses with 2 (two) base slots shall not have a reduction in the number of base slots. The slots taken from businesses with unused slots shall be allocated to those businesses whose deviation from the average is above the average value, starting from the one with the highest deviation from the average, by adding 1 (one) slot to each. However, where businesses have the same deviation from the average, the business with the higher slot usage deviation shall have priority in slot reallocation. If there are any leftover slots once the slots recovered from are all allocated to those businesses that need them, the allocation process shall be repeated using the same method. For businesses whose number of allocated slots have changed within a year, the capacity usage to take into consideration for slot usage analysis shall be separately calculated for each period. A business may see no change in its morning slot but its secondary flight and afternoon slot may change within the bounds of possibility. The slot numbers of a business for secondary flights and the afternoon period shall be calculated according to the productivity capacity of the business, at half the number of the base slots. Any remainder shall be rounded towards the change in the base slot. In case the total afternoon period is below the set slot number, the remaining slots will be allocated to those businesses whose new slots were rounded down, starting with the highest value for deviation from the average. The number of secondary flights and afternoon slots shall not be less than 1. Slot allocations calculated annually under this Directive shall be notified to the balloon businesses using the specified procedure.”

Accordingly, the first slot allocation was carried out as per temporary article 1 of the directive, in consideration of the number of flight-ready balloons of the existing undertakings. The working principles and procedures of the Slot Service Center (Slot Hizmet Merkezi - SHM), operating under the Cappadocia University and responsible for collecting data on behalf of the SHGM on assignment by the SHGM, are specified in Articles 6 and 7 of the Slot Implementation Directive in the Nevşehir Cappadocia Balloon Flight Area, published on 21.06.2019. Within this framework, the evaluation of the suitability for take-off in the Nevşehir Kapadokya Balloon Flight Zone is explained in Article 7.1(a) to (f) as follows: “a) One day before the planned flight, businesses shall send their flight plans to the SHM within the time frame designated by the SHM. The plans may be submitted through the Balloon Tracking system. b) The SHM shall evaluate the flight plans submitted by businesses and match them with the allocated slot numbers for each business. If there is a slot overrun, the suitability for take-off shall not be granted. c) Flag checks reflecting the meteorological evaluations for those sectors where take-offs are planned shall be conducted by SHM. In case a red or yellow flag is declared, the suitability for take-off shall not be granted to balloon businesses. If a green flag is declared, the businesses shall be notified that flights can be carried out with the approval of the business and the responsible pilot. ç) Authorized personnel of the business wishing to use the slot allocated by the Directorate General shall request suitability for take-off according to the communication rules and principles before take-off. d) Businesses requesting take-off suitability must comply with the specified take-off times. Flights can be initiated within fifteen minutes before or after the suitability for take-off time. If balloons do not/cannot take off within these periods, they need to request suitability for take-off again. e) For each landing balloon, the official of the business shall notify the balloon registry and landing time to the SHM. This notification may be done over the Live Balloon Tracking system. The SHM shall record the landing time of the balloon. In case of any events or accidents during take-

off/landing or flight, the SHM shall be immediately notified under the SHT-OLAY and the Ministry of Transportation and Infrastructure Transportation Safety Investigation Center Regulations. f) The suitability for take-off communicated by the SHM only means that the balloon business has the right to use the allocated slot and that the specified slot matches the flight plan. The safe conduct of the flight operation and the decision to cancel the operation, if necessary, are the responsibility of the operating company and pilot.” While there are no balloon pilots within the SHM, recruitment criteria are designated by the Cappadocia University, since it is not directly connected to the SHGM.

- (76) The Meteorological Assessment Group (Meteorolojik Değerlendirme Grubu - MDG) was established to examine meteorological conditions, analyze reports, coordinate, make meteorological assessments, and inform the SHM, and its working principles and procedures are specified in Articles 1-4 of the “Cappadocia Region Balloon Flights Meteorological Assessment” Circular, published on 15.06.2016, as follows: 1) *The structure of the Meteorological Assessment Group (MDG); a) Meteorological assessments shall be made by the Meteorological Evaluation Group made up of 12 (twelve) pilots. b) The group in question shall be assigned to five different regions, with 1 (one) primary, 1 (one) substitute, and 2 additional (pool) pilots assigned for each region. If a pilot resigns from office, a new pilot shall be appointed by the Nevşehir Representation. c) If the primary official is unavailable (due to leave and/or force majeure), the substitute pilot shall be appointed; if both are unavailable, the SHM shall appoint an appropriate pilot from the pool for the relevant day and region to make the assessment. 2) The MDG shall conduct preliminary meteorological assessments based on meteorological data for the First Flight, Secondary Flight, and Afternoon Flights, by conducting physical examinations at the flight zone. 3) Meteorological assessments shall begin with the review of meteorological reports one day before the flight and are finalized before the flight time on the day of the flight. Based on the meteorological conditions, a red flag decision may be taken one day in advance. 4) The appointed MDG pilots shall make the preliminary assessment of the regions under their responsibility and convey the final meteorological assessments for the relevant region to the SHM. The SHM shall record this information.*” Regarding the selection process of MDG pilots within the scope of this regulation, SHGM was asked about it and in its response letter, SHGM noted that the this group was selected from among private sector pilots working in the Cappadocia region, that the selection criteria included reliability, experience, proximity to the place of duty, adherence to confidentiality, and accessibility, that the pilots selected among working pilots to serve in this capacity were rotated every 14 or 21 days, and that this practice was intended to maintain the decision-making capabilities of the pilots within the group.
- (77) The table below shows the number of slots that undertakings had between the years 2016-2018:

Table 11: Number of Slots for Hot Air Balloon Companies in the Cappadocia Region

Undertakings	2016		2017		2018	
	Morning	Noon	Morning	Noon	Morning	Noon
ANATOLIAN BALON	4	2	4	2	4	2
ATMOSFER BALON	8	4	7	3	7	3
AIR KAPADOKYA BALON	3	2	3	2	3	2
ASSIANA BALON	3	1	3	1	3	1
ATLAS BALON	2	1	2	1	2	1
BALON TURCA	3	2	3	2	3	2

BROTHERS BALON	3	1	3	1	2	1
BUTTERFLY BALON	4	2	4	2	4	2
DELUXE BALON	2	1	2	1	2	1
COMFORT BALON	2	1	2	1	2	1
DISCOVERY BALON	3	1	3	1	3	1
İSTANBUL BALON	3	1	3	1	4	1
KAPADOKYA BALON	10	5	10	5	10	5
KAYA BALON	6	3	7	3	7	3
RAINBOW BALON	6	3	6	3	6	3
SKYWAY BALON	4	2	4	2	4	2
SULTAN BALON	3	1	2	1	2	1
TÜRKİYE BALON	3	2	3	2	3	2
UNİVERSAL BALON	2	1	3	2	3	2
EZEL BALON	2	1	2	1	2	1
GÖREME BALON	6	4	6	4	6	4
ROYAL BALON	5	3	5	3	5	3
THK BALON	3	1	3	1	3	1
ÜRGÜP BALON	4	2	4	2	4	2
VOYAGER BALON	6	3	6	3	6	3
TOTAL	100	50	100	50	100	50
Source: Response Letters Received from Undertakings.						

(78) When examining the table above, it can be observed that there was no change in the total number of slots between 2016 and 2018 and that, among the 25 hot air balloon businesses, the only changes to the slot allocations involved those of ATMOSFER BALON, İSTANBUL BALON, SULTAN BALON, KAYA BALON, and UNİVERSAL BALON. SULTAN BALON and ATMOSFER BALON had a decrease in their slot numbers, while UNİVERSAL BALON, KAYA BALON, and İSTANBUL BALON saw an increase in their slot numbers. The absence of any increase in slot numbers is due to the regulations by SHGM to ensure flight safety and security, while the relatively consistent slot numbers among the undertakings are due to the crucial importance of the slots for the profitability of a hot air balloon business.

(79) Due to the high number of flights in the Cappadocia region and the inability to increase capacity to ensure safe flights, SHGM has been carrying out various studies and incentive programs in other regions within the country to enable balloon flights to be conducted.

I.3. Relevant Market

I.3.1. Relevant Product Market

(80) Ballooning allows for amateur or sporting aviation activities, as well as commercial and training flights. Amateur and sporting aviation do not require an operating license. However, a license is required for commercial operations.

(81) Balloon flights conducted by balloon operators are generally divided into two categories: training flights and passenger-carrying flights (commercial flights). In terms of training, balloon operators are obligated to provide the necessary training for all personnel working in the business in accordance with the relevant regulations issued

by the SHGM to ensure the service is provided at international standards, depending on the operation type and region.

- (82) Accordingly, pilots who have been on a flight hiatus for up to 6 months are required to take a refresher flight of not less than one hour, while pilots who have been on a break for one to two years take a refresher flight of not less than two hours, in addition to other training. For flight and ground safety, the frequency of flights, the maximum number of balloons allowed to fly simultaneously, and other technical aspects are regulated by the SHGM, and training flights are not considered commercial flights.
- (83) Passenger-carrying flights are defined as “*flights where passengers pay a fee to participate in the balloon flight for the purpose of viewing a specific historical, cultural, or touristic area from a certain altitude and/or experiencing a flight with a balloon.*”¹¹ These commercial flights can be classified as standard flights, comfort flights, deluxe flights, etc., depending on the undertaking concerned. These flights may vary in terms of passenger capacity of the balloon, flight duration and facilities offered to the passengers (catering, transport to the take-off site, etc.). In commercial flights, the services on offer may vary depending on the duration or the number of passengers riding the balloon.
- (84) In terms of duration, flights last around sixty or ninety minutes of airtime. The number of passengers, on the other hand, can vary from four to 28, depending on the basket capacity.
- (85) To conduct commercial balloon flights, undertakings must obtain an operating license by fulfilling the conditions set out by the SHGM. Each undertaking has the option to offer flights lasting 60 minutes or 90 minutes. In other words, they can offer flight services of different durations with the same type of balloons, without incurring any additional cost in switching between one product to the other.
- (86) Based on the above information, training flights and commercial flights are considered as distinct services. Although commercial flights can be further categorized based on the services offered, for the purpose of the file herein, the relevant product market is defined as “hot air balloon flight services” for balloon operators.
- (87) The other side of the investigation apart from the balloon operators involve undertakings some of which are travel agencies operating in the tourism sector. The activities of travel agencies in Türkiye are regulated by the Travel Agencies and Travel Agencies Association Act No. 1618 (Act no 1618) and relevant secondary legislation. According to Article 1 the Act No. 1618, travel agencies are defined as follows: “*Commercial establishment that is authorized to provide information to tourists about tourism, create package tours, offer tourism-oriented accommodation, transportation, sightseeing, sports and entertainment services for profit, which can market the products it creates by itself or through other travel agencies.*” Article 3 of the Act no 1618 classifies travel agency services into three groups: Group A travel agencies can carry out all travel agency activities mentioned in Article 1, Group B agencies can sell tickets for international land, sea, and air transportation as well as tickets for the tours organized by the Group A travel agencies, and Group C agencies

¹¹ Directive on Commercial Aviation Activities with Balloons (SHT-Balon Rev.3).

can organize domestic tours for Turkish citizens only. In this context, undertakings that wish to provide travel agency services in Türkiye must hold one of the aforementioned three certificates. The investigated travel agencies are undertakings that hold Group A group agency operation certificates which are active in the field of incoming services in Türkiye.

- (88) As mentioned in the Board decision dated 21.11.2016 and numbered 16-40/662-296, incoming services¹² include activities such as welcoming customers arriving through tour operators at airports, arranging airport-hotel transfers, mediating hotel accommodation for customers, providing informative details about the destination in Türkiye, offering sightseeing and shopping services in response to demand, and arranging hotel-airport transfers at the end of the vacation. All of these services provided by the agencies providing incoming services market are collectively known as incoming services in the tourism sector.
- (89) Based on the explanations provided above, the relevant market for the investigated travel agencies is defined as the “incoming services market.”

I.3.2. Relevant Geographic Market

- (90) Since two separate relevant product markets were identified based on the market position and activities of the parties involved within the scope of the investigation, separate relevant geographic markets are determined for balloon operators and travel agencies as well.
- (91) Geographically, balloon flights are conducted in the Cappadocia and Pamukkale regions. However, efforts are being made to start balloon flights in the upcoming periods in other regions such as the Frigya Valley, Elazığ, Bitlis, Siirt, and Adana. Approximately 90% of balloon operators are located in the Nevşehir region, while the remaining 10% are in the Pamukkale region. In light of the fact that each geographical area has its unique characteristics and that there is weak demand substitution as a result, it is concluded that “*taking a balloon ride in another region cannot substitute the experience of a balloon flight in Cappadocia.*” Therefore, the relevant geographic market for hot air balloon flight services is defined as the “Cappadocia region.”
- (92) The investigated travel agencies¹³, on the other hand, mainly engage in bringing tourists to Türkiye from foreign countries and providing services to meet their needs, such as accommodation, shopping, entertainment, social activities, and visiting historical sites. Considering that these activities of travel agencies under investigation in the incoming services market are carried out in different regions across Türkiye, the relevant geographic market for travel agencies is defined as “Türkiye.”

I.4. Information and Documents Obtained within the File

I.4.1 Information and Documents Obtained in the On-Site Inspection

¹² The original decision in Turkish uses the term “incoming” as well.

¹³ The rest of the decision will refer to travel agencies and other tourism agencies under investigation as “agencies.” Thus, it should be noted that the term “agency” in the decision has a different meaning than the term in the competition law literature, in general.

- (93) All hot air balloon operators in the Cappadocia region initially aimed to establish a common sales and marketing platform under a cooperative framework, where sales prices for balloon flights would be determined; however, the planned cooperative could not be realized due to some undertakings opting out of participation.
- (94) Following the failure to establish the cooperative, a company called CO DMC was founded in partnership by the officials/shareholders of DORAK GROUP, PİENTİ, GNM, OPULENTIA, DELUXE, and TEMPEL. Simultaneously, another company named LE CO DERI was established in partnership by the officials/shareholders of PİENTİ, GNM, OPULENTIA, DELUXE, and TEMPEL. LE CO DERI started selling the flights leased through agreements with a total of 14 hot air balloon operators through a platform operating under LE CO DERI and/or CO DMC. Although they will be addressed in detail later, for the sake of providing a comprehensive perspective on the evidence, a table showing the 14 hot air balloon businesses under the platform is provided below.

Table 12: Hot Air Balloon Operators Operating Under the Platform

Group name	Undertaking
DORAK GRUBU	KAPADOKYA BALON
	ATMOSFER BALON
	RAINBOW BALON
	SULTAN BALON
ESPECIAL GRUP	UNIVERSAL BALON
	ISTANBUL BALON
ULUER GRUP	ANATOLIAN BALON
	DISCOVERY BALON
	BROTHERS BALON
	SKYWAY BALON
	TURKIYE BALON
	COMFORT BALON
	BALON TURCA
	KAYA BALON
Source: Evidence-112	

- (95) Additionally, findings indicating the exclusion of certain agents following the establishment of the relevant system have been obtained, along with other findings pointing to joint conduct by some agencies in foreign markets, all of which will be discussed under the relevant headings below.

1.4.1.1. Evidence Related to the Period before CO DMC

- (96) **Evidence-1:** On-site inspections at SKYWAY BALON, EZEL BALON, BUTTERFLY BALON, and DORAK HOLDING uncovered an e-mail sent by the Chairman of the KAPTID Board of Directors (.....)¹⁴ to an e-mail address owned by KAPTID on 30.12.2016, titled “On Solidarity in Ballooning Meeting,” which was copied to the e-mail addresses of ATMOSFER BALON, BUTTERFLY BALON, İSTANBUL BALON, KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON, UNIVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSIANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON, DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON, THK BALON, DORAK HOLDING General Coordinator (.....) and Kapadokya Lodge Hotel, and which includes the following statements:

¹⁴ (.....) is an official of ROYAL BALON at the same time.

“Hello;

First of all, we wish you all a good day.

A meeting called “Solidarity in Ballooning” will be organized to discuss and address the neglected issue of collaboration among companies in the iconic Balloon Tourism of Cappadocia during which a presentation will be given by Mr. (.....). The details of the meeting are as follows:

Venue: Kapadokya Lodge Hotel – Uçhisar

Date: January 5, 2017 – Thursday

Time: 14:00

Each company is invited to send one representative, and the attendee must be the Company Owner or General Manager.

Please inform us about your participation and the person who will attend the meeting on behalf of your company until January 3, 2017 - Tuesday / 17:00 at the latest, via e-mail to kapadokya@kaptid.org.

We would like to thank Mr. (.....), the General Manager of Kapadokya Lodge Hotel, for hosting our meeting.

On this occasion, we wish you all a happy new year and extend our wishes for health, happiness, and success.

Best regards,

(.....)

Chairman of the Board of Directors

KAPTID (Cappadocia Tourist Hoteliers and Operators Association)”

- (97) **Evidence-2:** The following statements are in the e-mail with the subject “Atmosfer Balon Evaluation,” sent by ATMOSFER BALON Operations Manager (.....) to the Chairman of DORAK HOLDING's Board of Directors (.....) on 01.01.2017, which was recovered during the on-site inspection at DORAK HOLDING:

“Hello Mr. (.....), I started working at Atmosfer Balloon in December 2015.

...

The solidarity that will be formed in tourism and the sector through the “Solidarity in Ballooning” meeting to be held on January 5, 2017, and the decisions to be made thereafter will help prevent unfair competition, increase service quality, and improve profitability. We can adopt the aphorism “The worst law is better than lawlessness” to

commerce as “The worst agreement is better than unfair competition.” Even getting together is a step forward and should be supported.

Even cooperation before competing with our competitors will lead to profitability.

As the balloon operators of Dorak Holding Group, we want to put in our best effort, work harder, and strive to achieve better results in solidarity.”

- (98) **Evidence-3:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting”, sent by the Chairman of the KAPTİD Board of Directors (....) to the e-mail address kapadokya@kaptid.org, also owned by KAPTİD on 03.01.2017, which was copied to ATMOSFER BALON, BUTTERFLY BALON, (.....)¹⁵, KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON, UNIVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSIANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON official (.....), DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON, THK BALON, DORAK HOLDİNG General Coordinator (.....) and an e-mail owned by Kapadokya Lodge Hotel, and which was recovered during the on-site inspections conducted at SKYWAY BALON, EZEL BALON, ÜRGÜP BALON, BUTTERFLY BALON and GÖREME BALON:

“Hello;

First of all, good day.

As you know, all commercial balloon operators in Cappadocia were sent an e-mail on 30.12.2016, and information about the planned “Solidarity in Ballooning” meeting was shared.

Unfortunately, due to the lack of sufficient responses by the specified deadline (today 17:00), the meeting has been cancelled. It appears that there is no problem in the ballooning sector, and there is no need for any work to be done in this regard.

We would like to thank the following companies for showing responsibility and responding to our e-mail. (In the order they responded):

Universal Balloon

Urgup Balloon

ASSIANA Balloon

Atmosfer Balloon

Kapadokya Balloon

RAINBOW Balloon

¹⁵ The response from KAPTİD states that KAPTİD had no information on what position the relevant person held in which undertaking. Moreover, it is also noted that KAPTİD tried to get the relevant information on the person concerned since the receipt of the Authority letter by meeting with some sector representatives, which were all unsuccessful and therefore it is believed that the relevant e-mail address could be added in error or the Google Gmail database could have added the name by “auto complete” when another name was being entered. In addition, even though İSTANBUL BALON states that it does not have an employee or acquaintance by that name, the e-mail dated 13.02.2017 in Evidence-14 which was recovered during the on-site inspection at SKYWAY BALON shows (.....) using the e-mail address fly@istanbulballoons.com. Thus, it is believed that the person concerned was an İSTANBUL BALON employee on the relevant date.

*Sultan Balloon
Balloon Turca
Royal Balloon
Cihangiroglu Balloon*

We would also like to thank once again Kapadokya Lodge Hotel and its General Manager Ms. (.....), who would have hosted us if the meeting had taken place.

Despite the current situation, the General Coordinator of Dorak Holding (.....) continues to maintain hope and can be reached at “(.....)@dorakholding.com.tr.”

Good evening,

(.....)

Chairman of the Board

KAPTİD (Cappadocia Touristic Hoteliers and Operators Association)”

- (99) **Evidence-4:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting”, sent by DORAK HOLDİNG General Coordinator (.....) to the e-mail addresses of ATMOSFER BALON, BUTTERFLY BALON, (.....); KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON UNİVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLİAN BALON, ASSİANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON official (.....), DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON and THK BALON 04.01.2017 and copied to DORAK HOLDİNG’s Corporate Communications and Business Development Director (.....), and which was recovered during the on-site inspections conducted at SKYWAY BALON, BUTTERFLY BALON and GÖREME BALON:

“Dear Balloon Sector Representatives,

Hello,

This is to inform you that the location and time of the meeting, which KAPTİD previously notified as canceled via the e-mail below, have been changed. The meeting will now take place among the balloon operators in Cappadocia, where we plan to exchange ideas on a new business model. The participation of Company Owners, Partners, or General Managers would be beneficial as we aim to ensure mutual gains and cost savings in this meeting. We hope to come together as all balloon operators for the strength that solidarity brings.

Date: January 9, 2017, Monday

Address: Avanos Double Tree Hilton

Time: 10:30

For your confirmation of attendance, you can reply to the e-mail addresses in the cc line. I wish you all safe, trouble-free, and profitable flights.

Best regards,

(.....)

General Coordinator

Dorak Tourism and Real Estate Investment Holding Inc.”

(100)**Evidence-5:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting”, sent from an e-mail address owned by ÜRGÜP BALON to DORAK HOLDİNG’s General Coordinator (.....) on 05.01.2017, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Hello (.....),

Our Company General Manager, Mr. (.....), will attend the planned meeting.

Thank you for your interest.

Best regards,

Ürgüp Balloons”

(101)**Evidence-6:** The following statements are in the e-mail with the subject “Information,” sent by DORAK HOLDİNG’s Corporate Communication and Business Development Director (.....) to DORAK HOLDİNG General Coordinator (.....) on 06.01.2017, which was recovered during the on-site inspection at DORAK HOLDİNG:

“Mr. (.....),

Regarding the companies to be contacted,

Turkeybaloon - Talked today, the e-mail was sent again, no response yet.

Skyway - Responded in writing.

AIR KAPADOKYA - Talked today, the e-mail was sent again, no response yet.

Deluxe Balon - Talked, the owner is the same person as Göreme Balon, they said Göreme Balon received an e-mail, but I didn't ask if they would participate since you said not to talk to Göreme Balon. But they know about it.

There isn't a balloon company named Ezel on the list? I'm not sure if that's the owner's name, if you have information, please let me know. Ezel is the only one that we could not contact?”

(102)**Evidence-7:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting,” dated 06.01.2017, between DORAK HOLDİNG’s Corporate Communication and Business Development Director (.....) and AIR KAPADOKYA BALON, which was copied to DORAK HOLDİNG General Coordinator (.....) and which was recovered during the on-site inspection at DORAK HOLDİNG:

“Hello Mr. (.....),

In reference to our conversation on the phone just a while ago, I am sending the e-mail once more in case you did not receive it. I kindly ask for your positive or

negative response regarding your attendance at the meeting after consulting with your officials, Have a nice working day.”

...

“Hello Ms. (.....);

Our company officials have been informed accordingly.

Our General Manager, Mr. (.....), will participate in the meeting.”

(103) **Evidence-8:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting,” sent by DORAK HOLDİNG’s General Coordinator (.....) to e-mail addresses owned by ATMOSFER BALON, BUTTERFLY BALON, (.....), KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON, UNİVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSİANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON official (.....), DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON and THK BALON on 08.01.2017, which was copied to Dorak HOLDİNG Corporate Communications and Business Development Director (.....), Hilton Otel employee (.....) as well as (....)¹⁶ owned by (....), who became (.....) as of 08.08.2019, and which was recovered during the on-site inspections conducted at SKYWAY BALON, KAYA BALON, EZEL BALON, BUTTERFLY BALON, GÖREME BALON and ÜRGÜP BALON:

“Hello,

Due to heavy snowfall and weather conditions, we have to postpone our meeting. We will inform you about the new date once the weather improves. Thank you for your understanding and have a great day,

Best regards.

(.....)”

(104) **Evidence-9:** The following statements are in the e-mail with the subject “On ‘Solidarity in Ballooning’ Meeting,” sent by DORAK HOLDİNG’s General Coordinator (.....) to e-mail addresses owned by ATMOSFER BALON, BUTTERFLY BALON, (.....), KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON, UNİVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSİANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON official (.....), DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON and THK BALON on 12.01.2017 which was copied to Dorak HOLDİNG Corporate Communications and Business Development Director (.....), Hilton Otel employee (.....) as well as (....) owned by (....), who became (.....) as of 08.08.2019, and which was recovered during the on-site inspections conducted at SKYWAY BALON, KAYA BALON, EZEL BALON, BUTTERFLY BALON, GÖREME BALON and ÜRGÜP BALON:

¹⁶ The e-mail address (.....) is owned by (.....).

*“Hello again, Esteemed Representatives of the Ballooning Industry,
We are planning to hold our meeting for strength through solidarity at Avanos
Double Tree Hilton hotel on January 18, 2017, Wednesday, at 10:30. Your
participation is extremely important.*

I wish you a very nice day and extend my regards.

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

(105) **Evidence-10:** The following statements are in the e-mail with the subject “Solidarity in Ballooning, Opinions,” sent by ASSİANA BALON’s Chairman of the Board (.....) to DORAK HOLDİNG General Coordinator Osman Taha KÜÇÜK on 19.01.2017, which was recovered during the on-site inspection conducted at ASSİANA BALON:

Dear (.....),

First of all, I want to express my happiness to see you among us again and extend my thanks for your kind invitation.

I would like to share my thoughts on the meeting “Solidarity in Ballooning.”

Before any preparation, we need to make sure not to get caught by certain AUTHORITIES..

If this matter cannot be definitively resolved, we should refrain from taking any steps towards a non-functional legal entity.

If we cannot take a step in the marketing aspect of ballooning, we can redirect this energy towards beneficial topics in other aspects of the business and work together to reduce costs.

E.g.: Joint.., transfers, reservations, operations, ground services, pilot pool, etc.

Another issue is the unfortunate situation in which well-intentioned initiatives of cooperation (cooperatives, etc.) are exploited and become environments where stakeholders suffer due to malicious intent over time.

IF we are to take a step towards solidarity in the marketing aspect after overcoming legal issues, my essential conditions are as follows:

a) The Constitution to be established among balloon companies must ensure FAIRNESS and a just distribution of income and expenses, which requires a well-designed formula.

b) It must prevent manipulation for the benefit of a particular group to ensure the longevity of this solidarity.

c) Besides fairness among balloonists, we should also prevent its use as a tool in competition between agencies (e.g., blocking).

d) Just as important as maintaining solidarity is respecting the free will of individual balloon companies. The only trump card in their hands in case of an injustice would be their ability to leave the cooperation, and they should not be deprived of this right. Therefore, the binding conditions should be relatively more

stringent for a certain period (e.g., 2 years) to prevent easy dissolution of the solidarity, but should later be eased so that the continuation of the solidarity can be voluntary, not mandatory.

e) The company, etc. to be established should undergo routine auditing by a reputable audit firm based out of Istanbul for impartiality and transparency.

Thoughts on the NAME: It should have a “.com” extension and be universal, (should not contain a word that only Turkish speakers can understand and pronounce.)

(.....),

Note: If you send me your Excel work, I will have the chance to gain insight into the formula and contribute.

(.....)

Chairman of NT Group.”

(106) **Evidence-11:** The following statements are in the e-mail with the subject “On 2nd Solidarity in Ballooning’ Meeting,” sent by DORAK HOLDİNG’s General Coordinator (.....) to e-mail addresses owned by ATMOSFER BALON, BUTTERFLY BALON, İSTANBUL BALON, KAPADOKYA BALON, RAINBOW BALON, TÜRKİYE BALON, UNİVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSİANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON, DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, SULTAN BALON, ÜRGÜP BALON, ROYAL BALON, THK BALON, ROYAL BALON official (.....) and İSTANBUL BALON-UNİVERSAL BALON representative (.....) on 12.01.2017, which was copied to Dorak HOLDİNG Corporate Communications and Business Development Director (.....), Hilton Otel employee (.....) as well as e-mail addresses owned by (....), who became (.....) as of 08.08.2019, and which was recovered during the on-site inspections conducted at SKYWAY BALON, EZEL BALON, KAYA BALON, BUTTERFLY BALON and GÖREME BALON:

“Dear Balloon Sector Representatives,

The meeting we planned to hold this week is postponed due to the low attendance because of the EMITT fair and various other commitments and will now take place on Monday, January 30, 2017, at 14:00, at the Avanos Hilton Hotel.

During this period, we had a meeting with (.....) (Doğuş Holding Chief Legal Advisor, Competition Law Specialist). We will share the detailed notes from our detailed discussion with him and your valuable opinions during our meeting, and if it leads to a positive outcome, we will be able to quickly establish commissions and start our work.

Since it is a decision-making meeting, a high level of attendance is required. I would appreciate it if you could inform us who will attend in the confirmation e-mail.

Wishing you safe flights.

(.....)

General Coordinator

Dorak Tourism and Real Estate Investments Holding Inc.”

- (107) **Evidence-12:** The following statements are in the e-mail with the subject “RE: On 2nd Solidarity in Ballooning’ Meeting,” sent by an e-mail address owned by ÜRGÜP BALON to DORAK HOLDİNG General Coordinator (.....) on 26.01.2017, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Dear Mr. (.....),

The representatives from our company who will attend the planned meeting are as follows:

(.....): Chairman of the Board

(.....): General Manager

Best regards,

ÜRGÜP BALLOONS”

- (108) **Evidence-13:** The following statements are in the e-mail with the subject “RE: On 2nd Solidarity in Ballooning’ Meeting,” sent by an e-mail address owned by GÖREME BALON to DORAK HOLDİNG General Coordinator (.....) on 29.01.2017, which was copied to GÖREME BALON Operations Manager (.....) and which was recovered during the on-site inspection conducted at GÖREME BALON:

“Hello, Dear Authorized Person,

Our Operations Manager (.....) and Accounting Manager (.....) (2 PEOPLE) will attend the “Solidarity in Ballooning” meeting scheduled for the specified date on behalf of Göreme Ballooning and Deluxe Balloon. Please be informed.

Yours sincerely,

(.....)”

- (109) **Evidence-14:** The following statements are in the e-mail with the subject “On the Final Meeting of the Balloon Cooperative,” sent by DORAK HOLDİNG General Coordinator (.....) to e-mail addresses owned by BUTTERFLY BALON, (.....) <fly@istanbulballoons.com>; TÜRKİYE BALON, UNİVERSAL BALON, VOYAGER BALON, AIR KAPADOKYA BALON, ANATOLIAN BALON, ASSIANA BALON, ATLAS BALON, BALON TURCA, BROTHERS BALON official (.....), DELUXE BALON, DISCOVERY BALON, EZEL BALON, GÖREME BALON, KAYA BALON, COMFORT BALON, SKYWAY BALON, ÜRGÜP BALON, ROYAL BALON ve THK BALON on 13.02.2017, which was copied to Hilton Otel employee (.....) and e-mail addresses owned by (.....), who became (.....) as of 08.08.2019 and which was recovered during the on-site inspection conducted at SKYWAY BALON, EZEL BALON, BUTTERFLY BALON, VOYAGER BALON and GÖREME BALON:

“Dear Balloon Sector Representative,

We will hold the final meeting for the Balloon Cooperative and Balloon AŞ. at Avanos Double Tree Hilton on Thursday, February 16, at 10:30 am.

The meeting will include a detailed draft study concerning the cooperative structure, operation, and financial matters relating to the cooperative. It is important to have representatives with the authority to sign and make decisions attending the meeting.

Below, you can find the invitation list and expected participants:

<i>Balloon Company</i>	<i>Participant name</i>
<i>Kapadokya</i>	
<i>Atmosfer</i>	
<i>RAINBOW</i>	<i>(.....)</i>
<i>Sultan</i>	
<i>Butterfly</i>	<i>(.....)</i>
<i>Skyway</i>	<i>(.....)</i>
<i>THK</i>	<i>(.....)</i>
<i>Cihangiroglu</i>	<i>(.....)</i>
<i>AİR KAPADOKYA</i>	<i>(.....)</i>
<i>Göreme</i>	<i>(.....)</i>
<i>Deluxe</i>	<i>(.....)</i>
<i>Türkiye</i>	<i>(.....)</i>
<i>İstanbul</i>	<i>(.....)</i>
<i>Universal</i>	<i>(.....)</i>
<i>Balon Turca</i>	<i>(.....)</i>
<i>Atlas</i>	<i>(.....)</i>
<i>EZEL</i>	<i>(.....)</i>
<i>Anatolia</i>	<i>(.....)</i>
<i>Discover</i>	
<i>Royal</i>	<i>(.....)</i>
<i>Ürgüp</i>	<i>(.....)</i>
<i>Kaya Balon</i>	<i>(.....)</i>
<i>ASSIANA</i>	<i>(.....)</i>
<i>Maccan</i>	<i>(.....)</i>
<i>Voyager</i>	<i>(.....)</i>

Note: Balloon company partners can also attend the meeting. Names are written for representational purposes. The list is in alphabetical order based on participant names.

Best regards,

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.

(110) **Evidence-15:** The following statements are in the e-mail with the subject “Fwd: RE: ‘On the 2nd Solidarity in Ballooning Meeting,’” which was sent by ÜRGÜP BALON General Manager (.....) to e-mail addresses owned by ÜRGÜP BALON partner (.....) and (.....)¹⁷

¹⁷ (.....) is a partner in Turista Turz. ve Tic. Ltd. Şti, in which ÜRGÜP BALON partner (.....) is also a partner.

on 14.02.2017, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Dear (.....), (.....),

Due to recent issues in the sector, such as inefficient competition, price imbalances, and market problems, two meetings have been organized under the name of Balloon Cooperative, with the presentation and hosting of Mr. (.....), the General Coordinator of Dorak Holding.

Many of the balloon companies have a positive outlook on this initiative.

In the third meeting, which will take place at 10:30 am on 16.02.2017, your opinions on the path we should follow and on the decision-making process are of great importance to us.

I am sharing the presentation of the meeting, as well as the purpose, and details of the initiative as an attachment.

If possible, your presence at the meeting on Thursday will be beneficial for us to make the right decisions.

Best regards,

(.....)”

The following statements are in the attached presentation file named “Balonda Birlik.pptx”:

“Objective:

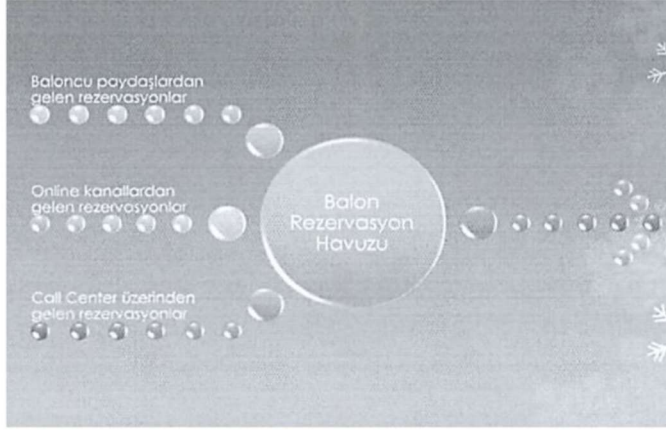
... Our main aim is to establish a KOSGEB-supported balloon cooperative for joint sales, marketing, and expense sharing.

What Kind of a Union?

Increasing Unit Revenue:

- *Gradually raising the unit fee of the balloon customer*
- *Selling the balloon at its value by setting a base price*
- *Determining commission amounts to prevent balloon sales at different prices.*
- *Penalizing those who do not comply with the fee rules through compensation.*

How Will the Operation Be?



(111)**Evidence-16:** The following statements are in the e-mail sent by DORAK HOLDİNG General Coordinator (.....) to SKYWAY BALON Operations Manager (.....) on 14.02.2017, which was copied to SKYWAY BALON partner (.....) and which was recovered during the on-site inspection conducted at SKYWAY BALON:

"Hello Mr. (.....),

The attached presentations are the ones we discussed with you today. I present them to you for your information.

Best regards,

(.....)

General Coordinator

Dorak Tourism and Real Estate Investment Holding Inc."

The attachment to the document includes an agreement titled "Balloon Tourism Development Cooperative" and a presentation titled "Balloon Cooperative Financial Matters." Some statements in the "Balloon Cooperative Financial Matters" are quoted below:

"Balloon Sales Prices

- | | |
|---------------------|-------------------------|
| • Balloon Companies | • Balon A.Ş. |
| ✓ Agencies | ✓ Sub-agencies |
| ✓ Hotels | ✓ Online Sales Channels |
| (.....) | (.....) |
| ✓ Own Website | ✓ Balloon Website |
| ✓ Walk-in | ✓ Call Center |
| ✓ Phone inquiries | ✓ Foreign Online Web |
| (.....) | (.....) |

Money Cycle

"On behalf of Balon A.Ş. the balloon companies collect fees. Similar to how passengers are gathered in a pool, the collections are gathered in a virtual pool. At the end of the day, a breakdown is sent to the balloon companies. At the end of the month, a settlement is made, and moneys are transferred between Balon A.Ş. and the balloon company."

(112) **Evidence-17:** The following statements are in the document named "BALONDA BİRLİK-genel kurallar.docx," attached to an e-mail sent by DORAK HOLDING General Coordinator (.....) to İSTANBUL BALON-UNİVERSAL BALON representative (.....), TÜRKİYE BALON Flight Operations Training Director (.....), AIR KAPADOKYA BALON Partner (.....), KAYA BALON official (.....), ÜRGÜP BALON General Director (.....), VOYAGER BALON official (.....), SKYWAY BALON Business Director (.....), DELUXE BALON official (.....) and ROYAL BALON official (.....) on 17.02.2017, which was recovered during the on-site inspections conducted at SKYWAY BALON and ÜRGÜP BALON:

1) Duration: 3.5 years.

2) Security Deposit: €400,000 per slot (Check / Promissory Note / Letter of Guarantee). 20,000 Cooperative fee

3) Balon A.Ş. budget: €5 from each flying passenger, each company shall have 4% shares in both Balon A.Ş. and the Cooperative

4) Decisions: Board of Directors' decisions shall be taken by 3/4 majority - (75%)

5) Advertising Budget: 20% if the income to remain with the A.Ş. exceeds 500,000 TL

6) Limitation: 1 Agency shall not fly more than 1,250 passengers per day if the occupancy rate exceeds 75%.

Package tours cannot include balloon sales.

There shall be no slot exchanges between ballooning companies; slots will be fixed."

7) Flight Operations: If passengers and agents declare a preference, they can fly with the desired balloon company.

8) Sales Call: If a balloon company wishes, it can directly communicate with the agency. For other agencies, Balon A.Ş. Marketing Team will work.

9) FREE: There will be no free flights.

10) Domestic Customers: Discounted tickets can be created for domestic customers.

11) Cost Calculation: shall be based on the number of individuals, not the basket.

12) Invoicing: Invoices shall be made out for share from the accumulated profit at the end of the month.

13) Collection: It can be done in two ways. By selling vouchers or by establishing a collection team.

If selling vouchers, everybody can be sold vouchers over the price including commission, once converted to ticket the commission amount shall be returned.

If establishing a collection team, each ballooning company shall have a collection personnel at the Balon AŞ for collection. Collection shall be made during the sale of the balloon by the personnel of the relevant ballooning firm, together with personnel from another ballooning firm.

..."

(113) **Evidence-18:** The following statements are in a Word document recovered during the on-site inspection at ASSIANA BALON, which the undertaking noted was dated 17.02.2017:

"1. C. Board: Other steps should not be taken before receiving exemption.

2. Duration: Should be 3 YEARS.

..."

6. Quotas: 1 Agency Firm cannot purchase more than 5,000 tickets within 1 month.

..."

8) FREE etc.: There should be absolutely no Free or Child discounts.

...

11) Invoicing: *Ballooning companies shall invoice the AŞ per Person flown.*

At the end of the month, they shall issue an Invoice again for their share of the accumulated profit.

12) Marketing: *All tickets shall be sourced from Balon AŞ. Agencies, ballooning companies, Boutique hotels, Brokers, etc., anyone who wishes can buy tickets in minimum quantities of 100 and in cash, and they can sell them at their desired price.*

...

14) PRICES: *There may be a discount of*

5% for 100 tickets purchased

8% for 200 tickets purchased

10% for 500 tickets purchased

15% for 1000 tickets purchased.”

(114) **Evidence-19:** The following statements are in the e-mail with the subject “Suggestion for Solidarity in Ballooning!”, sent by Chairman of ASSİANA BALON’s Board of Directors, (.....), to DORAK HOLDİNG General Coordinator (.....) on 18.02.2017, which was recovered during the on-site inspection conducted at ASSİANA BALON:

“Common PROBLEM: Preventing prices from going down

Individual Requests: SLOTS should not be fixed!

I will contact my agency !.

Those who want to fly with me, should be able to !..

COOPERATIVE: Shall print Vouchers

Vouchers will be sold for a fee in advance, and only to balloonists

The balloonist will enter the system using the number on the Voucher and buy a ticket for their customer, which they can sell at whatever price they want.

Vouchers will be sold for 100 TL, and at the end of the year, the balloon companies will receive 95 TL back.

PURPOSE: Preventing the decrease in prices by artificially increasing the flight cost for the balloonist.

(.....)

NT GROUP Chairman of Board of Directors”

(115) **Evidence-20:** The following statements are in the e-mail with the subject “Balloon Cooperative Presentation,” sent by DORAK HOLDİNG General Coordinator (.....) to the e-mail addresses of İSTANBUL BALON-UNİVERSAL BALON representative (.....), TÜRKİYE BALON Flight Operations Training Director (.....), AIR KAPADOKYA BALON Partner (.....), KAYA BALON official (.....), ÜRGÜP BALON General Manager (.....),

VOYAGER BALON official (.....), SKYWAY BALON Operations Manager (.....), DELUXE BALON official (.....), ROYAL BALON official (.....), ASSIANA BALON Chairman of the Board of Directors (.....) on 21.02.2017, which was recovered during the on-site inspections conducted at SKYWAY BALON and ÜRGÜP BALON:

“Dear colleagues, hello,

I have written the general provisions and organizational chart in the attached file.

I have also mentioned the doubts and solutions of each balloon company below. If you have anything to add, you can include it for the meeting on Friday. You can also specify the issues you want to discuss by replying to this e-mail. You can share not only your own company’s opinions, but also what other companies have in mind.

Let's meet at Yunak Hotel at 10:00 on Friday.

		Doubts	Solutions
<i>Kapadokya</i>	<i>10</i>	<i>NONE</i>	<i>NONE</i>
<i>Atmosfer</i>	<i>8</i>		
<i>RAINBOW</i>	<i>6</i>		
<i>Sultan</i>	<i>3</i>		
<i>Voyager</i>	<i>6</i>	<i>Selling package tours, including balloon rides, may lead to the elimination of small agencies in the long run.</i>	<i>To prevent the sale of package tours, including balloon rides, through agencies, a sales agreement can be established.</i>
<i>Kaya Balon</i>	<i>6</i>	<i>NONE</i>	<i>NONE</i>
<i>Arikan-Atlas</i>	<i>2</i>	<i>The fair distribution of maintenance services rather than being monopolized.</i>	<i>The existing maintenance facilities will be requested to update their prices, and each party will have the option to work with the maintenance center of their choice or establish/acquire a cooperative maintenance center.</i>
<i>Royal</i>	<i>5</i>	<i>Preserving the brand, allowing customers who wish to fly with Royal to do so, maintaining agency relationships, and not being bound by a very long-term commitment.</i>	<i>The passenger or agency will fly with the company they have expressed their desire to fly with. Balloon companies who wish to collaborate will visit agencies, while others will be visited and serviced by Balon AŞ. The partnership will be for a duration of 3.5 years.</i>
<i>Kelebek</i>	<i>4</i>	<i>NONE</i>	<i>NONE</i>
<i>Göreme</i>	<i>6</i>	<i>NONE</i>	<i>NONE</i>
<i>Özarслан-Deluxe</i>	<i>2</i>		
<i>Ürgüp</i>	<i>4</i>	<i>NONE</i>	<i>NONE</i>
<i>Skyway</i>	<i>4</i>	<i>Board decisions should be made with a high majority vote, and the partnership should be explained to the agencies by the corporation (AŞ) without damaging the relationships.</i>	<i>Decisions will be taken with a 3/4 majority vote. The marketing team established by Balon AŞ will handle agency relationships and activities.</i>
<i>Anatolia</i>	<i>4</i>	<i>NONE</i>	<i>NONE</i>
<i>Discovery</i>	<i>3</i>		
<i>Balon Turca</i>	<i>3</i>	<i>NONE</i>	<i>NONE</i>
<i>Samanyolu-</i>	<i>3</i>	<i>NONE</i>	<i>NONE</i>

<i>Türkiye</i>			
THK	3	Securing the warrants to the slots.	Guarantee checks/promissory notes will be tied to the slots to mitigate the risk of non-payment
AİR KAPADOKYA	3	NONE	NONE
Maviay/ASSİANA	3	The balanced allocation of the budget.	The expenditure items will be implemented based on the approval of the board of directors at the beginning of the year.
Cihangirođlu	3	NONE	NONE
Başkent-İstanbul	3	NONE	NONE
Ses-Universal	2		
Maccan	2	Increasing their own slot numbers by three.	There are no precaution or action to be taken.
EZEL	2	NONE	NONE

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

(116) **Evidence-21:** The following statements are in the e-mail with the subject “Regarding the Balloon Cooperative Signature Meeting,” sent by DORAK HOLDİNG General Coordinator (.....) to e-mail addresses owned by TÜRKİYE BALON Flight Operations Training Director (.....), İSTANBUL BALON-UNİVERSAL BALON representative (.....), VOYAGER BALON and ATLAS BALON partner (.....), AİR KAPADOKYA BALON partner (.....), ANATOLİAN and DİSCOVERY BALON official (.....), ASSİANA BALON Chairman of the Board (.....), VOYAGER BALON official (.....), BROTHERS BALON official (.....), DELUXE BALON representative (.....), EZEL BALON, KAYA BALON official (.....), SKYWAY BALON Operations Manager (.....), ÜRGÜP BALON General Director (.....), ROYAL BALON official (.....) and THK BALON on 2.02.2017, which was recovered during the on-site inspections conducted at EZEL BALON and ÜRGÜP BALON:

“Dear Representatives of the Balloon Sector,

As a result of the meetings held, a consensus has been reached on the attached items. We have requested an appointment through (.....)¹⁸ to consult the Competition Authority regarding the attached agreement. We will inform you about the date of the meeting according to this appointment. Regards,

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

¹⁸ Currently the Chairman of the Nevşehir Chamber of Commerce and Industry. See <http://www.ntso.org.tr/#>, Accessed : 07.08.2019.

The file attached to the document includes the Balloon Tourism Development Cooperative Accord Agreement, and some of its provisions are presented below¹⁹:

“44. Members shall collect payments, including commissions, and pay the commission fee to the agency against a commission invoice.

45. Balloon companies agree to owe Balon A.Ş. 105 € per passenger sent to the pool.

46. Agencies shall not be allowed to sell package tours with balloon rides; contractual arrangements regarding this matter will be made between balloon companies and agencies.”

47. If an agency has an occupancy rate exceeding 75%, it cannot fly more than 750 passengers in one day.

48. Free passenger rides will not be provided, and flights for promotion or bilateral relation purposes will be carried out by Balon AŞ after submitting the fee and reason for the flight to the executive board.

(117) **Evidence-22:** The following statements are in the e-mail sent by RAINBOW BALON and SULTAN BALON Operations Manager (.....) to (.....) on 01.03.2017, which was recovered during the on-site inspection conducted at DORAK HOLDİNG:

“Hello, Mr. (.....),

We can assist you with payments of (.....) TL (excluding VAT) for March and April, and (.....) TL (excluding VAT) for May.

Providing prices to you for the following periods might put us in a difficult situation since there is a formation called Balloon Solidarity in the region.

If this is realized the prices offered by the Association will be valid. We will keep you informed according to the Association formation.”

(118) **Evidence-23:** The following statements are in the e-mail with the subject “Balloon Cooperative Establishment Meeting,” sent by DORAK HOLDİNG General Coordinator (.....) to the e-mail addresses owned by VOYAGER BALON official (.....), ÜRGÜP BALON General Manager (.....), KAYA BALON official (.....), ANATOLIAN and DISCOVERY BALON official (.....), VOYAGER BALON and ATLAS BALON partner (.....), BUTTERFLY BALON official (.....), SKYWAY BALON Business Director (.....), AIR KAPADOKYA BALON partner (.....), EZEL BALON, ASSIANA BALON Chairman of the Board (.....), BALON TURCA, İSTANBUL BALON-UNİVERSAL BALON official (.....) on 03.03.2017, which was recovered during the on-site inspection conducted at EZEL BALON:

“Hello, dear friends,

We will be gathering at Avanos Voyager Balloon at 11:00 on Monday, March 6 to hold the Balloon Cooperative Establishment meeting. Your valuable participation is crucial.

¹⁹ Later evidence will include in detail those articles of the agreement related to the subject matter of the file.

Best regards,

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

(119)**Evidence-24:** The following statements are in the e-mail sent by BALONDOKYA²⁰ official (.....) on 03.03.2017, in response to an e-mail of the same date by individual customer (.....) asking for pricing information for a balloon ride on 21.04.2017, which was recovered during the on-site inspection conducted at SKYWAY BALON:

“Hello, Ms. (.....),

I can't be definite but the prices for 21st of April should remain fixed at (.....) TL. However, there are 25 balloon companies in the region, and these companies are coming together to form a collective. If this situation becomes official, the prices will increase even further.”

...”

(120)**Evidence-25:** The following statements are in the e-mail with the subject “Re: Reservation Request: (.....)” between ÜRGÜP BALON Operations Supervisor (.....) and (.....), an employee of the travel agency (.....) on 09.03.2017, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Hello, Mr. (.....) & Mr. (.....),

Our reservation request is as follows.

...”

“Hello

The reservation that you sent is confirmed.

Important NOTE: A cooperative for ballooning companies may be established on 01.04.2017. Please hold off on the requests for April and beyond. The situation is expected to become clearer on Monday.

Best regards,

(.....)

Operations Manager”

...

“Thank you for the confirmations, Mr. (.....),

Will there be a fixed price by any chance? Will the prices change? If I can learn your forecast, I can respond to incoming requests accordingly.”

...”

“Hello,

The prices are likely to be fixed with a slight increase. I will provide you with more detailed information after the meeting on Monday.”

²⁰ SKYWAY BALON's agency.

(.....)”

...

“Thank you, Mr. (.....)

I think it will be good. We have been hearing absurd prices around. It would also be nice if sales price for agencies were set as well.

Let’s hope for the best.”

...”

(121) **Evidence-26:** The following statements are in the e-mail with the subject “Concerning the Balloon Cooperative Memorandum of Understanding,” sent by DORAK HOLDİNG General Coordinator (.....) to e-mail addresses owned by ASSİANA BALON Chairman of the Board (.....), KAYA BALON official (.....), BUTTERFLY BALON Official (.....), SKYWAY BALON partner (.....), SKYWAY BALON Business Director (.....), THK BALON, BROTHERS BALON official (.....), AIR KAPADOKYA BALON partner (.....), TÜRKİYE BALON Flight Operations Training Director (.....), İSTANBUL BALON-UNİVERSAL BALON representative (.....), BALON TURCA, ATLAS BALON partner (.....), EZEL BALON, ANATOLİAN BALON and DİSCOVERY BALON official (.....), ÜRGÜP BALON General Manager (.....) and VOYAGER BALON official (.....) on 13.03.2017, which was recovered during the on-site inspection conducted at VOYAGER BALON:

“Hello,

The memorandum of understanding that was signed on Friday and its signed version are attached. After securing the signature of Göreme Balloon, which we will meet on Wednesday, we will establish our cooperative by obtaining the signatures of Cihangir, and THK, which also accepted. Once the establishment procedures are complete, we will hold a General Assembly meeting to do the necessary election, etc. work and proceed as soon as possible.

Thank you for your patience and understanding during this process.

Wishing you a great week ahead.

(.....)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

İçerik bu 56 maddede 7 sayıdaki otuzun mütabakat metni aşağıdaki listeye listelenen şirketler tarafından 10 Mart 2017 tarihinde görüşülmüş ve mutabık kalmışlardır. Gözetim çalışmaları Rekabet Hukukuna ve Türk Ticaret Kanununa göre yapılmıştır.

Şirket	Balon
[Redacted]	Istanbul
[Redacted]	Universal
[Redacted]	Anatolia
[Redacted]	Discover
[Redacted]	Eznel
[Redacted]	Balon Tur
[Redacted]	Atlas
[Redacted]	Royal
[Redacted]	Örgüp
[Redacted]	Kaya Bal
[Redacted]	Atsiana
[Redacted]	Maccan

Balloon Tourism Development Cooperative Memorandum of Understanding

1. *The Balloon Tourism Development Cooperative will operate as a transparently and democratically controlled undertaking subject to the Cooperative Act No. 1163, aimed at meeting the economic, social, and cultural needs and desires of the ballooning companies, in line with their joint interests.*

...

21. *Each company will have a 4.34% stake in Balon A.Ş., ensuring an equal share for everyone. After deducting management, advertising, promotion, and other expenses, the remaining cash will be distributed equally among the ballooning companies as dividend.*

22. Balon A.Ş.'s revenue sources will include €10 per flight and extra commissions from sales made through the online booking site and call center.
23. Balon A.Ş. will obtain a €200,000 letter of guarantee per slot from each ballooning company (Dorak Holding's balloon companies will pay three times the specified amount), and the redemption of the letter will require approval by the management board with a 75% majority vote.
30. Where group passengers/individual passengers indicate a preferred company to fly with, their request will be fulfilled if possible. (However, if every balloon company claims that the passenger wants to fly with them, operational issues may arise in the early months, and the choice of the ballooning company should be left to Balon A.Ş. without the passenger's declaration.
33. Balon A.Ş. will handle reservations with travel agencies on behalf of a ballooning company if requested. Any ballooning company may continue to negotiate and make reservations through its agents.
37. Ballooning companies will continue to sell balloon rides through their own websites and over the phone.
41. The online system to be created will include Cooperative members, allowing them to see both operational and financial distributions.
42. A collection team will be established, with each ballooning company having a collection agent at Balon A.Ş. During balloon sales, collections will be carried out jointly by the representative of the relevant ballooning company together with another ballooning company's representative.
43. Every two weeks, settlement and invoicing will take place between Balon A.Ş., an extension of the Cooperative, and its members.
44. Members will collect their fees including commissions, and pay commission amount to the agent in return for the commission invoice.
45. Ballooning companies agree to borrow from Balon A.Ş. € (...) for standard flights, € (.....) for comfort flights, and € (.....) for deluxe flights per passenger they send to the pool.
46. Agencies will not be allowed to sell tour inclusive balloon rides and contractual arrangements will be made between balloon companies and agents on this matter.
47. If the occupancy rate of an agency is over 75%, they cannot fly more than 750 passengers per day.
48. Free passenger flights will not be provided; however, in cases of promotion, mutual relationships, etc., such flights may be carried out by Balon A.Ş. with payment and justification presented to the executive board.
49. In case Balon A.Ş.'s cash balance exceeds 500,000 TL at the end of the year, the remaining amount will be distributed among cooperative members in proportion to their shares.

(122) **Evidence-27:** The following statements are in the e-mail with the subject “Fwd: on the Balloon Cooperative MoU,” sent by ÜRGÜP BALON General Manager Tamer DUYMAZ to the e-mail addresses ÜRGÜP BALON partners (.....) and (.....) on 13.03.2017, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Hello, Mr. (...) Mr. (...), Mr. (...),

** While this is not yet a binding matter in the establishment work of the cooperative, I am sharing the details of the preliminary agreement signed in the attachment.*

The agency price envisaged for after April 1, 2017, is (.....) EU, and the selling price is (.....) EU. As it has not been officially finalized yet, our current projection as the companies in general is that no prices should be given for April and beyond, and no advance reservations should be accepted.

** The validity period of the signatory circular expired in December 2016. As you discussed with (...), we urgently need to renew the signatory circular to carry out the following procedures in particular: change of office address, obtaining a license for the new address, transferring phone and internet services and notifying the new address for balloon registrations, etc.*

** We are also experiencing cash-flow problems due to the low number of customers and flight cancellations. We expect your support in this matter as well.*

I hope this collaboration will be beneficial,

Best regards, I wish you a successful and profitable season.

Greetings and respect,

(...)”

(123) The attachment to the document includes the Balloon Tourism Development Cooperative Memorandum of Understanding in Evidence-26.

(124) **Evidence-28:** The following statements are in the e-mail with the subject “On the Balloon Cooperative MoU,” sent by DORAK GOLDİNG General Coordinator to the e-mail addresses owned by ASSİANA BALON Chairman of the Board (.....), KAYA BALON official (.....), BUTTERFLY BALON official (.....), SKYWAY BALON partner (.....), SKYWAY Business Director (.....), THK BALON, BROTHERS BALON official (.....), AIR KAPADOKYA BALON partner (.....), TÜRKİYE BALON Flight Operations Training Director (.....), İSTANBUL BALON-UNİVERSAL BALON representative (.....), BALON TURCA, ATLAS BALON owner and VOYAGER BALON partner (.....), EZEL BALON, ANATOLİAN BALON and DISCOVERY BALON official (.....), ÜRGÜP BALON General Manager (.....), VOYAGER BALON official (.....), ROYAL BALON official (.....), DELUXE BALON representative (.....) and COMFORT BALON on 17.03.2017, which was recovered during the on-site inspections conducted at EZEL BALON and VOYAGER BALON:

“Hello dear friends,

As a result of our meeting with Göreme Balloon today, unfortunately they have stated that they cannot participate in this cooperative. After discussing with the majority, we have come to the realization that we cannot establish this solidarity due to the uncertainties arising from the absence of 4 companies. Thank you for your patience and support during this process. Hopefully, the balloon industry will overcome its problems and find the value it deserves as soon as possible.

Wishing you safe and trouble-free flights.

(...)

General Coordinator

Dorak Turizm ve Gayrimenkul Yatırımlar Holding A.Ş.”

- (125) **Evidence-29:** The following statements are in the e-mail dated 18.03.2017, sent by BALONDOKYA to a customer named (.....), who was using the e-mail address (.....) and was presumably an individual customer, which was recovered during the on-site inspection conducted at SKYWAY BALON:

“Hello, Mrs. (.....),

Unfortunately, we are unable to accept reservations for May at the moment. Since ballooning companies in the region is planning to unite, prices are currently not determined.

However, rest assured that we will still offer the best prices. We will send you an e-mail once the prices are updated.

...”

- (126) Following the sending of the e-mail, the customer (...) sent an e-mail on 05.05.2017 once more asking if they could make a reservation for May, to which Balondokya representative (.....) responded on the same day with the following statements:

“Hello, Mrs. (...),

As of May, the prices are updated to be €... per person. Would you like me to book you for 3 adults and 1 child on the date you prefer?”

- (127) **Evidence-30:** The following statements are in the e-mail with the subject “Fwd: Hot Air Balloon Coop. Agreement and request no.,” sent by DORAK HOLDING General Coordinator (.....) to ÜRGÜP BALON General Director (.....) on 05.04.2017, which was later forwarded by ÜRGÜP BALON General Director (.....) to ÜRGÜP BALON Partner (.....) and ÜRGÜP BALON partner (.....) on 10.04.2017 and was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“The establishment of the balloon tourism development cooperative is back on the agenda.

Attached is the Chamber of Commerce cooperative membership agreement.

Guarantees, the central operations unit, and pricing matters will be discussed in the future.

Best regards, and have a productive day.”

(128)The membership agreement attached to the e-mail includes the following statements:

...

3. TITLE

The title of the cooperative is SINIRLI SORUMLU KAPADOKYA SICAK HAVA BALONU TURİZM GELİŞTİRME KOOPERATİFİ (LIMITED LIABILITY CAPPADOCIA HOT AIR BALLOON TOURISM DEVELOPMENT COOPERATIVE).

...

5. DURATION

The cooperative is permanent.

6. PURPOSE and ACTIVITY AREAS

...

15) Organizes joint service and product procurement tenders to reduce partners' expenses.

16) Conducts digital marketing and sales activities on behalf of the partners.

12. NUMBER OF PARTNERS

The cooperative must have a minimum of 7 members.

