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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Competition and Inflation – Note by Türkiye**

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This document reproduces a written contribution from Türkiye submitted for Item 12 of the 139th OECD Competition Committee meeting on 29-30 November 2022.

More documents related to this discussion can be found at  
[www.oecd.org/competition/competition-and-inflation.htm](http://www.oecd.org/competition/competition-and-inflation.htm)

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## *Türkiye*

### **RETAIL DECISION OF THE TURKISH COMPETITION BOARD<sup>1</sup>**

#### ***(Supermarket Chains Investigation)***

#### **1. Introduction**

1. It is a well known fact that, competition authorities contribute to fight against inflation indirectly by improving competition in the markets. That is to say, by implementing competition rules effectively, competition authorities aim to prevent artificial price increases and also maintain price reductions by detecting and terminating anticompetitive behaviors of undertakings. Furthermore, enforcement of competition rules also helps to prevent the distortion of price stability by ensuring lower price levels in the medium and long term.

2. However, an economy where inflation prevails, especially if the inflation is triggered by supply or demand shocks, creates heavy workload and challenges for competition authorities in terms of implementing competition rules. Because, in such an economic environment, firms are generally eager to raise prices. It is questionable whether price increases in such periods are legitimate consequences of market conditions or the illegitimate results of undertakings' conduct such as anticompetitive horizontal or vertical agreements and abuses of dominance. Under these circumstances, discerning legal acts from illegal ones is an uphill task for competition authorities.

3. Competition law enforcement during Covid 19 pandemic that caused price spikes in certain goods all over the world, illustrates how all competition authorities around the world including the Turkish Competition Authority (TCA) face abovementioned challenges.

4. Following the Covid 19 outbreak in the world at the end of 2019, and after the first Covid 19 case reported in Turkey in March 2020, supply shortages and extreme price increases were observed in many products, especially in agricultural commodities, food products and cleaning/hygiene supplies. In order to determine whether these supply shortages and price increases resulted from anticompetitive behaviors of undertakings, the Turkish Competition Board (Board) initiated many examinations<sup>2</sup> upon complaints filed with it or on its own initiative. In these examinations, the TCA aimed to build a "holistic approach" and to analyse and assess the production and distribution processes of the related products, the undertakings that play role in these activities, and the relations between these undertakings entirely.

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<sup>1</sup> The Board's decision dated 28.10.2021 and numbered 21-53/747-360.

<sup>2</sup> Concluded investigations in the markets of *mask* (decision dated 20.12.2020 and numbered 20-57/798-355), *fresh fruits and vegetables* (decision dated 26.08.2021 and numbered 21-40/594-289), *lemon* (decision dated 30.09.2021 and numbered 21-46/668-333), *banana* (decision dated 11.11.2021 and numbered 21-55/780-386), *baby food* (decision dated 30.06.2022 and numbered 22-29/483-192), *soft drinks* (dated 07.07.2022 and numbered 22-32/508-205) and ongoing investigations in the markets of *yeast, egg, pasta and industrial ice cream* are examples of these examinations.

5. One of the most crucial examinations initiated in this period is the investigation publicly known as “Retail Investigation”, which was held against Fast-moving Consumer Goods (FMCG) retailers and their suppliers. The investigation is notable for the enforcement of the TCA for several reasons.

6. First of all, the investigation, lasted 19 months<sup>3</sup> and all the process including dawn raids performed during the Covid 19 pandemic and under strict measures taken against the pandemic, is an output of a highly comprehensive, intensive and dedicated work.

7. Additionally, the investigation constitutes a very good reflection of the TCA’s holistic approach mentioned above. Because, previous examinations in the FMCG retail sector only focused on interactions between rival retailers. However, within this investigation, besides interactions of retailers with their competitors, their relations with their suppliers were also put under close scrutiny.

8. Lastly, the Board’s decision concluding the investigation is the first decision that the Board characterized an infringement as “hub and spoke cartel”<sup>4</sup> and imposed record administrative fines<sup>5</sup> on cartel participants. Therefore, the decision constitutes a hallmark precedent in the Turkish competition law enforcement.

9. Main aspects of the investigation and the decision are summarized below in order to provide insight into the Board’s experience in tackling with illegitimate price increases during inflationary periods.

## 2. General Information about the Investigation

10. The investigation was conducted against 29 undertakings (9 of which are retailers operating in national or local/regional level, 2 of which are cosmetics and self-care products retailers and 18 of which are food and cleaning/hygiene products suppliers at producer or wholesaler level) and an association of undertakings whose members are active in food retailing sector. Pricing conduct of parties under investigation during COVID-19 outbreak scrutinized in order to determine whether they breached article 4 of the Act No. 4054 on Protection of Competition (Competition Act)<sup>6</sup>.