...

91. FIRST BOARD OF DIRECTORS MEMBERS

(.....)

92. FIRST BOARD OF AUDITORS MEMBERS

(.....)

FOUNDERS

(.....)²¹

(.....)²²

(.....)²³

(.....)²⁴

(.....)²⁵

²¹ DORAK HOLDİNG General Coordinator.

²² A shareholder in DORAK HOLDİNG, CO DMC and KAPADOKYA BALON, ATMOSFER BALON, RAINBOW BALON and SULTAN BALON'da, which are all under the umbrella of DORAK HOLDİNG.

²³ Was specified to be an official of the undertaking during the on-site inspection conducted at ATMOSFER BALON.

²⁴ BUTTERFLY BALON partner.

²⁵ VOYAGER BALON partner.

(.....)²⁶

(.....)²⁷

- (129) **Evidence-31:** The following statements are in the e-mail with the subject “Cooperative Membership,” sent by DORAK HOLDİNG General Coordinator (.....) to VOYAGER BALON partner (.....) on 17.04.2017, which was recovered during the on-site inspection conducted at VOYAGER BALON:

“Hello,

You can find attached the main agreement and the membership application for cooperative membership. After signing the application, I would appreciate it if you could leave it at the office of Financial Advisor (.....), across from the Nevşehir Municipality, within a day or two. You also need to deposit the entry fee to the IBAN number below. I have talked to the software company for reservations and sales, and they have started working as of today. I wish all of us good luck.”

- (130) **Evidence-32:** The following statements are in the correspondence between (.....), a customer who requested to make a reservation for June 2017, and BALONDOKYA official (.....), which took place between 20.04.2017 and 24.04.2017 and which was recovered during the on-site inspection conducted at SKYWAY BALON:

“Hello, Ms. (.....),

Currently, prices for June are not determined. The balloon companies in the region are considering forming a union, and if that happens the prices will increase significantly. Would you like me to get back to you once the situation is clarified?

...

“Hello, Mr. (.....),

Yes, please keep me informed. Also, when you mentioned “prices will increase significantly,” what is the maximum amount, according to you?

...”

...

“Hello, Ms. (.....),

The balloon companies are not forming a union. With the start of the season, from May onwards, the prices will be (.....) TL per person.”

- (131) **Evidence-33:** The following statements are in the e-mail with the subject “Regarding Prices,” sent by ATMOSFER BALON to (.....) on 27.05.2017, which was recovered during the on-site inspection conducted at DORAK HOLDİNG:

“Hello, Ms. (.....);

²⁶ Chairman of the Board of Directors of ASSİANA BALON.

²⁷ ANATOLİAN BALON shareholder.

Starting from Monday, 29.05.2017, the payment to us will be '(.....) € invoiced.' This price will be valid until 01.04.2018, under normal conditions. However, in case of solidarity in the balloon sector, there might be changes in the prices, and you will be informed accordingly."

(132) **Evidence-34:** The following statements are in the e-mail with the subject "We seek support for our views about the slots," sent by AIR KAPADOKYA BALON to the e-mail addresses owned by AIR KAPADOKYA BALON, COMFORT BALON, (.....)@gmail.com²⁸, GÖREME BALON, VOYAGER BALON, ASSIANA BALON, Cappadocia University, BALON TURCA, ROYAL BALON, DELUXE BALON, ÜRGÜP BALON, RAINBOW BALON, EZEL BALON, ANATOLIAN BALON, SKYWAY BALON, ATMOSFER BALON, KAPADOKYA BALON, SULTAN BALON, TÜRKİYE BALON, BROTHERS BALON, ATLAS BALON, KAYA BALON, BUTTERFLY BALON, (.....)@hotmail.com²⁹, UNIVERSAL BALON, İSTANBUL BALON, KAYA BALON official (.....) on 09.06.2017, which was recovered during the on-site inspection conducted at KAYA BALON:

"Hello dear colleagues,

We have conveyed our views on fixed slots to the civil aviation center, and we wanted to share our idea that will be beneficial for balloon companies in the future or for a certain period with you. Hopefully, you will find us correct on this issue and support us.

The views we submitted are shown below in red text.

"Hello,

During these challenging times that our country is going through, the worst effect on the ballooning firms is the fact that the demand is regularly below 150 balloons, and it is estimated that the average demand is around 50 balloons. For the ballooning companies to overcome these challenging periods in general, our recommendation is that the second slots be removed for a certain period, and everyone operate with 3 balloons in the first slot, totaling 75 balloons; otherwise, large companies are forced to lower their prices to survive, which unfortunately is always the first move we make according to our competitive outlook. I am sure that large companies will not warm up to this idea and will demand a standard 30% or 40% reduction, but if we assume that a restriction like 30% or 40% is imposed, that will still keep the large companies large, and this situation will not create fair competition, and we believe that the state of affairs will not improve.

From a different perspective, the biggest cause of accidents is the human factor. How beneficial can a flight crew be if their morale and motivation are not high? Or how comfortably can an employee act if their mind is not at ease?

²⁸ AIR KAPADOKYA BALON, the sender of the e-mail, stated that it did not know who the owner of the e-mail address was.

²⁹ AIR KAPADOKYA BALON, the sender of the e-mail, stated that it did not know who the owner of the e-mail address was.

However, if everyone competes fairly, the purchase prices for agencies will not bottom out, and this will indirectly result in positive effects on employee salaries. As a result, employees with improved morale and motivation will perform better.

In summary, we find it appropriate that all companies operate 3 balloons in the first slot for a certain period and that the second slots are removed; otherwise, we are not in favor of fixed slots.”

- (133) **Evidence-35:** An Excel file named “balon” found in the “Balloon Cooperative” folder during the on-site inspection conducted at LE CO (Creation date: 04.01.2017, modification date: 27.09.2018).

I.4.1.2. Evidence Related to the CO DMC Period

- (134) **Evidence-36:** A document titled “(Gentleman’s Agreement for Tour Operators) was obtained at PİENTİ. The document has the signatures of DORAK HOLDING Chairman of the Board (.....), GNM shareholder, and Executive Director (.....), PİENTİ shareholder and Executive Director (.....), TEMPEL shareholder and Chairman of the Board (.....), DELUKS Chairman of the Board (.....), ITIR and KRIZANTEM shareholder (.....), and NAMSAN owner (.....) at the bottom. Although there is no date on the document, the same on-site inspection also found that the same document³⁰ was sent to the PİENTİ shareholder and Executive Director (.....) on 21.06.2017. Therefore, it is evaluated that the document is dated June 2017.
- (135) The Gentleman Agreement was of an advisory nature and aimed to develop joint capabilities against foreign agencies, reduce expenses through joint purchases in the domestic market, raise commission rates in favor of tour operators, increase revenues, and establish a joint action platform among tour operators providing incoming services for joint marketing, sales, and market growth.
- (136) **Evidence-37:** An e-mail with the title “ON CO DMC-NT GROUP PRICE REQUEST” was recovered during the on-site inspection conducted at ASSİANA BALON, which was sent by CO DMC Agreements and Sales Director (.....) to an e-mail address owned by (.....), Reservations Director of the NT Yatırım Turizm Ticaret Ltd. Şti. (NT GROUP) which was under the control of ASSİANA BALON Chairman of the Board (.....) on 27.10.2017; the e-mail was also copied to the e-mail address of the CO DMC General Coordinator (.....)³¹ and it was forwarded by NT GROUP Reservation Director (.....) to ASSİANA BALON Chairman of the Board (.....). The e-mail includes the following statements:

“Hello, Mr. (.....),

I am sending an attached file explaining CO DMC’s structure, you can review it. The agencies forming the CO DMC association are: Dorak-Krizantem-Itir-GNM-Pienti-DELUKS, Namsan, and Tempel. In this context, we request you to send your WINTER prices that all agencies in this alliance can use, including CO

³⁰ In the agreement attached to the e-mail PİENTİ shareholder and Executive Director (.....) sent himself, the only missing signature is by NAMSAN owner (.....). Thus, it is believed that NAMSAN owner (.....) must have signed the document at a later date.

³¹ DORAK HOLDING General Coordinator (.....) became the General Coordinator for CO DMC following the establishment of CO DMC.

DMC commission ((.....) USD). I should note that, as CO DMC, we shall receive a commission of (.....) USD per person, and I wish you a productive day.

Best regards,

(.....)

CO DMC Agreement and Sales Manager”

- (137) **Evidence-38:** The following statements are in the e-mail sent by KAPADOKYA BALON Reservations Manager (.....) on 11.12.2017 in response to the e-mails (.....), an employee of the travel agency titled (.....), sent to KAPADOKYA BALON on 28.11.2017 and 07.12.2017 requesting information about the prices to be implemented for agencies in 2017 and 2018, which was recovered during the on-site inspection conducted at KAPADOKYA BALON:

“Hello Dear Neighbor ☺

Congratulations and wish you a profitable year, we are very happy about it.

For this year, you can use the price of (.....) € (Excluding VAT).

For next year, there are still discussions on balloon solidarity, price stabilizing, etc. Therefore, your special 2018 price will be (.....) € for Standard Flight and (.....)€ for Deluxe Flight.

We will talk again depending on the developing situations next year.

Greetings from Cappadocia.”

- (138) **Evidence-39:** The document “11.12.2017.docx” was attached to an e-mail with the subject “Meeting notes of Monday, December 11, 2018,” sent by DORAK HOLDING Corporate Communications and Business Development Director (.....) to toplanti@dorakholding.com.tr with DORAK HOLDING Chairman of the Board (.....) copied, and some statements included in the document concerned are as follows:

“Date: Monday, December 11, 2017,

Meeting Participants: (.....)³² - (.....)³³ - (.....)³⁴ - (.....)³⁵ - (.....)³⁶ - (.....)³⁷ - (.....)³⁸
- (.....)³⁹ - (.....)⁴⁰ - (.....)⁴¹ - (.....)⁴² - (.....)⁴³ - (.....)⁴⁴

³² DORAK HOLDING Brand Director.

³³ DORAK HOLDING Human Resources Manager.

³⁴ DORAK HOLDING Human Resources personnel.

³⁵ DORAK HOLDING European Project Business Development Director.

³⁶ DORAK HOLDING Corporate Lawyer.

³⁷ DORAK HOLDING and Affiliates Vehicle Fleet Director.

³⁸ DORAK HOLDING Financial Advisor.

³⁹ DORAK HOLDING Far East and China Operations Manager.

⁴⁰ DORAK HOLDING Financial Affairs Director for Europe.

⁴¹ DORAK HOLDING Latin America and Spain Operations Manager.

⁴² DORAK HOLDING Hotel Agreements Manager. Has resigned according to DORAK HOLDING.

⁴³ DORAK HOLDING Corporate Communications and Business Development Director.

⁴⁴ Crown Plaza general Director, Cappadocia Region Hotel Sales Coordinator.

Absent from the meeting: (.....)⁴⁵ - (.....)⁴⁶ - (.....)⁴⁷ - (.....)⁴⁸

Meeting Notes:

...

- (139) *CODMC will rent 80% of the balloons for Solidarity in Ballooning and the balloon prices will be under control as of 01.01.2018; Mr. (.....) is on it.*
- (140) **Evidence-40:** An e-mail with the subject “balloon rental” was recovered during the on-site inspection conducted at SKYWAY BALLOON, which was sent to SKYWAY BALLOON Operations Manager (.....) by CO DMC General Coordinator (.....) on 22.12.2017. In response to this e-mail, on 26.12.2017, SKYWAY BALLOON Operations Manager sent an e-mail to CO DMC General Coordinator (.....), which had a document titled “HOT AIR BALLOON FLIGHT RENTAL AGREEMENT” in the attachment. The agreement concerned is in draft form, and the statements contained therein will be presented in subsequent evidence.
- (141) **Evidence-41:** During the on-site inspection conducted at LE CO, the document in the screenshot below was obtained.
- (142) **Evidence-42:** The e-mail with the subject “Monday, January 15, 2018,” recovered during the on-site inspections conducted at DORAK HOLDING and ITIR, was sent by DORAK HOLDING Corporate Communications and Business Development Director (.....) to the e-mail address toplanti@dorakholding.com.tr and it had an attachment including the notes for the meeting held on the same date. The attachment named “15 Ocak 2018.docx” includes the following statements:

⁴⁵ DORAK HOLDING Indian Market Manager.

⁴⁶ DORAK MICE Meeting Director.

⁴⁷ DORAK HOLDING Far East Operations Manager.

⁴⁸ DORAK HOLDING Middle East Operations Director.

Slot ve Uçuş Durumları

KAPADOKYA BALON SLOD DURUMU

Balon Fırma Sahipleri	Balon Fırma İsmi	2016		2017		10%
		1. slot	2. slot	1. slot	2. slot	
Dorak Holding 25 Slot	Kapadokya	10	5	10	5	7%
	Atmosfer	8	4	7	3	6%
Murat Çoban 15 Slot	Rainbow	6	3	6	3	2%
	Sultan	3	1	2	1	6%
Flex 8 Slot	Vaygır	5	3	6	3	2%
	Arhan-Akiz	2	1	2	1	7%
Dorak 5 Slot	Kaya Balon	6	3	7	3	6%
	Göreme	6	4	6	4	2%
A3 Kuvaz 4 Slot	Osmanlı - Delice	2	1	2	1	1%
	Royal	5	3	5	3	4%
Kızılirmaklı 43 Slot	Kelebek	4	2	4	2	3%
	Samanyolu - Türkiye	3	2	3	2	4%
	Anatolia	4	2	4	2	3%
	THK	3	1	3	1	3%
	Maviye / Asiana	3	1	3	1	2%
	Ezel	2	1	2	1	4%
	Urgup	4	2	4	2	4%
	Skyline	4	2	4	2	3%
	Aur Kapadokya	3	2	3	2	3%
	Balon Turca	2	2	3	2	3%
CO ATIS 0-2 RUL SER	Cihangirođlu	3	1	3	1	2%
	Discovery	3	1	3	1	2%
	Maccan	2	3	2	1	3%
	Başkent - İstanbul	3	1	3	1	3%
	Ses - Universal	2	1	3	2	300%
		100	50	100	50	

6 ana şirket ortak paydada buluşarak balon operasyonu için normal seviyelerine döndürebilir. Herkes anlamasa dahi yaklaşık olarak %75 slot bile önemli bir güç demektir.

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TD. ŞTİ.
ark. Sırası
STANBUL
No: 275-5
20.000 TL
19

Date : Monday, January 15, 2018

Meeting Participants : (...)

Absentees : (...)

Meeting Notes:

...

• Solidarity has been achieved in ballooning. There are 80 balloons belonging to the solidarity, and 20 balloons are left out. It will be effective as of February 12, 2018. Reservations will continue in the same system for now, and balloon prices will be determined.”

(143) **Evidence-43:** The whatsapp group “leco partners,” recovered during the on-site inspection conducted at LE CO DERİ, had DORAK HOLDİNG Chairman of the Board (.....), PİENTİ shareholder and Executive Director (.....), GNM shareholder and Executive Director (.....), ITIR and KRİZANTEM shareholder (.....) and DORAK HOLDİNG General Coordinator (.....) among its participants. The conversations in the relevant group are included below:

Conversations on 15.01.2018

(.....): Since the other group is too crowded, there was a need to create this group for confidential matters.

(.....): Oh, thank goodness. Finally!

(.....): We can hang out comfortably here 😊

...

(.....): Ahmet, I think we couldn't discuss the details clearly because Namsan was at the meeting, right?

(.....): Exactly, Gökhan, we couldn't talk at all.

(.....): Then the core team should meet again when you're available we need to act very quickly.

(.....): Yes, there are significant pending issues.

(.....): Ok

(.....): Is Wednesday at 13:00 suitable for everyone for the meeting?

(.....): I'm available.

(.....): I am available too, but I will be going abroad on Thursday.

Conversations on 16.01.2018

(.....): Wednesday at 13:00 is okay for me too.

(.....): How about 12 o'clock?

(.....): It's suitable for me.

(.....): It's suitable for me too.

(.....): We are available

...

(.....): Dear colleagues, we had a very productive and clear meeting today. A while ago, we re-evaluated the balloon prices on the phone with (.....). We had a thought; wouldn't it be more reasonable and attractive for the agencies to have (.....) \$ instead of (.....) €? I am in favor of this idea, and I would like to hear your opinions again.

(.....): that's so we are not in the red at the end of the year since the cost is so high for balloon recovery

(.....): (.....) \$/(.....)\$ is very reasonable, but as Mr. (.....) said, it would be better to have it slightly higher to avoid losses at the end of the year. But, of course, our seniors know better.

(.....): I'll update the announcement according to your decision today and inform the ballooners.

(.....): (.....) USD is good.

(.....): I'm posting the announcement like that.

(.....): Okay.

Conversations on 17.01.2018

(.....): *Dear Colleagues and Travel Agents/Operators,*

Effective from February 12, 2018, Hot Air Balloon rates have been updated with the following conditions to be operated in Cappadocia, Türkiye.

- 1. Hot Air Balloon Optional Selling Rate Per Person (.....) USD*
- 2. Hot Air Balloon Package Inclusive Rate Per Person (.....) USD*

...

I wrote it like this. If you see anything missing or biased, I will add them.

(.....): (.....) *Well done. By the way, with the approval of Mr. (.....), we have agreed on a selling price of 100-120€, considering the risks we have taken and the guarantees we have given. Once again, may it be beneficial for all of us."*

(.....): *Dear Colleagues and Travel Agents/Operators,*

Effective from February 12, 2018, hot air balloon rates in Cappadocia have been updated with the following conditions.

- 1. Hot Air Balloon Optional Selling Rate Per Person (.....) USD*
- 2. Hot Air Balloon Package Inclusive Rate Per Person (.....) USD*

...

(.....): *Mr. (.....), as you asked, I wrote it in translation, but my skills for translating what I wrote are so bad, Sorry about that ☺*

(.....): *Est, I think USDs became EURs now.*

(.....): *How about keeping USD for the Far East?*

(.....): *Our prices for the Far East will remain as we discussed and as you wrote, anyway (.....).Leco's sales to the agencies should be calculated at 100-120 Euros or the equivalent in USD.*

Conversations on 19.01.2018

(.....): *Hello, we will have a meeting on Monday at 12:00. Your attendance is important.*

(.....): *Of course, Mr.(.....).*

(.....): *Okay, have a good evening.*

Conversations on 20.01.2018

(.....): *Good morning, everyone. It's fine for me too.*

Conversations on 31.01.2018

(.....): *Good evening, everyone. We will have a meeting tomorrow at 17:30.*

(.....): *It's suitable for me.*

(.....): *It's suitable for me too, have a good evening.*

(.....): *Good evening, friends, it's suitable for me too.*

(.....): *I'm in Kuşadası tomorrow.*

Conversations on 02.02.2018

(.....): *Hello, friends. Are you available for a meeting on Saturday afternoon?*

(.....): *I'm available.*

(.....): *I'm also available.*

(.....): *If 14:00 is suitable, let's meet at Dorak.*

(.....): *Okay.*

(.....): *It's fine.*

Conversations on 10.02.2018

(.....): *Hello, everyone. We have made great and difficult progress in the balloon issue and received reservations, hopefully, if the weather is not a problem on monday's flight, we have 1,724 reservations, so we're at capacity in addition we have already entered more than 11,000 reservations for the future into the system.*

(144)The conversations indicate that the participants of the group have scheduled numerous meetings even after the establishment of CO DMC. Therefore, instead of including all the relevant conversations, the dates on which they planned to meet are tabulated below:

Table 13: Meeting Dates Discussed by Participants in the CO DMC Group

Date of the speech	The scheduled meeting date
16.02.2018	19.02.2018
26.02.2018	27.02.2018
19.03.2018	20.03.2018
03.04.2018	06.04.2018
14.05.2018	15.05.2018
04.06.2018	05.06.2018
20.07.2018 24.07.2018 25.07.2018 26.07.2018	30.07.2018
13.08.2018	15.06.2018
30.08.2018	03.09.2018

(145) **Evidence-44:** The following statements are in Article 5/d of the document “Ballooning Businesses Gentlemen’s Agreement (Draft)” attached to an e-mail with the subject “Gentlemen’s Agreement Draft,” sent by SKYWAY BALON Business Director (.....) to e-mail addresses owned by İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON representative (.....)⁴⁹ on 17.01.2018, which was recovered during the on-site inspection conducted at SKYWAY BALON. The following statements are included in section 5/d of the relevant agreement. The signature section of the agreement includes SKYWAY BALLOON and KAYA BALLOON:

“d. OPERATION AND RESERVATION (The Joint Reservation and Operation section will be evaluated after meetings with CO DMC.)

1) in order to provide efficient and economical operation services, businesses will be able to establish a joint reservation / operation center. (to work in coordination with CO DMC.)

2) The working principles and procedures of the joint operation / reservation center will be determined with additional instructions.”

(146) **Evidence-45:** The chain of correspondence between 18.01.2018 and 19.01.2018, with the subject “co dmc questions,” involving UNİVERSAL BALON Manager (.....) and UNİVERSAL BALON-İSTANBUL BALON-COMFORT BALON representative (.....), which was recovered during the on-site inspection conducted at UNİVERSAL BALON, is included below:

“1. What should we do for existing approved reservations?

a. Do we inform CO DMC, or do the companies themselves make contact?

b. Will the companies upload their reservations to the system themselves, starting from February 1st?

2. How will the price change for approved reservations be implemented (e.g., (.....) obtained a price of (.....) Euro from us until the end of March and made their listing accordingly. They also sent us their series as well.)

3. If companies with existing balances create payment issues after this announcement, how should we proceed?

4. Can companies and baskets be chosen?

5. Are the new prices (.....) Euro?

6. How will companies make payments to CO DMC

7. What is the duration of the agreement?

8. What are the actions we need to take for operational procedures? (ballooning, vehicle plan, staff - flight crew requirements, etc.) At what time will they be determined and communicated to us?

9. Shall we provide (.....) name and (.....) number for CO DMC contacts?

10. What will be the procedure for passenger transfer on cancelation days?

⁴⁹ On 12.06.2017, COMFORT BALON was acquired by ESPECİAL GROUP, which also has İSTANBUL BALON-UNİVERSAL BALON under its umbrella. Following the aforementioned date, İSTANBUL BALON-UNİVERSAL BALON representative became the representative of COMFORT BALON as well.

11. *Child age and free applications*

(.....)

Director of Business Development

www.groupespecial.com”

The following statements are in the e-mail sent on 19.01.2018, in response to the one above:

“1- For agencies with existing reservations, we will inform them (regarding reservations after February 12). You can tell them that we launched the union and the prices are changed to (...) Euro per person. They can contact CO DMC for reservations. they will install an online reservation system for them and provide necessary information.

2- For existing reservations, CO DMC will obtain them from us and upload them to the system themselves.

3- (...) Euro agency price, (...) Euro walk-in. The document I sent you yesterday said (.....) Euro for those not in the union. They removed that distinction today. It is (...) Euro for everyone now. The selling prices will be (...) Euro.

4- If the agencies with existing balances do not pay their debts to ballooning companies (old accounts), the software will not be installed and a sales agreement (by CO DMC) cannot be made.

5- In the software, the agents will be able to fly with whichever company they want. If there are empty seats, preferences can be made.

6- 2+1 years

7- We won't do anything. We are closing the reservation department. Co dmc will handle operations and administration on their own. They will also manage accounting procedures.

8- You can provide that number for now.

9- Cancellations and child ages will be determined by CO DMC. Free applications have been eliminated completely”

(147) **Evidence-46:** The following statements are in all of the e-mails sent by Operations Manager *(.....)* on 19.01.2018, in response to the questions of travel agencies *(.....)* and *(.....)* concerning the price and cooperation for balloon flights, which were recovered during the on-site inspection conducted at RAINBOW BALON:

“...

There is a new entity concerning balloons in the Cappadocia Region. It seems like the decision will be to set minimum agency price at (.....) Euros.

They are currently in the final stages of the organization. We will be able to provide you with the most accurate information as of February 15th.

...,

(.....)

Operations Manager.”

(148) **Evidence-47:** The following statements are in the e-mail sent by BALONDOKYA on 23.01.2018, in response to individual customer (.....) who requested a reservation for 24.02.2018 on 22.01.2018, which was recovered during the on-site inspection conducted at SKYWAY BALON:

“Hello!

Prices will change as of february 15 due to a union among the ballooning firms in the region. You can follow the new pricing on our website.

...”

(149) **Evidence-48:** The following statements are in the e-mail sent on 23.01.2018, from an e-mail address owned by SULTAN BALON to (.....), an employee of the travel agency (.....), which was recovered during the on-site inspection conducted at SKYWAY SULTAN BALON:

“Hello, Mr. (...),

First of all, I hope we will have a great season in 2018.

I wanted to inform you about our prices.

RAINBOW & Sultan are sister companies.

A new entity has emerged in the Cappadocia region concerning ballooning. It looks like the decision will be to set minimum agency price at (...) Euro.

They are in the final stages of the organization process. We will be able to provide you with the most accurate information as of February 15.

...”

(150) **Evidence-49:** The following statements are in the e-mail with the subject “ballooning firms which did not participate in the 2018 balloon Cappadocia organization,” sent by NAMSAN Operations Manager (.....) to the e-mail addresses of NAMSAN owner (.....) and finance@namsantour.com on 24.01.2018, which was recovered during the on-site inspection conducted at NAMSAN:

- ROYAL (usually flies internet guests)

- BUTTERFLY (usually flies internet guests)

- BALON TURCA

- AIR KAPADOKYA

- ATLAS

- VOYAGER

- URGUP

- *TURK HAVA KURUMU*
- *GOREME*
- *BALONTURCA*

(151) **Evidence-50:** The following statements are in the e-mail with the title “RE: BALONDOKYA INFORMATION REQUEST-(.....),” sent by BALONDOKYA on 01.02.2018 in response to the travel agency (.....) that requested pricing information with an e-mail dated 01.02.2018, which was recovered in the on-site exemption conducted at SKYWAY BALON:

“Hello,

...

Due to the decision of the balloon companies in the region to form a union, our agency prices will be (.....) Euros as of February 12, 2018.

...”

(152) **Evidence-51:** The following statements are in the e-mail sent by BUTTERFLY BALON to various hotels and travel agencies on 07.02.2018, which was recovered during the on-site inspection conducted at BUTTERFLY BALON:

“Dear Business Partner,

...

Our summer prices for the period between April 1, 2018, and October 31, 2018, which will be valid for all markets, are included below.

Butterfly Flight (1 hour)

Selling price: (.....)-Euros per person/credit card - (.....) Euros per person/cash

**We kindly request not to sell below or above this price.*

Your payment: (.....) Euros per person/credit card - (.....) Euros per person/cash

Butterfly Beyond Flight (1.5 hours)

Selling price: (.....) Euros per person/credit card - (.....) Euros per person/cash

**We kindly request not to sell below or above this price.*

Your payment: (.....) Euros per person/credit card - (.....) Euros per person/cash

...”

The following statements are in the e-mail sent on 08.02.2018 from an e-mail address owned by “Esbelli Evi,” which is a hotel in Ürgüp, in response to the relevant e-mail:

“Congrats !! This union led by Dorak worth (.....) USD has been very good for you guys!!”

(153) **Evidence-52:** The following statements are in the e-mail with the subject “March 2018-Reservation Request,” sent by ATMOSFER BALON Reservations Official (.....) to (.....), official of the tour operator (.....) on 09.02.2018, which was recovered during the on-site inspection conducted at ATMOSFER BALON:

“Hello (.....),

Best regards. Our American group, consisting of 6 adults and 1 child (7 years old), would like to take a balloon tour on March 11 and 12. I will inform you about the number of individuals later.

Can you confirm the price for adults as (.....) Euros and for the child as (.....) Euros?

Best regards

...

Hello, Ms. (.....),

Due to the Agency Union (CO-DMS), the price for adults and children per person will be 100 Euros after February 12. If you wish, we can confirm the reservation at this price.

Best regards,

(.....)

Reservation/Reservation,

...

“*Mr. (.....),*

Thank you for your response.

Can you provide a special child discount for this group? Our guests are very important to us, and we don't want to lose this group.

Best regards,

(.....)”

...

“*Hello, Ms. (.....),*

Unfortunately, this is beyond our control, and the prices have been determined as stated.

Best regards,

(.....)

Reservation/Reservation.”

(154) **Evidence-53:** The following statements are in the e-mails between Pulsar Turizm Seyahat ve Tic. Ltd. Şti. Operations Manager (.....) and KRİZANTEM Incoming Department Manager (.....)/op@krizantemtour.com, sent between 09.02.2018 and

10.02.2018, which were copied to KRİZANTEM General Manager (.....) and recovered during the on-site inspection conducted at KRİZANTEM:

“Hello, Ms. (.....) ,

... A new practice will start for balloons on February 12. The price per person is set at (.....) euros. If you approve, I will proceed with the reservation accordingly.

...”

...

“Hello, Ms. (.....) ,

....

Also, due to the union in ballooning, we received a single price of (.....) euros or (.....) usd from (.....) can we proceed according to this?

...”

(155) **Evidence-54:** The following statements are in the e-mail sent by ATMOSFER BALON to (.....) on 10.02.2018 in response to an e-mail of 12.11.2017 to Tour Consultant (.....) from the travel agency (.....) requesting information on the prices to be implemented to the agency for the 2017-2018 season, which was recovered during the on-site inspection conducted at ATMOSFER BALON:

“Dear Business Partner,

Since a marketing and sales partnerships has been established with CO DMC on February 12th, 2018, we kindly request you to send all your existing or new reservations from this date onwards to the mail address provided below.

CO DMC

Orta Mahalle, Adnan Kahveci Caddesi

No: 12/B Göreme-Nevşehir”.

(156) **Evidence-55:** The following statements are in the correspondence⁵⁰ between (.....) asking for a reservation for three people and BALONDOKYA, dated 10.02.2018, which was recovered during the on-site inspection at SKYWAY BALON:

“Dear (.....),

The prices will change to (.....) euros per person after February 12th.”

...

“Is it rising from (.....) TL to (.....) Euro? In that case, I won't make the reservation, sorry.”

...

“Hello,

All 25 balloon companies in the region have formed a union. Therefore, the prices are (.....) euros. Unfortunately, you won't find any prices below this figure.”

⁵⁰ Some of the statements in the correspondence have been translated from English to Turkish and then back to English.

...”

(157) **Evidence-56:** The following statements are in the e-mail dated 10.02.2018, sent by CO DMC Reservation Official (.....)⁵¹, in response to a reservation request sent by GÖREME BALON Accounting Official (.....) to CO DMC Reservations unit on 10.02.2018, which was recovered during the on-site inspection conducted at LE CO DERİ:

“Hello, Mr. (.....),

Your reservation requests have been confirmed with an option.

Please inform us of the final numbers for all three dates until 17:00 on the preceding day.

...”

(158) **Evidence-57 :** The attachment to the e-mail with the subject “February 12, 2018,” sent by DORAK HOLDİNG Corporate Communications and Business Development Director (.....) to the e-mail address toplanti@dorakholding.com, which was recovered during the on-site inspections conducted at DORAK HOLDİNG and İTİR, includes notes from the meeting held on that date. The following statements are in the attachment named “12 Şubat 2018.docx”.

Date : Monday, February 12, 2018

Meeting Attendees : (.....)

Absentees : (.....)

Meeting Notes:

- *Solidarity in ballooning started as of today, Monday, February 12, 2018. After the meeting to be held this week, an official letter will be prepared for our agencies to inform them and it is planned for the new prices to take effect on March 15, 2018.*

Balloon purchase (.....) ((.....)-USD), agencies' sales should not be below (.....)-EURO ((.....)-USD).

- No child discount.

- No free services.

- No payment by installment for balloon flights.

- Balloon companies not part of the association, for your information:

Royal – Kelebek – Atlas – Voyager – Türk Hava Kurumu.

Once the letter is prepared, first, we will believe in it and then we will explain the situation to all the agencies we work with.

Agencies within the association for Far East market, for your information;

Dorak - Krizantem - Opulentia - Deluxe - Pienti - GNM

(159) **Evidence-58:** The following statements are in the e-mail sent by KRİZANTEM Incoming Department Manager (.....) to KRİZANTEM Director General (.....) on 12.02.2018, which

⁵¹ UNİVERSAL BALON-İSTANBUL BALON-COMFORT BALON representative (.....) started to work under CO DMC after CO DMC started its operations.

was copied to DORAK HOLDING Chief of Operations (.....) and which was recovered during the on-site inspection conducted at KRİZANTEM:

“Good morning (.....),

All balloon companies have merged, and now they operate as a single company under the name Dorak, applying a single price of (.....) USD.

We received the information on Thursday.”

...”

(160) **Evidence-59:** Draft agreements drawn separately between LIONCOX and ANATOLIAN BALON, ATMOSFER BALON, BALON TURCA, BROTHERS BALON, DISCOVERY BALON, KAPADOKYA BALON, KAYA BALON, RAINBOW BALON, SKYWAY BALON, and SULTAN BALON were recovered during the on-site inspection at LE CO, and these will be detailed in the following sections.

(161) Additionally, during the on-site inspection at GÖREME BALON, another version of the same draft agreement was obtained in which LIONCOX was included as one of the parties, with the name of the balloon operator party left blank.

(162) **Evidence-60:** During the on-site inspection at PİENTİ, three separate agreements between PİENTİ and COMFORT BALON, UNİVERSAL BALON, İSTANBUL BALON were obtained, titled “Service Procurement Agreements” and signed on 12.02.2018. These agreements regulate the parties' obligations of the parties concerning the provision of flight services by PİENTİ for a certain fee between 2.02.2018 and 11.02.2020, with the condition that the operating rights of the hot air balloons remains with the respective ballooning companies. The agreements bear the signatures of CO DMC General Coordinator (.....) and PİENTİ representative (.....) as guarantors and the details therein will be provided in the subsequent sections.

(163) Additionally, during the same on-site inspection, a “Sublease Agreement” was obtained regulating PİENTİ's transfer of the rights and obligations arising from the “Service Procurement Agreement” it signed with İSTANBUL BALON on 20.04.2018 to LE CO DERİ. Furthermore, a protocol was obtained indicating that DORAK TOUR, a company within the DORAK GROUP, provided 1,000,000 USD as security deposit for the “Service Procurement Agreement” between PİENTİ and İSTANBUL BALON.

(164) **Evidence-61:** The following statements are in the e-mail with the subject “NEW BALLON RESERVATION SYSTEM,” sent by DORAK TOUR Operations Director (.....) to ITIR Operations Manager (.....) on 13.02.2018, which was recovered during the on-site inspection conducted at ITIR:

“Good morning, everyone,

First of all, I wish you all a wonderful weekend.”

Since all ballooning companies formed a solidarity as of February 12, 2018, I kindly request you to send your reservations to the e-mail address reservation@CODMC.com.

Please be sure to specify which ballooning company you prefer.

Our balloon fees are (.....) euros or (.....) USD per person. Detailed explanations regarding this matter will be provided by (.....).

...”

(165) **Evidence-62:** The following statements are the e-mail with the subject “CO DMC,” sent by ATMOSFER BALON to the e-mail address owned by a travel agency titled “(.....)” with branches in İSTANBUL and the Cappadocia Region on 13.02.2018, which was recovered during the on-site inspection conducted at ATMOSFER BALON:

“Hello, Mr. (.....)⁵²;

Due to the establishment of the Agency alliance, we cannot confirm your reservations.

You can get information from the contact provided below and confirm your reservations.

Best regards,

...

Dear Business Partner,

...

CO DMC

Orta Mahalle, Adnan Kahveci Caddesi

No: 12/B Göreme-Nevşehir

...”

(166) **Evidence-63:** The following statements are in the e-mails dated 16.02.2018, sent by BALONDOKYA to (.....), presumed to be an individual customer requesting a quote for a balloon tour, which were recovered during the on-site inspection conducted at SKYWAY BALON:

“Ballooning companies in the Cappadocia region have decided to form an alliance beginning from February 12, 2018. Therefore, the prices for domestic guests will be fixed (.....) € per person.”

(167) **Evidence-64:** The following statements are in the e-mail with the subject “RAINBOW&Sultan Balloons,” sent from an e-mail address owned by RAINBOW BALLOON to DORAK HOLDİNG Information Technologies Director (.....) on 17.02.2018, which was recovered during the on-site inspection conducted at RAINBOW BALON:

“Hello, Mr. (.....),

With the launch of CO-DMC, balloon sales prices have been fixed at (.....) Euros for foreigners. Child discounts have also been removed.

To prevent misinformation and erroneous sales, we need to update the prices on our websites.”

...

Thank you for your assistance.

⁵² ATMOSFER BALON’s response states that Mr. (.....) was a mistaken greeting, that the relevant name belonged to a woman who is a partner of the travel agency in question.

(.....)

Reservations”

(168) **Evidence-65:** The following statements are in the e-mail dated 17.02.2018, sent in response to an e-mail of 16.02.2018 sent by Operations Manager (.....) requesting a quote, which was recovered during the on-site inspection conducted at SULAN BALON:

“Hello, Mr. (.....),

First of all, thank you for your e-mail and interest.

Since a marketing and sales partnerships has been established with CO DMC in the Cappadocia region starting from February 12, 2018, we kindly request you to direct your reservation requests to the contact information provided below.

...

You can visit www.CO DMC.com to create an agency registration panel and enter your reservations online.

Children under the age of 6 are not allowed to fly. The child discount has been removed.”

<i>Prices set for the year 2018</i>	<i>Domestic Market</i>	<i>Foreign Market</i>
<i>Passenger Sales Price: A discount of 10 Euros is applied for cash payment.</i>	<i>(.....)</i>	<i>(.....)</i>
<i>Agency price (VAT included)</i>	<i>(.....)</i>	<i>(.....)</i>

...”

(169) **Evidence-66:** The following statements are in the e-mail correspondence with the subject “Re: Urgent!! 2018 Balloon Quote Request” between Operations Officer of the travel agency titled (.....) and ÜRGÜP BALON Operations Official (.....) from 19.02.2018 to 20.02.2018, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Hello,

I request you to send your 2018 balloon prices for the Chinese market. Wishing you happy days.”

...

“Dear Ms. (.....),

Our net agency prices for 2018 have been updated as PP (.....) EURO for standard flights.”

...

“Hello, Mr. (.....),

You have offered a higher price than other companies except CO DMC, can you revise it?”

...

"Hello, Ms. (.....),

We would like to be flexible with the price, but since the overall prices have reached this level, we incur losses when we go around the blockage.

The special price that can be applied to you is (.....) Euro until April 1, 2018.

For after April 1, we can reevaluate the price during March."

(170) **Evidence-67:** The following statements⁵³ are in the e-mail sent by Operations Manager (.....) on 21.02.2018 in response to an e-mail from Denmark-based (.....)'s Director (.....)'s e-mail asking for a quote concerning a group of 60-70 persons in March/April 2019, which was recovered during the on-site inspection conducted at BUTTERFLY BALON:

"Hello (.....),

...

There has been a change in hot air balloon prices as a result of a cooperation among 20 companies. The final selling price for all firms is (.....) Euro per person (cash), and the cheapest agency price is (.....) Euro per person. As a result, your payment to us will be (.....) Euro per person."

(171) **Evidence-68:** The following statements are in the e-mail dated 21.02.2018, sent by KRİZANTEM General Manager (.....) to DORAK HOLDİNG's Director of the Board (.....), which was recovered during the on-site inspection conducted at KRİZANTEM:

"(.....), good morning,

I informed the customer about everything. I informed that our boss handled the Ballooning Cooperative union, that it was 80% our boss's work to maintain the price and quality, including the agencies of our own holding. ((.....) stated that the union was to prevent smaller balloon companies from going bankrupt, and that Royal couldn't the union because they are already large). I also informed them that they wouldn't have to pay any more over the previous price and the confirmed reservation. I also noted that there would be no problems with the Cooperative as well, since we had confirmed before"

..."

(172) **Evidence-69:** The following statements are in the correspondence with the subject "RE: FEBRUARY 19 BALLOON REQUEST ERT1802" between ERETNA Operations Official (.....) and CO DMC Reservations on 23.02.2018, which was recovered during the on-site inspection conducted at ERETA:

"Is Butterfly Balloon under your umbrella?"

...

"Hello Ms. (.....),

⁵³ The statements have been translated into Turkish from the English original, and then back to English.

Unfortunately, Butterfly is not with us.”

(173) **Evidence-70:** The on-site inspection at LE CO DERİ recovered a reservation request sent by (.....), the General Manager of (.....), to the authorized personnel at KAYA BALON on 22.02.2018 and forwarded to the CO DMC Reservation Department. In addition, the reservation request has been responded to by KAYA BALON official (.....) on 23.02.2018 as follows:

“Mr. (.....), good evening,

We are also part of the ballooning solidarity formed on February 12, and from that date onwards, all sales operations are handled by this association. The agency payment is (.....) Euro, and the agency selling price is (.....) Euro.

If you wish, I can establish the contact between you and the association and explain how the system works over the phone tomorrow.”

(174) **Evidence-71:** The following statements are in the e-mail sent by (.....) Official (.....) to CO DMC Reservations Official (.....) on 23.02.2018, which was recovered during the on-site inspection conducted at LE CO DERİ:

“Dear Sir/Madam,

When I told one of our customers, who had planned to visit Cappadocia last year but couldn't make it due to private reasons about the current prices, they were surprised.

Even though I explained that prices have returned to normal due to the lack of competition this year, I couldn't convince them.”

...”

(175) **Evidence-72:** The following statements are in the correspondence between 23.02.2018 and 24.02.2018, among (.....), an official of (.....) operating as a Sales Center for Extreme Sports and ÜRGÜP BALON General Manager (.....), which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

Hello Mr. (.....),

...

I kindly request you to update the balloon tour sales figures as follows: Standard Balloon Tour: (.....) TL Comfort Balloon Tour: CANCELLED Deluxe Balloon Tour: (.....) TL Private Flight: (up to 10 people) (.....) TL...

...”

...

Hello (.....),

...

We are updating the prices. There is a significant increase. Is it a decision specific to your company or a general decision in the region regarding the prices?

...

...

Hello Mr. (.....),

...

Yes, there has been a price increase in balloon tours throughout the region, and there have been some operational changes as well.

About 20 companies are now operating through a single operation center.

(www.CO DMC.com)

As Ürgüp Balloon, we are not part of this arrangement.

Currently, agency payment prices in the region are (.....) Euros, and sales figures are in the (.....) Euro range.

Depending on the market situation, I will keep you informed and make the necessary updates.

...

(.....)”

(176) **Evidence-73:** The following statements⁵⁴ are in the e-mail dated 26.02.2018, sent by KAYA BALON to a customer (.....) requesting quotes for balloon rides, which was recovered during the on-site inspection conducted at KAYA BALON:

“1 PERSON (.....) EUROS

GOOD DAY”

(177) **Evidence-74:** The following statements are in the e-mail with the subject “RE: seasonal balloon prices,” dated 26.02.2018, sent by ÜRGÜP BALON Operations Official (.....) to (.....), an official of (.....) based out of Ürgüp, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Dear Mr. (.....),

Apologies for our late response. As you know, due to some changes in the balloon industry in the region, agency prices have not been finalized yet.

Between February 20, 2018, and October 31, 2018,

For domestic and foreign markets, for group and FIT travelers, our agency prices will be as follows:

Standard Flights: PP (.....) Euros

Deluxe Flights: PP (.....) Euros

Private Flights: (up to 10 people) (.....) Euros

We would be pleased to assist you with any questions or requests.

Best regards,

(.....)/Operations Manager”

⁵⁴ The statements in the document were translated from the English original into Turkish, and then back to English.

(178) **Evidence-75:** A document showing the number of passengers flown in various ballooning companies during the month of February was recovered during the on-site inspection conducted at PİENTİ on 09.10.2018, and the screenshot of the document is provided below:

TARİH	TOPLAM UCAN	KAYA BALON	ANATOLYA- DISCOVERY	BALON TURCA	SKYWAY	BROTHERS	TÜRKİYE BALON	İSTANBUL GURUP	KAPADOKYA	ATMOSFER	RAINBOW- SULTAN
13.Şub	1571	219	176	88	110	96	48	168	270	184	212
14.Şub	904	132	124	38	77	65	39	122	147	70	90
17.Şub	1433	203	204	67	110	70	48	177	250	96	208
19.Şub	1382	182	186	40	113	92	46	205	214	134	170
22.Şub	1345	177	185	37	95	90	48	164	230	161	158
23.Şub	568	132	120	28	71	53	38	21	37	49	19
24.Şub	540	95	98	24	59	49	24	34	57	31	69
26.Şub	1356	206	136	72	94	78	48	191	231	132	168
TOTAL	9099	1346	1229	394	729	593	339	1082	1436	857	1094

GÖREME BALON	
13.Şub	275
14.Şub	74
17.Şub	0
19.Şub	233
22.Şub	316
23.Şub	53
24.Şub	0
26.Şub	219
OTAL	1170

(179) **Evidence-76:** The following statements are in the response sent by BALONDOKYA on 28.02.2018 to (.....), who, on 26.02.2018, requested a quote for a 16-person group wishing to take a balloon ride on 12.04.2018, which was recovered during the on-site inspection conducted at SKYWAY BALON:

"Hello Mr. (.....),

Due to the ballooning companies forming a union, the pricing will be (.....) € per person. There will be no discounts offered, as selling below this price would be a breach of agreement.

..."

(180) **Evidence-77:** The following statements are in the correspondence with the subject "Regarding Your prices," between Tour Guide (.....) and BUTTERFLY BALON on 28.02.2018, which was recovered during the on-site inspection conducted at BUTTERFLY BALON:

"First of all, Hello,

I am sending this e-mail with regard to a phone conversation I just had with an official of your company. I am a guide originally from Ürgüp, and I have been hosting my own customers in the Cappadocia region for a long time. According to the latest information I received, the ballooning companies in the region have formed an alliance, and as a result, there has been an increase in both agency and customer sales prices.

However, I also heard that Butterfly Balloons team is not part of this alliance.

If it is suitable for you, I would like to know your agency prices for this year, and if we reach an agreement, I would like to have a productive season together.

...”

“Hello Mr. (.....),

...

Our on-request winter prices for the period covering January 01 - March 31, 2018, are as follows, valid for all markets:

Butterfly Flight (1 hour)

Our sales price: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

**We kindly request not to sell below or above this price.*

Your payment: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

Our on-request summer prices for the period covering April 01 - October 31, 2018, are as follows, valid for all markets:

Butterfly Flight (1 hour)

Our sales price: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

**We kindly request not to sell below or above this price.*

Your payment: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

Butterfly Beyond Flight (1.5 hours)

Our sales price: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

**We kindly request not to sell below or above this price.*

Your payment: (.....)-Euro per person/credit card – (.....)-Euro per person/cash

...

Payment Method: Payments are made by the customer, and a commission fee is paid to you by Butterfly Balloons.”

(181) **Evidence-78:** There is information about the flights carried out by the ballooning firms through CO DMC in the e-mail with the subject “All files” and its attachments, sent by CO DMC support unit to ATMOSFER BALON’s accounting department on 26.02.2018; in the e-mail with the subject “Regarding 28 02 2018 CO DMC cashier’s report” and its attachments, sent from ATMOSFER BALON’s accounting department to ATMOSFER BALON Operations Manager (.....) on 28.02.2018, and in the e-mail with the subject “28 03 2018 xlsx” and its attachments, sent by CO DMC accounting department to the aforementioned department on 28.03.2018, all of which were recovered during the on-site inspection conducted at ATMOSFER BALON.

(182) **Evidence-79:** There is a list of flights TÜRKİYE BALON carried out through CO DMC in the attachment to an e-mail with the subject “the number of people flown,” sent by the TÜRKİYE BALON’s Accounting department to ATMOSFER BALON’s Accounting department on 27.02.2018, which was recovered during the on-site inspection conducted at ATMOSFER BALON.

(183) **Evidence-80:** The following statements are in the e-mail sent by DORAK HOLDİNG Legal Advisor (.....) to Attorney (.....) and copied to DORAK HOLDİNG's Chairman of the Board (.....) on 01.03.2018, which was recovered during the on-site inspection conducted at DORAK HOLDİNG:

"Mr. (.....),

Attached is the Service Procurement Agreement executed between BAŞKENT HAVACILIK⁵⁵ and ŞEREF TURİZM⁵⁶ on 10.02.2018. This agreement is related to granting the operation rights of the hot air balloons registered to BAŞKENT HAVACILIK to ŞEREF TOURİZM between 10.02.2018 and 09.02.2020.

We would like to lease the hot air balloons for which ŞEREF TOURİZM has been granted the operation authority. There is no provision to the contrary in the agreement related to this matter. Please examine the agreement and let's review it together."

(184) **Evidence-81:** Information on the flights carried out through CO DMC is included in the attachments to the e-mail with the subject "regarding co dmc reports," sent from the ATMOSFER BALON Accounting Department to ATMOSFER BALON Quality department on 01.03.2018, which was recovered during the on-site inspection conducted at ATMOSFER BALON.

(185) **Evidence-82:** The following statements are in the correspondence between DORAK HOLDİNG Corporate Communications and Business Development Director (.....) and RAINBOW BALON Operations Manager (.....) from 28.02.2018 to 01.03.2018, copied to DORAK HOLDİNG Information Technologies Director (.....), ATMOSFER BALON Operations Manager (.....) and KAPADOKYA BALON Operations Manager (.....), which was recovered during the on-site inspection conducted at RAINBOW BALON:

"Ms. (.....),

...

Minimum sales and agency sales prices have been conveyed by Mr. (.....) under the name of solidarity in ballooning.

To avoid making any incorrect changes, these packages and prices are being prepared and finalized under your control and on your request.

..."

"Good morning, Ms. (...),

...

Or, if things go well, perhaps the websites can be directed to CO DMC.

..."

"Ms. (.....),

⁵⁵ The undertaking referred to as BAŞKENT HAVACILIK is Başkent Havacılık Balonculuk Eğitim Tur. Rek. İnş. Tşm. San. ve Ltd. Şti. under investigation, which is shortened as İSTANBUL BALON in the decision.

⁵⁶ The undertaking referred to as ŞEREF TURİZM is Şeref Turizm ve Ticaret Ltd. Şti. under investigation, which is shortened as PİENTİ in the decision.

...

Therefore, let's take action for now without considering redirecting to Co DMC. We can discuss that in the coming days.

“Could you and Mr. (...) discuss with Mr. (...) and let me know your decision?

FOR NOW, we have removed the prices from their websites, with their knowledge, to avoid any issues, but if you are confident about the prices, they can certainly remain. The crucial point is for them not to be cheaper than the post-association indicated sales prices..

...”

- (186) **Evidence-83:** There are passenger manifests and flight information for BROTHERS BALON in the attachment to the e-mail sent by BROTHERS BALON Operations/Reservations Official (.....) to ATMOSFER BALON Accounting department on 05..03.2018, and passenger manifests and flight information for BALON TURCA in the attachment to the e-mail sent by BALON TURCA to ATMOSFER BALON Accounting department on 05.03.2018, which were both recovered during the on-site inspection conducted at ATMOSFER BALON.
- (187) **Evidence-84:** There is information on the reservations made through CO DMC in the document named “05-03-2018.xlsx” attached to an e-mail with the subject “Document from (.....)”, sent from an e-mail address reportedly⁵⁷ belonging to (.....) from İSTANBUL BALON Accounting department to ATMOSFER BALON’s Accounting department on 05.03.2018, which was recovered during the on-site inspection conducted at ATMOSFER BALON. The relevant document lists AIR KAPADOKYA BALON⁵⁸, ANATOLIAN BALON, ATMOSFER BALON, BROTHERS BALON, İSTANBUL BALON, KAPADOKYA BALON, KAYA BALON, RAINBOW BALON, SKYWAY BALON, SULTAN BALON, TURCA BALON and TÜRKİYE BALON in the column titled “Type of Collection.”
- (188) **Evidence-85:** The e-mail sent by SULTAN BALON Reservations Official (.....) on 06.03.2018 in response to an e-mail in which (.....), Managing Partner of the travel agency titled (.....)⁵⁹, requested to book a balloon ride for a group of 20 people on 06.03.2018, as well as the chain of correspondence⁶⁰ that followed, which were recovered during the on-site inspection conducted at SULTAN BALON, are quoted below:

“Dear (...),

...

Now there is a newly integrated reservation system called CO DMC. Our owner is also a part of and a member of CO DMC among other ballooning companies. Therefore, whenever you make a reservation, we will now forward the received

⁵⁷ Response letter sent by ATMOSFER BALON.

⁵⁸ As will be shown in the following pieces of evidence, the document includes information on a passenger group that took a ride with AIR KAPADOKYA BALON, despite the fact that AIR KAPADOKYA BALON did not work with the CO DMC platform. The following sections will include further explanations and observations on this subject.

⁵⁹ The response sent by SULTAN BALON states that the relevant agency is presumed to be operating in Romania.

⁶⁰ The statements in the document have been translated from the original English to Turkish and back to English.

reservation to CO DMC, as they are the central hub for all reservation processes of their members.

...

However, it's worth reminding that they do not sell their standard balloon flights for less than (...) Euros per person. There will be a (...) Euro discount for cash payments.

Your payment will remain the same this year, amounting to (...) Euros. However, there won't be any child discount. Children will be charged the same rate as adults. They don't accept children under 6 years old. But we can manage a 5-year-old child; it won't be a problem.

..."

"Hello (...),

Thank you for your quick reply.

This is my 6th group in the past years and every time the fee was (...) Euro / person. Please tell me if you can keep this fee. If not I need to discuss with my partners and to take a decision about the reservation."

...

Dear (...),

Thank you for your e mail.

But we are so sorry. We have an agency price (...)€ per person. We don't have a discount.

..."

- (189) **Evidence-86:** There is an Excel file with flight information on ULUER GRUP for 10.03.2018 in the attachment to the e-mail sent on 10.03.2018 from an address owned by ULUER GRUP, which has ANATOLIAN BALON and DISCOVERY BALON under its umbrella, to ATMOSFER BALON Accounting department, which was recovered during the on-site inspection conducted at ATMOSFER BALON, and the relevant file has "CO DMC" listed in the column titled "Payment".
- (190) **Evidence-87:** The e-mails with the subject "FW:KAYA BALON," dated 12.03.2018 and 26.03.2018, sent from the CO DMC Reservations department to ATMOSFER BALON's Accounting department, which were recovered during the on-site inspection conducted at ATMOSFER BALON, forward the e-mails sent from KAYA BALON to CO DMC's Reservations department, with various information on KAYA BALON's flights included in the content or attachments of the e-mails.
- (191) **Evidence-88:** During the on-site inspection conducted at KAPADOKYA BALLOON, a series of correspondences between (...), Reservation Manager of KAPADOKYA BALLOON, (...), the Operations Manager of KAPADOKYA BALLOON, and (...), Corporate Hotel Sales Representative of a travel agency, dated between 08.01.2018 and 12.03.2018, were recovered. From these correspondences, it is evident that (...), Corporate Hotel Sales Representative of (...) sent an e-mail on 08.01.2018 to request price information for a Turkish group of 10 people interested in participating in a balloon flight in April 2018, and that KAPADOKYA BALON Operations Manager (...) and

Reservations Manager (.....) responded with an e-mail on 12.01.2018, mentioning that the agency prices for the year 2018 were 75 Euros. However, in an e-mail dated 12.03.2018, in response to (.....) Corporate Hotel Sales Representative (.....)'s request for updated prices, where it was mentioned that the group has recently been confirmed, KAPADOKYA BALLOON's response includes the following statements:

"Hello Ms. (.....),

Due to the formation of a balloon solidarity in the region, there have been changes in prices;

Starting from February 12th, all ballooning companies in the region formed a union, and a unified pricing system was implemented.

These rates are set at (.....) € in cash for Standard Flights and (.....)€ via credit card for foreign guests, and (.....)€ in cash and (.....)€ via credit card for Turkish guests.

Unfortunately, there is no child discount. I had sent you the price list much earlier. Discussions about this change began after January 20th, and it was directly implemented on February 12th.

Accordingly, I will be waiting for further communication from you.

Have a productive day."

(192) **Evidence-89:** During the on-site inspection at KAPADOKYA BALLOON, a series of correspondences between KAPADOKYA BALLOON and (...), presumed to be an individual customer, were obtained. In these correspondences, KAPADOKYA BALLOON informed (.....) on 24.11.2017 that the Luxury Program cost €250 and the Standard Program cost €175, that there was a special price of 350 TL for guests staying at the Hotel (.....) where the customer also had accommodation, and that a further discount of 50 TL was available for cash payments. On the other hand, the following statements are in the e-mail sent by KAPADOKYA BALON in response to an e-mail by (.....), dated 12.03.2018, which had questions to KAPADOKYA BALON about how to fill the flight form:

"(.....), Hello,

I would like to inform you about a small change in the region;

Starting from February 12th, all ballooning companies in the region formed a union, and a unified pricing system was implemented.

These rates are set at (.....) € in cash for Standard Flights and (.....)€ via credit card for foreign guests, and (.....)€ in cash and (.....)€ via credit card for Turkish guests.

Unfortunately, there is no child discount. I had sent you the price list much earlier..."

The correspondence between KAPADOKYA BALON and (.....) following the e-mail in question is as follows.

"Hello again,

You did not inform me about such a change and the validity date of your prices. Based on that, I assumed your prices were valid for 2018. As mentioned before, we were planning to make a reservation for August 6th. Due to my workload at the time, I forgot to send the form.

According to what you gave us, your price sums up to €(.....) ((.....) YTL) from (.....)YTL normal and (.....)YTL child discount for those staying at (.....). In total, that's (.....) YTL instead of (.....) YTL, which is three times the previous amount. If you are not able to maintain the previous price or offer a similar one, I will have to cancel the reservation.

I hope you can be understanding about the price and keep the validity of your previous rate.

...

"Hello again, Mr. (.....),

This change was not something that had been discussed in the region for a long time; the necessary preparations were made in January and implemented in February, so we did not have the chance to inform our guests who could not make reservations previously. It is not in our hands, and we certainly cannot be flexible in prices on our own initiative, as the ballooning union is very strict on this issue. Unfortunately, as I mentioned in my previous e-mail, the prices given to you below will not be valid.

As Kapadokya Balloons, we would love to operate independently on this matter, but that's not possible.

Best regards,

...

"(.....) Ms. (.....),

Thank you for your response. However, I don't quite understand how you don't have the option to act as an individual company regarding prices.

If I understood correctly, Cappadocia Balloons is a member of this Balloon Solidarity, and I assume the Balloon Solidarity's members consist of competitive private companies. According to what you've mentioned, it seems like the Balloon Solidarity establishes price regulations that limit competition. In a way, it appears to function as a cartel. Since I don't have a full understanding of the connection between Balloon Solidarity and its members, I shouldn't make any definitive judgments. However, based on the information below, the approach I see appears to contradict the Law on Protection of Competition No. 4054. I hope that before entering into this new pricing agreement, you have consulted a lawyer specializing in this matter.

Before accepting the new prices you've provided, I will also consult with other companies that not are part of the Balloon Solidarity and make a decision.

Thank you..."

(193) **Evidence-90:** The documents named “Fiyat Listesi.docx: SICAK HAVA BALONU UCUŞ KİRALAMA SÖZLEŞMESİ CEZA TABLOSU MADDE.docx; SICAK HAVA BALONU UÇUŞ KİRALAMA SÖZLEŞMESİ-Final.docx” are in the attachment to the e-mail with the subject “Re: Agreement,” sent on 12.03.2018 by CO DMC General Coordinator (.....) to EZEL BALON, which was later shared between SKYWAY BALON Operations Manager (.....) and EZEL BALON and which was recovered during the on-site inspection conducted at EZEL BALON. The relevant attachments are related to the unsigned draft agreement concerning LIONCOX’s lease of balloon flights owned by SKYWAY BALON, the payments to be made by LIONCOX to SKYWAY BALON based on that agreement, and the sanctions to be imposed on the parties in case of non-compliance with the agreement provisions.

(194) **Evidence-91:** The following statements are in the e-mail dated 18.03.2018, sent by BALONDOKYA in response to a quote request by (.....), presumed to be an individual customer, which was recovered during the on-site inspection conducted at SKYWAY BALON:

“Hello,

...

Our standard flight fee is (.....) TL. The package that costs (.....) TL includes one-night Hotel accommodation, ATV tour for two, red tour for two, and balloon flight for two. Flight prices are listed below. The reason for such significant price changes is due to the union formed by the ballooning companies in the region. Balloon companies have been operating collectively since February,-

resulting in price increases.

Good evening.”

(195) **Evidence-92:** The e-mail with the subject “skywayballoons.com Price,” sent on 16.03.2018 from the e-mail address (.....)⁶¹, presumed to be an individual customer, which was recovered during the on-site inspection conducted at SKYWAY BALON, shows that the customer requested a price list and the undertaking informed them with an e-mail dated 17.03.2018 that their sales prices were (.....)€ for domestic customers and (.....)€ for foreign customers. Afterwards, the e-mail asked for a discount with an e-mail dated 19.03.2018, with the undertaking’s e-mail of 19.03.2018 in response including the following statements:

“Hello,

Unfortunately, the prices set are due to the ballooning companies’ cooperation. The final price will be (...)€ per person.

Wish you a good day.”

(196) **Evidence-93:** The following statements are in the correspondence of 28.03.2018 between (.....), who is presumed to be an individual customer requesting a reservation for a balloon ride, and KAPADOKYA BALON Reservations Manager (.....), which was recovered during the on-site inspection conducted at KAPADOKYA BALON:

⁶¹ The response by SKYWAY BALON states that the relevant e-mail is owned by an individual named (.....).

"Hello, Ms. (.....),

...

The balloon companies in the region have launched a cooperation, and fixed pricing has been implemented.

The prices you see below are the fixed prices applicable for everyone.

Unfortunately, we cannot provide discounts over these prices.

Have a good day.

...

Reservations Manager"

...

"Hello, Ms. (.....),

Are you aware that this practice might be in violation of competition law?

Could I kindly request your discounted prices in consideration of that fact?

Thank you."

(197) **Evidence-94:** The following statements are in the correspondence between KAPADOKYA BALON Reservations Manager (.....) and (.....), an employee of the travel agency titled (.....), which took place between 29.03.2018 and 30.03.2018, which were recovered during the on-site inspection conducted at KAPADOKYA BALON:

"Hello (...),

What happened to the final prices?

I heard that a joint decision has been taken and all companies will offer the same price, is that true?

What is your price, I'm gonna send someone over,

Many thanks."

...

"Hello Mr. (.....),

The prices have changed as follows

(.....)€ in cash

(.....)€ credit card payment for foreign guests

(.....)€ agency payment

(.....)€ in cash

(.....)€ credit card payment for Turkish guests

(.....)€ agency payment"

(198) **Evidence-95:** The following statements are in the e-mail with the subject "Re: S-Petersburg," sent on 30.03.2018 from an e-mail owned by ATMOSFER BALON to a

travel agency titled (.....) in Russia, which was recovered during the on-site inspection conducted at ATMOSFER BALLOON:

“Hello Petersburg;

In February, a cooperative of balloonists was established in our region, as a result of which prices were set at (.....)€ per person. If you wish to make a reservation, you can do so at the address I sent.

Since we have been in a marketing and sales partnership cooperation with CO DMC starting on February 12, 2018, we kindly ask that you send any existing or new reservations after this date to the e-mail address provided below.

CO DMC

...”

(199) **Evidence-96:** The following statements are in the e-mail sent on 04.04.2018 by CO DMC Reservations Unit to OPULENTIA in response to an e-mail where the latter requested a quote for a balloon ride for Japanese tourists, which was recovered during the on-site inspection conducted at OPULENTIA:

“Hello,

CO DMC Suggested Sales and Agency Payment Price Information

For foreign guests in 2018, (...)€ per person sales, (...)€ agency payment

For local guests in 2018, (...)€ per person sales, (...)€ agency payment

Children aged 0-5 cannot fly due to civil aviation regulations.

Children aged 5 and above are subject to full pricing.”

(200) **Evidence-97:** The following statements are in the e-mails with the subject “About the prices and payments,” sent between 24.04.2018-25.04.2018 among (.....) Tours General Manager (.....) and KAPADOKYA BALON Operations Manager (.....), which were recovered during the on-site inspection conducted at KAPADOKYA BALON:

“ Greetings (.....).

With reference to our meeting yesterday, could you please draft a paragraph explaining that you couldn't come to an agreement with Kircilar⁶² and thus couldn't confirm the price of (.....) Euros? We'll forward it to Mr. (.....)⁶³.

During our meeting with Mr. (...), he told us that the agreement with Kircilar was almost finalized under CO DMC. So we informed Mr. (.....) that it would be (.....)Euros. This put us in a difficult situation.

If you could quickly send an e-mail, we will share it with Mr. (.....) as well.

You already confirmed (.....), Euros for flights until this week. Additionally, we URGENTLY need the bank details for CO DMC.

⁶² The response sent by KAPADOKYA BALON notes that the name referred to as “Kircilar” is a group of companies operating in multiple areas within the tourism sector and is associated with GÖREME BALLOON in the balloon industry.

⁶³ The response sent by KAPADOKYA BALON notes that the individual referred to as “Mr. (.....)” is the owner of the travel agency with the title “(.....)” mentioned in the relevant e-mail.

...

"Hello, (.....) .

Unfortunately, due to not reaching an agreement with Kircilar to be included in CO DMC at the last moment, we regretfully cannot offer the (.....) € price for balloon flights.

(201) **Evidence-98:** The following statements are in the e-mail with the subject "DORAK BREZILIA CAPPADOCIA BALLOON PRICES," sent on 26.04.2018 by (.....), an employee of the travel agency (.....), to VOYAGER BALLOON official (.....), which was recovered during the on-site inspection conducted at VOYAGER BALLOON:

"Dear (...), hello,

Following our phone call yesterday, if you could somehow obtain the full company title of CO DMC, I would greatly appreciate it.

In the meantime, I would like to share the INFORMATION NOTE sent by DORAK TOUR to some firms in Brazil during the WTM Sao Paulo fair in early April, which we cooperated with.

Awaiting your news,

Thank you, regards.

(.....)

...

INFORMATION NOTE:

We signed an agreement with the newly formed Consortium for Cappadocia Hot Air Balloons on February 12, 2018.

The main reason for this agreement is to prevent unhealthy, irregular, and unfair competition experienced in previous years and to provide a compliant, healthy, and safe environment.

Established under the decision and support of the Turkish Government and Civil Aviation, this system will both guarantee a fair competition system and reduce quality and service problems arising from low prices.

The main function of the new Consortium established is;

- To promote a positive and collaborative safety culture through a fair, effective and productive aviation security regulatory system that supports the aviation community.*
- 80% of the major ballooning companies in Cappadocia have formed a Consortium in which prices are controlled and defined.*
- The minimum sales price per person in Cappadocia will be (...) USD (no discounts will be applied - all payments will be made in advance; credit will not be applied).*
- The new net price offered by Dorak to our partners in Brazil is 200 USD.*

For any questions, we are at your service.

DORAK TOUR BRAZIL”

(202) **Evidence-99:** The following statements⁶⁴ are in the e-mail with the subject “Greetings from Cappadocia,” sent on 27.04.2018, by VOYAGER BALON partner (.....) to (.....) employee (.....), which was recovered during the on-site inspection conducted at VOYAGER BALON:

“Hello Mr. (.....),

...

This winter, Dorak Group has formed a new group for travel agencies, and this new agency named CO DMC has leased 17 hot air balloon companies in Cappadocia. They are all operating out of a single center for reservations and are managed by Dorak. The other 8 companies operate individually outside this group. Voyager and Atlas are outside of this group.

The best thing about this group is that prices for travel agencies are now above (.....)€. Of course, the reservations are taken by Dorak, but at least we are also receiving (...)€ + VAT from our travel agencies for reservations for our company. Our standard flight sales price is (...)€, and the comfort flight is priced at (...)€ per person. There is also a (...)€ discount for cash payments.

In March and April, weather permitting, we flew fully booked with many agencies that did not want to work with Dorak...”

⁶⁴ The statements in the document have been translated from the original English to Turkish and back to English.

(203) **Evidence-100:** The document whose screenshot is included below indicating that the flights were carried out through CO DMC was recovered during the on-site inspection conducted at SKYWAY BALLOON:

SKYWAY					
CO-DMC GİDEN	GERÇEKLEŞEN UÇUŞ	GARANTİ	TAAHHÜDE GÖRE FARK	KİŞİ BAŞI BEDEL	ÖDEME
111	111	77	34	65	7.215
112	112	77	35	65	7.280
111	111	77	34	65	7.215
109	109	77	32	65	7.085
75	75	77	-2	65	5.005
76	76	77	-1	65	5.005
112	112	77	35	65	7.280
112	112	77	35	65	7.280
92	92	77	15	65	5.980
95	95	77	18	65	6.175
86	86	77	9	65	5.590
72	72	77	-5	65	5.005
112	112	77	35	65	7.280
91	91	77	14	65	5.915
112	112	77	35	65	7.280
108	108	77	31	65	7.020
112	112	77	35	65	7.280
95	95	77	18	65	6.175
92	92	77	15	65	5.980
92	92	77	15	65	5.980
91	91	77	14	65	5.915
92	92	77	15	65	5.980
112	112	77	35	65	7.280
2272	2272	77	-8		148.200

Nis.18

Banka : 74100 Dolar

Nakit: 74.100 Dolar -

3013 EURO SKYWAY TRAVEL Dolar
3616 Dolar

3616 = 70,484 Dolar

3121 = 67,363 \$

(204) **Evidence-101:** The following statements are in the correspondence dated 05.02.2018, 27.02.2018-28.02.2018 and 03.05.2018 made between Marketing Officer (.....) of (.....), with which the undertaking has a cooperation agreement, and BALONDOKYA official (.....), recovered during the on-site inspection conducted at SKYWAY BALON:

05.02.2018-06.02.2018

"Hello, Ms. (.....),

We need to update the prices once again. Due to the decision of the ballooning companies in the region to form an association, we have to remove the options

for standard and comfort flights and introduce a standard flight with a maximum of 20 people.

Price will be:

(.....)TL

Good evening.”

...

“Hello Ms. (.....),

Starting from February 11, we will have only one flight type on our website, and this system will be effective in the region starting from February 12.”

27.02.2018-28.02.2018

...

“Hello Ms. (.....) ,

We forgot to respond to you due to our busy schedule. The balloon companies have formed an association, and the selling price for local guests in the region has become (.....)€. Selling below this price is prohibited.

I had a talk with the guest and provided information about the prices. Refunds will be necessary, and tours can remain, but I suggest we remove balloon tours as it will be difficult for locals to afford them at this price.

Regards.”

“Mr. (.....) hello,

Did the flight become (.....) TL? So, is it a fixed (.....)€ for all flights in the Cappadocia region?

...”

“Hello, (.....) Madam,

Based on my conversation with the guest, I learned that the flight date is March 3, 2018. I kindly request you to pay the remaining amount up to (.....)€. I spoke with the authorities within the organization, and they said they cannot accept anything below (.....)€.

...

03.05.2018

“Hello Ms. (.....) ,

As I mentioned before, due to the ballooning companies forming an association, we can say that we no longer have a say; in short, 14 ballooning companies have been leased for 2 years. When we provide our reservations to this lessor company, our payment to this company comes up to (.....)€ per person...

This is why I'm explaining this to you personally... If the payment is to be made to our company account and invoiced, then we will need to adjust the standard flight price to (.....) TL.

...”

(205) **Evidence-102:** The following statements are in the e-mail with the subject “Fwd: Fwd: REVISED PRICE 2018,” sent on 18.05.2018 by ÜRGÜP BALON Operations Manager (.....) to (.....), a travel agency in Ürgüp, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Dear Sir or Madam, esteemed business partner,

In accordance with the evaluations made during the board meeting of all balloon companies, due to the difficulties caused by different sales figures and agency payment prices for our collaborators, guests, and ourselves, as well as for our company, we have decided that all existing confirmed reservations up to May 12, 2018, regardless of past or future dates, will be honored at the confirmed price and starting from 14.05.2018, the agency payment price and on-site sales figures applicable to you are provided below based on flight types.

After the challenging process we went through, in order to ensure the survival of the sector at a certain standard, strengthen cooperation among ballooning companies, minimize space issues, and maintain continuity in our collaboration with our agencies, we hope for your understanding regarding the updated agency prices, and we STRONGLY urge everyone not to fall below the recommended sales figures.

<i>FLIGHT TYPES</i>	<i>AGENCY PAYMENT PRICE</i>	<i>WALK-IN PRICE</i>
<i>STANDARD FLIGHT</i>	<i>(.....)</i>	<i>(.....)</i>
<i>COMFORT FLIGHT</i>	<i>(.....)</i>	<i>(.....)</i>
<i>DELUXE FLIGHT</i>	<i>(.....)</i>	<i>(.....)</i>
<i>PRIVATE FLIGHTS (1 HOUR)</i>		
<i>UP TO 10 PEOPLE:</i>	<i>(.....)</i>	<i>(.....)</i>
<i>UP TO 16 PEOPLE:</i>	<i>(.....)</i>	<i>(.....)</i>

(206) **Evidence-103:** The documents named “Şubat 2018 Gider Listesi,” “Mart 2018 Gider Listesi,” “Nisan 2018 Gider Listesi” and “Mayıs 2018 Gider Listesi” were recovered during the on-site inspection conducted at PİENTİ, which includes information on the renting prices of the ballooning companies.

(207) **Evidence-104:** The following statements are in the e-mail dated 08.06.2018, sent by KAPADOKYA BALON Reservations Manager (.....) to (.....) and copied to KAPADOKYA BALON Operations Manager (.....), which was recovered during the on-site inspection conducted at LE CO DERİ:

“Dear Ms. (.....),

Mr. Mr. (.....) must have discussed the changes in ballooning in the region that came about since February 2018.

At this point, prices in the region have been fixed at (.....)€ + VAT, and even mentioning lower figures is not possible.

However, your position holds a special place for us, and it will remain so.

...

In this context, in order not to inconvenience you based on the tour pricing you have already established, we will offer you a very special rate of (.....)€ (Including VAT) for (.....).

Furthermore, as I mentioned before, there are no prices below (.....)€ + VAT in the region.

...”

(208) **Evidence-105:** The following statements are in the e-mail with the subject “2018 prices,” dated 12.06.2018, sent by (.....), who seems to be the “Aegean Operations Officer of the travel agency titled (.....), to two e-mail addresses owned by TÜRKİYE BALON, which was recovered during the on-site inspection conducted at TÜRKİYE BALON:

“Hello Ms. (.....)⁶⁵,

I have spoken to Mr. (.....)⁶⁶ just now, I am selling at the prices you mentioned, adjusting the amounts I added on top. Unfortunately, I cannot provide the sales prices listed here as quotes were requested from other companies. Unfortunately, the established balloon association hasn't been very effective, and guests are still getting different prices. I also want to mention that there are balloon tours available on the internet for (.....)€. There might have been 2 private balloon flights from the guests who arrived this month, but those 2 private flights also went to another company.

I can say that for the 2 private flights on 07.06 , I will pay (.....) and (.....)€ and (.....)€ for my guests who take normal flights.

I wish you a productive working day...

Best regards,

(.....)”

(209) **Evidence-106:** The following statements⁶⁷ are in the correspondence between ÜRGÜP BALON General Manager (.....) and (.....), an employee of the travel agency titled (.....) based out of Malaysia on 16-17.07.2018 concerning the reservations for a 20-person group, which was recovered during the on-site inspection conducted at ÜRGÜP BALON:

“Dear Chin,

The net agency price per person for a group of 20 people will be (.....) Euro...”

...

“Dear Tamer,

⁶⁵ The relevant person is the TÜRKİYE BALON Operations Officer, (.....).

⁶⁶ The relevant person is the TÜRKİYE BALON consultant, (.....).

⁶⁷ The statements in the document have been translated from the original English to Turkish and then back to English.

Is the (.....) Euro price inclusive of 30% commission?

...

“Dear Chin,

At the beginning of the season, the balloon companies in Cappadocia collaborated.

Indeed, the (.....) Euro price includes the commission fee. The sales price we recommend is (.....) Euro per person.”⁶⁸

(210) **Evidence-107:** The following statements⁶⁹ are in the e-mail sent from KAPADOKYA BALON to (.....) official on 30.07.2018, which was recovered during the on-site inspection conducted at KAPADOKYA BALON:

“Hello (.....),

Have you heard about the new system for the ballooning companies in Cappadocia?

They have an online reservation system, and 17 balloon companies are working together.

We are also part of this system. However, I can still be responsible for reservations.

Standard flight prices;

For passengers (.....)

For agencies (.....)

Deluxe Flight Prices;

For passengers (.....)€

For agencies (.....)€

...”

(211) **Evidence-108:** The following statements are in the correspondence dated 24.08.2018 between (.....), an individual customer, and VOYAGER BALON, which was recovered during the on-site inspection conducted at VOYAGER BALON:

“I heard that many balloon companies were acquired this year (though I'm not sure, the group's name seems to be something like co dmc), did you get acquired?

Are you currently working with the other companies or are you operating independently?”

...

⁶⁸ According to the explanations provided by the ÜRGÜP BALON official (.....) about the relevant statements, the intent was to note that the net per-person price would be (.....) Euro, with the recommended sales price at (.....) Euro.

⁶⁹ The statements in the document have been translated from the original English to Turkish and then back to English.

“No, we were not acquired. We are independent.”

(212) **Evidence-109:** The following statements are in the document attached to an e-mail dated 31.08.2018, sent by GÖREMA BALON and DELUXE BALON Accounting Personnel (.....) to GÖREME BALON and DELUXE BALON Chairman of the Board (.....), which was recovered during the on-site inspection conducted at GÖREME BALON and DELUXE BALON:

“REGARDING GÖREME BALON CAPACITY AND DISTRIBUTION, FROM SEPTEMBER 01,

...

4- FROM SEPTEMBER 01, 2018, DAILY 50 PAX WILL BE GIVEN TO CO DMC COMPANY. PAX AGREEMENT PRICE IS (.....) EURO. OTHERWISE, NO SHOW WILL BE APPLIED.

...”

(213) **Evidence-110:** The following statements⁷⁰ are in the correspondence of 06.09.2018 between individual customer (.....) and VOYAGER BALON Hot Air Balloon Tours Expert (.....), which was recovered during the on-site inspection conducted at VOYAGER BALON:

“Hello (.....),

Thanks for your reply. I heard that all balloon companies, except Butterfly and Royal, have merged under CO DMC. Is your company also a member of CO DMC?

...”

“Hello, no, our company is not a member of CO DMC.

The three major companies are Voyager, Royal, and Butterfly Balon. We are Voyager Balon.

...”

(214) **Evidence-111:** The following document was recovered in the office of the Accounting Officer (.....) during the on-site inspection conducted at LE CO DERİ⁷¹:

⁷⁰ The statements in the document have been translated from the original English to Turkish and then back to English.

⁷¹ Of the individual mentioned in the document, (.....) is the Chairman of the Board of DORAK HOLDİNG, (.....) is the Operations Manager of Atmosfer BALON, and (.....) is the Operations Manager of KAPADOKYA BALLOON. On the other hand, (.....) is noted to be (.....) of (.....), the Chairman of the Board of DORAK HOLDİNG, that (.....) is not a shareholder in LE CO DERİ or any other known company, and that during the period mentioned in the document, started dealing with financial/banking matters of the business but was not a Social Security Institution (SGK) insured employee of the company.

29.09.2018 TOPLANTI NOTLARI

Katılımcılar: Ahmet Serdar Körükçü, Serkan Feralan, Levent Nuray, Bekir Özdemir

- 1) Primevera Çinlisi 100 €
Primevera Latin 80 €
- 2) Diğer Tüm acenteler Yerli 80€ / Yabancı 100€ fiyat uygulanacak
- 3) CO-DMC üyeleri EKİM 2018 Sonuna kadar eski fiyat uygulanacak.
- 4) Ets, Jolly ve Tatilbudur 80 Usd fiyat uygulaması devam edecek.
- 5) Uts Yerli/Yabancı 80 Eur fiyat uygulaması devam edecek.
- 6) Abdullah İNAL Ekim sonuna kadar CO- DMC de çalışmaya devam edecek. *(Abdullah İNAL ve Birol Özdemircan a Ekim ayı itibari ile prim ödemesi yapılmayacak.)* *(Abdullah İNAL ve Birol Özdemircan a Ekim ayı itibari ile prim ödemesi yapılmayacak.)*
- 7) Nejat Öksüz, Abdullah İnal ve Birol Özdemircan a Ekim ayı itibari ile prim ödemesi yapılmayacak.
- 8) İstanbul Balon 102
Comfort Balon 36
Universal 88 Pax kotaları bulunmaktadır.

(English Translation):

29.09.2018 MEETING NOTES

Participants: Ahmet Serdar Körükçü, Serkan Feralan, Levent Nuray, Bekir Özdemir

- 1) Primevera Chinese 100 €
- 2) Primevera Latin 80 €
- 3) CO-DMC members will be applied the old price until the end of OCTOBER 2018
- 4) Ets, Jolly and Tatilbudur will continue with the 80 Usd pricing.
- 5) Uts Domestic/Foreign will continue with the 80 Eur pricing.
- 6) Abdullah İNAL will continue working at Co-DMC until the end of October (*PREMIUMS WON'T BE PAID AFTER OCTOBER*)
- 7) Nejat Öksüz, Abdullah İnal and Birol Özdemircan will not receive premium payments as of October
- 8) İstanbul Balon 102
Comfort Balon 36
Universal 88 Pax quotas available.

(215) **Evidence-112:** The following screenshot was recovered during the on-site inspection conducted at LE CO DERİ on 09.10.2018, concerning which ballooning firms were using the CO DMC platform and were participating in the system.

FİRMA ÜNVANI	TELEFON NO	ŞEHİR	Yetkilil Adı	GSM	Email	Durumu
ANATOLIA		Nevşehir				
ATMOSFER BALON		Nevşehir				
BALON TURCA		Nevşehir				
CİHANGİROĞLU		Nevşehir				
COMFORT		Nevşehir				
DİSCOVERY		Nevşehir				
İSTANBUL BALON		Nevşehir				
KAPADOKYA BALON		Nevşehir				
KAYA BALON		Nevşehir				
RAINBOW BALON		Nevşehir				
SKYWAY BALON		Nevşehir				
SULTAN BALON		Nevşehir				
TURKİYE		Nevşehir				
UNİVERSAL BALON		Nevşehir				

(216) **Evidence-113:** The following tables are shared in the e-mail dated 25.11.2018, sent from the CO DMC Accounting department to KAPADOKYA BALON Operations Manager (.....) and ATMOSFER BALON Operations Manager (.....) as well as in the e-mail dated 03.12.2018 sent by CO DMC Accounting Official (.....) to KAPADOKYA BALON Operations Manager (.....) and ATMOSFER BALON Operations Manager (.....), which were recovered during the on-site inspection conducted at KAPADOKYA BALON:

COMPANY NAME	25.11.2018
ANATOLIA-DISCOVERY	(.....)
ATMOSFER	(.....)
BALON TOURCA	(.....)
BROTHERS BALON	(.....)
ISTANBUL BALON	(.....)
UNIVERSAL BALON	(.....)
COMFORT BALON	(.....)
KAPADOKYA	(.....)
KAYA BALON	(.....)
RAINBOW-SULTAN	(.....)
SKYWAY BALON	(.....)
TURKİYE BALON	(.....)
TOTAL	1.248

COMPANY NAME	03.12.2018
ANATOLIAN-DISCOVERY	(.....)
ATMOSFER	(.....)
BALON TOURCA	(.....)
BROTHERS BALON	(.....)
COMFORT BALON	(.....)
ISTANBUL BALON	(.....)
KAPADOKYA	(.....)
KAYA BALON	(.....)

RAINBOW-SULTAN	(.....)
SKYWAY BALON	(.....)
TURKİYE BALON	(.....)
UNIVERSAL BALON	(.....)
TOTAL	821

(217) **Evidence-114:** The following statements are in the response sent by CO DMC Reservations Official (.....) to the e-mail dated 27.11.2018 where (.....) asked pricing

information for the June-July 2019 period from KAPADOKYA BALON, which was recovered during the on-site inspection conducted at LE CO:

“Hello,

Starting from March 15, 2019, our prices for standard flight balloon tours that we will apply to your agency will be (.....)€ per person.

...”

- (218) **Evidence-115:** The tables for the accounting records of the flights organized between 26.02.2018-03.12.2018, recovered during the on-site inspection conducted at GÖREME BALON and DELUXE BALON, include wire transfers with the description “Co Dmc .. Balloon Leasing Payment Against Pax.” A screenshot of a portion of the relevant documents is below:

22.03.2018	22.03.05-22.03.18 Arası 150 Pax*85 Usd	150 USD	12.750,00	-66.696,97 A
22.03.2018	Co Dmc 150 Pax Karşılığı Balon Kira Ödemesi	USD	-18.416,97	-48.280,00 A
26.03.2018	26.03.05-26.03.18 Arası 130 Pax*85 Usd	130 USD	11.050,00	-59.330,00 A
28.03.2018	28.03.05-28.03.18 Arası 100 Pax*85 Usd	100 USD	8.500,00	-67.830,00 A
31.03.2018	31.03.18-31.03.18 Arası 73 Pax*85 Usd	73 USD	6.205,00	-74.035,00 A
31.03.2018	31.03.18-31.03.18 Arası 4 Pax*100 Euro	4 USD	493,03	-74.528,03 A
31.03.2018	Co Dmc 4 Pax*100 Euro Balon Kira Ödemesi	USD	-493,03	-74.035,00 A

- (219) **Evidence-116:** An excel file named “Balon Maliyet” (Balloon Cost) within the folder Balon Kooperatifi (Balloon Cooperative) was recovered during the on-site inspection conducted at LE CO (*Created on 14.01.2018, modified on 07.03.2018*).
- (220) **Evidence-117:** A copy of an invoice of 30,000TL was found during the on-site inspection conducted at PİENTİ, which was made out billed to LE CO DERİ by CO DMC on 01.11.2018, with the description “Balloon Reservations System”.

I.4.1.2.1. Evidence Regarding the Allegations of Exclusion of Tourism Agencies

- (221) **Evidence-118:** The following statements are in the documents named “whatsapp 28-34” in the “Leco Partners” group, dated 13.02.2018, recovered during the on-site inspection conducted at LE CO:

“(.....): (.....) glorious flew with whom?”

(.....): THK flew three balloons, 20+20+10, they flew 50 pax there

(.....): I thought there was no pilot...

(.....): They had to fly because the departure documents were not submitted and the departure wasn't completed

(.....): Are those the pilots coming to us?

(.....): Yes, that's them, they'll come once their procedures are finished

(.....): Let's take this seriously, (.....), these vermin will do ... from now on those pilots won't come...

(.....): There's no way he'll make it

(.....): He will if we don't take it seriously

(.....): He rented THK without paying any money, just with two checks...

(.....): We couldn't rent with money

(.....): This will be his downfall

(.....): No, if he didn't fly today, it would have been...

(.....): And we also need to follow like detectives and not put them on other balloons...

(.....): We need to monitor (.....) very closely...

(.....): We need to emphasize this to all balloonists... once our organization came about, the value of your companies increased by at least 50%, and this (.....)⁷² tried to decrease the value

(.....): Operators are right not monitoring if there is anyone flying glorious in the field right now...

(.....): Glorius has flown all of its customers, and we've learned our lesson too...

(.....): Then we need to work to make sure he doesn't fly anywhere else, look, today all of his customers have flown, that's the point

(.....): If he didn't fly today, his business in China would be over, and it would be a kicker for the agencies, I'm really sorry, so much effort went to waste"

(222) **Evidence-119:** The following statements are in the documents named "whatsapp 36-whatsapp 39" in the "Leco Partners" group, dated 20.02.2018, recovered during the on-site inspection conducted at LE CO:

"(.....): Friends, good morning, today at 15:59 we received a call from China, glorious group couldn't find a balloon and the cyts group called our office and we helped, we sold a balloon tour for 14 pax customers at (.....) USD and received (.....) USD, a short day's profit

(.....)⁷³: Honestly, this put a smile on my face when I read it, may he stumble around more and embarrass himself

(.....): Good riddance

(.....): Mr. (.....), this is great lesson for the Chinese agencies too, everybody will know in a very short time."

(223) **Evidence-120:** The following statements by ATMOSFER BALON Operations Manager (.....) are included in the document named "whatsapp 1," dated 25.04.2018, in the "CO DMC Blacklist" group, which also included CO DMC Reservations Official (.....),

⁷² It is thought that the person in question is GLORIUS DMC's owner (.....). This is because DORAK HOLDING's first written plea stated that the undertaking mentioned in the whatsapp chats was GLORIOUS DMC.

⁷³ The person in question is GNM's Managing Director (.....)

SKYWAY BALON employees (.....) and (.....), (.....), CO DMC employees (.....) and (.....), ATMOSFER BALON official (.....), KAYA BALON official (.....) and KAPADOKYA BALON official (.....), and which was recovered during the on-site inspection conducted at LE CO DERİ:

“Guys, I also just spoke with (.....), we won’t fly agencies that are not partners of CO DMC without receiving their payments in advance. Let’s definitely not confirm unknown agencies without payment.”

(224) **Evidence-121:** The following statements by CO DMC Reservations Official (.....) are in the document named “whatsapp 25,” dated 03.05.2018, in the “CO DMC Blacklist” group, which was recovered during the on-site inspection conducted at LE CO DERİ:

“We can tolerate those businesses that we trust very much, like our own. But we inform other businesses and those we don’t know that payment needs to be received in advance.”

(225) **Evidence-122:** The following statements by CO DMC Reservations Official (.....) are in the document named “whatsapp 95,” dated 25.07.2018, in the “CO DMC Blacklist” group, which was recovered during the on-site inspection conducted at LE CO DERİ:

“(.....) arch palace, take them in August and July, but don’t give them space during peak days, I don’t know the owner, man.”

(226) **Evidence-123:** During the on-site inspection conducted at LE CO DERİ, a list of the cancelled flights was recovered within the document named “Co DMC Cooperative Destination management Companies 01.01.2017-10.10.2018 uçuş iptaller”.

I.4.1.2.2. Evidence Regarding the Relationship between the Agencies under Investigation and CO DMC concerning Hot Air Balloon Flights

(227) **Evidence-124:** The following statements are in the e-mail with the subject “FW:CO DMC Information,” sent by NAMSAN’s owner (.....) to NAMSAN Operations Manager (.....) and NAMSAN (.....) on 19.02.2018, which was recovered during the on-site inspection conducted at NAMSAN::

“GUYS LET’S REVIEW THIS AGREEMENT, STAMP IT AND RETURN IT”

The attachment of the e-mail includes the CO DMC Agency Hot Air Balloon Agreement, the terms of which will be detailed in the following piece of evidence.

(228) **Evidence-125:** The e-mail sent dated 04.05.2018, sent from the address info@CO_DMC.com to OPULENTİA, which was recovered during the on-site inspection conducted at OPULENTİA, includes the draft HOT AIR BALLOON AGENCY AGREEMENT. Some of the terms of the agreement are quoted below:

(.....)

I.4.1.3. Evidence Regarding the Relationship Certain Agencies under Investigation and CO DMC had with Hotels

(229) **Evidence-126:** The e-mail with the subject “RE: NS-NH-20170915 QR – NAME LIST CONFIRMATION,” dated 08.09.2017, between NAMSAN Operations Manager (.....), Kolin Hotel Reservations and Kolin Hotel Sales Chief (.....), which was copied to NAMSAN owner (.....) and Koin Hotel employees and which was recovered during the on-site inspection conducted at NAMSAN:

“Our agreement terms are covered under the CO-DCM agreement. Therefore, we no longer make payments before check-in.

Thank you,

(.....)”

...

“Ms. (.....),

I'd like to express our satisfaction that our cooperation will develop and flourish with your inclusion in CO DMC.

However, as I mentioned on the phone, the agreement with CO DMC does not involve any changes in the payment terms between the agency and the Hotel.

...

(.....)”

(230) **Evidence-127:** The following statements are in the e-mail with the subject “Co DMC,” sent by CO DMC Accounting Official (.....) to Holiday Inn Group Sales Official (.....) on 01.03.2018, which was recovered during the on-site inspection conducted at KRIZANTEM:

“Ms. (.....), Hello,

We kindly request the number of people for January and February accommodation for our agencies (Opulentia Travel, Blue Bosphorus, Namsan, GNM, Pienti, Tempel, DELUKS, Krizantem), minus free stays. In accordance with our mutual agreement, a commission invoice will be issued to you...

The response to the e-mail in question, which was copied to KRIZANTEM employees and DELUKS, includes the following statements:

“Hello Mr. (.....);

It seems that we did not work with the following agencies amongst the members of CO DMC within February. We are working with DELUKS and Krizantem in March, but I would like to note that we won't be able to issue a commission invoice, as the (Sng-Dbf: (.....)-USD) we sent you is not among the figures with commission.”

(231) **Evidence-128:** The e-mail with the subject “ERETNA TRAVEL (CO DMC) 2018 WINTER-SUMMER,” sent by Kolin Hotel Sales Representative (.....) to ERETNA Operations Manager (.....) on 22.03.2018, recovered during the on-site inspection conducted at ERETNA, includes 2018 winter and summer price quotes within the framework of CO DMC. A portion of the attachment to the e-mail is provided below:

ATT :

TEL: +0212 876 51 50

INCOMING OPERASYONLARI GRUP/IT TEKLİFİ

Madde 01 - Taraflar :

- a) KOLIN HOTEL; Otel diye anılacak olup, Boğazkent mevki-Kepez/ÇANAKKALE adresindedir.
b) ERETNA TRAVEL; Acente diye anılacak olup 19 Mayıs Mh. Büyükdere Cd. Güzel Abant Apt. No:8 Kat:4 Şişli İstanbul

Madde 02 - İşbu teklif 22.03.2018-31.10.2018 tarihleri arasında geçerlidir.Madde 03 - Acentenin Ötele getireceği UZAKDOĞU uyruklu konuklara uygulanacak fiyatlar aşağıda verilmektedir

Sunulmuş olan fiyatlar CO-DMC Acente ortak hareket birlikteliğine dahil olan acenteler için uygulanacak olan çok özel fiyatlardır. Acentenin CO-DMC'den ayrılması halinde bu fiyatların ve free uygulamasının geçerliliği sona erer.

	22.03.2018-31.03.2018	01.04.2018-31.10.2018
	GRP/IT	GRP/IT
Dbl PP HB	30.5.-US\$	34.5.-US\$
Sng Suppl	18.-US\$	20.-US\$
3. Bed	21.-US\$	24.-US\$

	RACK RATE
Sgl BB	190.- €
Dbl BB	260.- €
Corner Suite BB	425.- €
Deluxe Suite BB	475.- €

Ebeveynleri ile aynı odayı paylaşmaları halinde, 0/6 yaş arası 1. Çocuk çocuk HB ücretsiz, 0/6 yaş 2. Çocuk ve 7/12 yaş arası çocuklar ise HB %50 indirimlidir. Yabancı grup fiyatları komisjonsuz olup, KDV fiyatlara dâhildir. Konjonktürel dalgalanmalar, mevcut vergi oranlarındaki artışlar veya sair isimler altında konulması muhtemel ek vergiler yukarıdaki fiyatlara yansıtılır.

Madde 04- Gruplar minimum 5 ödeyen odadır. Ödeyen her 5 oda sonrası 1 single oda pansiyon bazında freedir.

(English Translation)

INCOMING OPERATIONS GROUP/IT QUOTE

Article 01 - Parties :

- a) KOLIN HOTEL; shall be referred to as the Hotel and is located at Boğazkent neighborhood-Kepez/ÇANAKKALE.
b) ERETNA TRAVEL; shall be referred to as the Agency, 19 mayıs Mh. Büyükdere Cd. Güzel Abant Apt. No: 8 Floor: Şişli İstanbul

Article 02 - This quote is valid between 22.03.2018-31.10.2018.Article 03 – The prices for the guests with FAR EAST nationalities brought to the Hotel by the Agency are presented below.

The prices herein are very special prices that shall be applied to the agencies included in the CO-DMC Agency joint action association. These prices and the free practice shall be no longer offered to the agencies in case they leave CO DMC.

	22.03.2018-31.03.2018	01.04.2018-31.10.2018
	GRP/IT	GRP/IT
Dbl PP HB	30.5.-USD	34.5.-USD
Sng Suppl	18.-USD	20.-USD
3. Bed	21.-USD	24.-USD

	RACK RATE
Sgl BB	190.-€
Dbl BB	260.-€
Corner Suite BB	425.-€
Deluxe Suite BB	475.-€

In case they share the same room with their parents, child HB for the first child between ages 0-6 shall be free, second child and children between ages 7-12 shall have 50% HB discount. Foreign group prices are without commission fees, VAT inclusive. Cyclic fluctuations, increases to the current tax rates or any potential additional taxes under various names shall be reflected to the prices above.

Article 04 - Groups are 5 paying rooms at minimum. 1 single room is free for each hostel after every 5 paying rooms.

(232) **Evidence-129:** The following statements are in the e-mails sent by ERETNA Operations Manager (.....) to Hilton Hotel employee (.....), Hilton Hotel Sales Manager (.....) and

TRYP by Wyndham İstanbul Airport Hotel employee (.....) between 28.03.2018 and 30.03.2018, which were recovered during the on-site inspection conducted at ERETNA:

“Our agency is making reservations under CO DMC.

Our hotel accommodations are also under CO DMC.”

(233) **Evidence-130:** The following statements are in the e-mail with the subject “CO DMC TURİZM” sent on 16.04.2018, by CO DMC Accounting Official (.....) to the e-mail address (.....) owned by Tryp by Wyndham İzmit Hotel Sales Manager, which was recovered during the on-site inspection conducted at PİENTİ

“Hello Mr. (.....),

Our company, Co Dmc, is a union composed of 11 agencies. We are authorized to contract with hotels, shops, and restaurants on behalf of these 11 agencies and their sub-agencies. In this context, we would like to work with your Hotel, and with this agreement with you, we will share the special prices we will receive from you with the existing agencies and direct group accommodations to your Hotel.

I would like to mention that we receive a commission fee of (.....) USD per person for accommodations; we kindly request you to send us your 2018 summer prices (including Co Dmc Commission of (.....) USD) exclusively for our agencies. ...

Our current agency list:

- Dorak*
- Tempel*
- DELUKS*
- Krizantem*
- Namsan*
- Gnm*
- Pienti*
- Blue Bosphorus*
- Opulentia Travel*
- Eretna*
- Climax*
- ...”*

(234) **Evidence-131:** The following statements are in the e-mails sent by CLİMAX Operations manager (.....) to sales@ramadaplazakonya.com, owned by Ramada Plaza Konya hotel on 10.05.2018 and to TRYP by Wyndham İstanbul Airport Hotel employee (.....) on 06.07.2018, which were recovered during the on-site inspection conducted at CLİMAX:

“CLİMAX TOUR IS A CO DMC MEMBER”

(235) **Evidence-132:** The following statements are in the correspondence between CLİMAX Operations Manager (.....) and Kolin Hotel Sales Manager (.....) on 21.06.2018, which was collected during the on-site inspection conducted at CLİMAX:

“Hello Ms. (.....),

Firstly, we thank you for your interest in our Hotel.

Your request will be evaluated based on the special prices presented below.

...”

...

“OUR ARRANGED PRICE IS (.....) USD PER PERSON

INDIAN

WAITING FOR CONFIRMATION OVER THE ARRANGED PRICES”

...

“Ms. (.....);

The agreement made with CO DMC is valid for groups from FAR EAST nationalities.

Therefore, requests for different markets are evaluated with our standard pricing policy. ...”

- (236) **Evidence-133:** The following statements are in the e-mail with the subject “Re: 2018-2019 WINTER SEASON PRICE REQUEST/KOLIN HOTEL ÇANAKKALE” sent on 18.07.2018 by GNM Operations Manager (.....) to Kolin Hotel Sales manager (.....), which was collected during the on-site inspection conducted at GNM:

“Ms. (.....),

We are acting in coordination with CO DMC.

Respectfully,

(.....)”

- (237) **Evidence-134:** The following statements are in the e-mail with the subject “CO DMC AGENCIES 2019” sent on 01.08.2018 by Musho Hotel Sales and Marketing Manager (.....) to hidden receivers, which was recovered during the on-site inspection conducted at ERETNA:

“Hello,

Please find attached 2019 Far East Series Group prices that will be valid for all members of the Co Dmc family.”

- (238) **Evidence-135:** The following statements are in the e-mails sent to ERETNA Operations Manager (.....) by İris Hotel Reservations manager (.....) on 13.08.2018 and by Grand Hotel Temizel Sales-Marketing and Front Office Manager (.....) on 27.08.2018, which were recovered during the on-site inspections conducted at ERETNA:

“.. CO DMC prices will be applied to your requests concerned.

THEY ARE CONFIRMED OVER THE CO DMC PRICE.”

- (239) **Evidence-136:** The following statements are in the e-mail with the subject “Group Request (Far East),” sent on 15.08.2018 by NAMSAN Operations Manager (.....) to Hilton Hotel Fron Office Manager (.....) and copied to NAMSAN Owner (.....) and NAMSAN Operations Personnel (.....), which was recovered during the on-site inspection conducted at NAMSAN:

“Hello,

... We are within the CO-Dmc association..

We kindly request the confirmation of our reservation over the special prices.”

(240) **Evidence-137:** The following statements are in the correspondences between Kolin Hotel Fron Office Asst. Manager (.....) and CLIMAX Operations Manager (.....) on 03.10.2018, which were recovered during the on-site inspection conducted at CLIMAX:

“I kindly ask you to confirm my reservation detailed below

...”

...

“Hello,

Do you still have a deal with Co DMC?”

...

“Yes.”

...

“Your reservation is confirmed over the co dmc prices.

...”

(241) **Evidence-138:** The following statements are in the e-mail with the subject “Co Dm Price Request” sent on 05.2.2018 by CO DMC Accounting Manager (.....) to Uçhisar Kaya Hotel, which was recovered during the on-site inspection conducted at OPULENTIA:

“Hello Ms. (.....),

Following our phone conversation, we kindly request your summer season prices for the reservations of Far East groups by the agencies listed below.

Enterprise Name	Commercial Title
Dorak Tour	Tan Tourism A.Ş.
Pulsar	PULSAR TOURİZM SEYAHAT VE TİC. LTD. ŞTİ
Legacy	Global Tourism Eğt. Paz. Ve Tic. Ltd. Şti.
İtir	Akben Tourism Seyh. Ve Tic. A.Ş.
Krizantem	Stüdyo Tourism A.Ş.
Lion Cox	Leco Deri Tourism Tic. Ve San. A.Ş.
Pienti	Şeref Tourism Tic. Ltd. Şti.
GNM	GNM TOURİZM TİCARET LİMİTED ŞİRKETİ
DELUKS	DELUKS TOURİZM SAN. VE TİC. A.Ş.
NAMSAN	Namsan Tourism İşl. Ve Tic. Ltd. Şti.
TEMPEL	Tempel Tourism Yat. A.Ş.
OPULENTIA	DLX TOURİZM SEYAHAT ACENTELEĞİ VE TİC. A.Ş.
BLUE BOSPHORUS	Blue Bosphorus Tourism Ve Tanıtım Ltd. Şti.
ERETNA	Eretna Tourism İşl. Ve Tic. Ltd. Şti.
CLIMAX	Planet Tourism Taşımacılık Hotelcilik Yer Hizmetleri İç ve Dış Tic. Ltd. Şti.
STONE AGE TRAVEL	ATAGÜNDÜZ İNŞ. TAAH. TAR. TOUR. MAD. NAK. TİC. SAN. A.Ş
EUROIENTE TRAVEL	PRİMAVERA TOURİZM SEYAHAT ORGANİZASYON LİMİTED ŞİRKETİ
SOPHIA TOUR	
JANUS TOUR TRAVEL AGENCY	

(242) **Evidence-139:** The following statements are in an e-mail sent by Haliç Park Otel Front Office Manager (.....) to ERETNA Operations Officer (.....) on 08.01.2019, which was recovered during the on-site inspection conducted at ERETNA:

“Ms. (.....)

Could you please send a short message stating that you left CO DMC?

This is so we don't pay unnecessary commission fees.

...”

- (243) **Evidence-140:** The following statements are in the e-mail with the subject “CAP-UCHISARKAYA HOTEL JAPAN RES. REQUEST 09.01.19” sent by OPULENTIA to Uçhisar Kaya Otel on 09.01.2019, which was recovered during the on-site inspection conducted at OPULENTIA:

“Good morning again Ms. (.....),

Our agency is a member of CO DMC.

Following up on our recent phone conversation,

We kindly request an urgent confirmation for our new Japanese reservation detailed below.

...”

- (244) **Evidence-141:** The following statements are in the e-mail with the subject “Re, GNM FAR EAST GROUPS 2019” between Park Inn Otel Sales Marketing Director (.....) and GNM Operations Manager (.....), dated 16.01.2019, which was recovered during the on-site inspection conducted at GNM:

“ Hello Mr. (.....),

How are you? I hope everything is well. I hope you remember☺

I saw that you are among the CO DMC group agencies, but we are not currently working together, which is a shame.

We work with all the agencies in the CO DMC consortium, and I would like to work with you as well.

Here are our special rates:

...”

...

“Hello Ms. (.....),

...

Thank you very much for the price information. We mostly work with Hotels near the Old City, but we would be happy to work with you for any request for your neighborhood as well.

....

- (245) **Evidence-142:** The following statements are in the e-mails between NAMSAN Operations Manager (.....) and Kolin Hotel Sales manager (.....) on 08.02.2019, which were also copied to NAMSAN owner (.....) and Kolin Hotel employees and which were recovered during the on-site inspection conducted at NAMSAN:

“Ms. (.....), hello;

Could you please send me the official documents that indicate your involvement with CO DMC in the past, present, and future periods.

I need to present these documents to the upper management, so I await your prompt response. Wishing you a productive working day.

...

“(.....) Hello;

We do not have an official agreement with the CO DMC association. We only have a gentlemen's agreement between our companies.

...

“(.....) Hello;

Could you also share the date you parted ways with the formation? We need this information to adjust our calculations accordingly.”

(246) **Evidence-143:** The e-mail with the subject “AGENCY LIST” sent by CO DMC Accounting Manager (.....) to DELUKS Accounting Manager (.....) on 06.04.2019, which was recovered during the on-site inspection conducted at DELUKS, has an up-to-date list of agencies in the attachment. The agency list attached to the aforementioned e-mail is provided below:

Company Name
Dorak Tour
Pulsar
Legacy
Itir
Krizantem
Lion Cox
Pienti
GNM
DELUKS
OPULENTIA
BLUE BOSPHORUS
ERETNA
CLIMAX
STONE AGE TRAVEL
EUROIENTE TRAVEL
SOPHIA TOUR
JANUS TOUR SEYAHAT ACENTESI

Commercial Title
Tan Tourism A.Ş.
PULSAR TURİZM SEYAHAT VE TİC. LTD. ŞTİ
Global Tourism Eğt. Paz. Ve Tic. Ltd. Şti.
Akben Tourism Seyh. Ve Tic. A.Ş.
Stüdyo Tourism A.Ş.
Leco Deri Tourism Tic. Ve San. A.Ş.
Şeref Tourism Tic. Ltd. Şti.
GNM TURİZM TİCARET LİMİTED ŞİRKETİ
DELUKS TURİZM SAN. VE TİC. A.Ş.
DLX TURİZM SEYAHAT ACENTELEĞİ VE TİC. A.Ş.
Blue Bosphorus Tourism Ve Tanıtım Ltd. Şti.

<i>Eretna Tourism İşl. Ve Tic. Ltd. Şti.</i>
<i>Planet Tourism Taşımacılık Otelcilik Yer Hizmetleri İç ve Dış Tic. Ltd. Şti.</i>
<i>ATAGÜNDÜZ İNŞ. TAAH. TAR. TOUR. MAD. NAK. TİC. SAN. A. Ş</i>
<i>PRIMAVERA TOURİZM SEYAHAT ORGANİZASYON LIMITED ŞİRKETİ</i>

(247) **Evidence-144:** During the on-site inspection conducted at BLUE BOSPHORUS, a list of hotels with which CO DMC has agreements in various locations across Türkiye, including Antalya, Bursa, Çorum, Ankara, Karabük, Kapadokya, Kastamonu, Balıkesir, Çanakkale, İzmir, Pamukkale, Amasya, and Kocaeli, has been recovered.

I.4.2. Interviews Conducted Within the Scope of the File

(248) Interviews were conducted with some undertakings and with SHGM. The statements made during these discussions are provided below.

I.4.2.1. Interviews Conducted with Agencies and Hotels

(249) In the interview conducted with (.....) on 10.10.2018,

- It was stated that the formation of the balloonist's association dated back to February 2018, and that the balloonists achieved recovery during the 2017 crisis by selling their 2018 flights to DORAK HOLDİNG,
- It was stated that DORAK HOLDİNG did not give them space for balloon flights to them to steal their customers and damage their commercial reputation, that this situation was also applicable to other agencies, that similar issues were reported from all over Türkiye, that agencies based in Antalya selling tours to Cappadocia were not granted flights as an example, that a similar association was being established in Pamukkale but that Pamukkale was not a substitute for Cappadocia.

(250) The following points were made during the interviews conducted with (.....) on 10.10.2018 and 24.10.2018:

- Despite making reservations through CO DMC days in advance, they were being cancelled one day before the flight. Weather conditions were given as the reason yet the association was still able to fly on the same day. The cancellations of reservations increased in recent months (October 2018). The association was established in March 2018 and initially, the plan was to set up an implementation where everyone could choose the company they wanted, but the reservations would be done through a single system. However, this system was not established, instead the system took reservations according to the daily capacity. While everyone could choose the balloon company they preferred, CO DMC had the ability to make changes in the background and Co DMC did not make a written or verbal agreement.
- Some agencies made a high number of reservations through the system and later sold them to other agencies at higher prices. To prevent this, a capacity limit was imposed on agencies, which was determined by the system administrators in the background. This way, agencies outside the "association" were excluded.

- CO DMC had a powerful backing in the form of DORAK HOLDİNG. DORAK HOLDİNG had a dominant position in the Far East market. Assuming that there were 100 slots in Cappadocia, 20-30% of them did not work or rarely worked with agencies. They did not accept group reservations and only flew their own customers.

- It was estimated that 80% of balloon customers were foreign tourists, and 20% were domestic tourists. Most foreign tourists were from the Far East and tourists primarily came to the Cappadocia region to experience balloon flights. Due to cancellations, tourists took balloon rides in Pamukkale and efforts were made to retain them by creating different activities in Cappadocia. There was a loss of reputation in Cappadocia due to cancellations (particularly before partner operators abroad that were sending the tourists).

- DORAK HOLDİNG attempted to force its competitors out of the market. As the number of cancellations increased, foreign agencies started to prefer DORAK HOLDİNG. DORAK HOLDİNG colluded with ballooning companies to rent their flights at the beginning of the year, and acquired the market by threatening with penalty clauses.

(251) The following points were made during the interview conducted on 23.10.2018, with (.....), the General Manager of PİENTİ and Vice President of LE CO DERİ, and with (.....), who is known as the founder of the CO DMC platform:

- There was a crisis in the sector in 2015-2016. Before this period, there was intense competition among agencies but in April 2017, agencies gathered to discuss the problems in the sector,

- An attempt was made to solve problems by establishing a joint purchasing company. To that end, CO DMC was established at first, to be open to all agencies and hotels (business-to-business) basis and LE CO DERİ was established later.

- Initially, LE CO DERİ was involved in leather business but later it conducted marketing activities for ballooning companies. The system was created to ensure certain standards and prevent black market activities. Under the system, reservations from various channels were pooled in a central hub and distributed to ballooning companies. Agencies could choose which ballooning company they preferred. No specific prices or companies were imposed. Therefore, it was considered that an exemption could be obtained from the Competition Board,

- After CO DMC was established, attempts were made to form a cooperative among ballooning companies, but it was not successful.

- Flights were rented from balloon companies with occupancy guarantees. Each company had separate agreements on occupancy and prices. Discussions were held with all balloon companies and companies operating as tour operators. There were companies that did not join the association, with which there was no communication to establish price unity.

- Turkish travel agencies left their reservations until the last minute, leading to flight cancellations while their group made early reservation. However, even

without this formation, cancellations would have occurred due to late reservations. The system overbooked to ensure 100% occupancy.

- Complaints increased as the sudden increase in demand coincided with the establishment of the system.

(252) The following points were made during the interview with (.....), conducted on 23.10.2018:

- Türkiye launched tourism promotion activities in countries like China and Taiwan following the crisis of 2015-2016. Under the leadership of DORAK HOLDİNG, the idea of forming an association among the agencies was proposed. Agencies came together during that period, especially those in financially difficult situations. DELUKS joined initially, followed by GNM and PİENTİ. They purchased a leather business named LE CO DERİ and signed agreements at \$65. Although different businesses appeared to work with ballooning companies, they operated as a single entity,

- Later, some agencies, including them, were not provided flights and their flights were cancelled. When customers who were told there were no flights saw empty or half-filled balloons, it damaged the reputation of their businesses,

- Cappadocia balloon flights were highly renowned in the Chinese market. About 80% of customers preferred balloon flights. Chinese tourists purchased balloon rides from the agencies they used for plane tickets. The association told these agencies in China that only they could provide balloon rides.

- They caused financial difficulties for their competitors by obtaining upfront payments from them. They used similar agreements and statements in all sectors they operated, putting rival companies in difficult positions.

(253) The following points were made with the interview conducted with (.....) Cappadocia Region Manager (.....) and (.....) on 06.12.2018:

- (.....) was a tour operator providing incoming services and (.....) in order to meet its customers' demands for balloon flights,

- CO DMC was established during the years when the tourism sector was declining. (.....) made a pledge to ballooning companies, guaranteeing to pay \$50-60, and hot air balloon operators entered into a collaboration with CO DMC since they were in financial difficulties,

- After CO DMC was established, they started providing flight guarantees to foreign customers. (.....) and other agencies that couldn't provide flight guarantees had problems with customers under the circumstances. At present, (.....),

- DORAK HOLDİNG made the operations of agencies in the region difficult. DORAK HOLDİNG cancelled the flights of some agencies with no justification and provided no explanation for the cancellations. The cancellation of even a single flight could decrease sales by 40%,

- In reservations made through CO DMC, when an agency's flight was cancelled, it was given to the agency with the highest bid or DORAK HOLDİNG flew its own customers.

(254) The following points were made during the interview with (.....) Operations Manager (.....), which was conducted on 06.12.2018:

- They made balloon reservations through CO DMC via e-mail or phone. Especially in September and October 2018, they experienced problems with reservations made through CO DMC. All of their (.....) reservations in September were cancelled, their flights were cancelled at the last minute and transferred to DORAK HOLDİNG agencies at the last minute. Particularly, their confirmed reservations started to be cancelled due to the increase in the number of ITIR customers, which was DORAK HOLDİNG's own agency. Lots of customers were lost due to this association,
- Ballooning companies worked with CO DMC to protect themselves from a sectoral crisis and ensure their own safety. DORAK HOLDİNG rented balloons from balloon operators in the region at \$60-70.
- Initially, TEMPEL was a part of the association but later left it. As a result, (.....) began to cancel its flights,

I.4.2.2. Interview Conducted with SHGM

(255) The following points were made in the interview conducted with SHGM on 22.10.2018:

- In 2009, there were 11 balloon operators in Nevşehir. After an incident in 2013, safety measures were increased. As part of this, a quota of 100 balloons was set for simultaneous flights. The existing ballooning businesses inventories were assessed, and slot allocations were made. Slot distribution evaluations were conducted every January and published in March.
- Due to weather conditions, hot air balloon flights cannot take place everywhere. Currently, permanent flights can be conducted in a part of Pamukkale. Approximately 70% of balloon flights worldwide are conducted in Türkiye. The average price in Türkiye is significantly below the global average.
- Each ballooning business maintains a passenger manifest indicating which passenger is flown on which day, along with basket capacity and passenger nationality records.
- Since SHGM focuses on ballooning businesses' registry information and safety measures, they do not have direct information about commercial practices. Consequently, they do not possess an official document indicating one balloon operator purchasing flights from another balloon operator in advance. However, they received information that CO DMC formed an association with 17 balloon operators.

I.5. EVALUATION

I.5.1. GENERAL THEORETICAL/LEGAL FRAMEWORK

(256) Article 4 of Law No. 4054 prohibits agreements, concerted practices, and decisions of undertakings and associations of undertakings that have the purpose or effect of directly

or indirectly preventing, distorting, or restricting competition in a specific market for goods or services.

- (257) Accordingly, to establish a violation under Article 4, it is necessary to determine that undertakings are parties to an agreement and/or concerted practice with the purpose or effect of preventing, distorting, or restricting competition. Thus, any alignment of intent that can potentially conflict with the economic actors' obligation to make their decisions independently in the market falls under the scope of the relevant provision of the law.
- (258) In line with the goal presented above, Article 4 of Law No. 4054 sets out three different forms of collusion. However, when specifically discussing agreements and concerted practices among those forms of collusion, it is generally accepted that making a clear classification of the type of collusion would not significantly affect the legal analysis to be conducted under the provision. This is because it is more important to determine when undertakings act independently or in collusion than to distinguish between these closely intertwined terms.
- (259) In competition law, the concept of "agreement" is broadly interpreted and for the purposes of Article 4 of the Act No. 4054, an agreement does not need to be in writing, legally binding, or contain sanctions. Instead, Article 4 of the covers all agreements and/or concerted practices involving a specific alignment of will between the parties, regardless of their form. Similarly, an undertaking contributing to the formation of an agreement only to a limited extent or not implementing it in full does not mean that it is not a party to the agreement.
- (260) In addition to agreements that have the restriction of competition as their goal or effect, Article 4 of Act No. 4054 also addresses those situations that involve a type of coordination between the parties replacing individual decision-making mechanisms, through the definition concerted practice where an explicit alignment of will cannot be established.
- (261) In other words, in order to establish prevention of competition between the undertakings via coordination, it is not always necessary to demonstrate the existence of a concrete plan that has been implemented. Direct or indirect communications between the undertakings that aim to influence their competitors' behavior in the market or to provide rivals with information that will affect their future decisions and actions in the market are evaluated within the scope of concerted practices.
- (262) To prove the existence of coordination among undertakings replacing independent decision-making mechanisms, and thereby the existence of concerted practices, it is not required to establish in every case that an undertaking promised one or more rival that it would act in a certain way or that the parties agreed to act in a particular manner in the future. In this context, proving coordination would simply require showing that undertakings steered the market by directly or indirectly exchanging information or reduced or eliminated the uncertainties among competitors about their future behavior.⁷⁴
- (263) Additionally, the form of coordination among competitors, even if the process of reaching the mentioned agreement is not completed, will be considered a concerted practice within the extent of the violation. This is because even if this agreement is not completed, it will work as a practical collusion since it reduces the risks that competition creates.⁷⁵

⁷⁴ *Cimenteries CBR and Others* Decision of the European Union General Court (General Court) (Case T-25/95, para 1592).

⁷⁵ Case 48/69 ICI v Commission, para 64.

- (264) In the *Enameled Coil Wire*⁷⁶ decision of the Board, taken in response to the complaint about the simultaneous changes in the price lists of the undertakings operating in the enameled coil wire market and the identical wire prices in the lists, it was stated that, with regard to which behavior would be considered a concerted practice and which an agreements, it was difficult to determine the time sequence between these two concepts, that the necessity of making a distinction in this regard is controversial, that there is an explanation on the subject in the justification of the Article 5 of Act no 4054, and the decision in question made no definite distinction with regard to the undertakings' actions in the file as concerted practices or agreements, and concluded that the undertakings under investigation violated the 4th Article of Act no 4054 through agreements and concerted practices.
- (265) In response to the suit filed by Bemka Emaye Bobin Teli ve Kablo Sanayi Ticaret A.Ş. in this regard, in its decision numbered E:2008/9080 and K:2012/965, the 13th Chamber of the Council of State upheld the Board Decision, noting that “*there was an agreement among the undertakings under the umbrella of an association on switching to a single list, that price lists were shared periodically before and after this meeting, that, on the other hand while the single price list did not directly reflect on the final sales price in practice, it is understood that it had an impact on undertaking behavior in the way that the listed prices are taken into account in the determining the final sales price.*” Moreover, the relevant decision emphasized with regard to the price lists that even though it could be argued coordination and information sharing between undertakings had no effect on the market, it should be accepted that such communication would affect the undertakings' decisions in the market in the future, unless otherwise proven.
- (266) It is not important whether the information is shared unilaterally or reciprocally to establish the existence of a concerted practice based on communication among the parties. In the case of unilateral information sharing, if an undertaking receives information from its competitor which makes the competitive environment transparent between them, that undertaking is considered a party to the concerted practice unless it discloses that it does not want to receive this information, preferably to the public, and informs the competition authorities about receiving this information.
- (267) In fact, these issues were mentioned in the Board's *Work and Travel*⁷⁷ services and *Automotive Producers and Distributors*⁷⁸ Decisions. The *Work and Travel* Decision references the EU practice, noting that concerted practice implies the existence of mutual contact, and that reciprocity condition would be fulfilled in case a meeting was held where an undertaking received information about the intent and future plans of a rival and in case the minutes of the meeting shows that there were no objections to the rival disclosing its intent⁷⁹. Additionally, *Automotive Producers and Distributors* Decisions state the following: “*the claim that the participants did not follow the decisions taken or the defense that the pricing or the other behavior did not reflect the matters that were debated in the related meeting is not deemed sufficient to prove that the undertakings did not participate in the formation that committed the violation.*”
- (268) In addition, in its decision numbered E:2014/100 and K:2014/338 concerning the *Kayseri Bosch Dealers*⁸⁰ Decision, The 13th Chamber of the Council of State upheld the Board

⁷⁶ Decision dated 04.07.2007 numbered 07-56/672-209.

⁷⁷ Decision dated 11.04.2007 numbered 07-31/325-120.

⁷⁸ Decision dated 18.04.2011 numbered 11-24/464-139.

⁷⁹ Case T-3/89 Atochem v. Commission.

⁸⁰ Decision dated 12.06.2012 numbered 12-32/916-275.

decision, noting that there were no information and documents to show that there as a challenge to the price agreement by any of the undertakings in the e-mail group consisting of officials and/or employees of the undertakings in the provincial center of Kayseri, including the plaintiff, where some of the undertakings shared their price lists.

- (269) Similarly, the General Court stated that the expression of intent by only one of the participants in a meeting regarding their future actions does not eliminate the establishment of an agreement or concerted practice between the attending parties.⁸¹ The issue of when unilaterally shared information would be considered accepted by the recipient was clarified to some extent in the *Aalborg Portland* Decision of the European Union Court of Justice (CJEU). According to the CJEU, if a party receiving information from another party fails to openly express its opposition to the shared information or fails to report the situation to competition authorities, it will be held responsible for the restrictive agreement.⁸²
- (270) The approaches exhibited by the Board and the EU are clearly presented in the Guidelines on Horizontal Cooperation Agreements (Horizontal Guidelines). Paragraph 46 of the Horizontal Guidelines summarize this as follows: “*For example, mere attendance at a meeting where a company discloses its pricing plans to its competitors is likely to be caught by Article 101, even in the absence of an explicit agreement to raise prices. When a company receives strategic data from a competitor (be it in a meeting, by mail or electronically), it will be presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data.*”
- (271) The determination of whether the concerted practice among the parties has the purpose or effect of preventing, distorting, or restricting competition requires an examination of the content of the information shared. Information exchanges may be prohibited within the framework of competition law in case they are carried out secretly among competitors and they contain sensitive information that could disrupt the competitive environment. Information such as price and product amounts in particular which can make the fundamental competition parameters of the market transparent, which can remove any uncertainties an undertaking may have regarding the actions of each other are considered to be highly sensitive information for the competitive environment, including costs, sales data, capacity usage rates, bidding specifications, agreement provisions and inventory status. The exchange of information involving sensitive data that can potentially impact competition renders the market transparent in terms of the undertakings’ competitive behavior that they must determine individually, and leads to undertakings engaging in restrictive behavior that causes coordination rather than trying to compete, since this is more advantageous.
- (272) The exchange of competitively sensitive information such as future pricing, production or sales quantities among competitors is generally considered cartel behavior⁸³ under the normal circumstances and it constitutes a violation of competition by purpose, since it is generally aimed at price or amount maintenance. This is because it is presumed that a company receiving such information and conducting its operations in the market would benefit from the obtained information when making decisions regarding the

⁸¹ Case T-202/98, para 54.

⁸² Case C-204/00P, para 84.

⁸³ Horizontal Guidelines, para 57.

market, and that even if this exchange of information has not had an effect on the market, it would restrict competition by purpose⁸⁴.

(273) Finally, another point that needs to be mentioned is the ongoing single-violation approach. In addition to secret agreements and concerted practices treated as separate violations, an infringement can arise due to consecutive acts or ongoing actions/practices. If practices that seem distinct form part of a comprehensive overall plan, these actions can be considered as part of a single, encompassing violation as they the sole purpose shared by all of these practices is the restriction of competition in the common market. Agreements/concerted practices that extend over time, seeking to achieve the same economic purpose under a common plan, are classified as a single violation⁸⁵.

(274) In its *Particle Board*⁸⁶ Decision, the Board found that the undertakings restricting competition were parties to a single framework agreement lasting from 1993 to 2001, that the document dated 1993 constituted a fundamental agreement between the undertakings to restrict competition, and that the other documents contained the details for implementing this agreement. In the *Eastern Anatolia Cement* Decision⁸⁷, the Board discussed the agreements presented through two different groups of documents, and reached the conclusion that a single violation occurred since the chronological processes for the agreements/concerted practices established via the documents were intertwined, since the relevant geographical areas overlapped and since these documents failed to indicate two separate behaviors.

I.5.2. Evaluation of the Period before CO DMC

(275) The documents related to this period show that the companies in the hot air balloon business in the Cappadocia region conducted a series of meetings. As seen in Evidence-1, the first call for a meeting was done via an e-mail sent by the Chairman of KAPTİD Executive Board (.....) on 30.12.2016. According to the information obtained from KAPTİD, (.....) is a shareholder in the family-owned company ROYAL BALON, as well as Dinler Turizm A.Ş., Kayakapı Turizm Yatırım Tic. A.Ş., and Dinler Turizm Ticaret Kollektif Şirketi. KAPTİD also indicates that this meeting invitation was made in response to DORAK HOLDING General Coordinator (.....)'s request for assistance from the association in organizing a meeting to discuss issues in the ballooning sector, increasing the sector's development and improvement of service quality, and providing support to companies facing difficulties, especially during times of the economic crisis in the tourism sector similar to the one in 2016. Evidence-1 states that the topic of the meeting was "*Solidarity in Ballooning*" and "*collaboration among companies, which was ignored until today,*" with the meeting date set as 05.01.2017; the recipients of the e-mail were told that the attendees had to be either company owners or general managers, and asked to confirm their participation. It is also mentioned that (.....), who was the General Coordinator of DORAK HOLDING at that time, would give a presentation during the meeting. This initial e-mail was sent to all hot air balloon undertakings investigated, and the recipient undertakings are listed below:

⁸⁴ Case C-286/13P para 127, *Enameled Coil Wire* Decision dated 04.07.2007 numbered 07-56/672-209, *Automotive Producers and Distributors* Decision dated 18.04.2011 numbered 11-24/464-139, *T-Mobiles Netherlands* Decision dated 2009 (Case C-8/08).

⁸⁵ See also ABAD's Polypropylene decision (Case C-49/92P)

⁸⁶ Decision dated 19.12.2005 numbered 05-85/1181-335.

⁸⁷ Decision dated 06.04.2012 numbered 12-17/499-14.

- a. DORAK HOLDING General Coordinator (.....) and the companies under DORAK HOLDING, namely ATMOSFER BALON, KAPADOKYA BALON, RAINBOW BALON, and SULTAN BALON,
- b. İSTANBUL BALON-UNİVERSAL BALON, which is also part of the same group,
- c. COMFORT BALON,
- d. ANATOLIAN BALON and DISCOVERY BALON, which are part of the same group,
- e. DELUXE BALON and GÖREME BALON, which are part of the same group,
- f. VOYAGER BALON,
- g. AIR KAPADOKYA BALON,
- h. ASSIANA BALON,
- i. ATLAS BALON,
- j. BALON TURCA,
- k. BROTHERS BALON,
- l. EZEL BALON,
- m. KAYA BALON,
- n. BUTTERFLY BALON,
- o. SKYWAY BALON,
- p. ÜRGÜP BALON,
- q. ROYAL BALON,
- r. TÜRKİYE BALON,
- s. THK BALON

(276) Evidence-2 reveals the subject of the meeting. In the relevant e-mail, an official of ATMOSFER BALON, a DORAK HOLDING company, expresses their support for the mentioned meeting as follows: *“the ‘Solidarity in Ballooning’ meeting... and the decisions to be made thereafter will help prevent unfair competition, increase service quality, and improve profitability. We can adopt the aphorism ‘The worst law is better than lawlessness’ to commerce as ‘The worst agreement is better than unfair competition.’ Even getting together is a step forward and should be supported.. Even cooperation before competing with our competitors will lead to profitability.”* However, as seen in Evidence-3, this meeting was not held on the specified date due to insufficient responses for attendance. KAPTİD Chairman of the Board and the representative of ROYAL BALON official (.....) sent an e-mail to all the ballooning companies mentioned above, stating that only UNİVERSAL BALON, ÜRGÜP BALON, ASSIANA BALON, ATMOSFER BALON, KAPADOKYA BALON, RAINBOW BALON, SULTAN BALON, BALON TURCA, ROYAL BALON, and BROTHERS BALON had responded to participate in the meeting, and that DORAK HOLDING’s General Coordinator (.....) still had hope for holding the meeting.

(277) Indeed, as shown in Evidence-4, on 09.01.2017, the General Coordinator of DORAK HOLDING (.....) sent an e-mail to all hot air balloon companies to invite them to a meeting, stating, *“The participation of Company Owners, Partners, or General Managers would be beneficial as we aim to ensure mutual gains and cost savings in this meeting. We hope to come together as all balloon operators for the strength that solidarity brings.”* Evidence-6 shows that the Corporate Communications Director of DORAK HOLDING (.....) tried to receive responses from the companies regarding their attendance at the meeting called by the DORAK HOLDING General Coordinator (.....). In Evidence-5, the General Manager of ÜRGÜP BALON (.....), and in Evidence-7, the General Manager of

AIR KAPADOKYA BALON (.....) is indicated to attend the meeting. In Evidence-8 and Evidence-9, e-mails from the General Coordinator of DORAK HOLDING (.....) to all hot air balloon companies indicate that the date of scheduled meeting was postponed from 09.01.2017 to a later date due to heavy snowfall and, later, the meeting was rescheduled for *“Avanos Double Tree Hilton hotel on January 18, 2017, Wednesday, at 10:30”*

- (278) From the contents of Evidence-10, which is an e-mail dated 19.01.2017, it is understood that the first meeting took place on 18.01.2017. In this e-mail, the Chairman of ASSIANA BALON (.....), who apparently participated in the meeting, shares their ideas regarding the topics discussed in the meeting with the General Coordinator of DORAK HOLDING (.....). Meanwhile, from Evidence-10, it can be inferred that during the meeting with the theme *“Solidarity in Ballooning,”* the discussion focused on establishing a company or a similar structure for joint sales and marketing among hot air balloon companies. One of the suggestions put forward by the Chairman of ASSIANA BALON (.....) involves the possibility of forming a marketing alliance for a period of two years with severely binding terms.
- (279) In Evidence-11, the General Coordinator of DORAK HOLDING (.....) sends another e-mail to all hot air balloon companies, inviting them to a second meeting. The e-mail mentions that the second meeting will take place on *“January 30, 2017, Monday, 14:00, at Avanos Hilton Hotel”* and that this meeting will be a decision-making meeting. In Evidence-12, the Chairman of the Board (.....) and General Manager (.....) from ÜRGÜP BALON are mentioned to attend the meeting, while Evidence-13 notes that the Operating Manager (.....) and Accounting Manager (.....) would attend the meeting to represent GÖREME BALON and DELUXE BALON, which are in the same group. Evidence-14 shows that on 13.02.2017, an invitation e-mail for the third meeting was sent by the General Coordinator of DORAK HOLDING (.....) to all hot air balloon companies except those under DORAK HOLDING (ATMOSFER BALON, KAPADOKYA BALON, SULTAN BALON, and RAINBOW BALON). It can be inferred from the content of the e-mail that the Chairman of the Board of DORAK HOLDING (.....) would attend the meeting to represent the companies under the DORAK HOLDING umbrella. The meeting is called as follows: *“We will hold the final meeting for the Balloon Cooperative and Balloon AŞ. at Avanos Double Tree Hilton on Thursday, February 16, at 10:30 am. The meeting will include a detailed draft study concerning the cooperative structure, operation, and financial matters relating to the cooperative. It is important to have representatives with the authority to sign and make decisions attending the meeting.”*
- (280) The topics discussed in the first two meetings can be seen in the e-mail in Evidence-15. Evidence-15 includes an e-mail dated 14.02.2017, that is, two days before the scheduled date of the third meeting, sent by ÜRGÜP BALON General Manager (.....), who had been previously stated to attend the first two meetings as indicated in the above evidence, to their partners. The e-mail summarizes the topics discussed during the first two the meetings, stating *“Due to recent issues in the sector, such as inefficient competition, price imbalances, and market problems, two meetings have been organized under the name of Balloon Cooperative, with the presentation and hosting of Mr. (.....), the General Coordinator of Dorak Holding. Many of the balloon companies have a positive outlook on this initiative... I am sharing the presentation of the meeting, as well as the purpose, and details of the initiative as an attachment.”* The information provided in the attachment of the e-mail indicates that the main idea of the meetings was *“to establish a cooperative for joint sales, marketing, and expense sharing”* and the purpose of the proposed association was to increase the undertakings' incomes through the following ways:

- *“Gradually increasing the unit price for balloon customers*
- *Determining a base price and selling the balloon at its value*
- *Setting a commission amount to prevent balloon sales at different prices*
- *Punishing with compensation to those who do not follow/obey the fee rules”*

(281) In the relevant presentation the operation is planned to have a joint reservation pool, distribute passengers to the balloon companies according to slot numbers and distribute the total monthly turnover obtained at the end of the month to the companies according to their slots. Thus, it is clear from this e-mail, sent by a person who directly participated in the first two meetings, that in the meetings titled *“Solidarity in Ballooning,”* hot air balloon operators discussed the establishment of an association for price fixing and market sharing. It is apparent that the agreement between competitors dubbed *“Balloon Cooperative”* or *“Balon A.Ş.”* constitutes a cartel organization since it is intended to jointly determine prices that will gradually increase, allocate the via a the joint reservation pool, fix the amount of the commission fees for agencies to prevent selling balloon rides to final customers at different prices, and apply a penalty mechanism to those who do not comply with the established price rules.

(282) Evidence-16 includes an e-mail sent by the General Coordinator of DORAK HOLDING (.....) to SKYWAY BALLOON Operations Manager (.....) on 14.02.2017, and the attached presentations to this e-mail, which is dated two days before the third meeting, contain the plans for the formation dubbed *“Balloon Cooperative”* and *“Balon A.Ş.”*, which was also used in Evidence-14 when calling the third meeting. The statements in the presentation in Evidence-16, *“On behalf of Balon A.Ş. the balloon companies collect fees. Similar to how passengers are gathered in a pool, the collections are gathered in a virtual pool. At the end of the day, a breakdown is sent to the balloon companies. At the end of the month, a settlement is made, and moneys are transferred between Balon A.Ş. and the balloon company,”* show that the association to be established would involve a common reservations pool. Besides, it is seen that two separate prices were planned, at (.....) Euros for sales to agencies and hotels, and (.....) Euros for walk-in, telephone, and online sales. The statement, *“The attached presentations are the ones we discussed with you today,”* reveals that the presentations sent are those to be made by (.....), General Coordinator of DORAK HOLDING, during the meetings.

(283) Accordingly, it is observed that in the first two meetings, the subjects of price fixing and market allocation were discussed, and two separate prices were planned for sales to the agency/hotel and for the final prices. Within this framework, those who participated in these meetings took part in meetings where sensitive information was exchanged and during these meetings, undertakings were informed about the fact that undertakings in the market wanted to raise their prices towards the levels inferred to be discussed in the meeting. The evidence shows that some ballooning companies confirmed their participation in the first two meetings. At the same time, Evidence-11 and Evidence-14 reveal that the invitations for the second and the third meetings were sent to all the ballooning companies.

(284) Evidence-17 is dated 17.02.2017 and includes an e-mail sent by the General Coordinator of DORAK HOLDING (.....) one day after the third meeting, held on 16.02.2017. Sent to İSTANBUL BALON-UNİVERSAL BALON, TÜRKİYE BALON, AİR KAPADOKYA BALON, ÜRGÜP BALON, VOYAGER BALON, SKYWAY BALON, DELUXE BALON, and ROYAL BALON, this e-mail includes an attachment named *“BALONDA BİRLİK-genel kurallar.docx”* with some rules about the joint reservation pool and price unity, such as children passengers would not be flown for free, an agency

would not fly more than 1,250 passengers a day if their occupancy rate is over %75, and the slots would be fixed. A similar set of rules is also mentioned in Evidence-18, dated 17.02.2017, which was obtained during the on-site inspection conducted at ASSIANA BALON. Evidence-19 includes ASSIANA BALON official (.....)'s suggestions concerning those rules, wherein they agreed with the goal of increasing prices but proposes not to fix the slots. Therefore, ASSIANA BALON seems to have information about the discussed association rules, despite not being included among the recipients of Evidence-17. In this framework, it looks like the relevant unity rules were discussed at the third meeting in addition to the first two meetings.

(285) Evidence-20 summarizes level of agreement the companies reached after the third meeting held on 16.02.2017. Though this e-mail was sent to only some of the companies, it contains a table with the doubts and solution proposals from all of the undertakings regarding the establishment of a joint reservation pool system and price unity. The e-mail asks undertakings to add their views to this table and states that these topics would be discussed during the fourth meeting to be held on 24.02.2017⁸⁸. According to the table, the undertakings with no doubts are the hot air ballooning companies under the umbrella of DORAK HOLDİNG, namely BUTTERFLY BALON, GÖREME BALON, DELUXE BALON, ÜRGÜP BALON, ANATOLİAN BALON, DISCOVERY BALON, BALON TURCA, TÜRKİYE BALON, AIR KAPADOKYA BALON, BROTHERS BALON, İSTANBUL BALON, UNİVERSAL BALON and EZEL BALON. It is understood that the doubts of the other undertakings according to the table generally concerns slot sharing, timing, and decision-making mechanisms. Thus, the joint reservation pool and price unity rules still seems to be under discussion among the undertakings. It is observed that this e-mail, which also includes the invitation to the fourth meeting, was only sent to some of the businesses, including the recipients of the e-mail concerning the association rules in Evidence-17, and was copied to ASSIANA BALON⁸⁹.

(286) Evidence-21 is an e-mail sent on 27.02.2017, three days after the fourth meeting held on 24.02.2017, by the General Coordinator of DORAK HOLDİNG (.....) to TÜRKİYE BALON, İSTANBUL BALON-UNİVERSAL BALON, VOYAGER BALON, ATLAS BALON, AIR KAPADOKYA BALON, ANATOLİAN BALON, DISCOVERY BALON, ASSIANA BALON, BROTHERS BALON, EZEL BALON, KAYA BALON, SKYWAY BALON, ÜRGÜP BALON, ROYAL BALON, and THK BALON, and in its attachment there is a memorandum of understanding for establishing a cooperative which states "*Members shall collect payments, including commissions, and pay the commission fee to the agency against a commission invoice. Balloon companies agree to owe Balon A.Ş. 105 € per passenger sent to the pool. Agencies shall not be allowed to sell package tours with balloon rides; contractual arrangements regarding this matter will be made between balloon companies and agencies.*" *If an agency has an occupancy rate exceeding 75%, it cannot fly more than 750 passengers in one day. Free passenger rides will not be provided, and flights for promotion or bilateral relation purposes will be carried out by Balon AŞ after submitting the fee and reason for the flight to the executive board.*". It was sent to the recipients by the General Coordinator of DORAK HOLDİNG (.....), who noted that "*As a result of the meetings held, a consensus has been reached on the attached items.*" Therefore, it can be inferred that the text was created after discussion in the previous meetings on competitively sensitive matters including the price to be paid

⁸⁸ The statement "Friday" in the relevant e-mail refers to that date.

⁸⁹ This e-mail was not sent to BROTHERS BALON, ANATOLİAN BALON, DISCOVERY BALON, BUTTERFLY BALON, EZEL BALON, THK BALON, BALON TURCA and ATLAS BALON.

per passenger sent to the joint sale pool, reducing the free flight for children, and banning free flights.

- (287) Evidence-22 is comprised of an e-mail sent on 01.03.2017 by an official of RAINBOW BALON and SULTAN BALON, both under DORAK HOLDING umbrella, Evidence-24 is an e-mail sent by an official of an agency under SKYWAY BALON on 03.03.2017, and Evidence-25 is an e-mail sent by ÜRGÜP BALON on 09.03.2017, all of which provide pricing information to customers about the prices for April. These e-mails inform customers that there were plans to establish a cooperative among ballooning companies and that the prices could thus increase following the establishment of the cooperative.
- (288) Evidence-23 is again an e-mail sent by the General Coordinator of DORAK HOLDING (.....), dated 03.03.2017. The e-mail notes that the meeting for the founding of the Balloon Cooperative (fifth meeting) would be held at VOYAGER BALON on 06.03.2017. The recipients include other hot balloon companies besides ROYAL BALON, BROTHERS BALON, THK BALON, as well as DELUXE BALON-GÖREME BALON that is in the same group. Evidence-26, dated 13.03.2017, was sent after the fifth meeting by the General Coordinator of DORAK HOLDING (.....) to hot air balloon operators except for DELUXE and GÖREME BALON as well as ROYAL BALON, which are in the same group. The attachment to the e-mail includes the memorandum of understanding, which is said to have been signed on 10.03.2017. In the attached document, THK BALON, BROTHERS BALON, GÖREME BALON-DELUXE BALON, ROYAL BALON, and COMFORT BALON had no signatures, but the document was signed by the other hot air balloon businesses. In this framework, it is clear that the businesses that did not sign the memorandum of understanding were THK BALON, BROTHERS BALON, GÖREME-DELUXE BALON, COMFORT BALON, and ROYAL BALON.
- (289) Some of the matters mentioned in the memorandum of understanding in Evidence-26 that was sent to the customers via e-mail are as follows: *“Members will collect their fees including commissions, and pay commission amount to the agent in return for the commission invoice... Ballooning companies agree to borrow from Balon A.Ş. €110 for standard flights, €125 for comfort flights, and €165 for deluxe flights per passenger they send to the pool... Agencies will not be allowed to sell tour inclusive balloon rides and contractual... arrangements will be made between balloon companies and agents on this matter... If the occupancy rate of an agency is over 75%, they cannot fly more than 750 passengers per day... Free passenger flights will not be provided; however, in cases of promotion, mutual relationships, etc., such flights may be carried out by Balon A.Ş. with payment and justification presented to the executive board... In case Balon A.Ş.’s cash balance exceeds 500,000 TL at the end of the year, the remaining amount will be distributed among cooperative members in proportion to their shares.”* In the e-mail included in Evidence-26, the General Coordinator of DORAK HOLDING (.....) tells recipients on 13.03.2017 that *“After securing the signature of Göreme Balloon, which we will meet on [15.03.2017], we will establish our cooperative by obtaining the signatures of Cihangir [BROTHERS BALON] and THK, which also accepted.”*
- (290) Evidence-27 was sent on 13.03.2017, the same date as Evidence-26, by the General Manager of ÜRGÜP BALON (.....) to the partners of the undertaking, and the statements *“The agency price envisaged for after April 1, 2017, is 110 EU, and the selling price is 175 EU. As it has not been officially finalized yet, our current projection as the companies in general is that no prices should be given for April and beyond, and no advance reservations should be accepted,”* in the e-mail show that future prices were discussed

among hot air balloon operators in the previous meetings, i.e. at least during the fifth meeting, based on the date this e-mail was sent.

(291)As stated before, the e-mail in Evidence-26 announces to the recipients that “*After securing the signature of Göreme Balloon... we will establish our cooperative by obtaining the signatures of Cihangir [BROTHERS BALON] and THK, which also accepted,*” by the General Coordinator of DORAK HOLDİNG (.....). However, in Evidence-28, comprised of an e-mail sent to all hot balloon companies, including ROYAL BALON that did not receive Evidence 26 as well as DELUXE and GÖREME BALON in the same group, with the exception of those under the umbrella of DORAK HOLDİNG, sent by the General Coordinator of DORAK HOLDİNG (.....) on 17.03.2017 it is stated that “*As a result of our meeting with Göreme Balloon today, unfortunately they have stated that they cannot participate in this cooperative. After discussing with the majority, we have come to the realization that we cannot establish this solidarity due to the uncertainties arising from the absence of 4 companies.*” The information letter sent by DORAK HOLDİNG specifies that the four firms mentioned in the e-mail were GÖREME BALON, BUTTERFLY BALON, THK BALON and ROYAL BALON.

(292)The e-mail in Evidence-28 sent on 17.03.2017 by DORAK Holding General Coordinator (.....) to all hot air balloon operators with the exception of ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, and KAPADOKYA BALON, which are under the DORAK HOLDİNG umbrella, shows that while it was previously noted that the cooperative planned for launch in April 2017 in the region could not be established, some undertakings continued their work on an association after this date. In Evidence-30 which consists of an e-mail sent by ÜRGÜP BALON General Manager (.....) to partners on 10.04.2017, the statement “*The establishment of the balloon tourism development cooperative is back on the agenda*” makes it clear that the efforts to establish a cooperation were ongoing. The membership agreement attached to the e-mail concerned lists organizing common service and product tenders for reducing the members’ expenses and working on digital areas for joint sales and marketing purposes among the purposes and planned activities of the cooperative. The founders of the relevant cooperative include DORAK HOLDİNG General Coordinator (.....), (.....) who is a partner to DORAK HOLDİNG as well as to ATMOSFER BALON, SULTAN BALON, KAPADOKYA BALON and RAINBOW BALON under the DORAK HOLDİNG umbrella, ATMOSFER BALON official (.....), BUTTERFLY BALON partner (.....), VOYAGER BALON partner (.....), Chairman of the Board of ASSİANA BALON (.....), and ANATOLİAN BALON partner (.....). Meanwhile, the statement “*I have talked to the software company for reservations and sales, and they have started working as of today,*” in the e-mail sent by DORAK HOLDİNG General Coordinator (.....) to ATLAS BALON-VOYAGER BALON partner (.....), detailed in Evidence-31, suggests that the second association planned under the umbrella of a cooperative similarly intended to create a joint sales and reservations channel. Moreover, the e-mail dated 27.05.2017, sent by ATMOSFER BALON, which is under DORAK HOLDİNG umbrella, detailed in Evidence-33, notes that the 50 Euro price quoted to the agency would normally be valid until 01.04.2018 but that the prices would change if the ballooning association were implemented. Thus, it is clear that the second cooperative, to be established under the founding partnership of ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, KAPADOKYA BALON within DORAK HOLDİNG as well as BUTTERFLY BALON, VOYAGER BALON, ASSİANA BALON and ANATOLİAN BALON discussed matters of pricing changes, similar to the first cooperative.

- (293) Within this scope, when Evidence-30, Evidence-31, and Evidence-33 are considered as a whole, efforts of establishing a cooperative were clearly ongoing after April 2017 within the month of May with regard to DORAK HOLDING, ÜRGÜP BALON, VOYAGER BALON, ATLAS BALON, ANATOLIAN BALON-DISCOVERY BALON, BUTTERFLY BALON and ASSIANA BALON.
- (294) Evidence-34, on the other hand, is a piece of communication that shows the search for a different solution to the bad situation of the sector, since the efforts aimed at establishing a cooperative was at the dead end. The e-mail sent by AIR KAPADOKYA BALON to all hot air balloon businesses on 09.06.2017 states that the idea of removing the 2nd slots due to falling demand and flying a total of 75 balloons in the first slot with 3 balloon flights per undertaking was conveyed to the SHGM, and that they were expecting support for this proposal.
- (295) As detailed above, it is concluded that this association intended to create a joint reservation pool and price unity included market allocation and price collusion between the parties. Agreements between competing undertakings containing price fixing and/or market allocation provisions are defined as cartels under competition law and are prohibited under Article 4 of the Act no 4054. Article 4 of Act no 4054 bans those agreements that have as their object or effect or likely effect the prevention of competition directly or indirectly. Agreements among competitors that intend to fix prices or allocate markets are considered agreements that restrict competition by nature. There is no need to separately show the restrictive effects of these agreements in order to establish the existence of an infringement. Moreover, even if the agreement was not implemented in the market and did not have any effects, this does not prevent the finding of an infringement.
- (296) In fact, the *Cement Manufacturers*⁹⁰ Decision examining the allegations of collusion among four cement producers found that Article 4 of the Act was violated, despite the investigation failing to uncover any findings to prove that the collusion was implemented. The Decision concludes that officials from three cement producers violated Article 4 of the Act no 4054 by agreeing on a joint production and sales strategy for use in cement and ready-mix concrete products and by jointly setting the terms for selling cement to dealers and ready-mix concrete producers. The decision notes that “*while no findings could be uncovered to show that this agreement between the undertakings was implemented, it is nonetheless concluded that the agreement reached between the parties constituted a violation within the framework of ‘agreement between 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,’ prohibited under Article 4 of the Act, even if it was unimplemented.*”
- (297) Additionally, as emphasized in the Board’s *Work and Travel services*⁹¹ Decision with reference to the *Cimenteries CBR and Others v Commission*⁹² decision, an agreement/concerted practice signifies the existence of mutual contact, and the reciprocity condition would be fulfilled if a meeting is held where an undertaking gains information about its competitor’s intentions or future actions and the minutes of the meeting reveal that no objections were raised when the competitor disclosed its intentions. Under those circumstances, the attitude of the relevant undertaking cannot be reduced to that of a passive recipient of information that the other party unilaterally

⁹⁰ Decision dated 17.09.2013 numbered 13-54/756-316.

⁹¹ Decision dated 11.04.2007 numbered 07-31/325-120.

⁹² Case T-25/95

decided to convey, even if the former did not request it. However, the claim that the participants did not implement the decisions taken or the argument that pricing and other conduct did not reflect the issues discussed in the relevant meeting cannot be considered sufficient to prove that the undertakings were not involved in the infringement.

- (298) The above-mentioned Board decision also references the ECJ's *British Sugar*⁹³ and *T-Mobile Netherlands BV and other GSM operators*⁹⁴ Decisions, wherein it is noted that unless proven otherwise by the parties, it is not feasible to assume that the parties acted independently of the information they shared, with emphasis on the presumption that competitors change their behavior based on the information exchanged. In that sense, there is no difference between an agreement and a concerted practice since the fact that their object was to restrict competition is sufficient to establish the existence of an infringement, and similarly if a concerted practice is restrictive of competition by object it would not be necessary to prove its impact on the market separately to establish the existence of an infringement.
- (299) The fact that an undertaking did not comply with the results of a meeting with an anti-competitive purpose does not absolve it from the responsibility of having participated in a cartel unless it explicitly distances itself from the subject discussed in the meeting.⁹⁵ This distancing should be in the form of an announcement made immediately by the company, stating that it will not participate in collaboration-based meetings and therefore does not wish to be invited.⁹⁶
- (300) It is not sufficient for undertakings to claim that they had differences of opinion on the matters discussed in a meeting; they must also immediately inform their competitors that they are not a party to the infringement⁹⁷. As stated in the *Solvay SA* decision, according to the General Court, the fact that participants have different opinions or lack trust in each other does not prevent the meeting from being considered an example of a concerted practice/agreement. Contrary to the applicant's stance, the General Court stated that the participants regularly met and exchanged information related to market conditions and commercial strategies with the aim of preparing a competition-restricting agreement, despite their lack of trust for each other⁹⁸. In the *Poulenc*⁹⁹ decision, the General Court noted that the undertaking participated in a meeting concerning the determination of prices and sales quantities, where competitors exchanged information about the future prices they wished to see in the market as well as about their intentions concerning the product pricing. It was stated that the company's participated in this meeting in order to eliminate the uncertainty about its competitors' future behavior, but at the same time, it was not possible for the undertaking to set its pricing policy after the meeting without directly and indirectly taking the information acquired in the meeting into account, which was similarly applicable to its competitors participants in the meeting.

⁹³ Case C-359/01 P

⁹⁴ Case C-8/08

⁹⁵ See Case C-204/00P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P *Aalborg Portland A/S and Others v. Commission*, para 85; Case T-334/94 *Sarrió SA v. Commission*, para 118; Case T-141/89 *Tréfileurope Sales SARL v. Commission*, para 85; Case T-7/89 *SA Hercules Chemicals NV v. Commission*, para 232.

⁹⁶ Case T-377/06, *Comap v Commission*, para 75-78.

⁹⁷ Case T-329/01, *Archer Daniels Midland v Commission*, para 247-248.

⁹⁸ *Solvay SA* Decision of the General Court (Case T-186/06, para 152-153).

⁹⁹ Case T-1/89, para 122-123, another similar decision is Case T-202/98 *Tate Lyle and Others v Commission* para 57-58.

Therefore, it was emphasized that any undertaking that took part in this meeting would not be able to act independently of the information obtained in the meeting.

- (301) Examination of the evidence mentioned above shows that the first meeting was held on 18.01.2017, the second meeting on 30.01.2017, the third one on 16.02.2017, the fourth one on 24.02.2017, the fifth one on 06.03.2017 and the memorandum of understanding in Evidence-26, which includes the signatures of a majority of the undertakings, was signed on 10.03.2017, and sent via e-mail on 13.03.2017.
- (302) Evidence-15 reveals that price fixing and market allocation for hot air balloons were discussed during the first two meetings, and that the plan was to fix two separate pricing both for sales to intermediaries such as agencies/hotels, and for final sales. It is concluded that presentation in Evidence-16 which includes sale price information was the presentation made in these meetings. Within this framework, it is concluded that the participants of the first two meetings participated in meetings where competitively sensitive information was exchanged, and that during these meetings the undertakings learned that their peers in the market wanted to raise their prices up to the levels discussed in the meetings.
- (303) The content of information shared by e-mails and meetings among the undertakings in the process of forming an association points to an agreement or concerted practice whose purpose is the restriction of competition, and shows that the hot air balloon operators violated the 4th article of Act no 4054 by object.
- (304) Consequently, it is clear that the undertakings participating in this agreement/concerted practice would violate article 4 of Act no 4054 by object. As is seen in Evidence-28, which is an e-mail dated 17.03.2017, the relevant association failed as planned due to conflicts among the hot air balloon operators, however a memorandum of understanding was prepared before March 2017, which was agreed upon by a majority of the undertakings as displayed by their signatures under the text. Therefore, although it was not implemented, the existence of the agreement and of the consensus is proven for the undertakings which undersigned the memorandum of understanding detailed in Evidence-26. Assessments of those undertakings that did not sign the relevant text will be made below.
- (305) Within the framework of an assessment concerning those undertakings that did participate in the meetings, it was reported that the first one would be attended by ÜRGÜP BALON and AİR KAPADOKYA BALON (Evidence-5, Evidence-7); and the second one by ÜRGÜP BALON, GÖREME BALON and DELUXE BALON (Evidence-12, Evidence-13). E-mails sent by their officials show that ASSİANA BALON attended the first meeting (Evidence-10) and ÜRGÜP BALON to the second meeting (Evidence-15). SKYWAY BALON received an e-mail after the second meeting which included some presentations about the content of meeting (Evidence-16). It is clear that these undertakings attended the relevant meetings. On the other hand, Evidence-11 and Evidence-14 reveal that the invitations for the second and third meetings were sent to all ballooning companies.
- (306) In addition to that, Evidence-27, which is an e-mail sent by ÜRGÜP BALON to its partners after the fifth meeting, includes the statements *“The agency price envisaged for after April 1, 2017, is 110 EU, and the selling price is 175 EU. As it has not been officially finalized yet, our current projection as the companies in general is that no prices should be given for April and beyond, and no advance reservations should be accepted,”* which show that future prices were discussed among hot air balloon operators during meetings organized until this date, or at least during the fifth meeting as of the date this

e-mail was sent. The invitation e-mail for the fifth meeting is included in Evidence-23 and was sent to hot air balloon operators other than ROYAL BALON, BROTHERS BALON, THK BALON, and GÖREME BALON-DELUXE BALON.

- (307) Among the provisions in the memorandum of understanding which was sent to the recipients of the e-mail as an attachment and the final version of which is included in Evidence-26 are the statement *“Ballooning companies agree to borrow from Balon A.Ş. €110 for standard flights, €125 for comfort flights, and €165 for deluxe flights per passenger they send to the pool,”* and a notice that free flights would be terminated. Meanwhile, the recipients of Evidence-28 are all hot air balloon operators, who were told therein that the ballooning cooperative would not be established due to several undertakings changing their minds about joining. Consequently, it can be deduced that all hot air ballooning businesses knew the contents of the text when deciding whether or not they would sign, and the text includes details about price fixing and customer allocation. In this framework, it becomes clear that the five meetings held served to prepare a text with details about price fixing and market allocation. Also, the table in Evidence-20 lists the doubts expressed by undertakings as well as any suggestions for their solution. The points of doubt on the related table concerned issues like the duration of the agreement, majority rules for board decisions, slot numbers, and exclusive distribution of maintenance services.
- (308) In fact, despite the failure to establish an association, an increase in prices was observed after April 2017. Evidence-24 shows that an official of an agency under SKYWAY BALON noted, *“I can’t be definite but the prices for 21st of April should remain fixed at 200TL.”* on 03.03.2017 in Evidence-24. Evidence-29 and Evidence-32 include e-mails sent by an official of an agency under SKYWAY BALON once again, responding to customers who wished to reserve a flight/ask for a quote for the months of May and June, wherein they state *“As of May, the prices are updated to be €... per person,”* on 05.05.2017, and *“The balloon companies are not forming a union. With the start of the season, from May onwards, the prices will be 230TL per person.”*
- (309) To examine the issue once again with respect to those hot air balloon companies that may fall under suspicion, BUTTERFLY BALON has its signature on the memorandum of understanding in Evidence 26, despite DORAK HOLDING stating that the former opted out of participating in the cooperative at the last minute. Moreover, BUTTERFLY BALON is among the undertakings who were trying to form a new association after April 2017, when it was clear that the cooperative would not be established.
- (310) When Evidence-26 and Evidence-28 are examined together, it is clear that GÖREME BALON-DELUXE BALON and ROYAL BALON as well as the other businesses whose signatures were absent from the memorandum of understanding in Evidence-26, namely, COMFORT BALON, BROTHERS BALON, and THK BALON, did not join the cooperative. While these undertakings may have been the recipients of e-mails concerning the meetings and the subjects discussed in those meetings, it seems that they either did not attend the meetings at all or attended the first few meetings only. Moreover, the e-mail in Evidence-26 which had the memorandum of agreement that was signed on 10.03.2017 attached was not sent to DELUXE, GÖREME BALON, and ROYAL BALON. Similarly, it is apparent that the e-mail with the invitation to the fourth meeting was not sent to BROTHERS BALON and THK BALON, and the e-mail with the invitation to the fifth meeting in Evidence-23 was not sent to ROYAL BALON, BROTHERS BALON, THK BALON and GÖREME BALON-DELUXE BALON. Evidence-28, which is an e-mail dated 17.03.2017, includes the statements *“As a result of our*

meeting with Göreme Balloon today, unfortunately they have stated that they cannot participate in this cooperative. After discussing with the majority, we have come to the realization that we cannot establish this solidarity due to the uncertainties arising from the absence of 4 companies,” showing that the four companies mentioned in the e-mail clearly voiced their objections. In light of this information, it is concluded that GÖREME BALON-DELUXE BALON, ROYAL BALON, COMFORT BALON, BROTHERS BALON, and THK BALON showed their objections from time to time, first and foremost by not signing the agreement, and even those which attended the first few meetings did not participate in the following ones, were not invited the fourth and fifth meetings and were not included among the recipients of the e-mails as a reflection of these objections.

(311) In light of the information and assessments given above, when all documents acquired are taken as a whole, it becomes clear that there was an effort to create a cooperative including all hot air balloon businesses operating in the region during the period concerned, that undertakings held five meetings in that framework, and that topics such as pricing, pool, etc. were apparently discussed in the first two meetings as seen from Evidence-15 in particular, and that all undertakings were aware of the situation. However, the planned cooperative could not be established, not because of any fundamental competitive concerns of the undertakings but because of disagreements concerning the operations rules for the association. Even though the cooperative failed, it is still believed that it would be impossible for undertakings to set their pricing policies with no regard to the information they acquired in the process, either directly or indirectly. At the same time, as explained before, since an infringement of competition by object is in question, the failure of the cooperative to become operational does not remove the infringement itself.

(312) Consequently, it is concluded that DORAK HOLDİNG and its subsidiaries KAPADOKYA BALON, ATMOSFER BALON, RAINBOW BALON, SULTAN BALON, as well as İSTANBUL BALON, UNİVERSAL BALON, BALON TURCA, TÜRKİYE BALON, ANATOLİAN BALON, DISCOVERY BALON, SKYWAY BALON, KAYA BALON, ATLAS BALON, VOYAGER BALON, BUTTERFLY BALON, AIR KAPADOKYA BALON, ASSİANA BALON, EZEL BALON, and ÜRGÜP BALON violated Article 4 of the Act no 4054 in the hot air balloon market during the period before CO DMC by participating in agreements/concerted practices aimed at price maintenance and market allocation. On the other hand, it is found that sufficient information and findings did not exist to suggest that GÖREME BALON-DELUXE BALON, ROYAL BALON, COMFORT BALON, BROTHERS BALON, and THK BALON were also parties to this infringement.

I.5.3. Evaluation Regarding CO DMC Joint Reservation and Sale Platform Period

(313) As mentioned in the previous section, all hot air balloon operators active in the Cappadocia region came together, at first, with the goal of establishing a joint sales and marketing platform under the roof of a cooperation in order to fix sale prices for hot air balloon rides. However, the agreed-upon association could not be established since some of the undertakings refused to join at the last minute. Afterward, some of the undertakings, which were determined to be part of an agreement/concerted practice above, entered into a joint sales platform established under CO DMC and/or LE CO DERİ, while some of them did not take part in it.

I.5.3.1. Information on the Shareholding Structure of CO DMC and LE CO DERİ

(314) Founded on 12.06.2015, Tan Fuarçılık Ltd. Şti. was renamed CO DMC by a Board of Shareholders Resolution on 10.07.2017. DORAK HOLDİNG transferred all of its shares

in the undertaking to Ahmet Serdar KÖRÜKÇÜ, Serdar İBİŞ, Burak KOYUNCUOĞLU, Mustafa Gökhan BULUT, Yaşar TÜRKOĞLU, Halise Güney LEVİ, Sinan DUMAN, Taner AKTAŞ and Mehmet Ali SÖYLEMEZ. On the same date, Osman Taha KÜÇÜK was appointed as the manager of the undertaking. The following table shows the shareholding structure of CO DMC following the share transfer concerned.

Table 14: Previous Shareholding Structure of CO DMC

Shareholders	Share Percentage (%)
Ahmet Serdar KÖRÜKÇÜ	16.4
Mustafa Gökhan BULUT	16.4
Serdar İBİŞ	16.4
Burak KOYUNCUOĞLU	16.4
Taner AKTAŞ	16.4
Sinan DUMAN	6.4
Yaşar TÜRKOĞLU	5.6
Halise Güney LEVİ	5.6
Mehmet Ali SÖYLEMEZ	0.4
Total	100.0
Source: Trade Registry Gazette dated 01.08.2017	

(315) Of CO DMC shareholders, Ahmet Serdar KÖRÜKÇÜ and Mehmet Ali SÖYLEMEZ are shareholders in DORAK HOLDİNG, Gökhan BULUT is a shareholder in GNM, Serdar İBİŞ is a shareholder in ITIR and KRİZANTEM, Burak KOYUNCUOĞLU is a shareholder in PİENTİ, Sinan DUMAN is the Chairman of the Board of DELUKS, Halise Güney LEVİ is a shareholder in DELUKS, Yaşar TÜRKOĞLU is a shareholder in OPULENTİA, and Taner AKTAŞ is a shareholder in TEMPEL. On 27.12.2017, all of the shares owned by Taner AKTAŞ, one of the shareholders of the undertaking, were acquired by Alp Arslan TANER¹⁰⁰. As a result of the related acquisition, the current shareholding structure of CO DMC is as follows:

Table 15: Current Shareholding Structure of CO DMC

Shareholders	Share Percentage (%)
Ahmet Serdar KÖRÜKÇÜ	16.4
Mustafa Gökhan BULUT	16.4
Serdar İBİŞ	16.4
Burak KOYUNCUOĞLU	16.4
Alp Arslan TANER	16.4
Sinan DUMAN	6.4
Halise Güney LEVİ	5.6
Yaşar TÜRKOĞLU	5.6
Mehmet Ali SÖYLEMEZ	0.4
Total	100.0
Source: Trade Registry Gazette dated 02.02.2018 and the Response Letter Submitted by the Investigation Party	

(316) Mustafa Gökhan BULUT, Burak KOYUNCUOĞLU, Alp Arslan TANER, Sinan DUMAN, Halise Güney LEVİ, and Yaşar TÜRKOĞLU, who are among the shareholders of CO DMC, are also among the shareholders of the foundational period of LE CO DERİ, which was established on 14.07.2017.

¹⁰⁰ Alp Arslan TANER is a shareholder in Kaizen Rehberlik Danışmanlık Turizm ve Ticaret A.Ş., which is not included in the scope of the investigation since its field of activity is to train guides in various languages (e.g., Japanese, Chinese, Bahasa Indonesia and similar), to provide training to guides, to provide domestic and international training of guides, and to contribute to their certification by conducting TÜRSAB-Ministry examination processes.

Tablo 16: Shareholding Structure of LE CO DERİ at the Time of Foundation

Shareholders	Share Percentage (%)
Alp Arslan TANER	50.0
Sinan DUMAN	15.0
Taner AKTAŞ	10.0
Burak KOYUNCUOĞLU	10.0
Mustafa Gökhan BULUT	10.0
Yaşar TÜRKOĞLU	2.5
Halise Güney LEVİ	2.5
Total	100.0
Source: Trade Registry Gazette dated 20.07.2017	

(317) According to the Trade Registry Gazette dated 16.01.2018, Taner Aktaş, who is one of the shareholders of LE CO DERİ, resigned from the membership of the board on 26.12.2017. During the investigation process, Taner AKTAŞ, who is a 63% shareholder in TEMPEL, submitted a “Joint Stock Company Stock Transfer and Delivery Agreement,” showing that his 10% shares were acquired by Alp Arslan TANER on 25.12.2017. In addition, Yaşar TÜRKOĞLU, a shareholder in OPUENTIA, and Halise Güney LEVİ, a shareholder in DELUKS, withdrew from their partnership in LE CO DERİ by transferring their shares to Alp Arslan TANER, on 08.03.2018 and 28.03.2018, respectively. On the latter date (28.03.2018), GNM shareholder and Executive Director Mustafa Gökhan BULUT transferred 2.5% of his stock in the company to Alp Arslan TANER. After the acquisitions concerned, the shareholding structure of the undertaking is as follows:

Table 17: Shareholding Structures of LE CO DERİ after Share Transfers

Shareholders	Share Percentages (%)
Alp Arslan TANER	(.....)
Sinan DUMAN	(.....)
Mustafa Gökhan BULUT	(.....)
Burak KOYUNCUOĞLU	(.....)
Total	100.0
Source: Response Letter Submitted by the Investigation Party	

(318) According to Trade Registry Gazette dated 19.12.2018, a partial division occurred in the undertaking on 06.12.2018 and it was decided that all branches/businesses operated by LE CO DERİ in the field of leather business would be transferred to Santo Pelle Deri Turizm ve Sanayi A.Ş. (SANTO PELLE)¹⁰¹. Once more, according to the Trade Registry Gazette dated 19.12.2018, the shareholding structure of SANTO PELLE is as follows:

Table 18: Shareholding Structure of SANTO PELLE at the Time of Foundation

Shareholders	Share Percentage (%)
Alp Arslan TANER	77.5
Sinan DUMAN	7.5
Mustafa Gökhan BULUT	7.5
Burak KOYUNCUOĞLU	7.5
Total	100.0
Source: Response Letter Submitted by the Investigation Party and the Trade Registry Gazette dated 19.12.2018	

¹⁰¹ According to the statement made by the undertaking, as a result of the partial division at LE CO DERİ, the related business was transferred to SANTO PELLE, and the shares issued at SANTO PELLE were given to the shareholders of the divided company LE CO DERİ in accordance with the provisions of the Turkish Commercial Code and the Law on the Protection of Personal Data.

(319) Lastly, on 16.05.2019, Alp Arslan TANER and Mustafa Gökhan BULUT resigned as shareholders and board members by transferring their stock in LE CO DERİ and SANTO PELLE to Eylem ALP, who was working as the Middle East Operations Director at DORAK HOLDİNG. Within this scope, information about the up-to-date shareholding structure of LE CO DERİ and SANTO PELLE was requested from the undertakings on 09.09.2019 for the last time during the investigation process. The current shareholding structure of both undertakings is as follows:

Table19: Current Shareholding Structure of LE CO DERİ

Shareholders	Share Percentage (%)
Eylem ALP	(.....)
Burak KOYUNCUOĞLU	(.....)
Sinan DUMAN	(.....)
Total	100.0
Source: Response Submitted by the Investigation Party	

Table 20: Current Shareholding Structure of SANTO PELLE

Shareholders	Share Percentage (%)
Eylem ALP	(.....)
Burak KOYUNCUOĞLU	(.....)
Sinan DUMAN	(.....)
Total	100.0
Source: Response Submitted by the Investigation Party	

(320) According to the Trade Registry Gazette with the most up-to-date information about the undertaking, dated 12.06.2019, Eylem ALP is the Chairman of the Board for the undertaking, and Burak KOYUNCUOĞLU is the Deputy Chairman of the Board. At the same time, Eylem ALP is serving as the Middle East Operations Director of DORAK HOLDİNG.

(321) In summary, an examination of the first shareholding structure for CO DMC, given above, and of its shareholding structure after the transfers reveals that the relevant undertaking was controlled by parties to the investigation DORAK HOLDİNG and its subsidiaries, ITIR and KRİZANTEM, as well as the shareholders GNM, PİENTİ, OPULENTİA and DELUKS, with TEMPEL shareholder Taner AKTAŞ, who was initially a shareholder in the undertaking transferring his shares to another person before CO DMC's joint reservation system came into effect. It is clear that initially LE CO DERİ had a structure which included DELUKS, OPULENTİA, GNM and TEMPEL as shareholders in addition to Alp Arslan TANER, with TEMPEL shareholder Taner AKTAŞ selling his stock to the other shareholder Alp Arslan TANER before LE CO DERİ signed signing of the lease agreements with the other hot air balloon businesses. As will be discussed in detail in the following sections, at first it looks like CO DMC handled the operation of the joint reservations and sales system while LE CO DERİ concluded a portion of the lease agreements with hot air balloon businesses, it may be said that the companies in question were simply tools for the consensus and the association established by the agencies that became shareholders in those companies through their shareholders or employees.

1.5.3.2. Functioning of the Joint Reservations and Sales Platform CO DMC and Its Relationship with Hot Air Balloon Operators

(322) It can be observed that CO DMC, which is operating as a joint reservations and sales platform, is created not under the partnership of DORAK HOLDİNG and other hot air balloon companies, but under the partnership of DORAK HOLDİNG and six tourism

agencies. The structure and operation of the platform are explained in the written pleas of CO DMC and LE CO DERĪ as follows:

- Ballooning businesses sell the reservation rights to the entirety or a portion of the flight capacities that are assigned to them via short-term agreements (mostly for two years maximum).
- The platform pays prices ranging from 60 to 100 Euros for standard flights to ballooning businesses for the flight capacity reservations in question.
- Thus, the Platform acquires the reservation/marketing operations concerning the relevant flight capacities resells these reservations it bought to tourism agencies at prices it sets on its own (ranging from 80 to 100 Euros for standard flights).
- The Platform gives certain capacity guarantees in this context to ballooning businesses. As an example, when ballooning business A is given an 80% capacity guarantee, the Platform pays business as if it is 80% full, even if only 50% of the balloons flown by the business is full; if occupancy rates are over 80%, the payment is done for the full capacity. As a result, flights are still conducted by the ballooning businesses, yet the commercial risk is assumed by the Platform.
- Pricing authority is with the Platform exclusively.
- All ballooning businesses and agencies that wish to work with the Platform are allowed to do so.
- The Platform works Business to Business (B2B) only; final customers may not submit requests to the Platform directly.
- Tourism agencies registered to the Platform make reservations by submitting a request to the system together with the passenger’s name and information, and pay the Platform over the resale prices determined by LE CO DERĪ.
- The tourism agencies for which the Platform sells balloon flight reservations function as an intermediary for the customers who submit their reservation requests to them or to hotels and other tourism agencies which represent the customers.

(323)As noted above, hot air balloon businesses enter the platform by transferring some or all of their reservation rights for the flights. Therefore, the position of the hot air balloon businesses within the Platform is determined through the agreements obtained during the on-site investigations as well as through the agreements and evidence requested from the parties during the investigation process. The evidence recovered in the on-site examinations detailed below show that balloon businesses entered by platform by LE CO DERĪ leasing their hot air balloons.

(324)Uniform unsigned lease agreement samples acquired during the on-site inspections and included in Evidence-59 above are listed as follows. The parties to the agreements are LE CO DERĪ and the relevant hot air balloon business, and it is noted that LE CO DERĪ would be referred to as LIONCOX in the agreement.

Table 21: Unsigned Lease Agreements Recovered during the On-site Examinations

Balloon Business Party to the Agreement	Agreement Date	Agreement Duration
SKYWAY BALON	01.02.2018	2 years

KAYA BALON	01.02.2018	2 years
BROTHERS BALON	12.02.2018	2 years
BALON TURCA	12.02.2018	2 years
DISCOVERY BALON	12.02.2018	2 years
ANATOLIAN BALON	12.02.2018	2 years
KAPADOKYA BALON	01.02.2018	2 years
SULTAN BALON	01.02.2018	2 years
RAINBOW BALON	01.02.2018	2 years
ATMOSFER BALON	01.02.2018	2 years

(325) Additionally, the on-site inspections conducted also recovered signed lease agreements, as noted in Evidence-60. The agreements concerned were concluded between PİENTİ and COMFORT BALON, İSTANBUL BALON, UNİVERSAL BALON, and are detailed in the table below.

Table 22: Signed Hiring Agreements Obtained During the On-site Examinations

Balloon Business Party to the Agreement	Agreement Date	Agreement Duration	Details of the Content of the Agreement
COMFORT BALON	12.02.2018	2 years	Has the signatures of DORAK HOLDING General Coordinator (.....) and PİENTİ official (.....) as guarantors.
İSTANBUL BALON	12.02.2018	2 years	Has the signatures of DORAK HOLDING General Coordinator (.....) and PİENTİ official (.....) as guarantors.
UNİVERSAL BALON	12.02.2018	2 years	Has the signatures of DORAK HOLDING General Coordinator (.....) and PİENTİ official (.....) as guarantors.

(326) As a whole, the detailed signed/unsigned agreements show that agreements titled “Hot Air Balloon Flight Lease Agreement” might have been signed between LE CO DERİ and SKYWAY BALON, KAYA BALON, BROTHERS BALON, BALON TURCA, DİSCOVERY BALON, ANATOLIAN BALON, SULTAN BALON, RAINBOW BALON, ATMOSFER BALON and KAPADOKYA BALON; meanwhile rental agreements were concluded between PİENTİ and COMFORT BALON, İSTANBUL BALON, UNİVERSAL BALON.

(327) During the investigation process, all hot air balloon businesses were asked to provide copies of the signed final agreements on the matter of leasing hot air balloon flights for the years of 2017, 2018 and 2019. In response to the relevant request;

- SKYWAY BALON sent the final agreement it signed with LE CO DERİ on 01.02.2018, KAYA BALON sent a final agreement that was only signed by KAYA BALON itself.
- AİR KAPADOKYA BALON, ASSİANA BALON, BALON TURCA, BROTHERS BALON, ÜRGÜP BALON, ANATOLIAN BALON, DİSCOVERY BALON, ROYAL BALON, BUTTERFLY BALON, TÜRKİYE BALON, GÖREME BALON and DELUXE BALON, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, VOYAGER BALON and ATLAS BALON, EZEL BALON stated that they did not engage in any leasing activities for hot air balloon flights.
- THK BALON sent “Hot Air Balloon Agreement for the Purposes of Securing Customers,” which was signed with GLORIOUS DMC.

- İSTANBUL BALON, UNİVERSAL BALON and COMFORT BALON sent the “Service Procurement Agreement” they signed with PİENTİ. In addition, COMFORT BALON noted that they signed a new “Service Procurement Agreement” with PİENTY following the acquisition of the undertaking’s stock by Ali YAVUZ, one of the shareholders in BUTTERFLY BALON, on August 1, 2018, but that the relevant agreement was later terminated.

(328) In addition to balloon businesses, LE CO DERİ was requested to provide signed final agreements for leasing hot air balloon flights as well. In the response letter received from LE CO DERİ, it was stated that 11 balloon companies signed agreements with the LE CO DERİ reservation platform, that COMFORT BALON, İSTANBUL BALON, and UNİVERSAL BALON did not sign direct agreements with LE CO DERİ, and that these three balloon businesses concluded their agreements with PİENTİ. In fact, these agreements were also submitted by İSTANBUL BALON, UNİVERSAL BALON, and COMFORT BALON. In this framework, the details of the signed lease agreements obtained are provided in the table below.

Table 23: Signed Lease Agreements Requested from LE CO DERİ

Balloon Business Party to the Agreement	Agreement Date	Agreement Duration
KAPADOKYA BALON	01.02.2018	2 years
RAINBOW BALON	01.02.2018	2 years
ATMOSFER BALON	01.02.2018	2 years
SULTAN BALON	01.02.2018	2 years
BROTHERS BALON	01.02.2018	2 years
SKYWAY BALON	01.02.2018	2 years
BALON TURCA ¹⁰²	01.02.2018	2 years
KAYA BALON	01.02.2018	2 years
TÜRKİYE BALON ¹⁰³	12.02.2018	2 years
DISCOVERY BALON	01.02.2018	2 years
ANATOLIAN BALON	01.02.2018	2 years

Table 24: Signed Service Procurement Agreement Demanded from COMFORT BALON, İSTANBUL BALON, and UNİVERSAL BALON

Balloon Business Party to the Agreement	Agreement Date	Agreement Duration
COMFORT BALON ¹⁰⁴	1. sözleşme:12.02.2018-11.02.2020 2.sözleşme: 01.09.2018-31.03.2019	2 years 8 months
İSTANBUL BALON	12.02.2018	2 years
UNİVERSAL BALON	12.02.2018	2 years

(329) On the other hand, in Evidence-80, it is stated that DORAK HOLDİNG wants to lease the balloons whose operations rights were transferred to PİENTİ with the “Service Procurement Agreement” signed between PİENTİ and İSTANBUL BALON, and the

¹⁰² The agreement of BALON TURCA only bears the signature and stamp of LE CO DERİ. LE CO DERİ’s representative stated that there is no double-signed version of the agreement in question, but that the agreement is the final agreement in effect.

¹⁰³ Although the response letter sent from LE CO DERİ lists RAINBOW BALON as the contracting party, the agreement itself bears the stamp and signature of TÜRKİYE BALON.

¹⁰⁴ As mentioned before, COMFORT BALON was owned by ESPECIAL GROUP, which also had İSTANBUL BALON and UNİVERSAL BALON under its umbrella, at the time when the agreements were concluded with PİENTİ. The first agreement is the agreement concluded by COMFORT BALON with PİENTİ during this period. Upon the acquisition of the undertaking by BUTTERFLY shareholder Ali YAVUZ on August 1, 2019, a second agreement was concluded between PİENTİ and COMFORT BALON, and the related agreement expired as of 31.03.2019.

evidence show that the related parties tried to determine whether the provisions of the agreement allowed this type of lease. Consequently, based on the relevant evidence, the investigation asked whether there was any agreement concluded between PİENTİ and LE CO DERİ for the inclusion of the balloons belonging to İSTANBUL BALON, UNİVERSAL BALON, and COMFORT BALON in the platform under LE CO DERİ. In the response letter received by the investigation party, it was stated that there is a sublease agreement between PİENTİ and LE CO DERİ only for İSTANBUL BALON, and that there is no written sublease agreement for the other undertakings. The sublease agreement submitted by the undertaking was determined to be the same one as the sublease agreement dated 20.04.2018, which was recovered during the on-site investigation at PİENTİ, detailed in Evidence-60.

(330)The relevant provisions of the agreements concluded between PİENTİ and İSTANBUL BALON, COMFORT BALON, and UNİVERSAL BALON are given below:

(.....TRADE SECRET.....)

(331)The relevant provisions of the agreements concluded between LE CO DERİ and hot air balloon businesses are given below:

(.....TRADE SECRET.....)

(332)As understood from the above-mentioned agreement provisions, within the framework of the agreements signed between LE CO DERİ and the hot air balloon businesses within the platform, LE CO DERİ committed to make monthly payments to the balloon businesses at the prices specified in the annex of the agreement at 80% occupancy, and for any passengers flown over the 80% occupancy rate, it agrees to make payments over the prices specified in the annex of the agreement as well. The table below shows the agreement prices for each ballooning company in the platform within the framework of the agreements submitted by the parties to the investigation, and the total amount of capacity of the platform.

Table 25: Undertakings within the Platform

Balloon Company	Agreement Price	Total Number of Slots for Balloon Companies (2018) ¹⁰⁵	Balloon Company Rented to the Platform Number of Slots	Total Slots on the Platform	Total Flight Capacity of the Platform (Person)
KAPADOKYA BALON	<i>(.....)</i>	15	15	15	272
RAINBOW BALON	<i>(.....)</i>	9	9	9	176
SULTAN BALON	<i>(.....)</i>	3	3	3	96
ATMOSFER BALON	<i>(.....)</i>	10	10	10	192
KAYA BALON	<i>(.....)</i>	10	10	10	222
SKYWAY BALON	<i>(.....)</i>	6	6	6	132
TURCA BALON	<i>(.....)</i>	5	4	4	88
TÜRKİYE BALON	<i>(.....)</i>	5	2	2	48
ANATOLIAN BALON	<i>(.....)</i>	6	6	6	104
DISCOVERY BALON	<i>(.....)</i>	4	4	4	132
BROTHERS BALON	<i>(.....)</i>	3	2	2	80
COMFORT BALON	<i>(.....)</i>	3	2	2	36
İSTANBUL BALON	<i>(.....)</i>	5	5	5	102
UNIVERSAL BALON	<i>(.....)</i>	5	5	5	90

¹⁰⁵ Represents the sum of slot 1 and slot 2.

Total	-	89	83	83	1730
Source: Written Defense and Response Letter of CO DMC and LE CO DERİ, SHGM Slot Schedule					

- (333) The hot air balloon operators listed in the table above are those that participated in the CO DMC joint sales platform as hot air balloon providers. While 11 of the undertakings in the table leased all of their slots to the platform, COMFORT BALON rented 66% of its total slots, BALON TURCA 80%, and TÜRKİYE BALON leased 40%. In total, there are 14 hot air balloon operators on the platform, four of which are owned by DORAK HOLDİNG. In fact, the screenshots included in Evidence-112, which were recovered during the on-site inspection conducted at LE CO DERİ on 09.10.2018 list the undertakings in the table above as those using the CO DMC platform and included in the system. The same 14 hot air balloon operators are also in the tables showing the CO DMC daily flight list, which were in the e-mails sent by the CO DMC Accounting Department, as explained in Evidence-113, recovered during the on-site inspection conducted at KAPADOKYA BALON. Similarly, the Excel files containing the information for the flights done through CO DMC, included in Evidence-78 and Evidence-81, also show that the hot air balloon operators performing the flights were limited to the 14 hot air balloon operators in question.
- (334) Furthermore, the hot air balloon operators concerned are shown to be in the system by the e-mail in Evidence-79 sent from TÜRKİYE BALON Accounting Unit to ATMOSFER BALON Accounting Unit on 27.02.2018 with the subject “the number of people flown”; the e-mails in Evidence-83 sent by BROTHERS BALON and BALON TURCA to ATMOSFER BALON’s Accounting Unit on 05.03. 2018; the e-mail in Evidence-86 sent from an address owned by the ULUER GRUP, which has ANATOLIAN BALON and DİSCOVERY BALON under its umbrella, to ATMOSFER BALON accounting unit on 10.03.2018; the e-mails in Evidence-87 sent from CO DMC Reservations unit to ATMOSFER BALON accounting unit with the subject “FW:KAYA BALON” on 12.03.2018 and 26.03.2018; and the documents in Evidence-100 which were sent by SKYWAY BALON to CO DMC and which include information on the flights completed, price per person, the guaranteed rate, the difference from the commitments, and the payments.
- (335) At the same time, other information was found about the undertakings on the platform in some of the documents also recovered during the on-site inspections. However, as explained below, when all of the documents and information obtained during the investigation are taken into account, it becomes clear that a total of 14 hot air balloon operators took participated in the platform, consisting of the ones listed in the table above.
- (336) Evidence-49 dated 24.01.2018 shows that NAMSAN employees had prepared a list of ballooning companies they believed were not working with CO DMC. According to the e-mail, BALON TURCA is on the list of ballooning companies that the company officials considered outside of the association, but the investigation process found that it had an agreement with LE CO DERİ. On the other hand, it is believed that Evidence-49 does not fully reflect reality since it contains information based on the undertaking’s own research and sources. Another piece of evidence, Evidence-57 dated 12.02.2018, involves a correspondence between DORAK HOLDİNG employees, in which DORAK HOLDİNG shares the minutes of a meeting and states that the ballooning companies outside of the association consisted of ROYAL BALON, BUTTERFLY BALON, ATLAS BALON, VOYAGER BALON and THK BALON. However, examining the information acquired both from the hot air balloon businesses and from LE CO DERİ during the

investigation process shows that 14 ballooning companies had joined in the CO DMC joint sales platform through agreements in the current situation, with more undertakings than those listed in Evidence-57 having signed no agreements.

(337) It is believed that one of the reasons for the existence of documents containing different information regarding the undertakings on the platform is that the offer to join the platform was brought to all hot air balloon operators by the CO DMC association under the leadership of DORAK HOLDİNG. For instance, in Evidence-35 recovered during the on-site inspection at LE CO DERİ, the excel file named "balon" in the "Balloon Cooperative" folder include the tables concerning the market allocation plans made during the cooperative establishment process in 2017, mentioned in the previous section, in addition to a study listing the undertakings which did and did not accept the lease agreements in "worksheet 6". The file details of the relevant Excel file shows the author of the file as (.....), General Coordinator of DORAK HOLDİNG. In the relevant table, the column titled "*Participation*" shows ASSİANA BALON as "Present," with a note that says, "*Owned by Leco.*" In the telephone conversation with ASSİANA BALON's owner (.....) during the relevant period, it was stated that PİENTİ shareholder and Managing Director (.....) wanted to buy their balloon and hotel, that he offered to buy their company when he refused to join the joint sales platform, but that he did not accept the offer because he was given a very low price as an offer, and that he never sold or leased his balloons. The same page also shows EZEL BALON, ÜRGÜP BALON, THK BALON as "*Present*" in the column titled "Participation." There is also the correspondence in Evidence-90 with regard to EZEL BALON. The e-mail with the subject "Re: agreement," sent on 12.03.2018 by CO DMC General Coordinator (.....) to EZEL BALON and later shared between SKYWAT BALON Operations Manager (.....) and EZEL BALON has the files named "Price List.docx: SICAK HAVA BALONU UÇUŞ KİRALAMA SÖZLEŞMESİ CEZA TABLOSU MADDE.docx; SICAK HAVA BALONU UÇUŞ KİRALAMA SÖZLEŞMESİ-Final.docx" in the attachment. The relevant attachments consist of the unsigned draft agreement for leasing the balloon flights of SKYWAY BALON by LIONCOX, the payments to be made by LIONCOX to SKYWAY BALON based on this agreement, and the sanctions to be imposed on the parties in case of non-compliance with the agreement. On this subject, in its plea EZEL BALON stated that it did not respond to or take under consideration the e-mails it received from the relevant association and the other companies providing information about the "Hot Air Balloon Flight Rental Agreement," since it deemed it was not in good faith. No other documents or information indicating that ASSİANA BALON, ÜRGÜP BALON, THK BALON, and EZEL BALON had entered into an agreement could be found, and LE CO DERİ stated that these undertakings were not among the companies registered on the platform. Therefore, it was concluded that these undertakings were not included in the agreement.

(338) Evidence was found to show that GÖREME and DELUXE BALON, which belong to the same group as AIR KAPADOKYA BALON, were also connected to the CO DMC joint sales platform. As can be seen in Evidence-59, during the on-site examination conducted at GÖREME BALON, a copy of a draft lease agreement without the name of the signed ballooning company was obtained. The correspondence in Evidence-56, dated 10.02.2018, between a GÖREME BALON official and CO DMC's reservation unit, shows that GÖREME BALON made a reservation request to CO DMC. In addition, there is a screenshot showing the number of passengers flying with various balloon companies in February 2018, recovered during the on-site examination at PİENTİ and included in Evidence-75, which also shows the flight information of GÖREME BALON.

At the same time, the table in the Excel file named “*aylık liste 27.02.18’de hazırlanan*”, one of the Excel files belonging to the CO DMC system included in Evidence-81, mentions GÖREME BALON not among the undertakings flying hot air balloons, but among the agencies that procure hot air balloon flights from CO DMC on the dates in Evidence-75. Similarly, in the Excel spreadsheet of CO DMC listing the flights dated 28.03.2018 in Evidence-78, GÖREME BALON’s name is under the column titled “Reserving Party,” not among the undertakings flying hot air balloons, but among the agencies that procure hot air balloon flights from CO DMC,

- (339) Evidence-97 has the messages between (.....) General Manager (.....) and KAPADOKYA BALON Operations Manager (.....) on 24.04.2018-25.04.2018, with the subject “About the prices and payments,” which includes the following statement: “*Unfortunately, due to not reaching an agreement with Kırçılar to be included in CO DMC at the last moment, we regretfully cannot offer the (.....) € price for balloon flights.*” It is noted that in the e-mail the phrase “Kırçılar” refers to the group of companies that include GÖREME BALON. Evidence-109, recovered during the on-site examination at GÖREME BALON and DELUXE BALON, states “*4- FROM SEPTEMBER 01, 2018, DAILY 50 PAX WILL BE GIVEN TO CO DMC COMPANY. PAX AGREEMENT PRICE IS (.....) EURO. OTHERWISE, NO SHOW WILL BE APPLIED.*”. Finally, Evidence-115 includes the tables containing the accounting records for the flights performed between 26.02.2018-03.12.2018, obtained during the on-site examination at GÖREME BALON and DELUXE BALON, wherein there are money transfers with the explanation “*Co Dm... Balloon Rent Payment against .. Pax*”.
- (340) The explanation provided by GÖREME BALON for the relevant documents states that they did not accept customers from CO DMC, that on the contrary, some of the customers were directed to the balloons marketed by CO DMC when their existing balloon capacities were not sufficient for the customers of their own agencies; in other words, they did not procure passengers, but sent passengers to CO DMC at the agency price determined for them since their balloon capacity was not sufficient. It is noted that the statement in Evidence-109 about the provision of 50 pax customers was proof of this claim. They state that the account statement in Evidence-115 was not issued by themselves but it was sent to them by CO DMC as a piece of information to explain that their customers were flown by the relevant company and that the agency price was applied. It is stated that no written agreement was ever signed with CO DMC imposing obligations on the parties.
- (341) In this framework, the explanation provided by the undertaking is considered satisfactory, and in this sense, the connection established with CO DMC is not different from the large number of agency customers flown through CO DMC. LE CO DERİ also stated that GÖREME BALON was not among the companies registered on the platform. As a result of the investigations conducted, although GÖREME BALON was asked to join the association, there is no information or documents found to indicate that this offer was accepted.
- (342) Evidence-84 contains information for the flights performed through CO DMC, obtained during the on-site examination at ATMOSFER BALON. In the relevant Excel document, AİR KAPADOKYA BALON is also included among the undertakings from which fees were collected. In response to the information letter requesting clarification on this issue, AİR KAPADOKYA stated that it took over a flight from CO DMC for one time between 2016-2018 upon a canceled flight and that it did not work with CO DMC again; therefore, it did not have any agreement with CO DMC, that its sales were made through PİENTİ,

and that it learned that passengers were directed by CO DMC at a later date. Based on this explanation, AIR KAPADOKYA provided balloon flight to the CO DMC association for one time only. This was also confirmed by an examination of CO DMC platform's system, and no other record for AIR KAPADOKYA was found in the system. Since it is understood that the flight, which was stated to be taken over upon a canceled flight, was a one-time only deal, it cannot be concluded that the undertaking concerned was included in the CO DMC association as a balloon provider.

(343)As a result, it is concluded that the 14 hot air balloon companies listed in Table-25 above are included in the joint reservation and sales platform CO DMC within the framework of the lease agreements they signed, and that there is no concrete information and documents indicating that the other 11 hot air balloon companies are included in the platform.

I.5.3.3. Evaluation of the Evidence Regarding the Establishment, Purpose, and Activities of the Joint Reservation and Sales Platform CO DMC with regard to Article 4 of the Act no 4054

(344)According to the information and documents in the file, CO DMC was established with the partnership of DORAK HOLDING¹⁰⁶ and ITIR-KRİZANTEM, part of the former economic entity, and the shareholders/officials of DELUKS, PİENTİ, GNM, OPULENTİA, and TEMPEL; it is also understood that LE CO DERİ, which was established with the partnership of the shareholders/officials of the same undertakings, except for DORAK HOLDING and ITIR-KRİZANTEM, which is an economic entity of DORAK HOLDING and its subsidiary ITIR-KRİZANTEM, carried out activities related to a joint sales and reservation platform established under the name CO DMC. Evidence-36 provides the starting point of the CO DMC association. During the on-site examination in PİENTİ, a document titled "Gentlemen's Agreement for Tour Operators," dated June 2017, was obtained. The document is undersigned by DORAK HOLDING Chairman (.....), GNM Managing Director (.....), PİENTİ Managing Director (.....), TEMPEL Chairman of the Board (.....), DELUKS Chairman of the Board (.....), ITIR and KRİZANTEM shareholder (.....) and NAMSAN official (.....). The gentleman's agreement states its purpose as developing joint capabilities against foreign agencies, reducing expenses through joint purchases in the domestic market, raising commission rates in favor of tour operators, increasing revenues, and establishing a joint action platform among tour operators providing incoming services for joint marketing, sales, and market growth, and it notes that the document is advisory in nature. Thus, it becomes clear that the CO DMC association was established in June 2017 as an association of agencies for the international market, after it became clear that the association attempted to be established by the undertakings operating hot air balloons mentioned in the previous section would not come into fruition. The activities of this association abroad will be assessed under the scope of Act no 4054 in the following section.

(345)According to the information obtained within the scope of the file, in the general functioning of the market, direct sales by hot air ballooning companies and the sales of agencies through resales or commission payments constitute two alternative sales channels for hot air balloons. The first evidence regarding CO DMC's contact with hot air ballooning companies is Evidence-37, which is an e-mail sent from CO DMC to

¹⁰⁶ Other undertakings of the Group that are parties to the investigation are KAPADOKYA BALON, SULTAN BALON, ATMOSFER BALON, RAINBOW BALON.

ASSİANA BALON on 27.10.2017. The statements in relevant document and its attachment gives the impression that CO DMC was an establishment trying get quotes from hot air ballooning companies for the agencies included in the association in return for a commission, and that it differed from the structure involving price fixing for the sale of hot air balloons in the later period, at least at this stage. Therefore, it is considered that the details of the relationship CO DMC would form with hot air balloon operators and of the joint sales platform had not been fully established at that date.

(346) However, the relevant document states that *“The agencies forming the CO DMC association are: Dorak-Krizantem-İtir-GNM-Pienti-DELUKS, Namsan, and Tempel.”* The main significance of this document is the statement that NAMSAN and TEMPEL are also a part of the association. From the information on shareholding structures provided under the previous heading, TEMPEL’s representative is understood to be a shareholder in both CO DMC and LE CO DERİ during the establishment phase. It is observed that Taner AKTAŞ, a 63% shareholder of TEMPEL, transferred his shares in CO DMC and LE CO DERİ to Alp Arslan TANER on 27.12.2017 and 25.12.2017, respectively. These dates are important in terms of determining TEMPEL’s liability. The situation of NAMSAN and TEMPEL will be discussed separately in the following sections of the report.

(347) Regarding the purpose of the association, the statement in the e-mail sent to an agency on 11.12.2017 by (.....), the Reservation Manager of KAPADOKYA BALON, which is under DORAK HOLDİNG, included in Evidence-38, is important. The relevant e-mail states *“For next year, there are still discussions on solidarity in ballooning, price stabilizing, etc... We will talk again depending on the developing situations next year.”* These statements indicate that CO DMC held some contact with hot air balloon companies as of 11.12.2017, and provide information on the contents of these contacts. Evidence-39 is the notes of a meeting held at DORAK HOLDİNG on the same date, and this document contains the following statements: *“CODMC will rent 80% of the balloons for Solidarity in Ballooning and the balloon prices will be under control as of 01.01.2018; Mr. (.....) is on it.”* These statements are considered to be in confirmation of the content of the contact in Evidence-38. The aforementioned document also shows that DORAK HOLDİNG General Coordinator (.....)¹⁰⁷, who tried to bring hot air balloon companies together for solidarity in ballooning in the previous section, tried once again to collect hot air balloon operators, this time under the roof of CO DMC through leasing agreements. As a matter of fact, Evidence-40 shows that the draft lease agreement was sent to SKYWAY BALON on 22.12.2017, in other words, that the preparation phase of the structure to be formed was launched by contacting the hot air balloon companies. Evidence-41, obtained during the on-site inspection conducted at LE CO DERİ, contains a table evaluating the rentable slots and the renting plan, as well as a note stating, *“6 main companies can be returned to their normal levels for balloon operation by meeting on a common denominator. Even if not everyone agrees, even around 75% of the slots represent a significant power”*. The Excel files named “Balon” in Evidence-35 and “Balon Maliyet” in Evidence-116 seem to be related to the plans during the establishment phase of this association as well. Worksheet-1 of the Excel file titled “Balon” tabulates the participation of the undertakings to the cooperative phase mentioned in the previous section, and Worksheet-6 tabulates the participation of hot air balloon operators in CO DMC. Similarly, in the Excel file entitled “Balon Maliyet,” there is a table containing the

¹⁰⁷ The General Coordinator of DORAK HOLDİNG (.....) became the General Coordinator of CO DMC after the establishment of CO DMC.

participation status of hot air balloon operators in CO DMC and the terms of the agreement.

- (348) Evidence-42 dated 15.02.2018 consists of the notes taken in an internal DORAK HOLDING meeting. The following statements in these notes show that agreements were concluded with some of the hot air balloon companies and the intended structure was established by 15.01.2018: *“Solidarity has been achieved in ballooning. There are 80 balloons belonging to the solidarity, and 20 balloons are left out. It will be effective as of February 12, 2018. Reservations will continue in the same system for now, and balloon prices will be determined.”* The agreement said to be established in Evidence-42 refers to the fact that DORAK HOLDING, which has four hot air balloon businesses in addition to its undertakings operating as tourism agencies, came together with some undertakings which are its rivals in its agency operations to form the CO DMC association, and this entity managed to fix hot air balloon prices by launching a joint sales platform covering 55% of the slots in the market by signing lease agreements with a portion of the hot air balloon operators, which will be detailed below.
- (349) The documents entitled “whatsapp 6-7-8,” dated 16.01.2018 - 17.01.2018, are contained within the whatsapp group named “leco partners” in Evidence-43, and they show the correspondence between (.....), Chairman of the Board of Directors of DELUKS; (.....), co-founder of LE CO DERİ and partner of GNM (.....); (.....), shareholder and Managing Director of PİENTİ; (.....), General Coordinator of CO DMC (.....), and (.....), Chairman of the Board of Directors of DORAK HOLDING, revealing seen that the officials of the undertakings jointly fixed balloon sales prices, in account of the guarantee provided to hot air balloon companies. The content of the document clarifies that they *“agreed on a selling price of (.....),”* which would be notified to the hot air balloon operators. It is believed that the price mentioned in the document concerned is the “agency price.” As will be seen in the documents below, the association created determined two separate prices for sales to agencies and to final consumers, as was the case in the Balon A.Ş. or cooperative agreement mentioned in the previous section. On the other hand, it is considered that the aforementioned document shows that although he is not among the shareholders of LE CO DERİ, the shareholder and Chairman of the Board of Directors of DORAK HOLDING (.....) is also an influential person in terms of the activities of LE CO DERİ and that the activities of LE CO DERİ and CO DMC constitute a whole.
- (350) Hot air balloon operators were also aware of the establishment process of the association and the agreed prices. RAINBOW BALON under DORAK HOLDING and SULTAN BALON under DORAK HOLDING responded to the e-mails of an agency asking for quotes by saying *“There is a new entity concerning balloons in the Cappadocia Region. It seems like the decision will be to set minimum agency price at (.....) Euros. They are currently in the final stages of the organization. We will be able to provide you with the most accurate information as of February 15th,”* in Evidence-46 and Evidence-48, respectively. The e-mail in Evidence-47, on the other hand, has SKYWAY BALON informing a final consumer *“Prices will change as of february 15 due to a union among the ballooning firms in the region.”*
- (351) Subsequent evidence shows that the prices fixed by CO DMC were applied starting on 12.02.2018. In the e-mail in Evidence-50, BALONDOKYA, an agency owned by SKYWAY BALON, informs an agency that *“Due to the decision of the balloon companies in the region to form a union, our agency prices will be (.....) Euros as of February 12, 2018.”* In Evidence-52, ATMOSFER BALON, an agency under DORAK HOLDING,

responds to an agency's request for a quote by stating "Due to the Agency Union (CO-DMS) ¹⁰⁸, the price for adults and children per person will be (.....) Euros after February 12," and the agency's request for child discount was rejected, emphasizing that the prices were determined in this way.

(352) There is numerous evidence showing that the prices determined by the association started were applied starting on 12.02.2018¹⁰⁹. The details of the fixed pricing can be seen in the evidence. For example, information about the pricing implemented by the association is provided with the following statements in Evidence-57, which contains the notes of the meeting held at DORAK HOLDING on 12.02.2018;

Unity in ballooning started as of today, Monday, February 12, 2018. After the meeting to be held this week, an official letter will be prepared for our agencies to inform them and it is planned for the new prices to take effect on March 15, 2018.

Balloon purchase (.....), agencies' sales should not be below (.....)

- No child discount.
- No free services.
- No payment by installment for balloon flights.

As a matter of fact, an e-mail dated 16.02.2018, sent to final consumers by BALONDOKYA, an agency owned by SKYWAY BALON, includes the following statements: "the balloon companies in the Cappadocia region decided to merge as of February 12, 2018. For this reason, prices are fixed at (.....) for local guests per person...". In addition, in Evidence-65 of the same date, the following table is included in the e-mail sent by (.....), the Operations Manager of SULTAN BALON, which is a subsidiary of DORAK HOLDING, in response to the quote request of an agency:

<i>Prices set for the year 2018</i>	<i>Domestic Market</i>	<i>Foreign Market</i>
<i>Passenger Sales Price:</i>		
<i>A discount of 10 Euros is applied for cash payment.</i>	<i>(.....)</i>	<i>(.....)</i>
<i>Agency price (VAT included)</i>	<i>(.....)</i>	<i>(.....)</i>

(353) In Evidence-94, KAPADOKYA BALON, within DORAK HOLDING, provides the prices in the table above to an agency. Evidence-88 includes an e-mail showing the prices quoted by KAPADOKYA BALON, also under DORAK HOLDING, where it is noted "Due to the formation of a balloon association in the region, there have been changes in prices; Starting from February 12th, all ballooning companies in the region formed a union, and a unified pricing system was implemented. These rates are set at (.....) € in cash for Standard Flights and (.....)€ via credit card for foreign guests, and (.....)€ in cash and (.....)€ via credit card for Turkish guests." In this framework, it is seen that the CO DMC association set two separate prices for sales to agencies and sales to final customers.

(354) Evidence-113 shows that the prices previously determined on 27.11.2018 were increased for the following period. The relevant document involves Co DMC Reservations Official (.....) responding to an e-mail dated 27.11.2018, in which (.....) asks for a quote from KAPADOKYA BALON for the June-July 2019 period: "Our per-person

¹⁰⁸ The spelling error in the e-mail has been preserved.

¹⁰⁹ Evidence-53, 54, 55, 57, 63, 65, 70 and 88.

prices standard flight balloon tours (.....) that we will apply to your agency as of March 15, 2019”.

- (355) As will be explained in detail in the following sections, the evidence obtained within the scope of the file includes numerous documents wherein hot air balloon operators on the joint sales platform communicated both the agency prices and the final sales prices known as walk-in prices determined by the association to other agencies and final customers. Agencies that established the joint sales platform also started to provide hot air balloon flights to other agencies that were their competitors. This is what is meant by the term “agency price”. In terms of determining balloon sale prices to the final consumer, LE CO DERİ provided varying information on how the joint sales platform provided balloon flights to its client agencies. LE CO DERİ’s first written defense stated that the tourism agencies registered on the platform made reservations by entering a request into the system with the name and information of the passenger and made payments to the platform over the resale prices determined by LE CO DERİ. In another response letter, it was stated that the agencies worked with the platform in an ask-sell manner, that the platform sells to the agencies at the prices determined by the platform, and that the agencies resell to their own customers at the price they wish after purchasing the service.
- (356) According to information provided by DELUKS and ITIR, the conditions under which balloon tours are offered to international customers differ depending on whether the balloon is included in the tour package or not. It is stated that in the Taiwanese market, balloon sales are included in the tour package and the agency pays the balloon company monthly after the flight (based on the agency sales price); in the Latin American, Korean or European markets, balloon flights are not included in the tour package and thus they are optional; in general, customers make their payments directly to the ballooning company for sales not included in the package, and the agency receives a commission from the ballooning company for providing customers to the balloon company, that the collection is made by the platform, and that the agencies collect their commission fees from the platform at the end of each month. From the CO DMC records in Evidence-78, Evidence-86, and Evidence-83 obtained within the scope of the file, it is understood that the collection from the customer can be made by CO DMC, the agency, the guide, the hotel or the ballooning company performing the flight.
- (357) The information provided above makes it clear that where hot air balloon flights are sold as part of tour packages, the agencies provide the flight in return for the agency sales price and sell it to the customer by including it in the total tour price. However, in terms of flights that are not pre-purchased as part of any package tour and sold in TÜRKİYE, it is understood that the ask-sell procedure explained by LE CO DERİ in its response is an effort to fix the final sales prices as well¹¹⁰. In fact, in its plea, LE CO DERİ stated that tourism agencies made reservations by entering a request into the system together with the passenger’s name and information, and made payments to the platform based on the resale prices set by LE CO DERİ. The correspondence between a tourism agency and a CO DMC official in Evidence-71, dated 23.02.2018, shows that the agency official was unable to convince a customer with whom he shared the up-to-date prices, that he tried to explain that the prices had returned to normal because there was no competition in the region, however the customer was not satisfied and the agency official noted to

¹¹⁰ Providing an example would help substantiate the agent price and the end-customer price. Saying (.....) Euro agency and (.....) Euro final consumer price means that the agency which contacts CO DMC and requests a balloon pays (.....) Euro to the platform out of (.....) Euro it collects from the final customer.

the CO DMC official that the customer considered the prices too high. In Evidence-65, 85, 94, and 107 shows balloon businesses owned by DORAK HOLDING conveying information on the final sales prices determined by the association, referred to as agency and walk-in prices, to domestic and foreign travel agencies requesting pricing information. It is noteworthy that in this piece of evidence as well as in many other e-mails¹¹¹ obtained within the scope of the file which were sent to the agencies and contained price information, the final sales price of the balloon flight was also sent in addition to the price that the agency should pay to the platform. In this respect, it is concluded that the joint sales platform fixed the final sales prices for balloon flights as well as the agency prices.

- (358) In this context, telephone interviews were conducted on 31.10.2019 with the undertakings that sell balloons through CO DMC. During the interviews, the agencies generally stated that they were instructed by CO DMC to apply a fixed (.....) Euro price, but that this practice was later abandoned, that they currently were not under any instructions from CO DMC aimed at maintaining the final sales price, and that the purchase prices of balloon flights could fluctuate between (.....) Euros even during the day, being both very variable and very high.
- (359) The functioning of the joint sales platform with price fixing, established under the name of CO DMC, can be seen as an incorporated cartel with a complex structure. In fact, the companies with the titles CO DMC and LE CO DERİ are only tools for the implementation of the agreement/concerted practice between the parties. An integrated assessment that takes into account all of the evidence in the file would result in an interpretation conflicting with the spirit of Article 4 of the Act no 4054 if it addresses these tools separately. Under Article 4 of Act no 4054, the concept of agreement is shaped around the existence of an alignment of will among the parties, and the shape or form of that alignment does not matter. Within the scope of the file, the partnership structures of the two intermediation companies concerned reflects the alignment of will between the agencies aimed at price fixing, as clearly revealed in Evidence-43 showing the communication between agency officials or shareholders.
- (360) The companies CO DMC and LE CO DERİ were founded by the partnership between the DORAK HOLDING, which has four hot air balloon businesses, and the shareholders of agencies that sell the hot air balloon rides they procured from undertakings operating hot air balloons in return for commission fees or through resales, and they created a joint sales platform which fixes prices for 55% of the slots in the hot air balloon market via the two-year lease agreements¹¹² they signed with a portion of the hot air balloon operators.
- (361) Horizontal agreements involving hardcore restrictions such as price fixing, supply restriction, market or customer allocation are *per se* prohibited without examining their actual or potential effects on the market. In principle, such agreements are considered unlikely to meet the exemption conditions, since they are assumed to limit competition to an excessive extent by nature, both in a legal and an economical sense, and have no or extremely low ability to create economic benefits to eliminate their negative effects

¹¹¹ In Evidence-51, 65, 67, 72, 77, 88, 89, 94, 96, 99, 102 and 106, the e-mails sent by all ballooning businesses to agencies contain both agency and final sale price information.

¹¹² Eleven of the lease agreements that enable the establishment of this entity in the hot air balloon sales market were signed directly between LE CO DERİ and hot air balloon operators. However, it is concluded that COMFORT BALON, İSTANBUL BALON and UNİVERSAL BALON did not conclude direct agreements with LE CO DERİ, but instead signed them with PİENTİ, which is one of the agencies in the CO DMC association.

on competition. Such agreements that violate Article 4 of the Act no 4054 by object may sometimes emerge in the form of a cartel with a complex structure. In such complex structures, undertakings that are both competitors and suppliers of each other may sometimes come together, as in the present case.

- (362) In the file under examination, it is clear within the framework of Evidence-43 that DORAK HOLDING, GNM, DELUKS and PIENTI agreed on the balloon prices and would announce this to the balloon businesses. OPULENTIA, on the other hand, is considered to be a party to this agreement due to the fact that its shareholder (.....) was also a shareholder in LE CO DERI and CO DMC. Under the circumstances, it is concluded that DORAK HOLDING and its subsidiaries ITIR and KRIZANTEM as well as GNM, DELUKS, PIENTI and OPULENTIA, which constitute the association established under the name of CO DMC or LE CO DERI, agreed on the joint sales of hot air balloons and fixed the prices, and therefore, Article 4 of the Act no 4054 was violated, and this violation constitutes a violation by object. As will be evaluated in more detail below, hot air balloon businesses also consented and enabled the CO DMC joint sales platform to achieve its objective of price unification by terminating some or all of their independent sales activities through the agreements they signed, and some of them became a party to the infringement through the exchange of information about the independent (on their own behalf) sales that they continued to maintain partially.
- (363) In cartel cases, the first secret meeting is usually considered the starting point, regardless of its effects.¹¹³ However, in multi-form cartels, the frequency of meetings can vary. Case law interprets the prohibition broadly and considers preparatory work as an infringement. To establish an infringement, the exchange of commercial information between competitors during the preparatory phase of agreements restricting competition is sufficient. Leaving the details of the agreement to a later date does not mean that the infringement has not started. In some cases, since the infringement involves more than one element and there is no obligation to act on all of them at the same time, it will be sufficient to act on only one of the elements. Therefore, the content and attendance at the first meeting mean that the cartel has started, regardless of contemporaneous evidence.
- (364) In light of the above-mentioned information and the documents obtained within the scope of the file, determining the starting date of the cartel in the file is important in terms of determining the liability of the undertakings. As stated before, the tracks of an attempt to establish a union among tourism agencies can be traced back to 21.06.2017 within the framework of Evidence-36. In the context of Evidence-37, it is understood that the CO DMC formed by the agencies contacted the hot air balloon businesses for the first time on 27.10.2017 within the framework of the findings obtained under file; in this document, DORAK GROUP subsidiaries ITIR and KRIZANTEM as well as GNM, PIENTI, DELUKS, NAMSAN and TEMPEL had been listed among the agencies forming the union, but the functions and details of the structure formed at this stage had not yet been fully established. On 11.12.2017, the correspondence and internal meeting memoranda obtained from DORAK HOLDING-owned undertakings began to state that a balloon association would be established, CO DMC would rent balloons, and balloon prices would be brought under control as of 01.01.2018. However, these documents are internal correspondence of DORAK HOLDING and do not mention the other tourism

¹¹³ See, for example, Case T-254/12 *Kühne & Nagel International and Others v Commission* para. 155-204, Case T-264/12 *Uti Worldwide and Others v Commission*, EU:T:2016:112, para. 59-66, Case T-321/05 *AstraZeneca v Commission* n.1, para.380.

agencies that make up CO DMC. Therefore, the relevant documents are not sufficient to establish the participation of the agencies constituting CO DMC in the infringement beyond any reasonable doubt.

- (365) On the other hand, the draft lease agreement (Evidence-40) attached to the e-mail sent by CO DMC's General Coordinator (.....) to the hot air balloon operator SKYWAY BALON following the establishment of CO DMC, on 22.12.2017, which was replied on 26.12.2017 should be evaluated within the preparatory stages of the infringement. At the same time, the efforts noted in Evidence-35, Evidence-41, and Evidence-116 obtained during the on-site inspection at LE CO DERİ also confirm that the preparatory stages started during this period. In addition, within the framework of Evidence-43, which includes WhatsApp correspondence dated 15.01.2018-17.01.2018, it is clearly seen that the agencies forming the association agreed on the balloon prices and would announce that agreement to the balloon companies.
- (366) As mentioned before, the case law interprets the prohibition broadly and considers preparatory studies a violation. In this respect, the drafting and negotiation of the lease agreements that ensure the functioning and continuity of the structure created should be considered within the scope of the preparatory stages of the structure that violates the Act no 4054. In this context, Evidence-40 dated 22.12.2017, in which the draft lease agreement was sent to a balloon operator by the General Coordinator of CO DMC, was accepted as the starting point of the infringement for DORAK HOLDİNG and its subsidiaries ITIR and KRİZANTEM, as well as for GNM, DELUKS, PİENTİ and OPULENTİA.
- (367) In this framework, the following sections will examine the contributions to the price maintenance by each of the undertakings involved in this complex structure established by the agencies and hot air balloon operators, and their responsibilities under Article 4 of the Act no 4054.

1.5.3.3.1. Assessment of the Investigated Agencies' Relationship with CO DMC and LE CO DERİ

- (368) As mentioned above, the title of Tan Fuarçılık Ltd. Şti., established on 12.06.2015, was changed to CO DMC with a decision of the Board of Shareholders on 10.07.2017. On 01.08.2017, DORAK HOLDİNG sold all of its shares in the undertaking to Ahmet Serdar KÖRÜKÇÜ and Mehmet Ali SÖYLEMEZ, shareholders in DORAK HOLDİNG; Serdar İBİŞ, a shareholder in ITIR and KRİZANTEM; Burak KOYUNCUOĞLU, a shareholder in PİENTİ; Mustafa Gökhan BULUT, a shareholder in GNM; Yaşar TÜRKOĞLU, a shareholder in OPULENTİA; Halise Güney LEVİ, a shareholder in DELUKS; Sinan DUMAN, Chairman of the Board of Directors in DELUKS, and Taner AKTAŞ, a shareholder in TEMPEL. On 27.12.2017, all of the shares of Taner AKTAŞ, a shareholder of CO DMC, were acquired by Alp Arslan TANER.
- (369) Of these shareholders, Mustafa Gökhan BULUT, who is a shareholder in GNM, Burak KOYUNCUOĞLU, who is a shareholder in PİENTİ, Sinan DUMAN, who is the Chairman of the Board of Directors of DELUKS, Halise Güney LEVİ, who is a shareholder in DELUKS, Yaşar TÜRKOĞLU, who is a shareholder in OPULENTİA, and Alp Arslan TANER are shareholders of LE CO DERİ during founding period, which was established on 14.07.2017. According to the Trade Registry Gazette dated 16.01.2018, one of the shareholders of LE CO DERİ, Taner AKTAŞ, resigned from the board of directors as of 26.12.2017 and transferred his shares in LE CO DERİ to Alp ARSLAN TANER on 25.12.2017. In addition, Yaşar TÜRKOĞLU transferred his shares in LE CO DERİ to Alp Arslan TANER with a Share Transfer Agreement on 08.03.2018, and Halise Güney LEVİ

also transferred her shares to Alp Arslan TANER on 28.03.2018 and left the partnership, while both of them continue to be shareholders in CO DMC.

- (370) In the response letters sent by the undertakings regarding the activities of the two undertakings in question, it was stated that CO DMC was not involved in the commercial side of the activity in question, and was only involved in the development of the software for the relevant activity and the transfer of the software to LE CO DERİ. It was stated that the activities of the joint sales platform were carried out by LE CO DERİ. In the first written plea of the undertaking, it was explained that the platform was first under CO DMC and then under LE CO DERİ, and that the joint reservation platform was controlled by those undertakings that were shareholders in LE CO DERİ. Considering the similarity between the shareholding structures of both undertakings, it does not seem possible to say that CO DMC and LE CO DERİ are undertakings acting independently of each other. The pleas of the parties argue that the platform was established within CO DMC and then it transferred its activities to LE CO DERİ. Under Evidence-117 obtained within the scope of the file, if such a transfer took place, the date of the transfer could be 01.11.2018. Evidence-117 includes an invoice dated 01.11.2018 issued by CO DMC to LE CO DERİ for the Balloon Reservation System. However, it is noteworthy that this date is later than those of the many documents indicating an infringement, which were obtained during the on-site examination conducted on 09.10.2018-10.10.2018 within the framework of the preliminary investigation conducted on the parties prior to this investigation. The allegation that such a transfer was made does not make any practical sense considering the structure established, and there is no evidence within the scope of the file that the activities of these companies can be clearly observed or unbundled in any way. In conclusion, as stated above, when the evidence is evaluated as a whole, it is assessed that the two undertakings in question are parts of a whole serving a common purpose.
- (371) The two companies in question, which were established as a result of the partnership between the competing agencies, signed charter agreements with 14 hot air balloon companies on January 2018, as mentioned above, four of which belong to DORAK HOLDİNG, forming a joint sales platform in the hot air balloon sales market, which they called CO DMC association, i.e., a cartel covering approximately 55% of the slots. In the case concerned, the parties are found to have engaged in joint sales, and it is concluded that the agreement led to the coordination of prices and to the allocation of the market; therefore, Article 4 of the Act no 4054 was violated.
- (372) It is considered that among the undertakings that are parties to the infringement in question are the agencies which signed lease agreements with hot air balloon businesses, and whose partners are mainly made consist of the persons that also had shares in CO DMC and LE CO DERİ, as mentioned above. The correspondence in the WhatsApp group named "leco partners" obtained during the on-site examination at LE CO DERİ in Evidence-43 clearly shows this. This is clearly shown in the correspondence dated 16.01.2018-17.01.2018, which was included in the whatsapp group named "leco partners" that was recovered during the on-site inspection conducted at LE CO DERİ, presented in Evidence-43. In the correspondence between 16.01.2018 and 17.01.2018, the persons who appear to have agreed on the fact that the agency sales price "(.....) *should be the sales price*" are DELUKS Chairman of the Board (.....), GNM shareholder (.....), PİENTİ official (.....) and DORAK HOLDİNG shareholder (.....). Of the shareholders of these two undertakings, only DELUKS shareholder (.....) and OPULENTİA shareholder (.....) are not included in the screenshotted correspondence. In terms of DELUKS, the Chairman of the Board (.....) is included in the correspondence. Since

price fixing is clearly observed in the correspondence in the relevant group, there is no doubt that the shareholders in this group were parties to the infringement with respect to the agencies to which they are connected. OPULENTIA, on the other hand, is considered to be a party to the infringement since its shareholder (.....) is also a shareholder in LE CO DERI and CO DMC. As mentioned above, it is concluded that LE CO DERI and CO DMC are two tools that serve a common purpose. In this framework, it is understood that the joint reservation platform was set up by all of the agencies the shareholders of LE CO DERI and CO DMC were shareholders in or connected to. Consequently, it is concluded that DORAK HOLDING and its subsidiaries ITIR and KRIZANTEM as well as PIENTI, GNM, DELUKS and OPULENTIA violated Article 4 of the Act no 4054 in the market for hot air balloon sales market by joint price fixing and creating a joint sales platform.

(373) OPULENTIA shareholder (.....) terminated his shareholder status in LE CO DERI on 28.03.2018, but he remained a shareholder in CO DMC. As stated above, the two companies in question are considered to be instruments serving the purpose of price fixing within the scope of the file, and no evidence was found where the activities of these companies could be clearly seen or differentiated in any way. Although Evidence-96 shows that CO DMC shared final sales and agency price information with OPULENTIA on 04.04.2018, the shareholder status of (.....) in LE CO DERI until 28.03.2018 and his remaining a shareholder in CO DMC is considered significant and sufficient evidence that OPULENTIA is a party to the cartel.

(374) In terms of leaving the CO DMC association, the transfers made by the TEMPEL shareholder (.....) in December 2017 are important. As stated before, the document dated 22.12.2017, in which the draft lease agreement was sent by CO DMC General Coordinator to a balloon operator is considered the start of the infringement. At this point, it should be assessed whether TEMPEL, which was initially a shareholder in CO DMC, was a party to the infringement. The information obtained within the scope of the file shows that TEMPEL shareholder (.....) terminated his shareholder status in LE CO DERI on 25.12.2017 and CO DMC on 27.12.2017, very shortly after 22.12.2017, which is considered to be the start of the infringement. In its written plea, the undertaking stated that in December 2017, the association terminated all official business relations with them after it was realized that the main purpose was to address the anti-competitive actions of tour operators in the tourism market. The undertaking's transfer of its shares in December is in line with the points raised in the plea. Therefore, TEMPEL is not considered to be a party to the cartel established in the hot air balloon sales market, since it transferred its shares in CO DMC and LE CO DERI a few days after 22.12.2017, which is considered the start of the infringement, and since there is no evidence that it was a party to the cartel after that date.

(375) It appears that the chat group in Evidence-43 was set up by (.....) on 15.01.2018 to discuss confidential matters due to the crowdedness of another group. The conversations in the group reveal that a meeting with wide attendance was organized before the group was set up. The question "(.....) I think we couldn't discuss the details clearly because Namsan was at the meeting, right?", asked by GNM partner (.....), was confirmed by (.....). Thus, NAMSAN seems to have participated in the aforementioned meeting with wider participation. The members of the discussion group seem to have decided to hold another meeting after GNM's partner (.....) wrote, "Then the core team should meet again when you're available we need to act very quickly." After that meeting in question was held Chairman of the Board of Directors of DELUKS (.....) wrote the following message in the same group: "Dear colleagues, we had a very productive and

clear meeting today. A while ago, we re-evaluated the balloon prices on the phone with (.....). We had a thought; wouldn't it be more reasonable and attractive for the agencies to have (.....) \$ instead of (.....) €? I am in favor of this idea, and I would like to hear your opinions again.” The document shows that NAMSAN’s representative was among the attendees of the first meeting, which apparently had a wider participation. However, no evidence of what was discussed at the meeting was found within the scope of the file. On the other hand, the document reveals that price-fixing issues were discussed at the second meeting. However, there is no evidence as to whether the participants of this meeting were limited to the participants of the discussion group. It is possible to interpret from the progression of the conversations in the document that the participants of the second meeting could have been limited to the participants of the conversation group. In this framework, there is not sufficient evidence that NAMSAN, which has no relationship with CO DMC and LE CO DERÌ shareholding, is a party to the cartel formed in the hot air balloon market. As a matter of fact, in a response sent by NAMSAN, it was stated that they had discussions during the formation of CO DMC, but that they did not participate in the entity concerned.

(376) It was observed that the names of several agencies other than those with shares in CO DMC and LE CO DERÌ were mentioned in the documents as being part of the CO DMC association. As shown in Evidence-36, the association called CO DMC was established in June 2017 as a union with an aim to make price agreements for the foreign market. In that evidence, the signatories under the document titled “Tour Operators Gentlemen’s Agreement” are DORAK HOLDING Chairman of the Board (.....), GNM Managing Director (.....), PIENTÌ Managing Director (.....), TEMPEL Chairman of the Board (.....), DELUKS Chairman of the Board (.....), ITIR-KRIZANTEM shareholder (.....) and NAMSAN official (.....). Evidence-38 is an e-mail sent from CO DMC to ASSIANA BALON on 27.10.2017, at a time when the details of CO DMC’s relationship with hot air balloon companies and those of the joint sales platform had not yet been fully established, which reads as follows: “The agencies forming the CO DMC association are: Dorak-Krizantem-Itir-GNM-Pienti-DELUKS, Namsan, and Tempel.” When Evidence-38 and Evidence-36 are evaluated together, it is seen that the association referred to as the CO DMC Association in the relevant documents includes the undertakings that signed the gentleman’s agreement for the Far East market. NAMSAN is one of these undertakings, but due to the lack of evidence mentioned above, sufficient evidence indicating that NAMSAN is a party to the cartel formed in the domestic hot air balloon market could not be reached within the scope of the file.

(377) In addition, in Evidence-57, which is a kind of internal correspondence, DORAK HOLDING Corporate Communications and Business Development Director shared the notes of the meeting held on 12.02.2018 with the undertaking’s e-mail address for meetings. In the e-mail, DORAK HOLDING employees were informed that the agencies united in the Far East market were DORAK, KRIZANTEM, OPULENTIA, DELUXE, PIENTÌ, and GNM. In this document, OPULENTIA was added to the list of agencies that formed an association for the Far East market, but the names of NAMSAN and TEMPEL were not included. In Evidence-128, which is a message sent by the CO DMC Accounting Official to a hotel sales representative on 01.03.2018, the CO DMC officer requests from the hotel representative accommodation information for certain months, belonging to OPULENTIA, BLUE BOSPHORUS, NAMSAN, GNM, PIENTÌ, TEMPEL, DELUKS and KRIZANTEM, which he refers to as “our agencies”. Evidence-131 involves the e-mail dated 10.05.2019 sent by the CO DMC accounting official to a hotel, the CO DMC official states that as CO DMC, they were an association of 11 agencies, that they

received USD (.....) per person from hotels for accommodation, and that the current list of agencies consisted of DORAK HOLDING, TEMPEL, DELUKS, KRIZANTEM, NAMSAN, GNM, PIENTI, BLUE BOSPHORUS, OPULENTIA, ERETNA, and CLIMAX. Therefore, it is seen in Evidence-141 and Evidence-131 that the lists were expanded.

(378)With regard to TEMPEL, NAMSAN, BLUE BOSPHORUS, ERETNA, and CLIMAX, which are mentioned as members of the CO DMC association in the relevant documents, it is seen that TEMPEL and NAMSAN were among the parties that signed the gentleman's agreement for the Far East market. However, the investigation was unable to collect sufficient information and documents to indicate that TEMPEL was a party to the cartel established in the domestic hot air balloon market after the date on which it terminated its shareholdings in CO DMC and LE CO DERI, or that NAMSAN was a party to the relevant cartel in the domestic market. Of the remaining undertakings, ERETNA and CLIMAX are in the same group. The correspondence dated 23.02.2018 between the ERETNA operations officer and CO DMC in Evidence-69 shows that the ERETNA employee asks whether BUTTERFLY BALON was under CO DMC. In response, CO DMC official states that BUTTERFLY BALON was not under CO DMC. The said document may be considered as an indication that ERETNA and CLIMAX were not involved in the cartel, at least at the establishment stage. Under the scope of the file in general, there is no sufficient information and documents regarding BLUE BOSPHORUS, ERETNA, and CLIMAX to show that they were parties to the cartel established in the domestic hot air balloon market.

(379)The file does not contain sufficient information and documents to indicate that another tourism agency under investigation, namely GLORIUS DMC, was a party to the cartel established in the hot air balloon market, neither in terms of its shareholding structure nor in terms of its activities. The relationship of the undertaking GLORIUS DMC leased hot air balloon operations during the relevant period, THK BALON, with the cartel is further discussed in the section below.

(380)During the on-site inspections carried out at the agencies, a draft agreement titled "CO DMC Agency Hot Air Balloon Agreement," was recovered, which was detailed in Evidence-124 and Evidence-125, and the agreement includes the following regulations: *"The passenger shall pay the e-ticket price in cash or by credit card. If the passenger's credit card can be entered into the system, the ticket price shall be paid to CO DMC via the passenger's credit card. If the passenger wants to pay in cash or does not want the transaction to be made on his/her credit card over the Internet, the ticket price shall be collected from the passenger by the Agency ... The agency shall be entitled to the percentage commission and/or service fee defined in the system per ticket sold."* All agencies party to the investigation were asked whether they signed a relevant agreement and whether they signed any other agreement with LE CO DERI or CO DMC.

(381)In this context, the following points are made:

- In the response sent by PIENTI and GNM, it is stated that the draft agreement obtained during the on-site inspection was not implemented and no agreement was signed with CO DMC or LE CO DERI,
- TEMPEL's response notes that there was no agreement signed with CO DMC or LE CO DERI,
- DELUKS, ITIR, KRIZANTEM, OPULENTIA state that they had no agreements signed with CO DMC or LE CO DERI,

- In the response sent by NAMSAN, it is stated that the agreement obtained was signed and shipped unilaterally by NAMSAN, that no signed agreement was returned to them from CO DMC or LE CO DERİ,
- ERETNA and CLİMAX note that they had no agreements signed with CO DMC or LE CO DERİ,
- CO DMC and LE CO DERİ state that neither the agreement in question nor any other agreement were signed with the agencies.

Of the undertakings listed above, only NAMSAN states that the agreement was signed unilaterally but that no signed agreement was sent back to them. Since the response letters from the investigation parties received during the investigation process show that the relevant agreement was not implemented, the provisions of the agreement are not evaluated separately.

(382) In summary, regarding the structure found to be in violation of the Act no 4054 under the file, it is concluded that ITIR and KRİZANTEM, which are subsidiaries of DORAK HOLDİNG as well as PİENTİ, DELUKS, GNM and OPULENTİA were parties to the infringement, but that the information and documents obtained were insufficient to show that TEMPEL, NAMSAN, BLUE BOSPHORUS, ERETNA, CLİMAX and GLORİOUS DMC were parties to the infringement.

1.5.3.3.2. Assessment of the Relationship between the Hot Air Balloon Companies in CO DMC with the Platform in Question and Their Activities

(383) In light of the documents obtained during the investigation, it became necessary to analyze the role and activities of the hot air balloon businesses in the entity created. The joint reservation and sales platform entered into agreements with 14 hot air balloon companies to lease slot rights. However, in light of the information obtained during the investigations conducted within the scope of the file, suspicions arose that the hot air balloon businesses that signed the aforementioned agreements were operating beyond the scope of the agreements. In this framework, it became necessary to clarify how the balloon company's portion of the balloon flight price was determined and at which stage the balloon company's share was paid to the undertaking. The relevant regulations are included in the above-mentioned lease agreements, with information obtained on actual practices.

(384) An analysis of the responses of the undertakings on the subject show that, in the general functioning of the market, hot air balloon companies can realize their sales directly by themselves or through agencies and hotels. Some of the undertakings stated that they can work with the hotels and agencies that make reservations through commission fee payments, and some of the undertakings stated that they sell the flights to the agencies over a set price and then the agencies themselves determine their sale prices. Regarding the period before CO DMC, COMFORT BALON noted that the balloon sales price was (.....) TL per person in 2016 and (.....) Euro per person in 2017, but due to the occupancy rates varying between 30% and 40% in these years, the agencies did not have the opportunity to sell the flights at a higher price than the balloonist's sales price.

(385) From the above information above, hot air balloon operators had two alternative sales channels in the pre-CO DMC period: direct sales and sales through agencies. In the post-CO DMC period, LE CO DERİ undertook to make monthly payments to the ballooning companies at the prices presented in the table above as if 80% of the capacity of the balloons were full, and similarly in case of passengers exceeding the 80% capacity, to make monthly payments for the surplus number of passengers at the prices

in the annex of the agreement. Three hot air balloon operators leased some or all of their balloons to PİENTİ, one of the platform's partners, for the use of the CO DMC platform for a lump sum fee. The party with which they entered into this agreement is a joint sales platform formed by a vertically integrated undertaking that also owns players of the agency channel, one of the alternative sales channels of hot air ballooning, and rival balloon companies. DORAK HOLDİNG, the largest player in the joint sales platform, is an undertaking that operates four hot air balloon businesses, in addition to its agency activities. Through these agreements, hot air balloon operators terminated some or all of their independent sales activities, allowing the CO DMC joint sales platform to achieve its objective of price unification.

- (386) It would be mistaken to consider the agreements in question lease agreements in the usual sense, based on the wording of the title alone. In a standard lease agreement, the lessor should be expected to transfer its marketing and sales rights over the leased asset and terminate its activities in this regard; in other words, the lessor should not be able to market and sell its own product. However, as will be analyzed in detail below, the hot air ballooning businesses that signed these agreements do not seem to have terminated their activities completely after leasing their balloons to the platform, that they were able to play an active role in the operation of the platform, that they had access to competitively sensitive information during the operation of the platform, and that they had the opportunity to use this information in their independent sales.
- (387) First of all, an overview of the correspondence dated 16.01.2018-17.01.2018 in Evidence-43 above shows that DELUKS Chairman of the Board (.....), LE CO DERİ co-founder and GNM partner (.....), PİENTİ official (.....), CO DMC General Coordinator Osman Taha KÜÇÜK and DORAK HOLDİNG Chairman of the Board (.....) jointly maintained the balloon sales price, with (.....) stating *"I'll update the announcement according to your decision today and inform the ballooners"*, and it is understood from the content of the document that the sales price determined in this way would be notified to the hot air balloon operators. However, such information should not have been of any use to the hot air balloon businesses who signed the agreements, as there is no provision in the agreement stipulating that they would receive a share of the final sales of the product.
- (388) Evidence-45, involving the e-mail correspondence between the Manager of UNİVERSAL BALON and the representative of UNİVERSAL-İSTANBUL-COMFORT BALON between 18.01.2018 and 19.01.2018 reveals that the balloon businesses concerned were aware of the price to be applied by the CO DMC association to both the agencies and the final customers. The relevant e-mail answers some of the questions asked in order to clarify certain issues between the parties. One of the questions was about the new sale prices to be implemented. In the answer given by the UNİVERSAL-İSTANBUL-COMFORT BALON representative (.....), it is stated that *"(...) Euro agency price, (...) Euro walk-in. The document I sent you yesterday said (.....) Euro for those not in the union. They removed that distinction today. It is (...) Euro for everyone now. The selling prices will be (...) Euro."* In the response of the representative of UNİVERSAL-İSTANBUL-COMFORT BALON, it is seen that the agency price was determined as (.....) Euro and walk-in price as (.....) Euro, and that this issue was notified to the balloon companies in question. Thus, the balloon businesses mentioned in the document were aware of the final sale prices under the agreement. Moreover, (.....), who sent the said reply and was the representative of UNİVERSAL-İSTANBUL-COMFORT BALLOON on the relevant date, later transferred to CO DMC as an employee and received premiums from CO DMC, as can be seen from Evidence-111.

- (389) The on-site investigations revealed evidence that some of these undertakings made efforts to maintain the association during its operation, took an active role on the sales side, and made efforts to fix prices. The said evidence reveals that these undertakings had information on the final sales prices as well.
- (390) First, a great deal of such evidence was obtained with respect to the hot air balloon businesses under DORAK HOLDING, which led the establishment of the association. The balloon businesses of DORAK HOLDING seems to have shared with the agencies they worked with the prices that were discussed by the CO DMC agency association during the decision-making stage, as noted in Evidence-46 and Evidence-48, to be implemented as of 12.02.2018. From Evidence-52 onwards, DORAK HOLDING balloon businesses are observed to communicate the balloon flight prices finalized by agency association decisions to the customer agencies, and later they informed the persons or undertakings asking for up-to-date quotes, be they individual customers or agencies, about the flight prices and the association as seen in Evidence-65, 85, 88, 89, 93, 94, 95, 104, 107 and 114.
- (391) In addition to these undertakings, similar evidence was found regarding other balloon operators. In Evidence-47, an official of the SKYWAY BALON owned agency BALONDOKYA informs an individual customer about the price change that would be implemented on 15.02.2018 as a result of the unification of balloon companies. This evidence shows that the hot air balloon operators were aware of the establishment process for the association and the prices set by the association. Similarly, in Evidence-50, 55, and 63, an official of the SKYWAY BALON-owned agency BALONDOKYA informs a customer requesting a quote about the association formed and the current sales prices decided by the association. In addition to these, in Evidence-76, the BALONDOKYA official indicates to a customer that a discount was not possible as selling below the stated price would constitute a breach of agreement. In Evidence-91 and Evidence-92, a BALONDOKYA official tells customers asking for a quote that the increase in prices was due to the unification of balloon businesses in the region. Evidence-101 involves a correspondence between a BALONDOKYA official and a customer agency, where it is stated that as of 11.02.2018, a single flight type would be implemented in the systems of the businesses, and that they no longer had a say as an undertaking since the balloon companies came together.
- (392) In Evidence-70, the official of another balloon operator, namely KAYA BALON, responds to the reservation request by saying, *"We are also part of the ballooning solidarity formed on February 12, and from that date onwards, all sales operations are handled by this solidarity. The agency payment is (.....) Euro, and the agency selling price is (.....) Euro."*, and in Evidence-73, he sent the current price information of (.....) euro per person to a customer who requested the price.
- (393) Evidence-105 dated 12.06.2018 involves a correspondence between TÜRKİYE BALON and a travel agency it works with, wherein the agency sends an e-mail to a TÜRKİYE BALON official stating, *"I am selling at the prices you mentioned, adjusting the amounts I added on top. Unfortunately, I cannot provide the sales prices listed here as quotes were requested from other companies. Unfortunately, the established balloon association hasn't been very effective, and guests are still getting different prices. I also want to mention that there are balloon tours available on the internet for (.....) €."* From this correspondence, it is understood that the final sale prices adopted by the association were known by TÜRKİYE BALON and were communicated to its customers.

- (394) Among the above-mentioned documents, Evidence-43 constitutes evidence that balloon prices were notified to all ballooning companies in the platform. In fact, the other evidence above also proves that balloon businesses other than those under DORAK HOLDING, such as UNIVERSAL-ISTANBUL-COMFORT BALON, SKYWAY BALON, KAYA BALON and TÜRKİYE BALON had information about the final sale prices and communicated this information to the customers. In addition, Evidence-111 includes the meeting notes dated 29.09.2018 obtained during the on-site inspection at LE CO DERİ. From the notes of the meeting, which was attended by DORAK HOLDING Chairman of the Board (.....), ATMOSFER BALON Operations Manager (.....), KAPADOKYA BALON Operations Manager (.....) and (.....)¹¹⁴, it is understood that İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON employee (.....), KAYA BALON employee (.....) and SKYWAY BALON employee (.....) received premium payments from CO DMC until October 2018. In light of the said evidence, it is understood that SKYWAY BALON, İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON, and KAYA BALON also played an active role in the functioning of the association by transferring employees.
- (395) In addition, it is necessary to mention one more piece of evidence in relation to SKYWAY BALON, İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON, and KAYA BALON. Evidence-44 includes a document obtained during the on-site inspection conducted at SKYWAY BALON, which is titled “Ballooning Businesses Gentlemen’s Agreement (Draft),” attached to an e-mail sent on 17.01.2018, during the establishment of the CO DMC association, by SKYWAY BALON Operations Manager (.....) to the e-mail addresses of the representative of İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON (.....), with the subject “Draft Gentlemen’s Agreement”. The document was undersigned by SKYWAY BALON and KAYA BALON. Paragraph 5/d of the draft agreement text states: “*OPERATION AND RESERVATION (The Joint Reservation and Operation section will be evaluated after meetings with CO DMC.)*” Consequently, it becomes clear that SKYWAY BALON, İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON and KAYA BALON were in communications with each other to create a sales and marketing association during the establishment of CO DMC, and that they joined the CO DMC platform with the intention of participating in a sales and marketing association.
- (396) During the on-site examinations conducted within the scope of the file, database backup of “CO DMC.com” and “CO DMC2.com” addresses, used to take hot air balloon reservations, were made for the dates of 20.11.2018 and 28.08.2019. These include information concerning the reservation records created for hot air balloons, such as agency/hotel/guide information, number of people to fly, flight type, any preferred balloon undertakings, region entrance and exit dates for the group, flight dates, payment points, payment amounts, confirmation codes, and special requests or notes related to the flight. According to the information provided by the parties, the “agency_id” heading in the system provides the agency/hotel information related to the reservation; i.e., the information of the agency that made the reservation is included in this column. In addition to many tourism agencies, hotels, etc., this column also includes the names of 10¹¹⁵ of the 14 undertakings that signed a lease agreement with the platform¹¹⁶:

¹¹⁴ The undertaking noted that (.....) was a childhood friend, that the person concerned did not have any shares in LE CO DERİ or any other known company, that he started to take care of financial/banking transactions for the business around the date of the meeting specified in the document but was not an insured employee of the company.

¹¹⁵ Of the two undertakings in the same group, İSTANBUL BALON and UNİVERSAL BALON, only the former’s name is included under the heading.

¹¹⁶ Covering the February-October 2018 period.

ATMOSFER BALON¹¹⁷, KAPADOKYA BALON¹¹⁸, SULTAN BALON¹¹⁹, BROTHERS BALON¹²⁰, SKYWAY BALON¹²¹, TÜRKİYE BALON¹²², RAINBOW BALON¹²³, KAYA BALON¹²⁴, İSTANBUL BALON¹²⁵, BALON TURCA¹²⁶. Therefore, it is possible to say that following the lease agreements they signed, balloon-owning undertakings acted like tourism agencies to collect customers and create records in the reservation system. In this respect, within the structure created, balloon businesses went beyond the lease agreements they signed to actively engage in operations.

(397) In the case under review, the lease agreements signed bilaterally with hot air balloon businesses in order to include them in the joint sales platform established by the agencies that were the shareholders of CO DMC and LE CO DERİ constitute the basis of the cartel established in the hot air balloon market and in this sense are part of the cartel. The General Court's approach concerning a conclusion that separate different acts and agreements constitute a single infringement can be summarized as follows: *"the Commission must demonstrate that the undertaking intended to contribute to the common purpose pursued by all participants by its own act and that it was aware of the infringement planned and implemented by other undertakings for the common purpose, or at least could reasonably have foreseen it and accepted the risks that would arise in this context"*¹²⁷. Within the scope of present case, it is assessed that the hot air balloon businesses on the platform were aware of, or at least could have foreseen, the conduct planned and implemented by the agencies that were the founders of the joint sales platform and by the other hot air balloon businesses on the platform. With respect to SKYWAY BALON, İSTANBUL BALON-UNİVERSAL BALON-COMFORT BALON, and KAYA BALON, the aforementioned Evidence-44 clearly demonstrates this awareness. With respect to the other hot air balloon businesses that were members of the platform, it is believed that at the stage of signing the lease agreements, or at least after the announcements of the agreed-upon prices, they could have reasonably foreseen the fact that they were contributing to the common purpose pursued by the entirety of the agreement and by the participants with their own actions.

(398) In light of the assessments above, it was concluded that the separate agreements or many bilateral agreements signed between the joint reservation and sales platform and the hot air balloon businesses ultimately constitute a single breach; that the activities

¹¹⁷ Including the days cancelled by the SHGM and those cancelled by the parties, 120 reservation records.

¹¹⁸ Including the days cancelled by the SHGM and those cancelled by the parties, 694 reservation records.

¹¹⁹ Including the days cancelled by the SHGM and those cancelled by the parties, 41 reservation records.

¹²⁰ Including the days cancelled by the SHGM and those cancelled by the parties, 656 reservation records.

¹²¹ Including the days cancelled by the SHGM and those cancelled by the parties, 128 reservation records.

¹²² Including the days cancelled by the SHGM and those cancelled by the parties, 8 reservation records.

¹²³ Including the days cancelled by the SHGM and those cancelled by the parties, 196 reservation records.

¹²⁴ Including the days cancelled by the SHGM and those cancelled by the parties, 900 reservation records.

¹²⁵ Including the days cancelled by the SHGM and those cancelled by the parties, 253 reservation records.

¹²⁶ Including the days cancelled by the SHGM and those cancelled by the parties, 26 reservation records.

¹²⁷ Case C-49/92P, para. 82-84; Case C-204/00 P, C-205/00P, C-213/00 P, C-217/00 P ve C-219/00P *Aalborg Portland and Others v Commission*, para. 83; Case T-378/10 *Masco v Commission* para. 24, Case T-364/10 *Duravit v Commission*, para. 328-338; Case T-587/08, *Del Monte v Commission*, para. 639.

hot air balloon businesses that signed the lease agreements engaged in the market went beyond standard lease, and thus the agreements between them turned into instruments for the entity created to fix prices in the hot air balloon prices; that in this context, the rental fees prescribed in the agreements should be considered a share of the profit planned to be obtained by the cartel.

(399) In this respect, it is concluded that ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, KAPADOKYA BALON under the DORAK HOLDING umbrella, İSTANBUL BALON and UNIVERSAL BALON under the same group, ANATOLIAN BALON and DISCOVERY BALON under the same group as well as COMFORT BALON, BROTHERS BALON, BALON TURCA, TÜRKİYE BALON, SKYWAY BALON and KAYA BALON signed the agreements concerned and thus were included in the platform and the cartel, that they became liable for the violation of Article 4 of the Act no 4054 by signing the agreements, that they violated Article 4 of Act no 4054 and that this is an infringement by object.

(400) In addition to these points, a significant portion of the undertakings that leased their balloons to CO DMC through the agreements in question also had independent sales outside the association, as can be seen in the table below. It should be noted that 11 of the undertakings in CO DMC leased all of their slots to the platform, while COMFORT BALON leased 66% of its slots, with BALON TURCA leasing 80% and TÜRKİYE BALON leasing 40% of their total number of slots. On the other hand, while it may look like hot air balloon businesses who leased all their capacities to the platform had transferred all their flights to the platform, they still sold a small portion of their capacities independent from CO DMC, through self-owned agencies¹²⁸, hotels, or directly. These percentages can be seen in the table presented below. In fact, KAPADOKYA BALON, SULTAN BALON, ATMOSFER BALON and RAINBOW BALON, all of which are under the DORAK HOLDING umbrella, stated that they could sell directly to walk-in customers without reservations, albeit very rarely; that the majority of the sales were done over the prices determined by the agreements signed with the LE CO DERİ platform; that the capacity falling outside the flights transferred to the platform as well as any capacity falling under the scope of the agreement but was not used by the platform were sold directly, through travel agencies or hotels.

(401) The table below shows proportions for the channels through which hot air balloon operators which did and did not participate in CO DMC made their sales, and the table also shows the proportion of the sales undertakings included in CO DMC made outside of the platform:

Table 26: Sales Channel Distribution for Hot Air Balloon Businesses

Balloon Businesses Working with CO DMC	Sales Channels (2018) (%)					Total Customers Number
	Through Travel Agencies	Through CO DMC	Walk-in Customers	Arriving through Hotels	Other	
KAPADOKYA BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
RAINBOW BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SULTAN BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ATMOSFER BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

¹²⁸ An examination of the response letters from the undertakings shows that AIR KAPADOKYA BALON, SKYWAY BALON, TÜRKİYE BALON, ÜRGÜP BALON, BUTTERFLY BALON, VOYAGER BALON, COMFORT BALON and BROTHERS BALON had tourism agencies. Meanwhile BALON TURCA, THK BALON, UNIVERSAL BALON, ROYAL BALON, KAYA BALON, ASSİANA BALON and İSTANBUL BALON.

KAYA BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SKYWAY BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURCA BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TÜRKİYE BALON ¹²⁹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ANATOLIAN BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DISCOVERY BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BROTHERS BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
COMFORT BALON	(.....)	(.....) ¹³⁰	(.....)	(.....)	(.....)	(.....)
ISTANBUL BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
UNIVERSAL BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Balloon Companies out of CO DMC	Sales Channels (2018) (%)					
	Through Travel Agencies	Through CO DMC	Walk-in Customers	Arriving through Hotels	Other	Total Customer Number
AİR KAPADOKYA BALON ¹³¹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ASSIANA BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ROYAL BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BUTTERFLY ¹³² BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VOYAGER BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
THK BALON ¹³³	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DELUXE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GÖREME ¹³⁴	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ATLAS BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ÜRGÜP BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EZEL BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Response Texts by Undertakings						

(402)As can be seen from the evidence presented above, particularly Evidence-43, hot air balloon businesses gained access to information on final sales prices and thus to competitively sensitive information, by participating in the joint reservation and sales platform. Since hot air balloon operators that participated in the platform were clearly able to make sales outside of the platform, and since it was not possible for them to

¹²⁹ In its response letter dated 20.09.2019, TÜRKİYE BALON stated that since 12.02.2018, it has realized (.....)% of its sales through CO DMC and (.....)% through other agencies, through hotels and individually. In fact, even though TÜRKİYE BALON signed the same type of lease agreement with other undertakings, the excel spreadsheet in Evidence-116 includes the following note next to TÜRKİYE BALON: "sales/marketing for one balloon in the first slot done by their own hotel".

¹³⁰ İSTANBUL BALON, UNİVERSAL BALON and COMFORT BALON sent the "Service Purchase Agreement" signed with PİENTİ. Although these three undertakings did not enter into a direct agreement with CO DMC, the customers of these balloon companies flew with CO DMC because of the commercial relationship between PİENTİ and CO DMC. Therefore, the sales made through the agencies as reported by the undertakings are considered CO DMC sales. PİENTİ acts as an intermediary between the ballooning companies and CO DMC.

¹³¹ In its response letter dated 20.09.2019, AİR KAPADOKYA stated that it was not in any commercial agreement with CO DMC, and that it procured customers from CO DMC for one time in place of a group that got cancelled.

¹³² The free sales of the undertaking were added to "other sales".

¹³³ THK BALON's 2018 data sent to the Competition Authority covers the dates 01.01.2018 and 12.02.2018. The undertaking made all of its balloons available to GLORIUS DMC between 12.02.2018 and 11.06.2019. Therefore, the undertaking never worked with the CO DMC platform.

¹³⁴ GÖREME BALON, in its response letter dated 08.10.2019, stated that it did not procure passengers through CO DMC, that it transferred customers to CO DMC and other agencies at the price determined for its own agency when its own capacity fell short.

disregard the competitively sensitive information they gained for their independent sales, it is concluded that they violated Article 4 of Act no 4054 in this way.

1.5.3.3.3. Assessment of the Relationship between the Hot Air Balloon Companies outside of CO DMC with the Platform in Question and Their Activities

- (403) Evidence regarding the concurrent practices of some of the hot air balloon companies not included in the CO DMC platform was also obtained within the scope of the file. Concerning BUTTERFLY BALON, Evidence-51 involves an e-mail sent by BUTTERFLY BALON to various hotels and travel agencies on 07.02.2018, it is observed that between “April 01, 2018, and October 31, 2018,” the final sale price of the standard flight was set at (.....) Euro for cash and (.....) Euro for credit card sales, and the agency price was (.....) Euro for cash and (.....) Euro for credit card sales. Thus the undertaking communicated to its customers prices at the same level as those set by the CO DMC association and requested them not to sell below or above this price; from the statement “Payments will be made by the customer and the commission fee will be paid to you by Butterfly Balloons,” further on in Evidence-51, from a similar e-mail it can be understood that the sales were carried out on commission, not through resales. In response to this information, the customer is seen stating that balloon businesses outside the association such as BUTTERFLY BALON benefited from the establishment of the balloon association. In Evidence-67, a BUTTERFLY BALON employee gives a (.....) Euro agency price to the Denmark-based agency they work with on 21.02.2018, explaining that the prices went up as follows: “There has been a change in hot air balloon prices as a result of a cooperation among 20 companies. The final selling price for all firms is (.....) Euro per person (cash), and the cheapest agency price is (.....) Euro per person. As a result, your payment to us will be (.....) Euro per person.” In Evidence-77, a correspondence dated 28.02.2018, a tour guide in Ürgüp states that he heard a rumor that BUTTERFLY BALON was not included in the balloon association and sent an e-mail to BUTTERFLY BALON to confirm that information, requests prices from BUTTERFLY BALON. BUTTERFLY BALON, in turn, sends agency and final sales prices with the note “Payments are made by the customer, and a commission fee is paid to you by Butterfly Balloons,” without commenting on the association. These prices are observed to be quite close to the prices sent in Evidence-51.
- (404) When the evidence regarding ÜRGÜP BALON is examined, in Evidence-66, the correspondence dated 19.02.2018-20.02.2018 between ÜRGÜP BALON and an agency in Evidence-66, an agency official who requested a quote states that the agency price at (.....) Euro shared by ÜRGÜP BALON, the same level as the price set by the CO DMC Association, was too high, and notes that the price was higher than those asked by the other balloon companies not included in CO DMC. In response, ÜRGÜP BALON’s Operations Manager stated that the prices rose up to that level in the market in general, but implements a discount of (.....) Euro, stating “The special price that can be applied to you is (.....) Euro until April 1, 2018. For after April 1, we can reevaluate the price during March.” In the correspondence dated 23.02.2018-24.02.2018 between ÜRGÜP BALON and a sports center in Evidence-72, a price of (.....) TL is quoted for a standard balloon flight, and when the customer asks the reason for the increase in prices, the ÜRGÜP BALON official replies that 20 balloon businesses were managed through a single operation center, that ÜRGÜP BALON was excluded from this formation, and that the current agency payment throughout the region was (.....) Euro and the sales prices varied between (.....) Euro. In a response of 26.02.2018, sent by ÜRGÜP BALON’s operations officer to an agency in Evidence-74, it is stated that the prices have only just been clarified due to the recent changes in the sector and that the

price applied to the agencies is (.....) Euro per person for standard flights. Evidence-102 includes the response sent by ÜRGÜP BALON Operations Official to a travel agency on 18.05.2018, where it is stated that the board of directors meeting attended by all balloon businesses came to the conclusion that the different price policies implemented by all businesses posed a problem and that sales would be made at the price agreed at the meeting as of 12.05.2018, and a price list including the agency and gate price is shared with the customer. It is also noted that this practice intended to ensure cooperation between balloon companies and standardization in the sector. The relevant price list has the agency price for a standard flight at (.....) Euro, and the final sales price at (.....) Euro. It can be said that the agency price is the same as the price set by the CO DMC Association, while the final sale price is slightly lower.

(405) Regarding the reference to a meeting in Evidence-102, the representative of ÜRGÜP BALON provided the following explanation: *“This was written to allow the Company to report ‘its own price scale’ to those agencies requesting quotes from the Company, since each competitor is able to monitor the others’ prices due to the small volume of the sector and the limited number of actors in it. Of course, since these prices were outside the average pricing outlook and understanding of the sector and were completely in line with the priorities and preferences of the client, questions and feedback could arise for the agencies as to where these prices!!! Came from and what kind of logic they were based on, and the phrase ‘board of directors meeting for all ballooning companies...’ were used with an aim to prevent such feedback, referring to the cooperative meetings in 2017, without any background at all. Obviously, the use of this phrase was rather careless. However, it did not refer to any actual companies and/or prices”* In the correspondence between the General Manager of ÜRGÜP BALON and an agency on 16-17.07.2018, included in Evidence-106, the general manager of the undertaking states that the net agency price was (.....) Euro and the proposed sales price varied between (.....) Euro, noting that the ballooning companies entered into a cooperation at the beginning of the season.

(406) Looking at the evidence related to VOYAGER BALON, Evidence-98 shows that on 26.04.2018, a travel agency shared with VOYAGER BALON the memorandum sent by DORAK HOLDING to some of its business partners in the Brazilian market. The memorandum states that a consortium was formed to control and define the sales price of approximately 80% of the balloon businesses operating in the Cappadocia region, that the minimum sales price would be USD (.....) per person, that payments would be made in advance and credit cards would not be accepted. Evidence-99 involves an e-mail sent to a travel agency on 27.04.2018 by the partner of VOYAGER BALON, which states *“This winter, Dorak Group has formed a new group for travel agencies, and this new agency named CO DMC has leased 17 hot air balloon companies in Cappadocia. They are all operating out of a single center for reservations and are managed by Dorak. The other 8 companies operate individually outside this group. Voyager and Atlas are outside of this group. The best thing about this group is that prices for travel agencies are now above (.....) €. Of course, the reservations are taken by Dorak, but at least we are also receiving (...)€ + VAT from our travel agencies for reservations for our company. Our standard flight sales price is (...)€, and the comfort flight is priced at (...)€ per person. There is also a (...)€ discount for cash payments. In March and April, weather permitting, we flew fully booked with many agencies that did not want to work with Dorak...”* In the relevant piece of evidence, VOYAGER BALON quotes prices similar to but slightly below those set by the CO DMC association. Evidence-108 is a piece of evidence showing that VOYAGER BALON was not included in the formation, and in the e-mail therein

VOYAGER BALON responds to an individual customer asking whether VOYAGER BALON was in the relevant association by stating that it was not participating in the association concerned. Likewise, Evidence-110 dated 06.09.2018 shows that a VOYAGER BALON official stated in an e-mail sent to a customer that it was not in the association and that the three large companies that are not included in the association were VOYAGER BALON, ROYAL BALON and BUTTERFLY BALON.

- (407) It is seen from the evidence explained one by one above that the cartel prices formed by the CO DMC association have an effect on the entire market. Even though BUTTERFLY BALON, ÜRGÜP BALON, and VOYAGER BALON were not part of the association, they took advantage of the price increase of the association and increased their balloon sales prices in parallel, offering their customers the same or very close sales prices to the levels set by the association. On the other hand, the file does not contain sufficient information and documents to indicate that these behaviors in the relevant period were caused by an exchange of information, communication, or similar actions that would eliminate the uncertainty regarding the actions of competitors. Among the evidence quoted above, Evidence-102, which was obtained during the on-site inspection at ÜRGÜP BALON, shows that when sending its price list to the customer, the undertaking stated that as of 12.05.2018, the sales would be realized at the price decided at the board of directors meeting attended by all balloon companies. However, the file does not include any other information or document in support of this piece of evidence, indicating that such a meeting actually took place. As detailed above, the undertaking explained that there was indeed no such board meeting or agreed price.
- (408) On the other hand, as stated in the section titled "Sector Information and Legal Regulations," which provides information on the hot air balloon flight services market, slot rights that enable to undertakings to fly are determined by SHGM in the relevant market, in accordance with the provisions of the legislation. In other words, supply is limited in the market and does not change according to demand. However, there was a significant increase in the demand for hot air balloons between 2016 and 2018. As shown in Table-9 above, the number of customers riding in hot air balloons increased from 224,715 in 2016 to 509,736 in 2017 and 962,024 in 2018. Thus, demand increased approximately 4.2 times in the following two years. In a sector where supply is legally limited, it is inevitable that such an increase in demand will lead to some increase in prices. In addition, the fact that 55% of the supply in the sector is kept under control by the entity that is considered a cartel within the scope of the file, and the prices are increased may lead to parallel increases in prices by undertakings not included in the formation due to increasing demand.
- (409) Therefore, it is concluded that the information and documents were insufficient to indicate an exchange of information, communication, or similar actions as the cause of the pricing behavior of the hot air balloon companies outside the union in the relevant period in the market; that their pricing behavior was a reflection of their pursuit of the price leadership of the cartel based on the information they obtained from the market, and that the information and documents obtained were not sufficient to indicate a violation of Article 4 of the Act no 4054 by the relevant undertakings.

1.5.4. Price Movements of Hot Air Balloon Companies

- (410) Within the scope of the file, the average prices between 2016 and 2018 were requested from the undertakings operating hot air balloons. The table and graph below show the average prices and price trends, prepared in light of the information obtained from the undertakings.

Table 27: Weighted Average Prices of the Undertakings

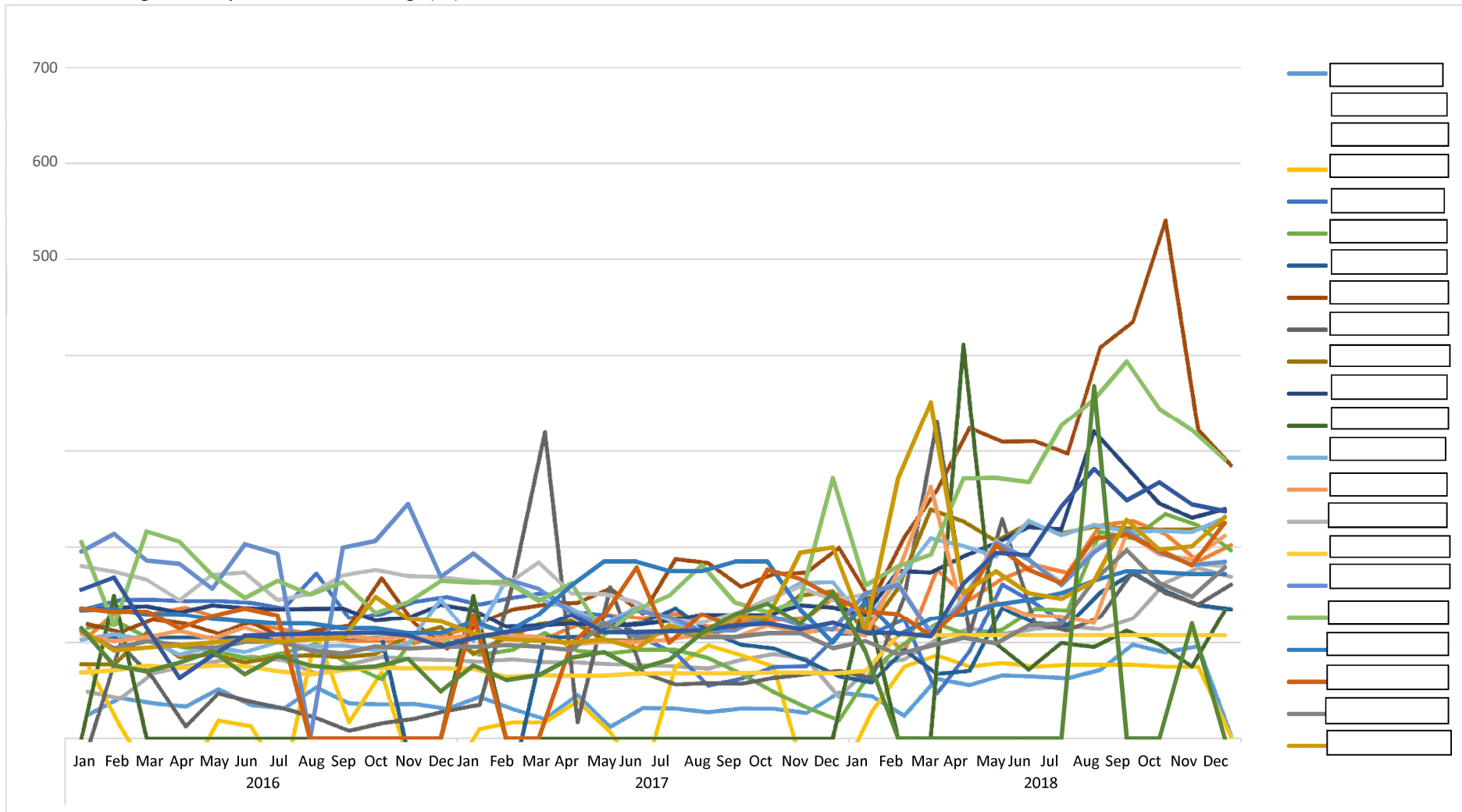
WEIGHTED AVERAGE SELLING PRICES			
Undertakings on the CO DMC Platform	2016	2017	2018
ANATOLIAN BALON	(.....)	(.....)	(.....)
ATMOSFER BALON	(.....)	(.....)	(.....)
BALON TURCA BALON	(.....)	(.....)	(.....)
BROTHERS BALON	(.....)	(.....)	(.....)
COMFORT BALON	(.....)	(.....)	(.....)
DISCOVERY BALON	(.....)	(.....)	(.....)
ISTANBUL BALON	(.....)	(.....)	(.....)
KAPADOKYA BALON	(.....)	(.....)	(.....)
KAYA BALON	(.....)	(.....)	(.....)
RAINBOW BALON	(.....)	(.....)	(.....)
SKYWAY BALON	(.....)	(.....)	(.....)
SULTAN BALON	(.....)	(.....)	(.....)
TURKIYE BALON	(.....)	(.....)	(.....)
UNIVERSAL BALON	(.....)	(.....)	(.....)
Weighted Average Price	₺124.46	₺126.51	₺174.35
Undertakings not on the CO DMC Platform ¹³⁵	2016	2017	2018
AIR KAPADOKYA BALON	(.....)	(.....)	(.....)
ASSIANA BALON	(.....)	(.....)	(.....)
ATLAS BALON	(.....)	(.....)	(.....)
BUTTERFLY BALON	(.....)	(.....)	(.....)
DELUXE BALON	(.....)	(.....)	(.....)
EZEL BALON ¹³⁶	(.....)	(.....)	(.....)
GOREME BALON	(.....)	(.....)	(.....)
ROYAL BALON	(.....)	(.....)	(.....)
URGUP BALON	(.....)	(.....)	(.....)
VOYAGER BALON	(.....)	(.....)	(.....)
Weighted Average Price	₺95.60	₺108.85	₺179.37
General Average Price	₺112.44	₺119.15	₺176.44

Source: Information obtained from the undertakings

¹³⁵ THK BALON's data could not be obtained.

¹³⁶ Since EZEL BALON declared that it flew (.....) customers in 2016 and 2017, gaining (.....) TL in revenue per person from these flights, the data for these years are not included in the table.

Chart 1: Average Monthly Sales of Undertakings (TL)



(411)The table above shows that the average hot air balloon prices of the undertakings were TL 112.95 for 2016, TL 119.67 for 2017 and TL 176.44 for 2018. A specific examination of the year 2018, when CO DMC was active, reveals that the average hot air balloon prices of the undertakings varied between TL 48.20 and TL 363.61. In addition, there also an approximately 47% increase in the annual weighted average prices of the undertakings in 2018 compared to the previous year.

(412)However, suspicions arose that the average prices of the undertakings differed from the prices mentioned in the documents obtained during the on-site inspections and evaluated above. This is because of the following points:

- i. In the correspondence dated 14.02.2017, it is stated that with the joint reservation system application planned by the undertakings, the sales prices were projected at (.....) Euro for agencies and hotels and (.....) Euro for individual customers (Evidence-16); in the e-mail attachment dated 13.03.2017, which was undersigned by a number of undertakings, this issue is finalized at (.....) Euro, (.....) Euro and (.....) Euro according to the types of balloon flights (Evidence-26); in another e-mail dated 01.04.2017, it is stated by an undertaking that the prices would be (.....) Euro for agencies and (.....) Euro for individual customers under the association (Evidence-27),
- ii. The documents dated 01.03.2017 and 03.03.2017 state that the prices for March and April 2017 would be (.....) TL, but that the prices could increase for the following periods depending on an association to be established (Evidence-22, 24); the documents dated 18.03.2017 and 24.04.2017 note that the association failed and therefore the prices would be applied as (.....) TL per person as of May 2017 (Evidence-29, 32); an e-mail sent to the agency dated 27.05.2017, on the other hand, contains updated payment information, where the price is stated to be (.....) Euro per person (Evidence-33),
- iii. In an e-mail dated 11.12.2017, an agency was given a price of (.....) Euro and (.....) Euro per person for 2018 depending on flight type (Evidence-38); the correspondences dated 16.01.2018 and 17.01.2018 regarding the established union state that an agreement was achieved on the prices of (.....) Euro and (.....) Euro within the framework of the union; another e-mail dated 19.01.2018 and 23.01.2018, it was stated that the price for agencies could be realized as (.....) Euro (Evidence-43, 46) Euro; another e-mail dated 19.01.2018 and 23.01.2018 notes that the price for the agencies could be (.....) Euro (Evidence-43, 46-48); an e-mail dated 19.01.2018 explains that the new prices would be (.....) Euro for agencies and (.....) Euro for individual customers (Evidence-45); in another e-mail dated 01.02.2018, an agency is informed that a price of (.....) Euro would be applied as of 12.02.2018 (Evidence-50); an e-mail sent on 07.02.2018 to various hotels and agencies states that the prices would be (.....) Euro, (.....) Euro, (.....) Euro, (.....) Euro and (.....) Euro per person depending on agency prices and flight types, and in the response to this e-mail, it is observed that the prices are unified at (.....) USD under the leadership of DORAK HOLDİNG.

(413)In addition to the evidence some of which are presented above in chronological order, it is also observed that the prices of hot air balloon flights quoted in many correspondences that took place in 2018 varied between 80 Euros and 230 Euros, depending on agencies and various flight types. Therefore, the prices offered to

agencies and individual customers seemed to have varied between 450 TL and 800 TL, with the prices rising to 550 TL and 1,300 TL in September and October¹³⁷.

- (414) An analysis of all of the invoices issued by the undertakings in the relevant period shows that the average prices are confirmed by the amounts on the invoices. Therefore, it is understood that there is a discrepancy between the balloon prices mentioned in the e-mails and the invoices issued by the undertakings. However, the fact that the CO DMC database has (.....) Euro per person for the payments to be done to the agencies and the prices displayed on the undertakings' websites during the investigation process¹³⁸ are in confirmation of the documents obtained during the on-site inspections. In this respect, it is concluded that there was a high level of informal transactions in the sector. Moreover, some CİMER applications made to the Authority during the process seem to emphasize the informal nature of the sector.
- (415) As a result, the price/cost analyses of the hot air balloon flights by the parties to the investigation are not included since they would not provide a healthy prediction regarding the subject matter of the file, due to the reasons explained above,.

I.5.5. General Overview of Pre- and Post-CO DMC

- (416) Article 4 of the Act no 4054 prohibits agreements that directly or indirectly have the purpose of preventing competition, or have or may have the effect of preventing competition. Therefore, as made clear by the wording of the Article, it is not necessary to demonstrate the anticompetitive effects of an agreement that has the purpose of preventing competition in the market by nature in order to establish the existence of an infringement, and the mere fact that the agreement was not implemented in or had no effect on the market would not prevent the determination of an infringement.
- (417) Considering the evidence obtained within the scope of the file, beginning in January 2017, the hot air balloon operators in the Cappadocia region intended to establish a joint sales and marketing platform to fix the sales prices for hot air balloon flights under the umbrella of a cooperative, holding numerous meetings for this purpose. The planned association did not become operational, as some undertakings did not take part in the entity. Nevertheless, a large portion of the undertakings clearly demonstrated their will to come to an agreement. It is concluded that Article 4 of the Act no 4054 was violated by DORAK HOLDING and its subsidiaries KAPADOKYA BALON, ATMOSFER BALON, RAINBOW BALON, SULTAN BALON and İSTANBUL BALON as well as UNIVERSAL BALON, BALON TURCA, TÜRKİYE BALON, ANATOLIAN BALON, DISCOVERY BALON, SKYWAY BALON, KAYA BALON, ATLAS BALON, VOYAGER BALON, BUTTERFLY BALON, AIR KAPADOKYA BALON, ASSIANA BALON, EZEL BALON, and ÜRGÜP BALON, as they were parties to an agreement/concerted practice for price fixing and market allocation in the hot air balloon market in the pre-CO DMC period.
- (418) Article 4 of the Act no 4054 prohibits agreements between undertakings that restrict competition, while Article 5 states that such agreements shall be exempted from the prohibition under Article 4 if certain conditions are met. The exemption of an agreement under Article 5 depends on the fulfillment of all of the following conditions:
- a) It must ensure new developments or improvements or economic or technical improvement in the production or distribution of goods, and in the provision of services,

¹³⁷ These are the prices identified, converted into Turkish Lira based on the TCMB exchange rates at the date the prices were quoted.

¹³⁸ See screenshots of the prices on the undertakings' websites.

- b) The consumer must benefit from the above-mentioned,
- c) It must not eliminate competition in a significant part of the relevant market,
- d) It must not restrict competition more than necessary to achieve the goals set out in sub-paragraphs (a) and (b).

(419) The actions of all hot air balloon businesses operating in the Cappadocia region aiming to establish a joint sales and marketing platform under the umbrella of a cooperative, where the sales prices of hot air balloon flights constitute price fixing, which is considered among hardcore infringements in competition law literature, and such acts are among the acts prohibited under Article 4 of the Act no 4054. Although the cooperative did not become operational, the text of the agreement was signed by most of the undertakings and information exchanges between all competitors continued until the signing stage, eliminating future uncertainties and showing that the aim was to raise prices. Paragraph 57 of the Horizontal Guidelines states *“An exchange information concerning future plans is more likely to lead to restriction of competition by object as compared to the exchange of current data. Within this context, 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. Such exchanges of information are very unlikely to meet the exemption conditions listed in article 5,”* emphasizing that it would be very difficult for such behavior to be granted an exemption.

(420) In spite of the fact that it would be unlikely for such conduct to receive an exemption in principle, an assessment under Article 5 of the Act no 4054 nonetheless will conclude that this conduct would not be granted exemption in light of the fact that joint price determination, market allocation and future price information exchange by hot air balloon operators would lead to an increase in prices without economic and rational reasons, that the resulting price increase would not benefit the consumer in any way, and that this would eliminate in a significant portion of the relevant market.

(421) Following the failure of the ballooning cooperative, some of the hot air balloon businesses which were engaged in the agreement/concerted practice are observed to establish a joint reservation and sales platform with some tourism agencies via various bilateral agreements. As seen in the above-mentioned documents, the association established was able to commit two separate acts of price fixing with respect to sales of hot air balloons to agencies and to final consumers both through its complex structure that included undertakings with horizontal as well as vertical relations, and through bilateral agreements. Consequently, it is concluded that the association involves an infringement of competition by object and should be considered a cartel. In this context, considering all the evidence obtained within the scope of the file as a whole, the parties of the cartel include DORAK HOLDİNG, with which shareholders of the companies CO DMC and LE CO DERİ that served as tools in the formation of the platform, ITIR and KRİZANTEM, which are controlled by DORAK HOLDİNG, as well as the tourism agencies known as PİENTİ, GNM, DELUKS, and OPULENTİA. However, the investigation did not obtain sufficient information and documents to indicate that the other tourism agencies under investigation, namely TEMPEL, NAMSAN, BLUE BOSPHORUS, ERETNA, and CLIMAX, were parties to the infringement.

(422) Furthermore, in light of the above-mentioned assessments, it is concluded that many bilateral agreements the joint reservation and sales platform signed with hot air balloon companies constitute a single violation, that lease agreements turned into an instrument for the conduct aimed at fixing the prices of hot air balloons, and that in this context, the

rental fees stipulated in the agreements should be considered shares from the profits planned to be obtained by the cartel. In this respect, signing of the lease agreements by the hot air balloon businesses in the platform means a violation of Article 4 of the Act no 4054. It is assessed that by signing these agreements balloon operators transferred all or part of their previously independent flights to CO DMC, enabling CO DMC to ensure the consolidation of sales prices and sharing in the cartel profits obtained by CO DMC. It is concluded that all of the undertakings included in the platform violated Article 4 of the Act no 4054 and that this is a violation by object. Thus, it is concluded that in addition to KAPADOKYA BALON, RAINBOW BALON, SULTAN BALON, ATMOSFER BALON, which were under the control of DORAK HOLDING during the CO DMC period as well as KAYA BALON, SKYWAY BALON, BALON TURCA, TÜRKİYE BALON, ANATOLIAN BALON, DISCOVERY BALON, COMFORT BALON, İSTANBUL BALON, UNİVERSAL BALON and BROTHERS BALON were parties to the cartel established in the hot air balloon market.

- (423) Moreover, it is unlikely for the relevant agreement/concerted practice to obtain an exemption by fulfilling the conditions listed in Article 5 of the Act no 4054. To explain, the platform rents the flight capacities of a total of 14 companies and offers them for sale at a single price. The relevant agreement/concerted practice does not lead to a new development or improvement in the provision of the service, and neither is there a benefit to the consumer since there is a reduction in consumer choice and an increase in prices. The resulting benefit is entirely in favor of the cartel members, eliminating competition in a significant portion of the relevant market. Therefore, it is concluded that it is not possible to grant exemption to the agreement/concerted practice comprising the subject matter of the file.
- (424) A note should be made of the measures that must be taken to end the infringement and restore the competitive environment in the market. As explained in detail in the previous sections, LE CO DERİ leases flights belonging to 14 hot air balloon operators for a period of two years through agreements, and then sells them at a single price¹³⁹. In this framework, the main factor enabling the joint sales and reservation platform to carry out this practice is the lease agreements it concludes with the balloon businesses. The ongoing lease agreements LE CO DERİ concluded directly with 11 hot air balloon operators, and the ongoing agreements PİENTİ concluded with UNİVERSAL BALON and İSTANBUL BALON which allow them to work with the platform must be terminated in order to end the infringement and restore the competitive environment; moreover, the joint reservation and sales platform operated under CO DMC or any other name must immediately cease its activities.
- (425) In addition, it is found that sufficient information and documents could not be obtained to indicate that the pricing behaviors of AIR KAPADOKYA BALON, ASSİANA BALON, ATLAS BALON, BUTTERFLY BALON, GÖREME BALON, DELUXE BALON, EZEL BALON, ROYAL BALON, THK BALON, ÜRGÜP BALON, and VOYAGER BALON, which do not have lease agreements with the platform, stemmed from an exchange of information, communication, or similar action, that their pricing behavior were a reflection of their pursuit of the cartel's price leadership based on the information they obtained from the market and that it is impossible to conclude that the undertakings in question violated Article 4 of the Act no 4054 during the CO DMC period.

¹³⁹ The agreements with İSTANBUL BALON, UNİVERSAL BALON and COMFORT BALON are signed with PİENTİ and COMFORT BALON's agreement expired as of 31.03.2019.

- (426) On the other hand, at this juncture, it is necessary to evaluate the liability of one of the parties to the investigation, namely LIONCOX, under competition law. From the information and documents obtained within the scope of the file, it was observed that the owner of LIONCOX is owned by LE CO DERİ and it does not have a separate legal entity, does not have commercial activities on its own, and in this context, is an agency in the sense used in competition law. Therefore, it is assessed that LIONCOX does not have the characteristics of an undertaking, and therefore should not be held responsible for the infringement under the Act no 4054.
- (427) On the other hand, it is important to determine the responsibility of DORAK HOLDİNG for the periods before and after the establishment of CO DMC. DORAK HOLDİNG, a party to the investigation, also includes hot air balloon operators ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, KAPADOKYA BALON as well as tourism agencies ITIR and KRİZANTEM. Therefore, DORAK HOLDİNG is the parent undertaking for six undertakings that are parties to the investigation, in terms of shareholding structure and management staff.
- (428) The question of whether the parent undertaking should be held liable for the infringements of its subsidiaries was discussed from different angles in competition law practice. In the absence of involvement of the parent undertaking in the infringement, the attribution of liability for the infringement committed by the daughter undertaking to the parent is based on those circumstances where it is accepted or shown that the parent undertaking exerts a decisive influence on the commercial behavior of the daughter undertaking. The factors that are taken into consideration when demonstrating decisive influence include shareholding ratio, the rights granted to shares, the composition and management of the board of directors, operating in the same or nearby markets, instructions given to the subsidiary, use of the same trade name and trademark, ownership of business equipment by the parent and intra-group sales. However, these factors are taken into account in cases where the parent undertaking is not directly involved in the infringement; liability arises when the parent undertaking is directly involved in the infringement.
- (429) When these issues are considered for the present case, it is evaluated that DORAK HOLDİNG did directly participate in the violation. This is because from Evidence-2, 4, 5, 6, 7, 7, 8, 9, 10, 10, 11, 14, 20, 21, 23, 26, 28, 39, 42, 43, 53, 57, 58, 68, 80, 82 clearly show that many employees of the holding, particularly the persons holding the titles of Chairman of the Board, General Coordinator, Corporate Communications Director, and Business Development Director of DORAK HOLDİNG, were aware of the infringement both during and before the DMC period and, in some cases, corresponded with other undertakings regarding the infringement. Thus, there should be no doubt that DORAK HOLDİNG directly participated in the infringement both during and before the CO DMC period, and that it has liability in this respect.

I.5.6. Evaluation of Allegations that Agents Involved in CO DMC Make it Difficult for Rival Agents to Operate

- (430) Articles 4.2(d) and 6.2(a) of the Act no 4054 lists complicating, restricting, or preventing the activities of competing undertakings as an example of anticompetitive behavior.
- (431) Although not directly similar to the present case, there is no obstacle before, for instance, evaluating exclusive agreements made by a dominant provider under both provisions. As a matter of fact, in cases where exclusive practices are carried out by the dominant

undertaking, there are decisions¹⁴⁰ where exclusive practices were evaluated under Article 4 of the Act no 4054, under Article 6¹⁴¹, and even where the same practices were evaluated under both articles¹⁴².

- (432) On the other hand, opening an investigation under Articles 4 and 6 of Act no 4054 regarding the same conduct does not constitute a violation of the principle of *ne bis in idem*, unless it results in the imposition of more than one fine. Considering the Board's case-law, in the decisions of *İzocam*¹⁴³, *Frito Lay*¹⁴⁴, and *Turkcell*¹⁴⁵, although an investigation was opened under Articles 4 and 6, the action was evaluated in terms of a single article, and a single penalty was imposed. As a result, as emphasized separately in the *Biletix*¹⁴⁶, *Booking*¹⁴⁷, and *Trakya Cam*¹⁴⁸ decisions, each conduct addressed in the aforementioned decisions were evaluated by focusing on the essence of the conduct and its consequences in terms of competition law, regardless of under which Article of the Act they were examined.
- (433) The entity examined in the present case does not resemble the usual cartel structures that are formed by only horizontal competitors that include only horizontal restrictions. The cartel under examination is a structure in which undertakings operating at different levels of the sector come together, which includes vertically integrated undertakings, and wherein the vertical relations between the undertakings help to ensure the functioning and continuity of the cartel.
- (434) Cartels may sometimes use vertical restraints or vertical relationships in the market to support horizontal elements of infringement elements (such as price fixing) and/or to keep the structure operational and sustainable. Vertically oriented structures and restrictions play a role in two important aspects: monitoring cartels and controlling or foreclosing market entries. Indeed, there are studies showing that vertical restraints increase the likelihood of cartel sustainability even in relatively less concentrated markets¹⁴⁹.
- (435) The Commission's *Sewing Needle Cartel*¹⁵⁰ Decision can serve as an example that cartels that set up a vertically integrated structure can create foreclosure and/or exclusion effects. The decision concerns the market for hard haberdashery products

¹⁴⁰ *Coca-Cola-1* Decision dated 10.09.2007 and numbered 07-70/864-327; *Efes* Decision dated 13.07.2011 and numbered 11-42/911-281; *Biletix* Decision dated 05.11.2013 and numbered 13-61/851-359.

¹⁴¹ *Turkcell* Decision dated 06.06.2011 and numbered 11-34/742-230; *Mey İçki* Decision dated 12.06.2014 and numbered 14-21/410-178.

¹⁴² *İzocam* Decision dated 08.02.2010 and numbered 10-14/175-66; *Coca-Cola-2* Decision dated 05.03.2015 and numbered 15-10/148-65.

¹⁴³ *İzocam* Decision dated 08.02.2010 and numbered 10-14/175-66.

¹⁴⁴ *Frito Lay* Decision dated 29.08.2013 and numbered 13-49/711-300.

¹⁴⁵ *Turkcell* Decision dated 06.06.2011 and numbered 11-34/742-230.

¹⁴⁶ *Biletix* Decision dated 05.11.2013 and numbered 13-61/851-359.

¹⁴⁷ *Booking* Decision dated 05.01.2017 and numbered 17-01/12-4.

¹⁴⁸ *Trakya Cam* Decision dated 14.12.2017 and numbered 17-41/641-280.

¹⁴⁹ Levenstein, M.C. and Suslow, V.Y. (2014), "How Do Cartels Use Vertical Restraints? Reflections on Bork's The Antitrust Paradox?", *The Journal of Law & Economics*, Vol.57, No.S3, The Contributions of Robert Bork to Antitrust Economics (August 2014), pp.33-50. According to Levenstein and Suslow's study, 20 out of 81 international cartel cases with price fixing, analyzed between 1990 and 2007, involved the participation of distributors in the cartel or the use of vertical restraints (such as resale price fixing) to support the main structure. The study found that the average CR4 concentration level in markets with cartels including vertically oriented participants or vertical restraints was 67%, which is lower than the overall average of 75%.

¹⁵⁰ Case F-1/38.338 – PO/Needles, 26.10.2004.

such as needles and zippers, designed to be used in clothing, footwear, etc., where the vertically integrated Prym and Coats, the latter of which was a distributor only, were able to use Coats power in the distribution side to include Entaco in the market allocation agreement, despite Entaco operating solely as a manufacturer. According to Entaco's arguments, since it was difficult to establish a new distribution network in the relevant market at that time, the only way to operate in the market was to enter into an agreement with Prym and Coats¹⁵¹. The Commission concluded that these undertakings participated in a cartel by allocating the market. It is noteworthy that the Commission did not consider the market foreclosure effect as a separate behavior of the cartel. In other words, it was interpreted that the market foreclosure effect was a natural consequence of a vertically integrated cartel.

- (436) In light of the information mentioned above, it is considered that it would be a more accurate approach to consider the allegation in the present case that activities were obstructed or excluded a consequence of the vertically integrated cartel, and to examine it within the scope of Article 4.
- (437) In order to examine the allegations in the file involving obstruction and/or exclusion of activities, database backups of the "CO DMC.com" and "CO DMC2.com" addresses for booking hot air balloon reservations were taken on 20.11.2018 and 28.08.2019. CO DMC and/or LE CO DERİ employees, agencies, guides and hotels wishing to book hot air balloon rides for any date in the said database log in with their usernames and passwords and make the reservation record themselves or have it made by CO DMC and LE CO DERİ employees via telephone. While creating the reservation record, information such as reservation status¹⁵², nationality of the group, agency/hotel/guide information, number of people to fly, flight type, preferred hot air balloon business if any, dates of arrival and departure of the group, flight date, payment point, payment amount, confirmation code¹⁵³ as well as special requests or notes about the flight are also entered.
- (438) However, an examination of the system revealed that these data were not entered with complete accuracy by the users. Some of the reservation records lacked important data such as agency information, check-in and check-out dates, confirmation codes were sometimes entered arbitrarily (such as entering code 3 instead of code 4 on some days when the flights were canceled due to weather conditions). In addition, it was found that the system does not keep logs to determine by whom and when the reservation record in the system was changed. Therefore, it was impossible to see from the database whether the reservation record created by a user was canceled by that user or by CO DMC or LE CO DERİ employees authorized to access the system. Despite these shortcomings, it is considered that the information contained in the database is useful in the analysis to be made on the subject. Moreover, it is known that the version of the database backups taken from the undertaking dated 20.11.2018 was kept by Zerosoft Yazılım ve Bilgi Teknolojileri Yazılım A.Ş., the third-party software company that first

¹⁵¹ *Ibid.* para. 61.

¹⁵² According to the system, 0 means Advance reservation and 1 means Reservation. Entering the advance reservation code gets the system to give out a flight code starting with PNR while entering confirmed reservations gets a flight code starting with RZV. However, since only (.....) of the (.....) reservation records analyzed are coded "0", this does not create a significant change in the analysis.

¹⁵³ According to the system, 0 means Pending, 1 means Confirmed, 2 means Flight Approved, 3 means Canceled and 4 means Flight Cancelled. Code 3 refers to those flights that are canceled by the undertakings for any reason, while code 4 represents flights canceled by the Directorate General of Civil Aviation due to weather conditions.

created the software, and the backup dated 28.08.2019 was kept by the undertaking itself. Considering the vulnerability of the system to manipulation due to the aforementioned problems, the database backup dated 20.11.2018, which was kept by a third party and covers a period very close to 09.10.2018, the date of the first on-site inspection conducted within the scope of the file, was considered to be more reliable.

- (439) In this framework, the records made between 20.02.2018, the date of the first reservation record in the database, and 09.10.2018, the date of the first on-site inspection at the undertakings within the scope of the file, were examined by removing the aforementioned deficiencies, and 52,179 reservation records made by 613¹⁵⁴, different users (agency/hotel/guide) were found.
- (440) When examining whether the conduct of undertakings party to a cartel has the ability to complicate the activities of other undertakings not included in the cartel or to exclude undertakings from the market, the conditions for a dominant undertaking to be deemed to have infringed Act no 4054 by refusing to provide goods or services or by preventing access to business elements are useful, in the absence of primary documentation. In order for the exclusion of an undertaking via refusing to deal to be considered a competition infringement, the refusal must relate to a product or service indispensable for competition in the downstream market, the elimination of effective competition in the downstream market must be likely, and consumer harm must be likely¹⁵⁵.
- (441) In the interviews conducted during the investigation process, it was stated that balloon rides are very important for the tourists coming to the region, that tourists are promised balloon flights in advance due to how the sector operates, and that when these promises are not fulfilled the reputation of the agencies abroad suffers great damage. Although the Nevşehir region is famous around the world with its balloon flights, it is a center of attraction for tourists not only with balloon flights but also with its nature and natural beauties. In this respect, it is necessary to determine how indispensable balloon flights are for tourists coming to the region and then for tourism agencies operating in the Cappadocia region's incoming services. Although it does not fully reveal these issues, data on how many tourists visiting the region take balloon flights may be useful. According to the data provided by the undertakings under investigation and the Ministry of Culture and Tourism¹⁵⁶, the total number of foreign tourists¹⁵⁷ visiting the province of Nevşehir between 2016 and 2018 was 267,074, 422,847 and 872,336, respectively¹⁵⁸. Considering the number of foreign tourists that took hot air balloon rides were 179.772, 407.789 and 769.619¹⁵⁹ in the relevant years, it is seen that approximately 67.32% of foreign tourists took a hot air balloon flight in 2016, 96.44% in 2017 and 88.23% in 2018.

¹⁵⁴ Agencies or hotels owned by the same person/group are counted once.

¹⁵⁵ Guidelines on Exclusionary Abusive Conduct by Undertakings with Dominant Position, p.9-10.

¹⁵⁶ This data covers tourists who arrived in the region and checked into an accommodation facility; there is no information on day-long visitors.

¹⁵⁷ The agencies allegedly subjected to exclusion, and the agencies investigated provide *incoming services* for foreign tourists. In addition, it was stated in the interviews conducted within the scope of the file that approximately 80% of balloon rides were taken by foreign tourists. Therefore, the number of foreign tourists visiting the region is taken as a basis.

¹⁵⁸ The relevant numbers only include those tourists who have checked in to the accommodation facilities in the Nevşehir province. However, according to the Ministry of Culture and Tourism, the Cappadocia region includes the provinces of Kayseri, Aksaray and Niğde, in addition to Nevşehir. When these regions are included in the calculations, the numbers of foreign tourists in the relevant years rise to 299,050, 458,771, and 916,626, respectively.

¹⁵⁹ According to the interviews conducted within the scope of the file, it was learned that approximately 20% of the consumers taking balloon rides were Turkish citizens.

Therefore, riding in a hot air balloon is a frequently preferred activity for tourists coming to the region, and for this reason, access to hot air ballooning may be relatively important for agencies that provide incoming services for the region.

(442) However, at this juncture, it becomes important whether the incoming services provided by agencies differ by domestic regions. As stated in the definition of the relevant product market, incoming services include services such as welcoming customers brought through tour operators at the airport, providing airport-hotel transfers, arranging hotel accommodation for the customer, providing introductory information about the destination in Türkiye, fulfilling requests for tour and shopping services, and providing hotel-airport transfers at the end of the vacation. It is understood from the examinations made within the scope of the file that tourists coming to the Cappadocia region generally do not arrive directly to the region but travel to spend a part of their 7–10-day cultural tours in the region¹⁶⁰. Although it is known that some agencies in the sector specialize in certain countries, for example, approximately 63% of foreign tourists arriving to Nevşehir come from the Far East¹⁶¹ and the activities carried out by the agencies completely overlap with each other. In other words, the activities carried out by agencies do not vary significantly depending on the country or domestic region, and the same services are provided to tourists arriving in the country. Despite a lack of information about the exact number of tourists coming to Türkiye by making use of incoming services, in light of the fact that the number of foreign tourists coming to Türkiye in 2018 was 39,146,171¹⁶², that the number of foreign tourists coming to the province of Nevşehir was 872,336, and that there are 10,108¹⁶³ tourism agencies with A licenses in the region, it is considered that operating in the Cappadocia region is not an essential condition for a tourism agency to compete effectively in the incoming services market. However, considering that a significant portion of the tourists coming to the Cappadocia region arrive from the Far East and that the activities of the undertakings complained of are concentrated especially in that region, the investigation focused on the Far East activities of the agencies.

(443) Regarding the allegations of obstructing the activity of the rival undertaking and/or excluding the rival undertaking, the WhatsApp correspondence between DORAK official (.....), PİENTİ and CO DMC/LE CO DERİ official (.....) and CO DMC/LE CO DERİ official (.....), dated 13.02.2018 and included in Evidence-118, has statements about monitoring the flights of the tourism agency GLORIUS DMC and ensuring that it does not fly in the future. Similarly, in the WhatsApp correspondence dated 20.02.2018, which is included in Evidence-119, there are statements on GLORIOUS DMC. In the relevant document, it is stated that GLORIOUS DMC could not find balloons for one of its groups and had to buy balloons from CO DMC. In this framework, the behavior of the cartel towards GLORIOUS DMC is analyzed as a beginning.

(444) The correspondence in the evidence in question dates back to February 13 and 20, 2018; in other words, the dates when reservations from the joint platform had just started to come in and the system entries were not very sound. Furthermore, Evidence-81

¹⁶⁰ According to the information in the database analyzed, tourists visiting Cappadocia generally stay in the region for 1-3 days.

¹⁶¹ People's Republic of China, Indonesia, Philippines, South Korea, North Korea, Japan, Cambodia, Malaysia, Malaysia, Thailand, Vietnam, Singapore, Brunei, Laos, Taiwan, Bangladesh.

¹⁶² Republic of Türkiye Ministry of Culture and Tourism, Tourism Statistics, General Evaluation 2018, p.2. Statistics on day-long foreign tourists and non-resident citizens are not included.

¹⁶³ Republic of Türkiye Ministry of Culture and Tourism, Tourism Statistics, General Evaluation 2018, p.22.

shows that GLORIOUS DMC made reservations from CO DMC for the dates 14-22-26.02.2018. The sales in Evidence-119 dated 20.02.2018 are believed to be from this period. However, there is no evidence that GLORIOUS DMC made a reservation from CO DMC for the following period. On the other hand, it is understood that during this period, GLORIOUS DMC signed a charter agreement with THK Balloon on 12.02.2018, under which GLORIOUS DMC procured 3 slots in the morning and 1 slot in the afternoon for its own agency. This way GLORIOUS DMC was able to continue its activities even though it did not make reservations from CO DMC after February 2018. On the other hand, it was also possible for GLORIOUS DMC to gain access to the balloons through undertakings that were not part of the cartel. As mentioned in the previous sections of the Report, the hot air balloon operators that were not participating in the cartel accounted for 45% of the total slot capacity. Therefore, it appears that there were alternative sources of supply for GLORIOUS DMC.

(445) Moreover, the representative of GLORIOUS DMC (.....) stated that there was personal animosity with DORAK HOLDING due to the fact that he previously worked for DORAK HOLDING, and that they signed the hot air balloon agreement with THK BALON in order to obtain customers, as they anticipated that they would have difficulties finding a ballooning companies under the formation established by DORAK HOLDING due to this animosity.

(446) Due to the characteristics of the cartel in the file such as the size of the market it controls and its vertically integrated structure, it creates certain obstacles and additional costs for other undertakings in terms of access to alternative resources by its very nature. At this juncture, the points pointed out by the Board in its *Atlas*¹⁶⁴ decision becomes important. As stated in that decision, the fact that using or creating an alternative facility imposes additional costs on competitors and causes inconvenience is not sufficient to prove the essentiality of the input^{165, 166}; in order to establish essentiality, it must be shown that the asset is both vital for competition in the downstream (secondary) market and that it is practically and reasonably impossible to establish a similar one¹⁶⁷; the competitor must show that the relevant element is central to the existence of competition in the downstream market¹⁶⁸. In this context, the conclusion reached in competition law on this subject is that as long as the service or product subject to refusal can be obtained from an alternative source, the indispensability condition is not met, even if the alternative source is less advantageous or favorable¹⁶⁹. Therefore, it is important to demonstrate whether the undertaking subject to refusal is able to continue its activities. In this context, considering that GLORIOUS DMC is able to continue its activities through its own slot rights and through balloon owning undertakings that are not a party to the cartel, access to the flights of the cartel in question, even under more favorable and suitable conditions, is not considered indispensable under competition law. Thus, there is no sufficient evidence to indicate that the cartel violated Act no 4054 by foreclosing the market to GLORIOUS DMC through exclusionary practices.

¹⁶⁴ Decision dated 25.10.2018 and numbered 18-40/644-314.

¹⁶⁵ *Alaska Airlines v. United Airlines* 948, F.'d.536 (6th Cir. 1991)

¹⁶⁶ VENIT, J.S. and J.J. KALLAUGHER (1994), "Essential Facilities: A Comparative Law Approach", in B. Hawk (ed.), *Fordham Corporate Law Institute International Antitrust Law and Policy*, Kluwer Law International, The Hague, The Netherlands, pp.314-344.

¹⁶⁷ SOMA J.T., D.A. FORKNER. AND B.P. JUMPS (1998), "The Essential Facilities Doctrine in the Deregulated Telecommunication Industry" 13, *Berkeley Tech. L.J.* pp.565-590.

¹⁶⁸ AREEDA, P. and H. HOVENKAMP, (1996) *Antitrust Law (Supplement)*, Little, USA.

¹⁶⁹ Google Decision dated 16.11.2016 and numbered 16-39/638-284.

- (447) On the other hand, the documents obtained during the on-site inspections and referred to above in Evidence-120 to 122 have raised suspicion as to whether similar behavior was exhibited towards agencies/hotels/guides other than GLORIOUS DMC. In this context, 52,179 reservation records between 20.02-09.10.2018 were examined with two points in mind: Firstly, cancellations on days when balloon flights were not canceled by SHGM, and secondly, cancellations in the 1-2 days directly after the balloon flights were canceled by SHGM, due to congestions caused by the accumulated demand.
- (448) Reservation records of the undertakings and the cancellations made during the period examined, for the days when the balloon flights were not canceled by SHGM and the flights took place. It was observed that among the 613 undertakings that created reservation records, some undertakings did not create regular records (such as 1-2 records) as well as some that created regular records. In order to make a sound assessment, the undertakings were broken down according to the average number of reservations of the entire sample, which is 100: Accordingly, 129 undertakings recorded more than 100 bookings, while 484 undertakings recorded less than 100 bookings. The table below shows the total number of cancellations and total bookings of the undertakings and the ratio thereof. As can be seen in the table, the cancellation rates of all undertakings with more than 100 reservation records are equivalent to the overall average, while the average for all undertakings with less than 100 reservation records is 16%, three percentage points higher than the overall average.

Table 28: Breakdown of All Undertakings with More or Less than 100 Bookings

	Total Res. Records	Total Pax Number	Canceled Res. Records	Canceled Pax Number	Canceled Res. Rate (%)	Canceled Pax Rate (%)
Undertakings making reservations more than 100	33.787	253.453	4.267	32.864	13	13
Undertakings making reservations less than 100	9.065	37.935	1.461	6.912	16	18
Total	42.852	291.388	5.728	39.776	13	14

Source: LE CO DERİ On-site Examination

- (449) At the same time, the following tables include the position of the parties under investigation as within the overall average, as well as those undertaking among the 613 undertakings which had a larger rate of cancellations while making regular reservations.

Table 29: Reservations Made by Undertakings in the Cartel

Undertaking	Total Res. Records	Total Pax Number	Canceled Res. Records	Canceled Pax Number	Canceled Res. Rate (%)	Canceled Pax Rate (%)
DORAK GRUBU ¹⁷⁰	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SKYWAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PIENTİ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DELUKS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BROTHERS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ESPECIAL GRUP ¹⁷¹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GNM	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KAYA BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BALON TURCA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OPULENTİA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TÜRKİYE BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

¹⁷⁰ The DORAK GROUP consists of ATMOSFER BALON, SULTAN BALON, RAINBOW BALON and KAPADOKYA BALON; while the agencies consist of KRİZANTEM, ITIR ve TAN TURİZM, Ata Turizm İşl. Taş. Madencilik Kuyumculuk San. Dış. Tic. A.Ş., Hemisphere Turizm Tic. Ltd. Şti., Global Turizm Eğitim Pazarlama ve Tic. Ltd. Şti., Crystal Concepts Etkinlik Danışmanlık Seyahat Yönetim A.Ş., İki Turizm Acentalığı ve Tic. A.Ş., Bolca Turizm Seyahat Acentalığı ve Tic. A.Ş., Pulsar Turizm Seyahat ve Tic. Ltd. Şti. ve Marveltur Turizm A.Ş.

¹⁷¹ İSTANBUL BALON and UNİVERSAL BALON are the balloon businesses under ESPECIAL GRUP.

ANATOLIAN BALON and DISCOVERY BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total (except DORAK HOLDING)	3.391	31.843	402	4.284	12%	13%
Total (incl. DORAK HOLDING)	9.535	118.363	858	9.074	9%	8%
Source: LE CO DERİ On-site Examination						

Table 30: Reservations Made by Undertakings Out of the Cartel

Undertaking	Total Res. Records	Total Pax Number	Canceled Res. Records	Canceled Pax Number	Canceled Res. Rate (%)	Canceled Pax Rate (%)
GÖREME BALON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TEMPEL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ERETNA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAMSAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BLUE BOSPHORUS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VOYAGER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: LE CO DERİ On-site Examination						

Table 31: Other Undertakings with Above Average Cancellation Rates¹⁷²

Undertaking	Total Reservation Registry	Total Pax Number	Canceled Reservation Registry	Canceled Pax Number	Canceled Reservation Rate (%)	Canceled Pax Rate (%)
Kapadokya Eser Turizm Rek. Taş. San. ve Tic. Ltd. Şti. (ESER TURİZM)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
İndigo Grup Turizm ve Tic. A.Ş. (MATİANA TRAVEL)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Aydınlı Turizm Tic. Ltd. Şti.	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Kap Tur Turizm ve Otelcilik Ticaret Ltd. Şti. (INSİDER TRAVEL)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Serpa Turizm Tic. Ltd. Şti.	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Çakmak SeyahatTurizm Ticaret Ltd. Şti.	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Terra Vista Otel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Göreme House Hotel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Hermes Cave Otel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Nessa Cave Hotel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Cappadocia Cave Rooms	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Vista Cave Hotel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Hezen Cave Otel	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: LE CO DERİ on-site Examination						

(450)As seen above, undertakings that are found to be a party to the cartel generally have lower cancellation rates than non-party undertakings. On the other hand, the cancellation rates of the undertakings that included in the cartel vary considerably. Among the undertakings that are in the cartel, some undertakings have cancellation rates at almost half of the average (DORAK GROUP, DELUKS, SKYWAY), as well as undertakings with cancellation rates close to the average (PİENTİ) or above the average (BROTHERS, ESPECIAL GROUP, GNM)¹⁷³. However, the cancellation rates are observed to be higher for those undertakings under investigation that did not participate in the cartel. It was found that there were 13 undertakings with regular reservation

¹⁷² The cancellation rates of the remaining 98 undertakings are lower than or close to the average.

¹⁷³ Undertakings with less than 100 reservations were ignored.

records and above average cancellation rates, while the remaining 98 undertakings had cancellation rates lower than or close to the average.

(451) However, an important point should be taken into account when evaluating the aforementioned data. Due to the technical specifications of the platform, it is not possible to know precisely who canceled the reservation records in question. The dynamic and variable nature of the tourism sector, the fact that most of the undertakings in the market generally work via telephone, the large number of tourist groups, and the possibility of shifting between groups, it is not possible to confirm who made the cancellations in question for each individual record. Therefore, the reservation cancellations may have been made by the above-mentioned undertakings themselves or by the cartel. Considering this, it should not be ignored that the rate of cancellations made by the cartel may be lower than the cancellation rates in the table. The statements of the undertakings on this issue are not uniform, either. The opinions of the undertakings are given below:

- (.....) stated that they worked closely with CO DMC and that the cancellation of reservations was completely with their knowledge. They also stated that CO DMC helped customers in case they had a problem at the airport, etc. or had to fly on another day for another reason, and that there were no unjustified cancellations.
- (.....) stated that they did not have problems in finding customers. They explained that they did not experience unjustified cancellations in sales made through CO DMC, but they heard that there were undertakings that experienced this situation.
- (.....) stated that they did not have any problems in their sales with CO DMC, that they first called to ask if there was available space when they were going to make a sale through CO DMC, that there was usually no available space, that they entered an advance reservation when there was space actually available, and that after entering the advance reservation booking they called to get information about whether it was confirmed or not.
- (.....) stated that they did not experience any unjustified cancellations in their sales through CO DMC, that the cancellations were generally on the days when the flight was canceled by SHGM and that they did not encounter any problems with the flights confirmed by CO DMC.
- (.....) stated that they did not work with CO DMC in the last year, and that during the time when they did CO DMC canceled flights without giving any reason and the prices were too high.
- (.....) specified that reservations made with CO DMC were canceled 1 day before the flight day, that especially where there was a cancellation due to weather conditions, seats were reserved for Dorak HOLDING's own groups for the next day, that Dorak HOLDING restricted supply by reserving seats for its own groups and that this situation caused the prices to increase significantly.
- (.....)¹⁷⁴ stated that they made very few sales through CO DMC, that they did not experience any unjustified cancellations, and that the cancellations made were generally unconfirmed advance reservations.

¹⁷⁴ Since the hotels interviewed were private companies, the hotel titles of the undertakings are included.

- (.....) stated that they did not experience any unjustified cancellation problems in the reservations they made through CO DMC and that the cancellations were made upon the request of the customers.
- (.....) stated that the reservations made through CO DMC were canceled against their will, that DORAK HOLDING and CO DMC applied dynamic pricing practices, for example, the price of a balloon flight that was announced the day before increased by 30-40 Euros by the next day, and that when CO DMC sold the flight at a higher price, they canceled the flights that they had previously sold at a more favorable price.
- (.....) stated that they did not engage in the sales of balloon rides very frequently, that when they did, they first entered a request on the platform, following which they were called by CO DMC and told whether the advance reservation was confirmed. In addition, they explained that they have made very few sales in this way so far and that the cancellations were mostly in the form of CO DMC failing to confirm the reservation.

(452) The statements of the undertakings show that the flights could be canceled either by the undertakings themselves or by CO DMC without any reason. However, within the scope of the file, sufficient information and data could not be obtained either from the party to the investigation or from the other undertakings in the market to indicate that their activities were obstructed to the extent that there was market foreclosure. On the other hand, no evidence could be found during the on-site examinations to suggest that requests of undertakings were being systematically denied. Moreover, it was observed that each of the undertakings with the highest cancellation rates mentioned above performed flights for different groups on different days after the canceled reservation.

(453) In addition to all these issues, flights on the days immediately following the days when flights were canceled by SHGM were also examined. As frequently pointed out in the complaints of some of the undertakings, there is an accumulation of flights immediately after the days canceled by SHGM as tourists stay in the region for 1-3 days. Flights were canceled by the Directorate General of Civil Aviation on 70 days during the period under review. It would be useful to give an example of the methodology followed during the examination: Between 13-17.03.2018, balloons could only be flown on 17.03.2018. On 16.03.2018, the records with a departure date of 17.03.2018 were examined, as only these groups would be able to fly the next day since they did not leave the region. On the said date, the groups available for taking a balloon ride the next day consisted of 119 visitors with DORAK HOLDING and its subsidiaries, 50 visitors with ERETNA, 28 visitors with ESER TURİZM and 17 visitors with GÖREME BALON. An examination of the flights on 17.03.2018 according to reservation numbers, nationalities, and pick-up points of the groups showed that DORAK GROUP, ERETNA, ESER TURİZM and GÖREME BALON were able to fly. The cancellations on 17.03.2018 belong to DORAK GROUP ((.....) person), PİENTİ ((.....) person), DELUKS ((.....) person) and Cappadocia ESER TURİZM ((.....) person). In other words, a significant portion of the cancellations on 17.03.2018 were the flights of cartel members. Therefore, there is no concrete evidence that cartel members canceled the flights of non-cartel competitors to make room for their own groups. This examination method was repeated for the 70 days canceled by SHGM, and no concrete findings were obtained to confirm the issues in question.

(454) In the light of all the information and assessments given above, in summary, it is assessed that 45% of the market for hot air balloons is open for the tourism agencies

operating in the market, and in this sense, the capacity of the cartel cannot be characterized as indispensable for the undertakings. On the other hand, it is by nature of the structure under examination that the cartel comprising the subject matter of the file, which holds 55% of the market and has a vertically integrated structure in a market where the supply is limited but the demand is gradually increasing, conflicts with the interests of the other undertakings in the market while providing advantages to the cartel members and makes the activities of the undertakings difficult to some extent, and that the cartel members, who sell to both end sales and agencies, are endeavoring to keep the final sales prices in the market at a certain level. However, from the information obtained within the framework of the file, it is concluded that there is no concrete information and documents to suggest that the cartel subject to the investigation has complicated the activities of competitors and excluded them from the market by engaging in independent, systematic conduct with regard to the market, characteristics and chronologic processes, and therefore, Act no 4054 has not been violated in this respect.

I.5.7. Assessment of the Relationship Certain Agencies and CO DMC had with Hotels

(455)As the evidence shows, CO DMC's name is frequently mentioned during the establishment, operation and maintenance of the reservation platform for hot air balloon flights. In fact, in addition to establishing the reservation platform for hot air balloon flights and creating a basis for an agreement between the agencies for incoming services regarding the Far East market, the association titled CO DMC is also active in different aspects of the tourism sector in order to meet the needs of the agencies for the services they will provide to the tourists they bring to Türkiye. In this context, CO DMC helps to reduce the expenses of the agencies under its umbrella by making agreements with businesses operating in various fields. This is because the agencies that established CO DMC and the agencies that benefit from CO DMC's agreements with businesses do not only provide hot air balloon flights to the tourists they bring to Türkiye, but also organize tour programs that include many activities including cultural tourism and sea tourism throughout Türkiye .

(456)Some of the evidence cited earlier also consists of the correspondence on the relationship between hotels and some agencies that benefit from CO DMC's agreements with hotels, on the matter of fulfilling the accommodation needs of tourists within the scope of incoming services. The information given by CO DMC concerning the system it employs when working with hotels shows that CO DMC is an agreement company established to gain an advantage in the market by negotiating with hotels to get the right price at better terms. It was also stated that CO DMC worked with hotels through agreements and that these agreements were only valid for tourist groups coming from the Far East. The provisions of the agreements CO DMC signed with hotels are given below.¹⁷⁵

(.....*TRADE SECRET*.....)

¹⁷⁵ The relevant provisions are taken from the agreement signed by CO DMC with Family Resort Hotel in Silivri/Istanbul. The undertaking also stated that the same type of agreement was signed with all hotels.

(457) The above-mentioned provisions in the agreements show that CO DMC would direct the agencies to the hotels to meet the accommodation needs of the tourists brought from abroad by the agencies receiving services from CO DMC; within this framework, the hotels commit to a price for the tourists to be brought by the agencies, and the agencies receiving services from CO DMC receive a commission of (.....) USD for each tourist brought to the hotel.

(458) During the investigation process, CO DMC was asked to provide a list of agencies that received services from it during the years 2017, 2018 and 2019. The undertaking stated that it was not in operation in 2019 and did not issue commission invoices; therefore, no agencies received services from CO DMC in 2019, while for 2017 and 2018 the agencies in question consisted of the following undertakings.

Table 32: Agencies Receiving Services from CO DMC in 2017 and 2018

Group Name	Undertaking Name	2017	2018
DORAK GROUP	DORAK TOUR	✓ ¹⁷⁶	✓
	Pulsar Turizm Seyahat ve Tic. Ltd. Şti. (PULSAR)	✓	✓
	DNR Global Seyahat Acent. ve Tic. Ltd. Şti. (PAGE TOUR)	✓	✓
	Beynar Turizm A.Ş. (BEYNAR)	✓	✓
	Hemisphere Turizm Seyahat Acentalığı ve Tic Ltd. Şti. (HEMISPHERE)	✓	✓
	Global Turizm Eğitim Paz. ve Tic. Ltd. Şti. (LEGACY)	✓	✓
	Bolca Turizm Seyahat Acenteliği ve Tic. A.Ş. (VETTA)	✓	✓
	ITIR	✓	✓
	KRİZANTEM	✓	✓
	PIENTİ	✓	✓
	GNM	✓	✓
	DELUKS	✓	✓
	NAMSAN	✓	✓
	TEMPEL	✓	_ ¹⁷⁷
	OPULENTIA	-	✓
	BLUE BOSPHORUS	-	✓
ERETNA GROUP	ERETNA	-	✓
	CLIMAX	-	✓
	Atagündüz İnş. Taah. Tar. Tur. Mad. Nak. Tic. San. A.Ş. (STONE AGE TRAVEL)	-	✓
	Primavera Tur. Seyahat Org. Ltd. Şti. (EURORIENTE)	-	✓
Total Agency Number		13	19
Source: Response Text Sent by Undertaking ¹⁷⁸			

¹⁷⁶ The sign indicates that the agency was among the agencies receiving services from CO DMC in the relevant year.

¹⁷⁷ The sign indicates that the agency did not receive services from CO DMC in the relevant year.

¹⁷⁸ In the response sent by CO DMC, it was stated that Janus Tur Seyahat Acentesi (JANUS) was among the agencies receiving services from CO DMC. However, during the investigation process, it was stated by JANUS that it started its operations in July 2018, and mediated accommodation services for 600-650 tourists during this period, but that the services provided by CO DMC were not utilized in the provision of these services. Therefore, the name of the undertaking is not included in the table.

(459) The information in the table shows that in 2017, 13 agencies benefited from the services provided by CO DMC, nine of which were in the DORAK GROUP, while in 2018 that number was 19, with nine agencies from the DORAK GROUP once again. It should be noted that some of the undertakings listed in the table (DORAK GROUP-GNM- PİENTİ-DELUKS-OPULENTİA-TEMPEL) are also agencies controlled by CO DMC's shareholders at the time of its establishment.

(460) In order to provide information about the size of the agencies receiving services from CO DMC in Turkish tourism, the number of tourists they brought in 2016, 2017, and 2018 and the total number of tourists coming to Türkiye are given below.

Table 33: Market Shares of Agencies Receiving Services from CO DMC in 2016, 2017, and 2018 (%)

Group Name	Undertaking Name	Number of Tourists Brought to Türkiye		
		2016	2017	2018
DORAK GROUP ¹⁷⁹	DORAK TOUR	(.....)	(.....)	(.....)
	PULSAR	(.....)	(.....)	(.....)
	HEMISPHERE	(.....)	(.....)	(.....)
	LEGACY	(.....)	(.....)	(.....)
	ITIR	(.....)	(.....)	(.....)
	KRİZANTEM	(.....)	(.....)	(.....)
	PİENTİ	(.....)	(.....)	(.....)
	GNM	(.....)	(.....)	(.....)
	DELUKS ¹⁸⁰	(.....)	(.....)	(.....)
	NAMSAN	(.....)	(.....)	(.....)
	TEMPEL	(.....)	(.....)	(.....)
OPULENTİA ¹⁸¹	(.....)	(.....)	(.....)	
BLUE BOSPHORUS ¹⁸²	(.....)	(.....)	(.....)	
ERETNA GRUP	ERETNA	(.....)	(.....)	(.....)
	CLIMAX	(.....)	(.....)	(.....)
	STONE AGE TRAVEL ¹⁸³	(.....)	(.....)	(.....)
	EURORIENTE ¹⁸⁴	(.....)	(.....)	(.....)
CO DMC Total	(.....)	(.....)	(.....)	
Türkiye Total	25.352.213	32.410.034	39.488.401	
CO DMC Market Shares (%)	(.....)	(.....)	(.....)	
Source: Response Letters from Parties and Republic of Türkiye Ministry of Culture and Tourism Statistics				

(461) The information in Table-37 shows that the total market share of agencies receiving services from CO DMC was (.....) in 2016, (.....) in 2017 and (.....) in 2018.

(462) During the investigation process, CO DMC was requested to provide information on how it works with these agents and how the agents are selected. The response sent by the undertaking states that the agencies were not required to sign agreements in order to work with CO DMC, that the agencies in question consisted of undertakings of different sizes working with various countries in Asia, and that these undertakings were well known in the sector and their cooperation was trusted.

¹⁷⁹ PAGE TOUR, BEYNAR, and VETTA, which were listed among the agencies receiving services from CO DMC in the previous table and are owned by the DORAK GROUP, stated that they did not provide incoming services in 2016, 2017 and 2018. Therefore, these undertakings are not included in the table.

¹⁸⁰ The response letter notes that the undertaking was not active in 2016.

¹⁸¹ The response letter notes that the undertaking started operations as a tourism agency at the beginning of 2018.

¹⁸² No information could be obtained from the undertaking.

¹⁸³ It was found that the undertaking terminated its activities.

¹⁸⁴ The undertaking stated that it started its operations in November 2017 and therefore the groups started to arrive beginning in March 2018.

- (463)As for the evaluation of the evidence in line with the information provided above; Evidence-126, which contains the correspondence between NAMSAN and Kolin Hotel in Çanakkale on 08.09.2017, in other words, approximately two months after the establishment of CO DMC, states that no payment was made by NAMSAN to the hotel before check-in due to its participation in CO DMC, but the hotel notes that the agreement with CO DMC did not include any change in the payment terms between the agency and the hotel.
- (464)In Evidence-127, dated 01.03.2018, a CO DMC employee is trying to come to an understanding with the hotel concerning the commission to be received per tourist directed to the hotel by the agencies that procures services from CO DMC under Article 3 of the agreement quoted above. Similarly, Evidence-128, which includes the e-mail sent by the Kolin Hotel to ERETNA on 22.03.2018, shows the hotel's price offer for groups from the Far East due to the agency's inclusion in CO DMC.
- (465)Evidence-129 includes the e-mails dated 28.03.2018-30.03.2018 sent by ERETNA to various hotels stating that it is under the CO DMC umbrella; Evidence-131 includes e-mails dated 10.05.2018 and 06.07.2018 sent by CLIMAX, which is in the same group with ERETNA, to various hotels stating that it is under the CO DMC umbrella; Evidence-133 includes GNM's e-mail dated 18.07.07.2018 where it informs Kolin Hotel that it is under the CO DMC umbrella; Evidence-136 includes NAMSAN's e-mail dated 15.08.2018 where it informs Hilton Hotel in Cappadocia that it is under the CO DMC umbrella, and Evidence-140 includes OPULENTIA's e-mail dated 09.01.2019 where it informs Kaya Hotel in Uçhisar/Nevşehir that it is under the CO DMC umbrella.
- (466)In Evidence-130 dated 16.04.2018 and Evidence 138 dated 05.12.2018, a CO DMC employee sends the list of agencies to various hotels and requests the prices that the hotels will charge for the agencies' group with Far Eastern nationality.
- (467)In Evidence-132 dated 21.06.2018, a CLIMAX employee asks to benefit from CO DMC's contracted price with the hotel for the accommodation of Indian tourists, but the hotel responds that the agreement with CO DMC is only valid for Far Eastern groups.
- (468)Evidence-134 is an e-mail sent by Musho Hotel in Ayvalık/Balıkesir on 01.08.2018, which communicates the 2019 prices for groups of Far Eastern nationality brought by agencies in the CO DMC family.¹⁸⁵
- (469)Evidence-135 includes e-mails sent to ERETNA by İris Hotel in Çanakkale on 13.08.2018 and Grand Temizel Hotel in Ayvalık/Balıkesir on 27.08.2018, which show that the agency was charged over the rates contracted with CO DMC.
- (470)Evidence-137 dated 03.10.2018 contains the correspondence between Kolin Hotel and CLIMAX. In the relevant e-mail, the hotel asks CLIMAX whether its agreement with CO DMC is still in effect, and CLIMAX responds in the affirmative.
- (471)Evidence-139 is an e-mail sent by Haliç Park Hotel in Ayvalık/Balıkesir to ERETNA on 08.01.2019, in which the hotel requests ERETNA to send an e-mail stating that they had parted with CO DMC. During the investigation process, an explanation of the relevant document was requested from the undertaking and in the reply, it was stated that they worked with CO DMC out of necessity, that there was no written agreement between them, that they had to accept CO DMC's demands since CO DMC had influence on ballooning in Cappadocia, that one of these demands was to send customers to the

¹⁸⁵ The recipient part of the e-mail is hidden. However, since the evidence was obtained during the on-site inspection at ERETNA, it is assumed that ERETNA is one of the recipients of the e-mail.

hotels they worked with across the country, that they worked this way for about two months but although they fulfilled all the requested requests, the balloon flights of their customers were canceled at the last minute, and therefore they informed the hotels that they no longer worked with CO DMC.

- (472) Evidence-141 is an e-mail sent by Park Inn Hotel in İstanbul to GNM on 16.01.2019, and the e-mail states that the hotel worked with every agency under the CO DMC umbrella except GNM with whom they also wanted to work with, and forwards a list of the special prices they would apply to the agency.
- (473) Evidence-142 contains the correspondence between NAMSAN and Kolin Hotel on 08.02.2019. In the relevant e-mail, the hotel requests official documentation showing participation in the CO DMC formation, while NAMSAN states that there is no official agreement with CO DMC, only a gentleman's agreement between the companies. Thereupon, the hotel requests information on the date on which it left the association. No further document regarding the continuation of the e-mail series in question could be obtained during the on-site inspection, and an explanation of the relevant document was requested from the undertaking. In the response sent by the undertaking, it was stated that there was no formal agreement with CO DMC as explained in the e-mail, that there was a spoken gentleman's agreement to avoid losses in the markets, and that only the services offered by the formation were purchased. The undertaking did not provide any explanation as to whether the services provided by CO DMC were still utilized.
- (474) Evidence-143 concerns an up-to-date list of agencies receiving services from CO DMC, sent by CO DMC to DELUKS on 06.04.2019. Evidence-157, on the other hand, shows the hotels contracted by CO DMC and the document includes hotels operating in many different regions of Türkiye including Antalya, Bursa, Çorum, Ankara, Karabük, Cappadocia, Kastamonu, Balıkesir, Çanakkale, İzmir, Pamukkale, Amasya and Kocaeli.
- (475) As it can be understood from the above-mentioned information and evidence, the agencies under investigation benefited from the prices agreed between CO DMC and the hotels to fulfill the accommodation needs of the tourists of Far Eastern nationality they bring to Türkiye as part of their incoming services. The agreements signed by CO DMC with the hotels are important for the evaluation of the said actions of CO DMC and the agencies within the scope of Act4054, and the provisions of the agreements are given above.
- (476) The "*Hotel Pricing and Commission Agreement*" between CO DMC and hotels is a type of agreement in which CO DMC agrees to refer its customer agencies to the hotel for the duration of the agreement, the accommodation company agrees to provide hotel services to the customers of the travel agencies within CO DMC for a certain price, and the hotel agrees to pay a commission of USD (.....) per tourist brought in by the agencies.
- (477) According to Article 2 of the Group Exemption Communiqué on Vertical Agreements (Communiqué No. 2002/2), agreements between two or more undertakings operating at different levels of the production or distribution chain for the purchase, sale or resale of certain goods or services are defined as vertical agreements. As regards the subject matter of the case, the parties to the agreement are the undertakings providing accommodation services and CO DMC, which has undertakings providing incoming services under its umbrella, and according to Article 2.5 of the agreement, CO DMC represents the agencies receiving services from it. In this framework, even though CO DMC is the signatory of the agreement, one of the parties to the agreement is the undertaking providing accommodation services, and the other party is the agency that will meet the accommodation needs of tourists within the scope of incoming services.

Thus, the agreement signed between CO DMC and the accommodation facilities has the nature of a vertical agreement since it is concluded for the purchase, sale, or resale of goods or services between undertakings operating at different levels of the production or distribution chain.

- (478) First of all, when the obligations of CO DMC and accommodation facilities under the agreement are examined, it is seen that under Article 2.3 of the agreement CO DMC does make any commitments in terms of the number of tourists to be brought to the hotel¹⁸⁶; moreover, CO DMC has the right to direct the agencies receiving services from CO DMC to a different hotel. Similarly, according to Article 2.4 of the agreement, the accommodation business reserves the right to make offers to agencies not under CO DMC or enter into agreements with other agencies on the same/similar issues. Accordingly, the agreements concluded between CO DMC and the hotels do not seem to contain vertical restrictions such as exclusivity and non-competition obligations.
- (479) On the other hand, in Article 2.6 of the agreement, the hotel guarantees that the price offered to CO DMC will be the best/lowest price, and agrees that it will not publish a price lower than the price offered to CO DMC. Terms of this nature constitute an example of what is referred to as the most favored customer clause (MFC) in competition law literature.
- (480) The MFC clause refers to the obligation of the supplier to offer the favored buyer more favorable prices and agreement terms they may offer to other buyers. It is not possible to state that the effect of the MFC clauses of the agreements on the market will be the same in all cases. As reflected in various decisions of the Board¹⁸⁷, not only MFC clauses can have anticompetitive effects such as reducing price competition in the market and leading to price rigidity, facilitating cooperation and cartels, creating entry barriers and market foreclosure, it can also have an impact on efficiency by encouraging investments specific to the commercial relationship, reducing transaction costs, preventing the problem of free-riding and protecting the trademark, reducing delays and demand uncertainties.
- (481) As stated in the Guidelines on Vertical Agreements (Vertical Guidelines)¹⁸⁸, in principle, an agreement containing MFC clauses may benefit from group exemption if the market share of the party in whose favor this clause is established in the agreement does not exceed 40% and the other conditions specified in the Communiqué are met. In this respect, the first issue to be considered is whether the market share of the agencies receiving services from CO DMC exceeds 40%. As mentioned before, CO DMC does not operate in the field of incoming services but incorporates agencies providing these services. Therefore, CO DMC's market share is made up of the total market share of the agencies receiving services from CO DMC for each year. Considering that CO DMC started its operations in 2017 and did not have any activities in 2019, it is necessary to look at the market shares for 2016, the year before it started its operations, as well as for 2017 and 2018, the years in which it was active.

¹⁸⁶ Although Article 2.3 of the agreement states that CO DMC may add a commitment to this effect to Annex-1 if it wishes, there is no such commitment in the annex of the agreement.

¹⁸⁷ *Booking* decision dated 05.01.2017, numbered 17-01/12-4; *Motaş* decision dated 13.07.2017, numbered 17-22/344-154.

¹⁸⁸ Vertical Guidelines, para 223.

(482) The provisions in the agreements signed between CO DMC and hotels are valid for the groups with Far Eastern nationality, brought by the agencies¹⁸⁹. In this framework, when evaluating the MFC clauses in the agreements under the Communiqué No. 2002/2, the market share created based on the number of Far Eastern tourists brought to Türkiye by the agencies receiving services from CO DMC were taken as the basis. The table below shows the number of Far Eastern tourists brought to Türkiye by agencies receiving services from CO DMC in 2017 and 2018, the total number of Far Eastern tourists staying in Türkiye and the market share of agencies receiving services from CO DMC in the respective years.

Table 34: Total Market Shares of the Agencies Receiving Services from CO DMC for the years 2016-2018, Calculated Based on Far Eastern Tourists

Group Name	Undertaking Name	Number of Far Eastern Tourists Brought to Türkiye		
		2016	2017	2018
DORAK GROUP	DORAK TOUR	(.....)	(.....)	(.....)
	PULSAR	(.....)	(.....)	(.....)
	HEMISPHERE	(.....)	(.....)	(.....)
	LEGACY	(.....)	(.....)	(.....)
	ITIR	(.....)	(.....)	(.....)
	KRİZANTEM	(.....)	(.....)	(.....)
	PIENTİ	(.....)	(.....)	(.....)
	GNM	(.....)	(.....)	(.....)
	DELUKS	(.....)	(.....)	(.....)
	NAMSAN	(.....)	(.....)	(.....)
	TEMPEL	(.....)	(.....)	(.....)
	OPULENTIA	(.....)	(.....)	(.....)
	BLUE BOSPHORUS ¹⁹⁰	(.....)	(.....)	(.....)
ERETNA GROUP	ERETNA	(.....)	(.....)	(.....)
	CLIMAX	(.....)	(.....)	(.....)
	STONE AGE TRAVEL ¹⁹¹	(.....)	(.....)	(.....)
	EURORIENTE ¹⁹²	(.....)	(.....)	(.....)
CO DMC Total		(.....)	(.....)	(.....)
Total Number of Far Eastern Tourist Staying in Türkiye ¹⁹³		541,271	996,777	1,817,346
CO DMC Market Share (%)		(.....)	(.....)	(.....)

Source: Response Letters from Undertakings and Republic of Türkiye Ministry of Culture and Tourism Statistics

(483) From the data in the table, the total market share of the agencies receiving services from CO DMC in 2016 was (.....), in 2017 (.....), and in 2018 (.....), based on the groups with Far Eastern nationality. In this context, in terms of the market share threshold, it is concluded that the agreements between CO DMC and the hotels were covered by the

¹⁸⁹ In fact, as shown in Evidence-132, ERETNA asked to benefit from the contracted rate from Kolin Hotel for tourists of Indian nationality but was informed by the hotel that the agreement with CO DMC was only valid for groups from the Far East.

¹⁹⁰ No information was received from the undertaking.

¹⁹¹ It was found that the undertaking terminated its activities.

¹⁹² The undertaking stated that it started its operations in November 2017 and therefore the groups started to arrive beginning in March 2018.

¹⁹³ Calculated based on tourists from Bangladesh, People's Republic of China, Indonesia, Philippines, Malaysia, Singapore, Singapore, Thailand, South Korea, and Japan in the Ministry of Culture and Tourism statistics.

group exemption under Communiqué No. 2002/2. Moreover, with respect to the market shares, it should be noted that although the agreements CO DMC signed with the hotels were valid for groups of Far Eastern nationalities, the nationality of the tourists did not matter for the hotels themselves. Therefore, the relevant market shares represent the highest market shares based on the narrowest market definition. Indeed, as seen in Table-33, the agencies receiving services from CO DMC had a market share of (.....) in 2016, (.....) in 2017 and (.....) in 2018, based on the total number of tourists they brought to Türkiye and the total number of tourists coming to Türkiye.

- (484) It should also be pointed out that MFC clauses are usually used in agreements where there is a supplier on one side of the market and a buyer on the other. However, CO DMC is not merely a buyer, but an agency association-like structure that includes rival undertakings. Therefore, theories of harm regarding MFC clauses should be examined in more detail in this case. This is because some of the agencies receiving services from CO DMC were found to have violated Article 4 of the Act no 4054 in the hot air balloon market.
- (485) Although MFC clauses can come in many different shapes and sizes, a basic distinction can be made between wholesale MFCs and retail MFCs.¹⁹⁴ The main difference between traditional wholesale MFC clauses and retail MFC clauses stems from the customer group benefiting from the clause. Namely, wholesale MFC clauses are usually implemented for B2B (*business to business*), i.e., where the supplier provides a product or service to a buyer who is not in the retail market. Retail MFC clauses, on the other hand, occur in a B2C (*business to consumer*) business models, where the final consumer directly bears the price for the product or service. Therefore, wholesale MFC clauses do not create as many competitive concerns as retail MFC clauses. This is because in wholesale MFC clauses, there is no intervention on the retail price that the buyer will charge to the final consumer and the buyer's freedom to set the price is protected.¹⁹⁵ On the other hand, with retail MFC clauses, also known as platform MFC clauses, the buyer covered by the MFC receives the most advantageous offer for the price and terms to be offered to the final consumer and thus, the MFC clauses have a direct impact on consumers.
- (486) The MFC clauses in the agreements CO DMC signed with hotels are wholesale MFC clauses. This is because the prices in question are the prices that the hotels will apply to the agencies and the tourists coming from abroad do not make any payment to the hotel at these prices. As a matter of fact, as can be seen from the correspondence between NAMSAN and Kolin Hotel in Evidence-126, the NAMSAN employee states that no payment will be made to the hotel before check-in, but in the reply sent by the hotel notes that the agreement with CO DMC does not change the payment terms between the agency and the hotel. As understood from the relevant e-mail, payments for accommodation services of tourists coming from abroad are made by the agency to the hotel. Similarly, in the reply sent by EURORIENTE, which utilizes the services of CO DMC, it is stated that Far Eastern customers come to Türkiye by purchasing a package, that this package includes hotel fees, museum and archaeological site fees, etc., and that similar payments such as hotel payments are covered by the agencies during this period.

¹⁹⁴ BOSTOEN, F. (2017), Most Favored Nation Clauses: Towards an Assessment Framework Under EU Competition Law, *European Competition and Regulatory Law Review* 2017, Vol. 1(3), p.223.

¹⁹⁵ LONG, S. (2019), Retail MFNs and Online Platforms Under EU Competition Law: A Practical Primer, *CPI Antitrust Chronicle*, September 2019, p.2-3

- (487) This situation arises from the fact that, in addition to meeting the accommodation needs of the tourists coming from abroad, the agencies offering incoming services provide various other services in many areas such as meeting the tourists arriving through the tour operator at the airport, providing airport-hotel transfers, providing tour and shopping services, and providing hotel-airport transfers at the end of the holiday. Agencies providing incoming services offer all of these as a package to their contracted tour companies, and tourists abroad purchase all these, as well as services such as transportation to Türkiye, etc., in a bundle from tour companies abroad. Thus, agencies providing incoming services sell packages to the tour companies abroad by adding a certain profit margin on top of the prices they receive from hotels and their costs for the other services they provide. Therefore, it is considered unlikely that the provisions that allow those agencies receiving services from CO DMC to receive best price guarantees from hotels would lead to a decrease in price competition and to price rigidity in terms of its implications for final consumers.
- (488) Another theory of harm for MFC clauses is that they facilitate cooperation and cartels in the market. Since CO DMC is a structure that includes rival undertakings, it is conceivable that the MFC clauses may play a role in facilitating cooperation. This is because the fact that all agencies receiving services from CO DMC benefit from the same prices from the hotels from which they procure services will lead to at least one cost item becoming more similar. On the other hand, it should be noted again that since these agencies operate in the field of incoming services, they are in price competition for the prices to be quoted to tour operators abroad. Therefore, as evaluated in the previous section with respect to some of the agencies in question, an agreement that restricts the competition between the parties would have direct effects on tour operators located and working abroad, as well as indirect effects on the consumers located abroad, and therefore should fall outside the scope of Article 2 of the Act no 4054.
- (489) Another consequence of MFC clauses is that they create barriers to entry and lead to exclusion from the market. Indeed, by virtue of this clause, the buyer benefiting from the MFC guarantees the lowest possible price in the market. In particular, if the buyer benefiting from the MFC is in a position of indispensability for the sellers, other buyers can often obtain products at higher prices, since offering lower prices to other buyers can reduce the profit maximization of the seller. Consequently, since both incumbent and potential competitors in the market will never have a competitive advantage, the likelihood that incumbents will be pushed out of the market increases and there may be barriers to entry for potential competitors. However, where the upstream market is sufficiently competitive, competitive harm may not occur as potential competitors will have other alternatives to choose from.
- (490) Examining the total market shares of the agencies receiving services from CO DMC in this context shows that the relevant market share did not exceed (.....), either in 2016 or in 2017. Due to its negligible market share and to the increase in the number of foreign tourists visiting Türkiye¹⁹⁶, CO DMC is not considered to be indispensable for accommodation businesses in the relevant period. In addition, the response sent by CO DMC states that only 27 hotels have signed the agreement in question since 2017. As set out in Evidence-144, these hotels are located in many provinces of Türkiye and are not concentrated in a particular province or region. According to the data of the Ministry

¹⁹⁶ In fact, the number of foreign tourists visiting Türkiye was 25,352,213 in 2016, 32,410,024 in 2017 and 39,488,401 in 2018. (See <http://ttyd.org.tr/Uploadfiles/DocumentFiles/649d10e8-6e78-4c8e-9365-4be6191d539d.pdf> , Accessed: 01.11.2019)

of Culture and Tourism, the number of tourism operation license holding facilities in Türkiye was 3,641 in 2016, while this number increased to 3,771 in 2017.¹⁹⁷ Therefore, the number of hotels in which CO DMC benefits from the MFC clauses is negligible as they constitute a very small portion of the market, and the MFC clauses will not cause this type of competitive concerns since there are many alternatives available to incumbent and potential competitors.

(491) In light of all of the information and assessments above, the agreements between CO DMC and the hotels, drawn up to be valid in 2017 and 2018, are found to fall under the group exemption within the scope of Communiqué No. 2002/2 in the relevant years.

I.5.8. Arguments and Their Assessments

I.5.8.1. EVALUATION OF THE ARGUMENTS REGARDING THE PRE-CO DMC PERIOD¹⁹⁸

I.5.8.1.1. Arguments Submitted by ATMOSFER BALON, DISCOVERY BALON, DORAK HOLDİNG, ANATOLIAN BALON, TÜRKİYE BALON, KAPADOKYA BALON, RAINBOW BALON, SULTAN BALON, SKYWAY BALON, BROTHERS BALON, EZEL BALON, ROYAL BALON ISTANBUL BALON, UNIVERSAL BALON

(492) The argument that the activities carried out in the period before CO DMC were not a process of cartelization but of cooperative conversion; that balloon businesses were in a financially difficult situation due to the sectoral crisis in 2016; that these initiatives intended to discuss what could be done about the effects of the crisis environment Türkiye's tourism found itself in due to terrorist attacks during 2015-2016 and to establish a cooperation that would enable the country to earn foreign currency inflow again; that these initiatives were carried out with the encouragement and participation of the administrative authorities; that no competitively sensitive information was shared, there was no discussions about prices or efforts to fix prices; that Balon A.Ş. was not established; that no future decisions were taken and put into practice.

(493) Evidence-15 includes a presentation from the meetings held during the cooperative process, and under the heading "What kind of a union?", the presentation includes the following statements: "Gradually raising the unit fee of the balloon customer, selling the balloon at its value by setting a base price, determining commission amounts to prevent balloon sales at different prices," and "Penalizing those who do not comply with the fee rules through compensation." Again, the text of the memorandum in Evidence-26 reads has the provision, "45. *Ballooning companies agree to borrow from Balon A.Ş. € (...) for standard flights, € (.....) for comfort flights, and €(.....) for deluxe flights per passenger they send to the pool.*" Therefore, it is clear from the evidence that the initiatives during the cooperative formation period went beyond the purpose of discussing sectoral problems and turned into a cartel organization.

(494) It is considered that there was an exchange of competitively sensitive information until the maturation of the memorandum of understanding, and therefore, undertakings would not be able to act completely independently from this information. Moreover, there is no

¹⁹⁷ <https://yigm.ktb.gov.tr/TR-9860/turizm-belgeli-tesisler.html>

¹⁹⁸ In their first written pleas, LE CO DERİ, CO DMC, PİENTİ, İTİR, KRİZANTEM, DELUKS, OPULENTİA and GNM have also raised arguments to the findings regarding the period before CO DMC similar to those given under this heading. Considering that these undertakings were not found to be parties to the infringement in the period before the CO DMC, it is not deemed necessary to make a separate assessment for these undertakings beyond the explanations made for the arguments herein with respect to the relevant period in general.

evidence that the undertakings explicitly stated that they disagreed with and opposed the points under discussion.

- (495) In Evidence-27, sent after the fifth meeting held on 06.03.2017, it is stated that “*The agency price envisaged for after April 1, 2017, is (.....) EU, and the selling price is (.....) EU. As it has not been officially finalized yet, our current projection as the companies in general is that no prices should be given for April and beyond, and no advance reservations should be accepted.*” Thus, it is made clear that future prices were discussed among the hot air balloon companies in the meetings held before this date. Consequently, the undertakings' arguments that no price fixing was discussed in the relevant meetings and that no competition-sensitive information was shared do not reflect the truth.
- (496) In some cases, the demand for the products of an industry may decrease unexpectedly. As a result, in the short term, firms may find it difficult to adapt to this crisis. According to the Commission, agreement among the firms in a sector experiencing a structural crisis to take certain measures will not be considered an infringement only if the method chosen is on sound legal basis.¹⁹⁹
- (497) Looking at the foreign practices on crisis cartels, it is observed that the “crisis cartel” argument is not accepted in the US. In the EU, the acceptance of this argument is very, very exceptional and subject to strict rules. Namely, the agreement should be aimed at reducing overcapacity and should not be accompanied by price fixing and quota agreements. Most importantly, undertakings are not allowed to resort to individual measures without the knowledge of the public authorities²⁰⁰. In other words, the Commission asks that horizontal agreements in sectors with excess capacity be notified and that undertakings refrain from making agreements among themselves. In particular, the *Montedipe Decision*²⁰¹ underlines that undertakings should not take decisions among themselves in the event of a sector-wide crisis.
- (498) In the Board's *Ceramics*²⁰² decision, some undertakings argued that the crises in Türkiye had a negative impact on the sector, and therefore, the actions taken by the undertakings did not aim to provide unfair advantage as in cartels but were a struggle for survival and should be tolerated. However, the Board adopted the source EU legislation against these crisis cartel arguments, concluding that the argument failed to meet the necessary criteria.
- (499) In addition, as the Board emphasized in the *Burdur Mechanical Engineers*²⁰³ decision, undertakings presenting sectoral problems as an excuse does not eliminate their liability for acting in violation of the Act no 4054.
- (500) Furthermore, the parties did not submit any concrete evidence to support their argument that the initiatives for the cooperative process were undertaken with the encouragement and participation of administrative authorities. While Evidence-8, Evidence-9, Evidence-11 and Evidence-14 show that the Director of Nevşehir Trade Registry (.....) was one of the recipients of the e-mails in question, there is no information that the relevant

¹⁹⁹ See ÇATALCALI, O.T. (2007), “*Kartel Teorisi İhracat Kartelleri ve Kriz Kartelleri*”, Competition Authority Expert Theses Series.

²⁰⁰ For detailed information, see GREEN, N. and A. ROBERTSON (1997), *Commercial Agreements and Competition Law Practice and Procedure in the UK and EC*, Second Edition, Kluwer Law International, London, U.K.

²⁰¹ Case T-14/89 *Montedipe SpA v Commission* (1993).

²⁰² Decision dated 03.08.2007 and numbered 07-64/794-291.

²⁰³ Decision dated 14.12.2017 and numbered 17-41/640-279.

meetings were held with the encouragement of any administrative authority. In addition, the evidence in which Nevşehir Trade Registry Director (.....) is the recipient does not contain any information/documentation regarding the decisions taken as a result of the meetings. Therefore, it is not possible to agree with the parties' argument that the attempts to establish a cooperation and the decisions taken were encouraged by administrative authorities.

- (501) The argument that the services offered by the balloon businesses operating in the region were not homogeneous in terms of factors such as quotas and quality levels of the baskets and differentiation of catering, and therefore the cost structure of each of them varied; that balloon flights were sold as a package due to the economic integrations in which some companies were involved and they could afford to take losses from hot air balloon activities instead of losing customers if necessary, whereas undertakings who were only active in hot air ballooning could not make sales at loss; that it was therefore impossible for these undertakings to agree among themselves to apply a single price.
- (502) The arguments claiming that it was impossible to apply a single price because the balloon companies operating in the region had different cost structures and could offer varying prices according to different basket sizes and different flight types are not found acceptable. This is because in Article 45 of the memorandum of understanding, which is signed by the officials of the parties and included in Evidence-26, it is clearly stated that *"Ballooning companies agree to borrow from Balon A.Ş. € (....) for standard flights, € (.....) for comfort flights, and €(.....) for deluxe flights per passenger they send to the pool."* Therefore, the parties clearly agreed that different prices could be applied for different flight types during the cooperative conversion period, even if they had different cost structures.
- (503) The argument that structures in the form of cooperatives were not themselves in violation of Article 4 of the Act no 4054; that if the cooperative had been finalized, a single economic integrity would have been formed in which each company would have had equal shares of 4.34%, wherein independent economic entities would have come together; that, ultimately, this transaction would have been a merger within the scope of Article 7 of Act no 4054; that whether this merger would have been subject to the Board's authorization could not be examined since the process had not been finalized; that therefore the process did not reach the stage of notifying the Board, but that the information shared between the parties during the merger negotiations did not have the purpose or effect of restricting competition.
- (504) There is no assessment that the establishment of a cooperative is in violation of Article 4 of the Act no 4054 by itself. Moreover, the important issue under competition law is not whether the undertakings come together under a cooperative, association of undertakings, cooperation agreement, etc., but whether they come together and engage in conduct with the purpose or effect of restricting competition, regardless of legal personality. Indeed, the decision does not address the coming together of undertakings under the roof of a cooperative, but rather the anti-competitive issues discussed and agreed upon during the meetings organized in an attempt to establish a cooperative.
- (505) The argument that, even if the cooperative enterprise could not be considered a failed merger attempt within the meaning of Article 7, the cooperative could still qualify as an association of undertakings or a cooperation between competitors that was not restrictive of competition.
- (506) On the other hand, it is not possible to agree that the establishment of a cooperative could have been considered a merger transaction had it been successfully established.

This is because, in order for a transaction to be defined as a merger/acquisition under competition law, two or more independent undertakings must be transformed into a new undertaking or an undertaking must be wholly incorporated into another undertaking.²⁰⁴ There is no provision in the Cooperatives Law numbered 1163 and in the Turkish Commercial Code No. 6102 stipulating that the parties may become cooperative members by terminating their legal personality during the establishment of the cooperative. Moreover, none of the evidence provided concerning the period in question includes a statement in support of these arguments of the parties; on the contrary, the statements “... Any ballooning company may continue to negotiate and make reservations through its agents,” “Ballooning companies will perform balloon flights depending on the number of slots at the end of the month or the end of the year with the methods to be applied by the cooperative,” and “Ballooning companies will continue to sell balloon rides through their own websites and over the phone,” in Articles 33, 34 and 37 respectively of the memorandum of understanding quoted in Evidence-26, show that the legal personalities and activities of the balloon companies would have been maintained even if the cooperative had been established.

(507) The argument that the issues discussed in the meetings during this process consisted of the sales conditions and prices that would have applied in the future if a cooperative had been established, but the cooperative was never established; that in similar cases the Board preferred to send an opinion pursuant to the Article 9.3 of the Act no 4054 rather than imposing a fine.

(508) The fact that the provisions of the relevant memorandum of understanding have not been put into practice and the entity called Balon A.Ş. or Balon Cooperative has not been officially established does not mean that the agreement reached between the undertakings was not an infringement under Article 4 of the Act no 4054. It is clear that an agreement that restricts competition by object will constitute an infringement of competition within the scope of Article 4 of the Act no 4054, regardless of the extent to which it is implemented or has an effect. Although there are some decisions of the Board where the Board preferred to render an opinion pursuant to Article 9.3 of the Act no 4054 in some cases where it suspected that there might have been a violation of the Act no 4054, these decisions were taken at the end of the preliminary investigation processes where it was evaluated whether launching an investigation was necessary, in the presence of certain conditions in line with the concerns of procedural economy. Due to their nature, these decisions did not rule on whether there was a violation of the Act, but on whether there was a need to launch an investigation, and the fact that an opinion was rendered within the framework of Article 9.3 of the Act does not mean that the Act was violated. On the other hand, an investigation process carried out to determine whether there was a violation of Act no 4054 (under the assumption that the commitment mechanism was not used) requires a final decision to be taken as to whether the Act was violated by the practices subject to the investigation, and it is not a legally correct practice to close the file by rendering an opinion under Article 9.3 of the Act. The circumstances under which administrative fines may be withheld for undertakings found to have violated the Act no 4054 (such as full immunity from administrative fines due to leniency) are regulated separately, and Article 9.3 of the Act is not a mechanism that can be used for this purpose.

1.5.8.1.2. Arguments Submitted by BROTHERS BALON

²⁰⁴ Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control

- (509) The argument that they were the recipients of the e-mails in Evidence-1, 3, 4, 8, 9, 11, 14, 21, 26, 28 and 34, but these were not obtained from their premises; that they were neither the recipients of the e-mails in Evidence-10, 15, 16, 17, 19, 20, 22, 23, 24, 25, 27, 29 and 32, nor these were obtained from their premises; that the excel file in Evidence-35 was not obtained from their premises either; that Evidence-15 and 16 were not obtained from their premises and that they were neither the sender nor the recipient of these e-mails.
- (510) In competition law, the principle of circumstantial evidence applies, and the source of the evidence, the circumstances of its creation, whether it is sound and reliable, and whether it is consistent with other means of proof are taken into consideration in the evaluation of the evidence. In addition, each piece of evidence does not need contain all the elements of the infringement, instead, the evidence obtained from all undertakings are evaluated as a whole to reveal the existence of the infringement and the stages thereof. In this framework, if the evidence obtained from the other undertakings is reliable, the fact that no evidence was obtained from the undertaking found responsible for the infringement does not prevent a conclusion of infringement against the undertaking. As a matter of fact, this approach was adopted in the Board's *Fertilizer*²⁰⁵, *Central Anatolia-Mediterranean-Marmara Cement*²⁰⁶, *Dialysis III*²⁰⁷, *Gaziantep Cement*²⁰⁸ Decisions, stating that it is not necessary to obtain evidence in the inspections conducted at each of the undertakings that are parties to the cartel, and in addition, in the *Central Anatolia-Mediterranean-Marmara Cement* Decision it is stated that due to the secrecy of cartels, it cannot be expected to find evidence in every undertaking, since an approach to the contrary would lead to rewarding the undertaking that is the most successful in destroying the evidence. In the on-site examinations conducted at the undertakings under investigation within the scope of the file, many pieces of evidence were obtained that were created simultaneously by the undertakings that are considered to be direct parties to the infringement. Therefore, considering the source of the evidence and by whom it was created, it is found to be of a reliable nature.
- (511) The argument that they did not attend any meeting in which discussions on cartel formation took place; that, as a matter of fact, they were not among the recipients of the e-mail notifying the fifth meeting mentioned in Evidence-23; that this piece of evidence alone proved that they did not participate in the meetings related to the cartel organization; that, moreover, they did not sign the memorandum of understanding in Evidence-26; that claiming they were a party to the infringement since they were among the recipients of this e-mail was incompatible with the principle of fairness; that although it is stated in Evidence-26 that they would sign the memorandum, this was a unilateral statement by DORAK HOLDİNG; that therefore they showed their objection to the process both by not signing the memorandum and by declaring that they would not participate in the cooperative process as stated in the content of the e-mail in Evidence-28; that the mere fact of being the recipient for some of the e-mails did not indicate that they took a position according to these e-mails; that in fact there was no change in their conduct after the meetings.
- (512) As explained above, taking into account some of the issues stated by the undertaking in its plea, it is concluded that the undertaking was not a party to the infringement in the period before CO DMC.

²⁰⁵ Decision dated 05.01.2006, numbered 06-02/45-7 and dated 26.07.2007, numbered 07-62/738-266.

²⁰⁶ Decision dated 24.04.2006 and numbered 06-29/354-86.

²⁰⁷ Decision dated 23.12.2010 and numbered 10-80/1687-640.

²⁰⁸ Decision dated 30.05.2006 and numbered 06-37/477-129.

I.5.8.1.3. Arguments Submitted by BUTTERFLY BALON and COMFORT BALON

- (513) The argument that they were not among the recipients of Evidence-15, which the investigation committee claimed indicates that price fixing and market sharing issues were discussed in the first two meetings; that neither were they among the recipients of Evidence-16 describing the functioning of the association; that since they did not attend the first two meetings and were not the recipients of the e-mails, it was not possible for them to object to what was discussed in the meetings; that they were not among the recipients of Evidence-17; that what was written in addition to the table in the e-mail in Evidence-20 could be another undertaking expressing its suspicions of an undertaking to the General Coordinator of DORAK HOLDING; that they were not among the recipients of Evidence-20; that the principle of “suspicion benefits the accused” should apply; that the only reason why the memorandum of understanding was signed by BUTTERFLY BALON was to overcome the bottleneck in balloon tourism, which was going through hard times; that the memorandum of understanding was not signed with an aim to act in violation of competition law.
- (514) The fact that BUTTERFLY BALON was not among the recipients of Evidence-15, 16, 17 and 20 is of no importance for the subject matter of the case, since the undertaking has signed the memorandum of understanding in Evidence-26, which is the final text in the cooperative conversion process and contains anti-competitive statements in many articles. Turkish Commercial Law No. 6102 imposes an obligation on every merchant to be prudent in all of its commercial activities. In this framework, it is not possible to agree with the undertaking’s argument that the only reason for signing the text was to overcome the bottleneck in balloon tourism.
- (515) As explained above within the framework of the approach of both the Board and the Commission, the fact that undertakings present sectoral crises or problems as a justification does not eliminate their liability for acting in violation of the Act no 4054.
- (516) The argument that COMFORT BALON was not among the recipients of Evidence-21; that it was not a recipient of Evidence-26 and did not sign the memorandum of understanding; that the worsening situation of the tourism sector in the Cappadocia region should also be emphasized with respect to the efforts of creating the association concerned; that they made their sales by setting their own prices.
- (517) As explained above, taking into account some of the points made by the undertaking in its argument, it is concluded that the undertaking was not a party to the infringement in the period before CO DMC.

I.5.8.1.4. Arguments Submitted by BALON TURCA

- (518) The argument that the meetings held and the e-mails sent by DORAK HOLDING in the period before CO DMC aimed to overcome the difficulties experienced in balloon tourism, but no association or structuring was done based on the consideration that it was not legal; that the whole process was carried out by DORAK HOLDING officials; that the undertakings outside the DORAK HOLDING economic entity did not have any involvement in the organization of the meetings and the establishment of the association, only participating in the meetings; that DORAK HOLDING pursued the aim of monopolization under its own control during this period and that other companies were not aware of this situation; that the evidence were secondary evidence that failed to substantiate the violation; that even if there were signed documents, those were not accepted by them.

- (519) Turkish Commercial Law No. 6102 imposes an obligation on every merchant to be prudent in all commercial activities. The undertaking has undersigned the memorandum of understanding in Evidence-26, which has the characteristics of primary evidence as it directly substantiates the existence of an agreement that clearly fixes prices.
- (520) As explained above within the framework of the approach of both the Board and the Commission, the fact that the undertakings present sectoral crisis or problems as a justification does not eliminate their liability arising from their violation of the Act no 4054. Neither does the fact that the cooperation was created and the decisions during this process were taken under the leadership of DORAK HOLDING change the liability of the other undertakings that participated in the conduct.
- (521) The argument that it was not established that the companies under investigation acted in coordination within a framework agreement or a common plan, and therefore it was necessary to determine whether there was a single ongoing infringement or separate infringements.
- (522) That the undertakings acted in coordination within the framework of an agreement or a common plan has been established with numerous pieces of evidence, and whether there were different violations in the pre-CO DMC and post-CO DMC periods is a separate issue that must be assessed independent of the framework agreement concept.

1.5.8.1.5. Arguments Submitted by KAYA BALON

- (523) The argument that the main purpose of the meetings held in the period before CO DMC was to market the hot air balloon service at the price it deserves; that its goal was to allow the exchange of ideas on which path the companies that faced the risk of going bankrupt after the dismal tourism season should follow and how to implement cooperative conversion; that the organizers of these meetings told them they had consulted with the Competition Authority regarding the issues discussed in the meetings and informed them that there were no legal objections; that therefore, no meetings were held with an aim to violate the competition law.
- (524) Turkish Commercial Law No. 6102 imposes an obligation on every merchant to be prudent in all of its commercial activities. The undertaking has undersigned the memorandum of understanding included in Evidence-26, which is in the nature of primary evidence and which directly reveals the existence of the agreement aimed at price fixing. Therefore, the undertaking, as a prudent merchant, should make its own judgment as to whether there was anything in violation of the Act, rather than relying on third party statements that the negotiations during the cooperative period were not contrary to competition law. In addition, the parties to the investigation did not submit any information/document indicating that they had met with the Competition Authority prior to the investigation, nor is there any application in this respect in the records of the Authority.
- (525) The argument that there was some confusion in the analyses of the number of passengers flying in the region in 2018; that the phrase indicating there were 962,024 flown was incorrect.
- (526) The numerical analyses were prepared in line with the data obtained from all hot air balloon companies operating in the region within the framework of Article 14 of Act no 4054, and the undertakings are legally obliged to provide accurate information. This is because the provision of incomplete, false, or misleading information or documents by the undertakings under Article 14 of Act no 4054 will leave them subject to the imposition

of administrative fines under Article 16.1(c) of the Act. The analyses were conducted under the assumption that the undertakings provided correct answers to the questions posed to them within the framework of their legal obligations. KAYA BALON is one of the undertakings from which information was requested. Moreover, KAYA BALON is the only undertaking to argue that this information is not correct. In this framework, it is considered that the undertaking's defenses are not acceptable.

I.5.8.1.6. Arguments Submitted by ATLAS BALON and VOYAGER BALON

(527) The argument that the hot air balloon market in the Cappadocia region was an oligopolistic market in which the firms were dependent on each other in decision-making processes; that, therefore, the offering of hot air balloon flights at the same price by the firms operating in the region in the pre-CO DMC period was not the result of any anti-competitive agreement or concerted practice, but arose from the market structure; that the presumption of concerted practice cannot be applied in such oligopolistic, transparent markets where the goods and services offered are homogeneous; that an assessment based solely on price parity without any evidence of interaction or exchange of information between the firms would not be in accordance with the Act.

(528) There is no determination made on the basis of price parity; on the contrary, since the information and documents obtained during the investigation process suggest that informality in the sector may be high, price-cost analysis could not be included due to concerns that it might lead to misleading results. For the period before the CO DMC, the assessment was made entirely within the framework of the evidence of communication between the parties. It is thus impossible to agree with the undertakings' arguments. Moreover, in light of the number of undertakings operating in the market, it is considered that the market is not one with oligopolistic dependence.

I.5.8.1.7. Arguments Submitted by ASSIANA BALON

(529) The argument that an information letter sent at the stage of establishing a cooperative that contains the suggestions of others did not reflect the company's opinion and approval; that the expression "Preventing the decrease in prices" in Evidence-19, mentioned as one of the suggestions during the stage of establishing a cooperative was not a proposal for fixing sales prices, but a formula for increasing costs, which it was proposed that the cooperative could ensure by issuing an infrastructure service invoice to its members; that the balloon companies would thus be free in their sales prices, but they would avoid selling below-cost since that would increase their losses.

(530) The statements of the undertaking in Evidence-19 clearly state that the aim was to prevent the prices from going down by fictitiously increasing the flight cost of the balloonist. In this framework, it is not possible to talk about an actual cost increase. Moreover, the undertaking is a signatory to the memorandum of understanding detailed in Evidence-26, which contains provisions regarding the establishment of a joint sales and reservation platform under the name of Balon A.Ş. or Balon Cooperative, where prices would be determined. In this framework, it is obvious that the undertaking agreed with the idea of price fixing, suggested by hot air balloon companies.

I.5.8.1.8. Arguments Submitted by ROYAL BALON

(531) The argument that they were not given the documents mentioned in the annex of the investigation report, and that they reserved the right to submit a more detailed plea after these documents were obtained.

(532) All of the evidence obtained and the documents issued about the undertaking were presented to it on a CD together with the investigation report, with any trade secrets blacked out.

(533) The argument that the request to organize a meeting was communicated to (.....) by the General Coordinator of DORAK HOLDING (.....) in the pre-CO DMC period; that since the content of the meeting was discussing the problems of the sector and (.....) was the chairman of a non-governmental organization, he accepted this request and called for a meeting; that after the failure of that initiative, the meeting was organized by the General Coordinator of DORAK HOLDING (.....) himself; that ROYAL BALON participated in the first two meetings where sectoral problems were discussed; that ROYAL BALON did not participate in the following meetings as it became clear that the conduct might constitute a violation of competition law; that ROYAL BALON expressed its reservations; that these reservations led to the formation of an opinion to ask for the competition law the perspective to competition experts; that after the expert opinion was obtained, ROYAL BALON immediately objected; that although there is no written record of this, ROYAL BALON did not participate in any of the meetings after the second one; that it was in the e-mail group before that but was not among the recipients afterwards; that no decisions taken in these meetings was implemented by ROYAL BALON; that the cooperative failed due to the refusal of some undertakings, including ROYAL BALON, to participate; that ROYAL BALON thus not only did not engage in anti-competitive acts, but also interrupted the performance of them; that participation in the meetings of an association of undertakings alone could not be considered proof of anti-competitive behavior; that the transfer of the burden of proof to the other party after an inference made without any written evidence contradicts the principle that doubt benefits the accused; that the burden of proof lies with the competition authority.

1.5.8.1.9. Arguments Submitted by GÖREME BALON and DELUXE BALON

(534) The argument that they did not participate in the association that was intended to be formed before CO DMC; that they did not sell in accordance with the alleged association prices; that they determined their pricing policy independently; that they were not among the recipients of Evidence-23; that they did not sign the memorandum of understanding in Evidence-26; that they were not sent any e-mail correspondence after 03.03.2017; that they did not attend the meetings; that the undertakings in Evidence-17 were the undertakings that attended the first meeting, and GÖREME BALON was not a recipient of this e-mail.

(535) An official of DELUXE BALON, (.....), is among the recipients of the e-mail in Evidence-17, and is also a shareholder in GÖREME BALON, which is part of the same economic entity. In this framework, it is not possible to agree with the argument that GÖREME BALON was not among the recipients of Evidence-17. However, as explained above, taking into account some of the points raised in the argument submitted by GÖREME BALON and DELUXE BALON, it is concluded that CO was not a party to the infringement in the period before CO DMC.

1.5.8.1.10. Arguments Submitted by AIR KAPADOKYA BALON

(536) The argument that a series of meetings were held under the chairmanship of the Governor of Nevşehir and with the participation of the provincial MPs and the managers of the hot air balloon companies during 2016-2017; that in these meetings, official administrators and MPs advised and encouraged hot air balloon businesses to act in concert when necessary, on matters of developing shared wisdom in the services provided, increasing service quality and customer satisfaction, refraining from causing

losses to the employees and increasing the contribution to the national economy; that it would not be legally acceptable to find that the steps taken as a result of this advice and encouragement provided by representatives of official institutions and organizations were anti-competitive.

- (537) The undertaking did not submit any documents to prove the allegation that a series of meetings were held under the chairmanship of the Governor of Nevşehir and with the participation of provincial MPs, and that the cooperative initiative was the result of the suggestions made at these meetings. Moreover, there is no statement in any of the evidence obtained that can support the allegations in question. While Evidence-8, Evidence-9, Evidence-11 and Evidence-14 show that the Director of Nevşehir Trade Registry (.....) was one of the recipients of the e-mails in question, there is no information to show that the relevant meetings were organized with the encouragement of any administrative authority. Furthermore, the evidence in which Director of the Nevşehir Trade Registry (.....) is the recipient does not contain any information/document regarding the decisions taken in the meetings. Therefore, it is not possible to rely on the undertaking's argument that the attempts to establish a cooperative and the decisions taken were based on the encouragement of administrative authorities.
- (538) The argument that the Evidence-34 sent by them should not be considered anti-competitive; that the companies were looking for a solution due to the decrease in the number of tourists in 2017; that the e-mail in question merely intended to communicate the situation to SHGM.
- (539) The evidence obtained within the scope of the case must be considered from a holistic perspective. No infringement was established solely on the basis of Evidence-34, and Evidence-34 was only considered to be evidence of communication that shows the hot air balloon companies' search for a solution to the bad situation of the sector in a different way, due to the failure of their efforts to establish a cooperative.

I.5.8.1.11. Arguments submitted by THK BALON

- (540) The argument that THK BALON was unaware of the e-mails sent in the period before CO DMC since they were not sent to the corporate e-mail address used by THK BALON; that they became aware of the e-mail address thkbalon@gmail.com through the investigation report; that they did not respond to any of the e-mails; that an examination of the relevant e-mails shows that Director of the Nevşehir Trade Registry (.....) was one of the recipients; that, therefore, even if there was an anti-competitive formation concerned, this issue was within the knowledge of Director of the Nevşehir Trade Registry Directorate; that in the relevant period, THK BALON did not conduct balloon flights on its own but chose to lease the balloons collectively; that it was impossible to talk about a concerted practice when the prices of the other undertakings in the market are compared to the prices when THK BALON conducted its own flights or when THK BALON's balloons were leased by another undertaking.
- (541) The use of an undertaking's corporate e-mail address is not a requirement for an undertaking to be held responsible for a violation. This is because even if the e-mail address in question is not the corporate e-mail address of the undertaking, there is a possibility that it may be another e-mail address used by the undertaking.
- (542) As stated in the plea submitted by the undertaking, the e-mails were sent to the address thkbalon@gmail.com, and there is no e-mail indicating that the undertaking responded to these e-mails.

- (543) In Evidence-8, Evidence-9, Evidence-11 and Evidence-14, Director of the Nevşehir Trade Registry (.....) appears to be one of the recipients of the e-mails, but the e-mails only contain information on the dates, locations and participants of the parties' meetings. The e-mails in which the decisions taken as a result of the meetings are shared do not include any employee of Nevşehir Trade Registry Directorate. Therefore, it is not possible to agree with the undertaking's argument that *"even if there was an anti-competitive formation concerned, this issue was within the knowledge of Director of the Nevşehir Trade Registry Directorate"*.
- (544) Another point of note is that THK BALON did not have any lease agreement concerning balloons in force during the period before CO DMC. In fact, in the response letter of the undertaking, which was entered into the records of the Authority on 19.03.2019 with the number 1964, it is stated that the hot air balloons *"were leased to Saray Turizm Havacılık ve Yer Hiz. San. Tic. Ltd. Şti. between March 04, 2014, and July 17, 2016, to Şeref Tur. Org. İnş. Petrol Sağlık Film İç ve Dış Tic. Ltd. Şti. between February 12, 2018, and February 12, 2019... About the period between July 17, 2016, and February 12, 2018, when they were operated by us..."*
- (545) The argument that they did not know the identity of "Mr. (.....)", referred to as an official of THK BALON in an e-mail concerning a meeting; that there was no one named Cihan among the authorized persons representing THK BALON at that time; that this proves that the planned actions were unilateral and without the knowledge of THK BALON.
- (546) In Evidence-14, the phrase "Mr. (.....)" can be seen written in the expected participant column for THK BALON. The undertaking states that they did not have an employee named "(.....)" at that time. However, during the investigation process, the computer and desk of the SGHM Coordinator (.....) at THK BALON were examined on 04.12.2018. In addition, the information request letter of the Authority asked *"for a clarification regarding the duties and jurisdiction of "Mr. (.....)", who is noted as the representative of your company in the invitation list in the e-mail included in Finding-10 in the Investigation Notice,"* and the response sent by the undertaking and entered into the records of the Institution on 22.03.2019 with the number 2107 states that *"Our Personnel (.....) acted as a Balloon Operation Officer, who acted under the orders and directives of the Responsible Manager and did not have signature and decision authority on the aforementioned dates."*
- (547) The argument that if their pleas were not deemed reasonable, they should be allowed to benefit from the exemption provisions set out in Article 5 of the Act no 4054, since they enabled consumers to purchase tickets at lower prices, and therefore fulfilled the condition of "consumer benefit" in subparagraph (b).
- (548) As explained above, taking into account some of the issues stated by the undertaking in its plea, it is concluded that the undertaking was not a party to the infringement in the pre-CO DMC period. Nevertheless, it should be emphasized that the assessments above concluded that the agreements involving price fixing and market sharing would not benefit the consumer.

1.5.8.1.12. Arguments Submitted by ÜRGÜP BALON

- (549) The argument that the meetings held during the cooperative conversion period were not attended due to anti-competitive conduct; that there were also discussions about prices in these meetings, but the draft cooperation text was only signed on the assumption of a formation intended to solve the sectoral problems; that the decisions taken as a result of these meetings did not result in any price regulation or competition-sensitive

information exchange on the side of ÜRGÜP BALON; that ÜRGÜP BALON severed its ties with these meetings and endeavored to reflect its own strategies onto the field when the meetings evolved into competition infringement; that ÜRGÜP BALON noted some developments in the region outside of them in Evidence-72; that that they clearly declared they were outside this formation as ÜRGÜP BALON and therefore they did not agree with the finding that there was no evidence to show their opposition to the purpose of price fixing or that they would not take part in the formation.

(550) In the attachment to Evidence-15, which is an internal correspondence of ÜRGÜP BALON, there is a presentation made at the meetings organized for cooperative initiatives, and in the relevant presentation, the objectives of the association planned to be established include gradually increasing the unit prices and selling the balloon rides at their value by setting a base price. Similarly, in the e-mail sent by the undertaking to an agent in Evidence-25, it is stated that “*The prices are likely to be fixed with a slight increase.*” In addition, the undertaking’s signature is on the memorandum of understanding in Evidence-26, which explicitly fixes prices. The relevant text is shared with ÜRGÜP BALON officials in Evidence-27, and it is stated that the agency price for the period after April 1, 2017, was EUR 110 and the sales price was EUR 175. It is not possible to rely on the argument that the undertaking, after participating in all these processes, severed its ties at the stage where the meetings evolved into an anti-competitive situation and chose to determine its own strategies. Moreover, Evidence-72 where, according to the undertaking, it explicitly declared that it was not a part of the formation, is related to the CO DMC period and it is concluded that the undertaking was not a party to the infringement during this period. In this framework, since there is no evidence that the undertaking opposed the purpose of price fixing at any stage in the period before CO DMC, and on the contrary, it is clear from the evidence that it was involved in the whole process until the failure of the cooperative and had signed the memorandum of understanding, it is not possible to agree with the arguments submitted by the undertaking.

I.5.8.2. EVALUATION OF THE ARGUMENTS REGARDING THE CO DMC PERIOD

I.5.8.2.1. Arguments Submitted by DORAK HOLDİNG, LE CO DERİ, CO DMC, PİENTİ, İTİR, KRİZANTEM, DELUKS, OPULENTİA, GNM, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, TÜRKİYE BALON, ANATOLIAN BALON and DISCOVERY BALON

(551) The defense that the platform established under LE CO DERİ/CO DMC was independent from the cooperative initiatives under the name of “solidarity in ballooning;” that the period of the cooperative establishment initiatives and the period of the platform established under LE CO DERİ/CO DMC should be evaluated separately from each other.

(552) The pre-CO DMC period and the CO DMC period were evaluated separately. However, it was found that the undertakings that were parties to the infringement both in the pre-CO DMC period and in the CO DMC period acted with the same purpose in both periods; that after the failure of their attempts in the pre-CO DMC period, same type of attempts were made during the CO DMC period; that their goals were similar in both periods; that the undertakings restricted competition in both periods for the same product and geographical market with similar conduct related to the same competitive parameters; that therefore their conduct pre- and post-CO DMC could not be assessed completely independent of each other and were partially integrated, with the conclusion being there

is no need to determine two separate infringements for these undertakings or to impose two separate fines.

- (553) The argument that the platform concerned, which was a reservation platform, was established as a separate legal entity independent from all balloon businesses and took over hot air balloon flight capacities for a short period of two years through agreements concluded with ballooning companies; that in this respect, the platform was independent from balloon businesses and tourism agencies and managed to increase its market efficiency in various ways; that the platform held the pricing authority; that in light of the fact that the duration of the agreements concluded between the balloon businesses of the end customers and the platform was two years, it was not possible to claim that the platform changed the structure of the market with severe and long-term binding agreements or permanently; that the platform had the nature of a horizontal cooperation agreement and cannot be considered a cartel; that this is in line with the Board's case law (Erzincan Ready-Mix Concrete, PADOK, Hyundai Dealers, Mediterranean Cement Producers Decisions).
- (554) For the purposes of Article 4 of the Act no 4054, the concept of agreement revolves around the existence of a consensus between the parties, and it does not matter in what shape or form it appears. A joint sales platform was established for 55% of the slots in the relevant market with two-year lease agreements LE CO DERİ and CO DMC signed with some of the hot air balloon companies. As shown by a number of documents obtained during the course of the investigation (e.g., Evidence-65, 71, 85, 94, 107), the joint sales platform was found to have fixed the agency prices as well as the final sale prices of balloon flights.
- (555) The Regulation on Fines defines cartels 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.”* Accordingly, agreements between competitors on price fixing etc. are defined as cartels. When the evidence obtained within the scope of the file is examined as a whole, the functioning of the joint sales platform established under the name of CO DMC, which includes price fixing, can be seen as an incorporated cartel with a complex structure.
- (556) On the other hand, as discussed in detail in the relevant sections of the decision, the roles of the agencies and hot air balloon businesses associated with the platform are beyond what is expected from a mere lease agreement in light of the evidence available in the file. Rather than a commercialization agreement between competitors for the sale, distribution or promotion of substitute products, the platform is a cartel that was initially formed between the competitors, and then incorporated the hot air balloon companies, which are vertically related undertakings, to enable the sale and marketing of the service offered at a single price. As stated in the Guidelines on the General Principles of Exemption, it is accepted that an agreement involving price fixing would significantly restrict competition in a legal and economic sense by its very nature and it would be highly unlikely to create economic benefits to eliminate its negative effects on competition. This is because a price-fixing horizontal agreement reduces consumer welfare by limiting output, causing inefficient use of resources, and at the same time unreasonably raising prices in the relevant market.
- (557) Therefore, it is not possible to agree with the arguments that the platform was a horizontal cooperation agreement and that the undertakings forming the platform were merely resellers.

- (558) On the other hand, the parties claim that the lease agreements were valid for a short period of time of just two years, and thus it was not for them to create a permanent effect on the market. First of all, it should be noted that the creation of a long-term and permanent effect on the market is not one of the elements for a competition violation to be considered a cartel; instead, this is a matter that can be relevant during the assessment of the fine. In cartel cases where Article 4 of the Act no 4054 is deemed to be violated by object, it is concluded that there is a violation regardless of the extent to which the agreement is realized or has an effect.
- (559) The argument that since the platform is a horizontal cooperation agreement, it should be evaluated under the individual exemption in Article 5 of the Act no 4054; that the condition in Article 5(a) of the Act was met for the platform as it (i) ensured operational security, (ii) eliminated collection risks, (iii) ensured ride safety, (iv) increased predictability in the market to ensure effective capacity utilization, (v) created cost advantages for balloon businesses; that the efficiency gains were passed on to the consumers, as made clear by the fact that the number of foreign tourists coming to the region taking hot air balloon rides reached historical highs in 2018, during the operation of the platform; that was no restrictive effect on competition in the market; that the market did not have a single price; and, in this respect, all the conditions listed in Article 5 of the Act were fulfilled.
- (560) It is evaluated that the agreement with price fixing comprising the subject matter of the file is in the nature of a cartel and violates Article 4 of the Act no 4054 by object. The Act no 4054 does not contain a regulation excluding certain types or types of agreements restricting competition from the protection of Article 5. In theory, all agreements and provisions restricting competition that meet the conditions listed in Article 5 may enjoy the exemption. However, it is very unlikely that agreements that are assumed to significantly restrict competition due to their legal and economic nature and unlikely to create economic benefits that will eliminate their negative impact on competition would be able to meet the conditions for exemption.
- (561) Cartel agreements are the foremost types of anti-competitive agreements prohibited in competition law. In practice, this is usually implemented through price fixing, restriction of supply, market allocation, customer or region allocation, collusive bidding in tenders or a combination thereof. Although cartels restrict competition, they do not produce any tangible compensatory benefits. On the contrary, they harm consumers and society by raising prices above the competitive level. As a result of the price increase, consumers are either completely unable to purchase the service or are forced to purchase the same goods or services at higher prices. In this way, there is a decrease in consumer welfare and thus social welfare, while only the welfare of cartel members increases.
- (562) The platform leases flight capacities of 14 companies in total and offers them for sale at a single price. The relevant agreement/concerted practice creates no new development or improvement in the provision of the service, and neither does it lead to consumer benefit since there is a decrease in consumer options and an increase in prices. As suggested consumer benefit resulting from the platform created, the parties could only offer the fact that the number of foreign tourists coming to the region and taking hot air balloon rides reached quite high levels in 2018 and that Turkey came to provide the world's largest operation in this field. It does not seem possible to directly associate the increase in the number of tourists coming to the region with balloon flight services. This is because it is well-known that the number of tourists visiting a country is affected by many factors such as the conjuncture of the country, its relative price levels, its

perception, etc. On the other hand, the parties failed to provide any concrete data indicating that consumers could not safely utilize the balloon flight services before the platform was established. Within the framework of the regulations made by the SGHM, consumers could safely enjoy balloon flight services before the platform was established as well. During the examinations and interviews conducted within the scope of the file, no evidence was obtained to indicate that consumers could not benefit from balloon flights in a safe and predictable manner before the establishment of the platform in question.

- (563) As a result, the benefit resulting from the cartel formed by the parties to the investigation is entirely in favor of the cartel members, and there is no benefit passed on to the consumers. In addition, within the framework of the agreement between the parties, competition is eliminated in a significant 55% of the relevant market. Therefore, it is concluded that the agreement/concerted practice should not benefit from exemption.
- (564) The argument that an opinion letter could be sent under Article 9.3 of the Act no 4054, in light of the nature of the structure created.
- (565) The explanations on why Article 9.3 of the Act no 4054 is not applicable to the current file were given above.
- (566) The argument that under the Competition Authority, EU, German caselaw, it is possible to characterize structural and contractual ties between groups of persons as a single undertaking due to their common interests and habits to act jointly in the market; that when evaluated from this perspective, the platform partners had a unity of interest due to economic and structural ties; that it would be appropriate to evaluate the aforementioned companies within a single economic entity in this sense and characterize them as a single undertaking; that if the platform founders were characterized as a single undertaking, the cartel allegations would be invalid since the partners that created the platform were acting as a single undertaking it would be impossible to exchange competition-sensitive information between these undertakings; that even if where they were not considered a single undertaking, the exchange of information between the parties did not go beyond what was necessary to operate the platform; that the information contained in the documents could not be considered competition-sensitive information due to the transparency of the market and the public availability of the platform prices.
- (567) What is characterized as a complex structure is the structure created by the parties with an aim to violate competition. It is not possible to talk about complex shareholding structures or economic ties between the undertakings before the formation of this structure. The parties involved in the infringement have established contractual relationships to ensure the sustainability of this structure. However, it is clear that these contractual relationships between the parties would not be sufficient to consider the parties a single undertaking. This is because the economic ties between the parties arose for the first time within the framework of the creation and maintenance of the competition infringement; the parties did not have any structural and economic unity of interest prior to the competition infringement. In the pre-infringement period, the undertakings continued their activities as competitors.
- (568) Since it is clear that the structure was established with an aim to violate competition under the evidence collected within the scope of the file, it does not seem possible to assess the agreements and expenditures between parties, which did not exist before and which were intended to realize an illegal purpose, within the framework of unity of interest as adopted in the case law. Moreover, the travel agencies that established the

platform continued their tourism activities other than balloon sales, and some of the hot air balloon companies in the platform continued their activities, all independent of each other. In this respect, the common interests between the parties differs significantly from the concept of unity of interests stated in the case law, and that the economic ties and common interests between the undertakings only existed within the framework of the anti-competitive structure. Therefore, it is impossible to agree with the argument of the parties that they should be considered a single undertaking.

(569) In addition, the parties argue that even if they cannot be considered a single undertaking, the exchange of information between the parties did not exceed what was necessary for the operation of the platform, and that the information in the documents could not be considered competitively sensitive due to the transparency in the market and the public availability of the platform prices. First of all, there is no inference that the parties violated competition by exchanging information beyond the operation of the platform in what is referred to as the post-CO DMC period. The findings regarding the information exchange during this period, as claimed by the parties, are presented in the section titled “*Assessment of the Relationship between the Hot Air Balloon Companies in CO DMC with the Platform in Question and Their Activities*”. This section establishes that the hot air balloon operators in the platform were aware of the final sales price determined and communicated it to their customers. These issues constitute the basis for the findings concerning what role the role played in the infringement by the hot air balloon operators in the platform.

1.5.8.2.2. Arguments Submitted by BROTHERS BALON

(570) The argument that none of the evidence was obtained from BROTHERS BALON and that they were not a party to the notifications mentioned in the evidence.

(571) A response to this argument was given in the section above where the arguments submitted by BROTHERS BALON were evaluated.

(572) The argument that the CO DMC platform and LIONCOX offered an attractive offer to lease the balloons of their companies during crisis periods in Cappadocia tourism; that the offer included flight and occupancy guarantees; that a minimum price was guaranteed even if the flight could not be made or full occupancy could not be achieved; that BROTHERS BALON considered it rational to be included in this system where it was guaranteed to make money²⁰⁹.

(573) This argument shows that the undertaking took part in the violation since it accepted an offer that was in line with its commercial interests, and it does not change the liability of the undertaking under Article 4 of the Act no 4054. In addition, it should not be ignored that undertakings have an obligation to act prudently so as to foresee any possibility of illegal consequences of their behavior while taking actions in accordance with their commercial interests.

(574) The argument that the undertaking had no say on under what conditions, with whom, with which agency and at what price the platform engaged in sales and marketing; that it had already leased some of its capacity to the platform and collected the lease money; that the findings are only related to flight operations and did not have any information on the formation of a cartel; that BROTHERS BALON leasing some of its flights did not prevent it from making independent sales at different prices or doing business with other

²⁰⁹ Since SKYWAY BALON, ISTANBUL BALON, UNIVERSAL BALON and COMFORT BALON's first written plea made similar arguments, the explanations made herein are also applicable for these undertakings.

tourism agencies; that they served their own customers at different prices via walk-in sales.

- (575) This argument is discussed in detail in the section titled “*Assessment of the Relationship between the Hot Air Balloon Companies in CO DMC with the Platform in Question and Their Activities.*” As stated in the relevant section, it was found that CO DMC had a 97% share in the breakdown of the undertaking’s sales by sales channels in 2018, that 656 reservation records²¹⁰ were entered into the platform on behalf of the undertaking between February and October 2018, that the balloon companies included in the platform were aware of the final sales information determined by the cartel in light of the evidence collected, and that it was not possible for these companies to act independently from the cartel price in terms of their independent sales.
- (576) The argument that BROTHERS BALON leased its flights for its own interests and not for the cartel purposes of the company or platform with which it has concluded an agreement; that therefore it should not answer for the assessment that the agreements have transformed into an instrument for the conduct aimed at fixing hot air balloon prices; that the evaluation of the rental fees as a share of the profit planned to be obtained by the cartel is not based in facts and has no legal validity.
- (577) When assessing whether an agreement restricts competition by object, the content of the agreement, the goals it seeks to achieve, and the economic and legal framework in which the agreement takes place should be taken into account; relying exclusively on the wording or headings of the agreement would be incompatible with the purpose of competition law.
- (578) It would not be accurate to consider these agreements as lease agreements in the usual sense, based on the wording of the title. In a standard lease agreement, the party that leases the product it owns should be expected to transfer its marketing and sales rights on the leased product and terminate its activities in this regard. However, it is clear that the hot air balloon companies that signed these agreements, including BROTHERS BALON, did not completely terminate their activities after leasing their balloons to the platform, they were able to play an active role in the operation of the platform, they had access to competition sensitive information during the operation of the platform, and they had the opportunity to use this information in their independent sales. In this respect, it was not possible to agree with the arguments submitted by the party concerned.

1.5.8.2.3. Arguments Submitted by COMFORT BALON

- (579) The argument that Ali YAVUZ, who is also a shareholder of BUTTERFLY BALON, took over the shares of COMFORT BALLOON on 01.08.2018; that the agreement covering the period between 12.02.2018 - 11.02.2020 for the provision of flight services by PİENTİ for a certain fee provided that the operation rights of the hot air balloons owned by balloon firms stayed with those firms was signed by COMFORT BALON before acquisition of its shares by Ali YAVUZ; that there were attempts to terminate the agreement, but this was not possible due to commercial relations and a new agreement was signed; that after the acquisition a new agreement was signed between COMFORT BALON and PİENTİ for the period between 01.09.2018-31.03.2019 and the agreement previously signed by the parties to cover the period of 12.02.2018-11.02.2020 was terminated; that the agreement signed after the transfer of shares reduced the number of slots given to PİENTİ from three to two and the duration of the agreement was

²¹⁰ Including those days canceled by SHGM and flights canceled by the parties.

shortened by 11 months; that Ali YAVUZ was not aware of the association; that he saw the service procurement agreement between COMFORT BALON and PİENTİ as an agreement signed only with PİENTİ; that he did not know there was any relationship between PİENTİ and CO DMC; that he tried to terminate the service procurement agreement in question despite this and attempted achieve this goal (by shortening the duration of the agreement and reducing the number of slots).

- (580) As stated in the decisions of the 13th Chamber of the Council of State²¹¹ and the Plenary Session of Administrative Law Chambers²¹², Turkish law adopts the principle of universal succession for the acquisition of transferable rights or obligations of one legal subject to another legal subject and for determining liability, with the general arrangement concerning universal succession for commercial companies included in Article 151 of the Turkish Commercial Law. According to the provisions of the aforementioned article, in mergers or acquisitions, the newly established or acquiring undertaking is responsible for the rights and debts of the acquired undertaking. According to the same decisions, since the competition infringement continued after the acquisition, it is not against the law to hold the acquiring party liable pursuant to the principle of succession.
- (581) From this point of view, it is not possible to agree with the argument. This is because the relevant agreement was maintained by the acquiring undertaking, albeit with a shortened duration. Reducing the number of slots or shortening the duration of the agreement does not change the fact that the undertaking was a party to the infringement.
- (582) At the same time, it is not possible to agree with the undertaking's argument that it was not aware of a relationship between PİENTİ and CO DMC, either. Interviews were conducted with all balloon companies on the CO DMC platform. Moreover, as stated by the undertakings, the undertakings in the market were aware of the process of establishing the platform, and PİENTİ is a well-known undertaking that had been operating in the region for a long time. Moreover, even if it is assumed that the undertaking was unaware of the relationship between PİENTİ and CO DMC, with a little care and effort, it could have learned that PİENTİ is one of the partners of CO DMC, as this information is openly available in public places such as the Trade Registry Gazette²¹³. In this respect, it is found that the undertaking did not fulfill its obligation to act prudently.

1.5.8.2.4. Arguments Submitted by BALON TURCA

- (583) The argument that the balloon companies were not aware of the activities of DORAK HOLDİNG; that their only purpose was to eliminate their own losses; that during the crisis in tourism in 2016 and 2017, most balloon companies had to perform empty flights with sandbags when necessary, in order not to lose their flight rights; that they leased some of their slots in 2018 because they were guaranteed occupancy.
- (584) This argument shows that the undertaking took part in the violation since it accepted an offer that was in line with its commercial interests, and it does not change the liability of the undertaking under Article 4 of the Act no 4054. Furthermore, as discussed in detail in the section titled "*Assessment of the Relationship between the Hot Air Balloon Companies in CO DMC with the Platform in Question and Their Activities,*" it is

²¹¹ Decision dated 25.03.2008 and numbered E:2006/2437, K:2008/3350

²¹² Decision dated 06.03.2013 and numbered E:2008/3084, K:2013/793

²¹³ Trade Registry Gazette dated 01.08.2017.

understood that the undertaking did not fully terminate its activities by leasing all of its balloons to the platform, had access to the fixed price determined during the operation of the platform, and had the opportunity to use this information in its independent sales.

1.5.8.2.5. Arguments Submitted by KAYA BALON

(585) The argument that there was a written and one-to-one lease agreement between KAYA BALON and another company; that all of the findings in the Investigation Report were between the leased companies and their customers, and occurred without the knowledge of KAYA BALON; that they did not monitor prices and did not engage in monopolization efforts; that the platform had various benefits for them.

(586) This argument shows that the undertaking took part in the violation since it accepted an offer that was in line with its commercial interests, and it does not change the liability of the undertaking under Article 4 of the Act no 4054. “*Assessment of the Relationship between the Hot Air Balloon Companies in CO DMC with the Platform in Question and Their Activities,*” it is understood that it played an active role in the operation of the platform, had access to the fixed prices set during the operation of the platform, and had the opportunity to use this information in its independent sales.

1.5.9.2.6. Arguments Submitted by ATLAS BALON, ASSIANA BALON, EZEL BALON VOYAGER BALON, AIR KAPADOKYA BALON, BUTTERFLY BALON, GÖREME BALON, DELUXE BALON, NAMSAN, TEMPEL, ROYAL BALON

(587) The argument that they did not participate in the alliance formed in 2018, did not take part in the joint reservation and sales platform CO DMC, and did not engage in concerted practices with the other undertakings; for this reason, they did not engage in businesses and conduct that could be considered in violation of the purpose of Article 4 of the Act no 4054.

(588) Since sufficient evidence to conclude that NAMSAN, one of the parties under investigation, participated in the cartel established in the hot air balloon market during the CO DMC period could not be found and since TEMPEL sold its shares in CO DMC and LE CO DERİ a few days after 22.12.2017, which is the date of the start of the violation, and no evidence could be uncovered following the relevant date to indicate it was participating in the cartel, the arguments of these undertakings are found valid.

(589) In addition, during the investigation process, it was found that ASSIANA BALON, AIR KAPADOKYA BALON, ROYAL BALON, EZEL BALON, ATLAS BALON, VOYAGER BALON, BUTTERFLY BALON, GÖREME BALON, DELUXE BALON did not lease their flights to the joint sales and reservation platform operating under CO DMC and/or LE CO DERİ. Moreover, no information and documents were uncovered indicating that the aforementioned undertakings determined their pricing behavior in the market through information exchange or communication with rival undertakings or similar actions after the platform became operational. Therefore, these undertakings were not found to be parties to the infringement during the CO DMC period, and it is concluded that their defenses are valid.

1.5.8.2.7. Arguments Submitted by THK BALON

(590) The arguments that evaluating THK BALON’s pricing behavior during the CO DMC as a reflection their following the cartel price leadership based on the information they obtained from the market did not reflect the truth; that under the agreement signed between THK BALON and GLORIOUS DMC in February 2018 customers were procured by GLORIOUS DMC; that even if there was participation in the activities of the

joint reservation and sales platform carried out under the name CO DMC or another name, this was carried out by GLORIOUS DMC; that the evaluation of THK BALON's pricing behavior as "a reflection of following the cartel price leadership "did not reflect the truth; that THK BALON did not follow cartel leadership to set prices during the period when selling its own tickets; that instead it charged within the framework of its own costs.

(591) The relationship between THK BALON and GLORIOUS DMC was taken into account, and undertakings were not found to be parties to the infringement during the CO DMC period. It was determined that THK BALON did not lease its flights to the joint sales and reservation platform operating under CO DMC and/or LE CO DERİ. In addition, there is no finding that the undertaking's pricing behavior in the market during the relevant period was in violation of the Act no 4054.

I.5.8.2.8. Arguments submitted by AIR KAPADOKYA BALON

(592) The argument that the information and documents shared with the Authority should be evaluated within the scope of the "Regulation on Active Cooperation for Detecting Cartels", considering their importance in the detection of the CO DMC formation.

(593) For a reduction in fines to apply under Article 7 of the Regulation on Fines in light of assistance during the inspections and cooperation in the process, the parties under investigation must provide assistance during the inspection beyond what is required by their legal obligations. It is not possible to say that the parties to the investigation assisted the investigations beyond their legal obligations. The plea did not present any concrete facts to support this argument, either.

I.5.8.2.9. Arguments submitted by ÜRGÜP BALON

(594) The argument that they were not in the association formed in 2018 and this situation was determined; however, they disagreed with the statements that ÜRGÜP BALON increased the price of balloon sales in parallel with the association by taking advantage of the price increase of the association, that it sold at a price scale close to or compatible with the prices of the association, and that it set prices within the framework of the information obtained in previous period negotiations; that ÜRGÜP BALON was not in any cooperation with any undertaking or association in 2018; that it did not sell or transfer its operations or direct customers to the "association platform" in hot air balloon flights; that similar behavior by undertakings operating in a certain market does not necessarily indicate the existence of concerted practice restricting competition; that the close proximity of prices is a natural requirement imposed by the market; that the market has an oligopolistic characteristic in which transparent and homogeneous goods or services are provided.

(595) There is no finding that the undertaking was a party to the infringement during the CO DMC period. Moreover, there is no finding that the pricing behavior of the undertaking in the market during the relevant period violated Act no 4054, either.

I.5.8.2.10. Arguments Submitted by GLORIOUS DMC

(596) The argument that the balloon prices in the Cappadocia region were 45-50 Euros before the establishment of the association, but increased to 80-100 Euros after the establishment of the association; that they were never included in this association but were one of the undertakings that suffered the most harm because of it.

(597) As there was no finding that GLORIOUS DMC was a party to the infringement, no further assessment is deemed necessary.

I.5.8.2.11. Arguments Submitted by ERETNA and CLIMAX

- (598) The argument that they did not have any written agreements with CO DMC; that they did not have formal or informal partnerships with CO DMC either; that they were forced to make a verbal agreement with CO DMC in order to fulfill balloon flight requests from abroad, and in this context, they had to work with all the businesses in the areas where CO DMC provided services; that in order to earn commission income through its businesses, CO DMC informed its contracted hotels that ERETNA and CLIMAX were members of CO DMC by e-mails that included their names, and they were forced to send e-mails to these businesses confirming that they were members of CO DMC in order to provide balloon services.
- (599) As there was no finding that ERETNA and CLIMAX were parties to the infringement, no further assessment is deemed necessary.

I.5.8.2.12. Arguments concerning Other Conduct under Examination

- (600) The arguments submitted by DORAK HOLDING, LE CO DERİ, CO DMC, PİENTİ, İTİR, KRİZANTEM, DELUKS, OPULENTİA, GNM, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, TÜRKİYE BALON, ANATOLIAN BALON and DISCOVERY BALON stated that they agreed with the allegations that the activities of competing agencies were complicated, that some agencies acted together in foreign markets, and with the evaluations regarding the relations of some agencies and CO DMCs with the hotels.
- (601) Since this argument did not include an objection to the findings and assessments made, no further assessment is deemed necessary.

I.5.8.3. Assessment of the Arguments Submitted Regarding the Calculation of the Turnover Used in the Calculation of the Base Fine

I.5.8.3.1. Arguments submitted by DORAK HOLDING, LE CO DERİ, CO DMC, PİENTİ, İTİR, KRİZANTEM, DELUKS, OPULENTİA, GNM, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, TÜRKİYE BALON, ANATOLIAN BALON and DISCOVERY BALON

- (602) The argument that in case the Board imposes an administrative fine, the fine should be calculated based on the turnovers of the undertakings in the relevant product market, not on their total turnovers; that there was no relationship between the activities of the parties in the hot air balloon flight market and their activities in other markets; that in many decisions of the Board²¹⁴ the base fine was determined based on the turnover in the relevant product market.
- (603) The decisions rendered by the 13th Chamber of the Council of State and the Plenary Session of Administrative Law Chambers²¹⁵ adopted an approach based on the concept of gross revenue in Article 16 of Act no 4054 and the power of the undertakings, and therefore, no distinction is made between the elements of gross revenue. Thus, it does not seem possible to base the fines to be imposed on undertakings pursuant to Article 16 only on the turnover obtained in the relevant product market. This point is made clear

²¹⁴ Decisions dated 28.11.2017 and numbered 17-39/636-276, dated 11.11.2010 and numbered 10-72/1503-572, dated 27.10.2011 and numbered 11-54/1431-507, dated 18.3.2010 and numbered 10-24/339-123, dated 15.04.2010 and numbered 10-31/471-175, dated 25.09.2008 and numbered 08-56/898-358.

²¹⁵ Decisions dated 08.05.2012 and numbered E:2008/9080, K:2012/965; dated 09.05.2012 and numbered E:2008/8485, K:2012/968; dated 02.04.2013 and numbered E:2009/3231, K:2013/898; dated 03.03.2014 and numbered E:2010/2661, K: 2014/610.

in the relevant decisions of the Council of State as follows: “... *there is no contradiction with the Act in imposing an administrative fine on the plaintiff company based on its gross revenue without any distinction regarding the type of revenue...*” and “...*the plaintiff company’s claim that it should be fined only on domestic EBT sales is not appropriate.*”

- (604) At the same time, it is observed that the other main operating revenues of the parties in the total turnover do not consist of markets that are completely unrelated to the relevant product market where the infringement occurred, but of complementary markets related to tourism. It is possible to say that the infringement in the hot air balloon services in which the parties participate will affect the other tourism revenues of the undertaking by showing a kind of leverage effect. Therefore, it was not possible to agree with the parties’ arguments.
- (605) The argument that if the Board decides to impose a fine, a reduction should be applied, in light of the fact that the undertakings concerned assisted in the inspections and met the process with cooperation.
- (606) As stated in relation to a similar argument above, it is not deemed appropriate to reduce the penalty on this ground, since it is not possible to say that the parties assisted the inspections beyond their legal obligations during the investigation process, both during the on-site examinations and within the framework of the information letters requested from them.
- (607) The argument that DORAK HOLDING was not a direct party to the infringement in the field of hot air balloon flights, which is the subject matter of the investigation; that DORAK GROUP is a group of companies working in every field of the tourism sector, selling package tours to tourists from abroad as well as operating hotels and restaurants, which is active in a wide range of services from transportation and airport transfer to logistics, and also has businesses operating in the field of balloon flights as part of the tours it provides; that finding a holding company responsible for the violations of the group of companies it controls could reach a point where it is incompatible with the principle of individuality of fines; that in order for a company to be fined for a violation in which it is not directly involved, more than the fact that it had the opportunity to exert a decisive influence on the violator must be demonstrated; that, in this context, the fine should be based not on the consolidated turnover of the DORAK GROUP Economic Entity, but on the turnover of the subsidiaries alleged to have participated in the violation (excluding the turnover of DORAK HOLDING).
- (608) As explained above, in the absence of any involvement of the parent undertaking in the infringement, the attribution of liability to the parent undertaking for the infringement committed by its daughter undertaking is governed by the circumstances in which it is admitted or shown that the parent undertaking exerted a decisive influence on the commercial conduct of its daughter undertaking. However, these considerations are taken into account in those cases where the parent undertaking is not directly involved in the infringement; where the parent undertaking has a direct involvement in the infringement, its liability is inevitable²¹⁶.
- (609) Evidence-2, 4, 5, 6, 7, 8, 9, 10, 11, 14, 20, 21, 23, 26 and 28 for the pre-DMC period, Evidence-39, 42, 43, 53, 57, 58, 68, 80, 82 for the post-CO DMC period make it clear

²¹⁶ The decision of the 13th Chamber of the Council of State dated 16.12.2008 and numbered E:2006/4791, K:2008/7687 also indicates that the parent undertaking will be responsible for its participation in the infringement. For a similar decision of the Plenary Session of Administrative Law Chambers, see the decision dated 11.03.2013 and numbered E:2009/978, K:2013/810.

that the Chairman of the Board of Directors of DORAK HOLDİNG, the Director of Corporate Communications and Business Development and many employees of the holding company were fully aware of the infringement and in some cases corresponded with other undertakings. In this framework, it is concluded that DORAK HOLDİNG directly participated in the infringement both during and before the CO DMC period, and in this respect, there is no doubt that it is liable. Therefore, an administrative fine was also imposed on DORAK HOLDİNG.

- (610) The argument that DORAK HOLDİNG did not hold dominant position in the relevant market and even if it did, its conduct and practices did not constitute abuse; that it is wrong to attribute the market shares of all balloon companies who leased capacity to the platform to DORAK HOLDİNG; that in consideration of the two-year duration of the lease agreements, it cannot be said that the market shares were continuous; that buyer power is an important factor in the assessment of dominant position, and that there was significant buyer power in the market.
- (611) The allegations of obstruction or exclusion examined within the scope of the file are considered as a consequence of the vertically integrated cartel and examined within the scope of Article 4 of the Act no 4054. DORAK HOLDING is not found to hold a dominant position.

1.5.8.4. Arguments Regarding the Definition of the Relevant Product and Geographic Market, and Their Assessment

- (612) The arguments submitted by of DORAK HOLDİNG, LE CO DERİ, CO DMC, PİENTİ, İTİR, KRİZANTEM, DELUKS, OPULENTİA, GNM, KAPADOKYA BALON, ATMOSFER BALON, SULTAN BALON and RAINBOW BALON, note that there are many touristic activities other than balloon tours in the Cappadocia region such as horse riding tours, ATV tours, pottery making, museum tours, historical building tours, wine tasting, valley tours, underground city and regional tours; that domestic and foreign tourists coming to the Cappadocia region have alternative touristic activities instead of balloon tours; that therefore the relevant product market should be defined more broadly to include other touristic activities instead of as the “hot air balloon flight services market”; that there is a significant uncertainty of demand in the market due to political and sociocultural events, meteorological and safety conditions as well as civil aviation legislation and social media impact; that there is also supply constraints due to civil aviation legislation and slot applications; that the transparent structure and development potential of the market should also be emphasized; that the market structure and characteristics were not taken into consideration in this context; that SHGM determined that Burdur-Bucak, Denizli-Pamukkale, Adana-Kozan, Bitlis-Ahlat, Ankara-Polatlı, Afyon-İhsaniye, Eskişehir-Seyitgazi, Samsun-Bafra, Aksaray-İhlara were also suitable for hot air balloon transportation and therefore the relevant geographical market should be defined more broadly.
- (613) As shown by the Evidence in detail, the conduct comprising the subject matter of the file were carried out in relation to hot air balloon flights in the Cappadocia region. The issues raised by the undertakings regarding the relevant market were evaluated in the relevant section of the decision, and it was found impossible to agree with the parties' views on the broader definition of the relevant product market and the relevant geographical market within the framework of the explanations made. On the other hand, in the present case where it is concluded that Article 4 of the Act no 4054 was violated by object, alternative definitions of the relevant market will not change the conclusion reached in terms of the existence of the violation. Besides, the structure and characteristics of the

market in the file do not require or justify the undertakings violation of Article 4 of the Act no 4054.

I.5.9. Assessment of Administrative Fines

(614) Article 16.3 of the Act no 4054 has the following provision: *“To those who commit behavior prohibited in Articles 4, 6 and 7 of this Act, an administrative fine shall be imposed up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations to be imposed a penalty, generated by the end of the financial year preceding the decision, or generated 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.”*

(615) As a result of the examinations and evaluations made within the scope of the investigation, it was decided that

1. DORAK HOLDİNG, ATMOSFER BALON, SULTAN BALON, RAINBOW BALON, KAPADOKYA BALON, and tourism agencies ITIR and KRİZANTEM in the same group
2. İSTANBUL BALON and UNİVERSAL BALON in the same group,
3. ANATOLİAN BALON and DİSCOVERY BALON in the same group,
4. COMFORT BALON,
5. BROTHERS BALON,
6. BALON TURCA,
7. TÜRKİYE BALON,
8. SKYWAY BALON,
9. KAYA BALON,
10. ATLAS BALON,
11. VOYAGER BALON,
12. BUTTERFLY BALON,
13. AİR KAPADOKYA BALON,
14. ASSİANA BALON,
15. EZEL BALON,
16. ÜRGÜP BALON,
17. PİENTİ
18. GNM
19. DELUKS
20. OPULENTİA
21. CO DMC
22. LE CO DERİ

violated Article 4 of the Act no 4054 on the grounds that they participated in agreements/concerted practices aimed at price fixing or market allocation in the period before the joint reservation and sales platform CO DMC in the hot air balloon flight

services market, and/or in agreements/concerted practices aimed at price fixing during the CO DMC period.

- (616) Pursuant to Article 5.1 of the Regulation on Fines, which regulates base fines, when calculating the base fine, for cartels 2% to 4% of the annual gross revenues of the undertakings involved in the infringement as determined by the Board shall be taken as the basis, while this ratio will be between 0.5% and 3% for other violations. In this framework, it is first necessary to assess the legal nature of the violation.
- (617) Article 3 of the Regulation on defines “cartels” 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.*” As explained in the relevant section, it was concluded that the infringement concerned had the nature of a cartel, in both pre- and post-CO DMC periods since there is an agreement/concerted practice aimed at price fixing and/or market allocation involved; therefore, the rate of the base fine to be imposed on the undertakings listed above should be set at 2% to 4% of their annual gross revenues, pursuant to Article 5.2(a) of the Regulation on Fines.
- (618) On the other hand, Article 5.2 of the Regulation on Fines requires that the “*market power [of the relevant undertakings and], the severity of the damage incurred or likely to be incurred as a result of the violation*” be taken into consideration when setting base fines.
- (619) The undertakings that only participated in the infringement during the pre-CO DMC period are ATLAS BALON, VOYAGER BALON, BUTTERFLY BALON, AIR KAPADOKYA BALON, ASSIANA BALON, EZEL BALON and ÜRGÜP BALON. For these undertakings, within the framework of Article 5.2 of the Regulation on Fines, the base fine was determined as (.....)%, taking into account that the cooperative work started in the pre-CO DMC period did not come into fruition as planned and therefore its impact and competitive damage should be considered within this framework.
- (620) Article 5.3 of the Regulation on Fines stipulates that the duration of the violation should be taken into account when setting the base fine. According to the aforementioned provision, the amount of the basic fine shall be increased by half for violations lasting between one and five years, and by one-fold for violations lasting longer than five years.
- (621) From the examination of the evidence above, it is observed that the first meeting before CO DMC was held on 18.01.2017, the second meeting on 30.01.2017, the third meeting on 16.02.2017, the fourth meeting on 24.02.2017, the fifth meeting on 06.03.2017 and the memorandum of understanding with the signatures of a majority of the undertakings listed in Evidence 26 was signed on 10.03.2017, then sent by e-mail on 13.03.2017. Subsequently, it is also observed that some undertakings continued to work on forming a new association and the last mass e-mail was sent on 09.06.2017. Therefore, it is understood that the duration of the cooperative efforts undertaken during the pre-CO DMC period did not exceed six months, even in its most comprehensive form. In this respect, for the seven undertakings listed above, which were only parties to the infringement in the pre-CO DMC period, no increase was made in the rate of the base fine due to the duration of the violation under Article 5.3 of the Regulation on Fines, and thus, their base fine rates were set at (.....)%.
- (622) Articles 6 and 7 of the Regulation on Fines regulate aggravating and mitigating factors, respectively. Within the scope of the file, there is no aggravating factor that would require an increase in the fine under Article 6 of the Regulation on Fines for the undertakings that only participated in the infringement during the pre-CO DMC period. However, the

base fine rates for these seven undertakings were reduced by half within the framework of Article 7.1 of the Regulation on Fines due to their limited participation in the infringement during the CO DMC period and the pre-CO DMC period together. Thus, the final rates of the fines to be applied to ATLAS BALON, VOYAGER BALON, BUTTERFLY BALON, AIR KAPADOKYA BALON, ASSIANA BALON, EZEL BALON, and ÜRGÜP BALON, which only took part in the infringement during the pre-CO DMC period, was determined at (.....)%.

- (623) The undertakings which only took part in the infringement during the CO DMC period were PİENTİ, GNM, DELUKS, OPULENTİA, CO DMC, LE CO DERİ, COMFORT BALON and BROTHERS BALON. Within the framework of Articles 5.1(a) and 5.2 of the Regulation on Fines, the base rate for the administrative fines to be imposed on these undertakings was set at (.....)%, in light of the fact that the cartel in question covered 55% of the hot air balloon supply in the market.
- (624) Since it is concluded that the starting point of the infringement for CO DMC, LE CO DERİ, GNM, DELUKS, PİENTİ, OPULENTİA should be considered the Evidence-40 dated 22.12.2017, it found that the relevant undertakings were parties to the infringement for more than one year and less than five years, and consequently, the base fine rate of (.....)% set for these undertakings should be increased by half in accordance with Article 5.3(a) of the Regulation.
- (625) On the other hand, although it is not possible to identify the exact date on which the negotiation process started for each of the hot air balloon companies, since the nature of the liability under the Regulation on Fines will not change even if the narrowest range of dates is taken into consideration, for BROTHERS BALON and COMFORT BALON²¹⁷, listed among the undertakings above, the dates of 01.02.2018 and 12.02.2018 can be accepted as the starting date of the infringement for these undertakings, respectively, as these are the dates specified by the lease agreements when noting that the agreement would be in force for two years; in this framework, the relevant undertakings were parties to the infringement for more than one year and less than five years.
- (626) As a result, the base fine rate is set at (.....)% for PİENTİ, GNM, DELUKS, OPULENTİA, CO DMC, LE CO DERİ, COMFORT BALON and BROTHERS BALON, which were parties to the infringement only during the CO DMC period. There are no aggravating factors under Article 6 of the Regulation on Fines applicable for these undertakings, and moreover, the rate of the base fines to be imposed on the tourism agencies PİENTİ, GNM, DELUKS and OPULENTİA is reduced by half to (.....)% pursuant to Article 7.1 of the Regulation on Fines, since the infringing conduct had a secondary place within their fundamental operations and the real benefit of the infringement was enjoyed by the balloon operators.
- (627) On the other hand, it is concluded that there is no need to impose administrative fines on CO DMC, since this company did not have any activities in 2020 and therefore did not generate any turnover that year.
- (628) The undertakings that were parties to the infringement both before and after CO DMC period were DORAK GROUP, İSTANBUL BALON, UNİVERSAL BALON, ANATOLİAN

²¹⁷ All shares of COMFORT BALON were taken over by Ali YAVUZ, 33.3% shareholder of BUTTERFLY BALON on 16.08.2018. The parties did not work together after 31.03.2019, which was the end date of the agreement updated after the share transfer. In this respect, it is considered that the undertaking's liability lasted at least between 12.02.2018-31.03.2019, which is longer than one year, which is the lower limit in terms of the Criminal Regulation. In this sense, the responsibility of the undertaking does not differ from other undertakings.

BALON, DISCOVERY BALON, BALON TURCA, TÜRKİYE BALON, SKYWAY BALON and KAYA BALON. As regards these undertakings, it is concluded that they acted for the same purpose in both periods; that following the failure of their attempts before CO DMC, they made similar attempts during the CO DMC period; that their goal was the same in both periods; that in both periods, the undertakings restricted competition by similar conduct for the same product ad geographical markets; that therefore their actions in the period after CO DMC could not be deemed independent of their actions during the pre-CO DMC period; that these actions were partially integrated; and it was decided that it was unnecessary to identify two separate violations and therefore impose two separate fines on these undertakings.

- (629) The base rate for the administrative fines to be imposed on these undertakings other than the DORAK Group was set as (.....)% within the framework Articles 5.1(a) and 5.2 of the Regulation on Fines.
- (630) On the other hand, when setting the fine for the DORAK Group, it was concluded that the Group's leading role in the occurrence of the infringement, as seen in Evidence-4, 6, 8, 9, 11, 14, 15, 16, 20, 21, 23, 26 and 28 from before CO DMC and in Evidence-39, 42, 43, 43, 57, 58, 58, 68, 80, 111 and 116 from the CO DMC period, should be taken into account within the framework of Article 5.2 of the Regulation on Fines, and in this framework, the rate of the base fine was set at (.....)% for the DORAK Group.
- (631) With respect to the undertakings which took part in the violation both before and after the establishment of CO DMC, the rate of the base fines were raised by half pursuant to Article 5.3(a) of the Regulation on Fines, in consideration of the conclusion that the actions of the undertakings concerned showed a level of integration and of the fact that the violation took between 1 to 5 years²¹⁸, even if only the CO DMC period is taken into account. Thus, the rate of the base fine for the DORAK Group was set at (.....)%, and at (.....)% for İSTANBUL BALON, UNİVERSAL BALON, ANATOLİAN BALON, DISCOVERY BALON, BALON TURCA, TÜRKİYE BALON, SKYWAY BALON, and KAYA BALON. There is no reduction or increase in the fine to be imposed on the DORAK Group or on the other undertakings under Articles 6 or 7 of the Regulation on Fines.

D. CONCLUSION

- (632) In accordance with the Report and Supplementary Opinion issued in relation to the investigation conducted pursuant to the Board decisions dated 15.11.2018 and numbered 18-43/687-M, dated 28.03.2019 and numbered 19-13/175-M(1) and dated 18.04.2019 and numbered 19-16/223-M, the evidence collected, the written pleas, the statements made at the hearings and the contents of the file examined,

A- It is decided UNANIMOUSLY that

1. Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş., Kapadokya Balonculuk Tur. Tic. A.Ş., Atmosfer Balonculuk Ticaret Turizm A.Ş., Gökyüzü Balonculuk Hizmet Taşıma Turizm Tic. A.Ş., Sultan Balonculuk Havacılık Tur. Rek. A.Ş., Akben Turizm Seyahat and Ticaret A.Ş., Stüdyo Tur. Taş. ve Tic. A.Ş., all of which are in the same economic entity;

²¹⁸ The dates of participation in the CO DMC platform is identified as 22.12.2017 for SKYWAY BALON, which is the date it received the draft lease agreement; 01.02.2018 for BALON TURCA, KAYA BALON as well as ANATOLİAN BALON and DISCOVERY BALON in the same group, which is the date the lease agreement states that it will go into force for a period of two years; on 12.02.2018 for TÜRKİYE BALON, İSTANBUL BALON and UNİVERSAL BALON, which is the date the lease agreement states that it will go into force for a period of two years.

2. Başkent Havacılık Balonculuk Eğitim Tur. Rek. İnş. Tşm. San. ve Ltd. Şti. and Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş., all of which are in the same economic entity;
3. Uluer Havacılık Turizm ve Ticaret Ltd. Şti. and Discovery Havacılık Turizm ve Tic. Ltd. Şti., all of which are in the same economic entity;
4. AİR KAPADOKYA Balonculuk Havacılık Turizm Reklamcılık A.Ş.,
5. Arıkan Havacılık Ltd. Şti.,
6. EZ-AİR Havacılık Reklamcılık Turizm İthalat İhracat and Tic. Ltd. Şti.,
7. Cihangiroğlu Havacılık Balonculuk Reklamcılık Turizm Taşımacılık ve Ticaret Ltd. Şti.,
8. CO DMC Turizm ve Ticaret Ltd. Şti.,
9. DELUKS Turizm Sanayi ve Tic. A.Ş.,
10. DLX Seyahat Acentalığı ve Tic. A.Ş.,
11. Göktürk Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.,
12. GNM Turizm Ticaret Ltd. Şti.,
13. Han Havacılık Balonculuk Turizm Nakliye ve Tic. Ltd. Şti.,
14. Kapadokya Kaya Balonculuk Hav. Tur. Rek. Ltd. Şti.,
15. LE CO Deri Turizm Ticaret ve Sanayi A.Ş.,
16. Maccan Balonculuk Havacılık Tur. Tic. Ltd. Şti.,
17. Mavi Ay Havacılık Balonculuk Turizm İth. İhr. San. Tic. Ltd. Şti. and
18. Pelikan Havacılık Organizasyon Turizm Rek. Taş. ve Tic. Ltd. Şti.,
19. Samanyolu Havacılık Balonculuk Eğt. Turz. İnş. San. ve Tic. Ltd. Şti.,
20. Sultan Kelebek Tur. San. ve Tic. Ltd. Şti.,
21. Şeref Turizm ve Ticaret Ltd. Şti.,
22. Ürgüp Balonculuk Havacılık Turizm Reklam Ltd. Şti.

violated the Article 4 of the Act no 4054 by participating in price fixing and market allocation during the period before the joint reservation and sales platform CO DMC and/or in agreements/concerted practices aimed at price fixing during the CO DMC period in the hot air balloon flight services market;

B- For these reasons; under Article 16.3 of the Act no 4054 and Articles 5.1(a) and 5.2 of the “Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position,”

1- and, under Article 5.3(a) of the same Regulation, the following administrative fines should be imposed on the undertakings listed below, based on their gross annual revenues generated at the end of the fiscal year of 2020 as determined by the Board:

a) at a rate of (.....)%

1. on the following undertakings within the same economic entity,

- 230.751,55 TL for Dorak Turizm ve Gayrimenkul Yatırımları Holding A.Ş.,

- 60.868,70 TL for Kapadokya Balonculuk Tur. Tic. A.Ş.,
- 93.231,91 TL for Atmosfer Balonculuk Ticaret Turizm A.Ş.,
- 41.482,69 TL for Gökyüzü Balonculuk Hizmet Taşıma Turizm Tic. A.Ş.
- 23.512,17 TL for Sultan Balonculuk Havacılık Tur. Rek. A.Ş.
- 394.569,40 TL for Akben Turizm Seyahat ve Ticaret A.Ş.
- 425.735,86 TL for Stüdyo Tur. Taş. ve Tic. A.Ş.,

b) at a rate of (.....)%:

2. on the following undertakings within the same economic entity,

- 28.014,93 TL for Başkent Havacılık Balonculuk Eğitim Tur. Rek. İnş. Tşm. San. and Ltd. Şti.,
- 88.794,52 TL for Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş.,

3. on the following undertakings within the same economic entity,

- 14.762,95 TL for Uluer Havacılık Turizm ve Ticaret Ltd. Şti.,
- 12.695,50 TL for Discovery Havacılık Turizm ve Tic. Ltd. Şti.,

4. 33.032,21 TL for Cihangiroğlu Havacılık Balonculuk Reklamcılık Turizm Taşımacılık ve Ticaret Ltd. Şti.,

5. 79.244,44 TL for Göktürk Balonculuk Havacılık Turizm Reklamcılık Ltd. Şti.,

6. 120.574,61 TL for Han Havacılık Balonculuk Turizm Nakliye ve Tic. Ltd. Şti.,

7. 120.156,22 TL for Kapadokya Kaya Balonculuk Hav. Tur. Rek. Ltd. Şti.,

8. 62.798,47 TL for Maccan Balonculuk Havacılık Tur. Tic. Ltd. Şti.,

9. 20.061,57 TL for Samanyolu Havacılık Balonculuk Eğt. Turz. İnş. San. ve Tic. Ltd. Şti.,

10. 575.767,37 TL for LE CO Deri Turizm Ticaret ve Sanayi A.Ş.

2- and, under the provisions of Articles 5.3(a) and 7 of the same Regulation, the following administrative fines should be imposed on the undertakings listed below, at (.....)%, by discretion, of their gross annual revenues generated at the end of the fiscal year of 2020 as determined by the Board:

11. 148,195.15 TL for DELUKS Turizm Sanayi ve Tic. A.Ş.

12. 16,398.03 TL for DLX Seyahat Acentalığı ve Tic. A.Ş.

13. 93,410,027 TL for GNM Turizm Ticaret Ltd,

14. 357,506.10 TL for Şeref Turizm ve Ticaret Ltd. Şti

3- and, under the provisions of Article 7 of the same Regulation, the following administrative fines should be imposed on the undertakings listed below, at (.....)%, by discretion, of their gross annual revenues generated at the end of the fiscal year of 2020 as determined by the Board:

15. 12.040,89 TL for AİR KAPADOKYA Balonculuk Havacılık Turizm Reklamcılık A.Ş.

16. 6.554,56 TL for Arıkan Havacılık Ltd. Şti.,

17. 1.614,60 TL for EZ-AİR Havacılık Reklamcılık Turizm İthalat İhracat ve Tic. Ltd. Şti.
18. 12.854,03 TL for Mavi Ay Havacılık Balonculuk Turizm İth. İhr. San. Tic. Ltd. Şti.
19. 928,23 TL for Pelikan Havacılık Organizasyon Turizm Rek. Taş. ve Tic. Ltd. Şti.
20. 27.074,61 TL for Sultan Kelebek Tur. San. ve Tic. Ltd. Şti.
21. 20.902,39 TL for Ürgüp Balonculuk Havacılık Turizm Reklam Ltd. Şti,

4- It is decided UNANIMOUSLY that there is no need to impose an administrative fine on CO DMC Turizm ve Ticaret Ltd. Şti., since it does not have a turnover for 2020

C- It is decided UNANIMOUSLY that there is no need to impose administrative fines on

1. Eretna Turizm İşl. ve Tic. Ltd. Şti. and Planet Turizm Taş. Otel. Yer. Hiz. ve Dış. Tic. Ltd. Şti. in the same economic entity,
2. Göreme Balonculuk Genel Havacılık Reklamcılık Turizm Sanayi ve Ticaret A.Ş. and Özarslan Balonculuk Havacılık Reklamcılık Turizm Ticaret A.Ş. in the same economic entity,
3. Blue Bosphorus Turizm ve Tanıtım Ltd. Şti.,
4. Tempel Turizm Yatırım A.Ş.,
5. Namsan Turizm İşletmeciliği ve Ticaret Ltd. Şti.,
6. Şeref Tur Organizasyon İnşaat Petrol Sağlık Film İç ve Dış Ticaret Ltd. Şti.
7. Royal Balon ve Havacılık İşletmeleri Turizm Tic. A.Ş.,
8. THK Gökçen Havacılık İktisadi İşletmesi

under Article 16 of the Act no 4054, since there is no sufficient information and documents to indicate that the undertakings concerned violated Article 4 of the same Act;

D- It is decided UNANIMOUSLY that LİONCOX, one of the parties under investigation, does not qualify as an undertaking and does not need to be held liable for the violation within the scope of Act no 4054 by UNANIMOUS VOTE

E- It is decided UNANIMOUSLY that the ongoing lease agreements directly concluded between LE CO Deri Turizm Ticaret ve Sanayi A.Ş. and 11 hot air balloon companies as well as the agreements signed between Şeref Turizm ve Ticaret Ltd. Şti., Ses Balonculuk Havacılık ve Eğitim Turizm Tic. A.Ş. and Başkent Havacılık Balonculuk Tur. Rek. İnş. Taş. San. and Tic. Ltd. Şti., which are still in force and which enable working with the platform, should be terminated in order to end the violation and restore the competitive environment; moreover, the joint reservation and sales platform carried out under CO DMC, or any other name should immediately cease its activities,

with the decision subject to review before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.