11. Within the investigation that was completely carried out during the pandemic, nearly 50 dawn raids were executed (several undertakings were raided twice), extensive information about prices and price changes in the related period was gathered from more than 150 undertakings some of which were party to the investigation and some of which were not, and also from market research companies. Furthermore, data on retail prices

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<sup>3</sup> Examination was initiated on 31.03.2020 with a preliminary inquiry, than evolved into investigation on 07.05.2020 and concluded with the Board decision dated 28.10.2021.

<sup>4</sup> Before this investigation, the Board evaluated hub and spoke cartels in its *LSID* decision (dated 16.12.2015 and numbered 15-44/731-266) and *Aral* decision (dated 07.11.2016 and numbered 16-37/628-279), however, in none of these cases the Board did not explicitly mention hub and spoke arrangements in itself as an infringement of the Act in its reasoned decision.

<sup>5</sup> The Board imposed record fines in its history both per undertaking and per investigation respectively 958.129.194,39 TL and 2.682.539.593,70 TL.

<sup>6</sup> Article 4 of the Competition Act deems illegal and prohibits agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services.

obtained from Turkish Statistical Institute that is the official statistical authority. At the end, the Board decided by rigorously considering all the evidence and information gathered, written pleas and the explanations made during the hearing.

### 3. Findings and Assessment

12. By examining the evidence obtained such as e-mails and WhatsApp correspondences, the Board concluded that five national retailers, even though there are few direct contacts, mainly communicate indirectly via their common suppliers to limit price competition in the market. It was clearly understood from these evidences that, during 2018-2021 period;

- some of these national retailers arranged prices and price increase dates of particular products together by direct communication,
- national retailers demanded from their suppliers “*to organize the market*”, in other words to ensure all national retailers apply the same price determined by suppliers for their own products and raise their prices on the same date,
- suppliers, in order to meet retailers’ demand, shared information on retail prices and price increase dates within rival retailers regularly and strived to enable all retailers to implement determined prices and dates,
- retailers monitored and controlled their competitors’ prices and price changes continuously,
- when a retailer detected a price lower than the determined price level, that is commonly expressed as “*irregular price*” in the sector, the price is reported to the supplier by sending photographs of price tags or receipts that demonstrates the retail price of the product, and requested from the supplier to intervene in and put pressure on the cheating retailer in order to ensure the price to be raised to the determined level,
- in the case that a deviation detected, the price of the product was reduced again by the retailers that had increased the price to the determined level previously, and the price difference was invoiced to the supplier as a sanction of the failure to organize the market.

13. In addition to these inferences made from the evidence, it was assessed whether the price changes subject to the correspondences were realized, by analyzing price data in the relevant period for each evidence. This analysis revealed that in most cases, price series of the five retailers confirmed the expressions in the evidence obtained and demonstrates parallelism. Retail prices of private label sunflower seed oil products implemented by the national retailers in 01.01.2018-15.09.2020 period is a striking example of this parallelism. The graphics showing related price series are given below.

Figure 1. Private Label Sunflower Seed Oil (1 litre) Prices (TL, including VAT)

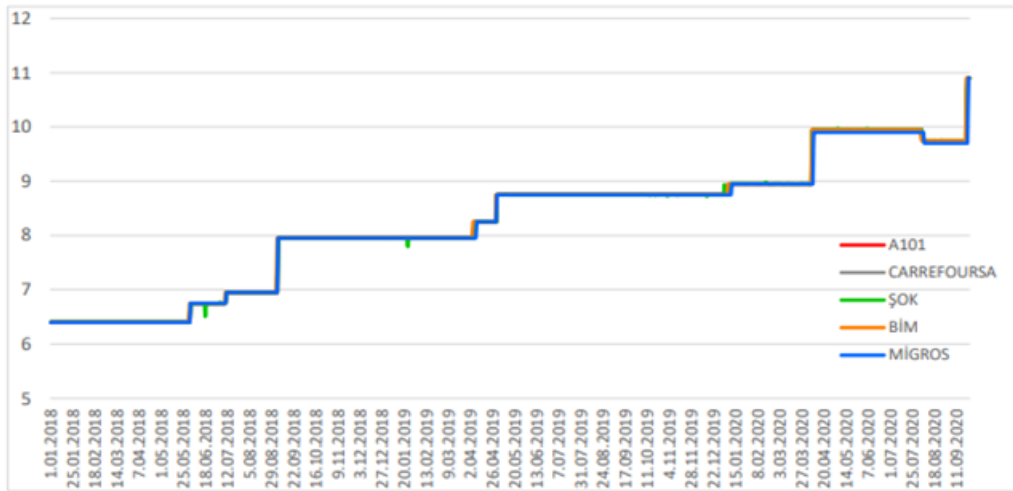


Figure 2. Private Label Sunflower Seed Oil (2 litres) Prices (TL, including VAT)

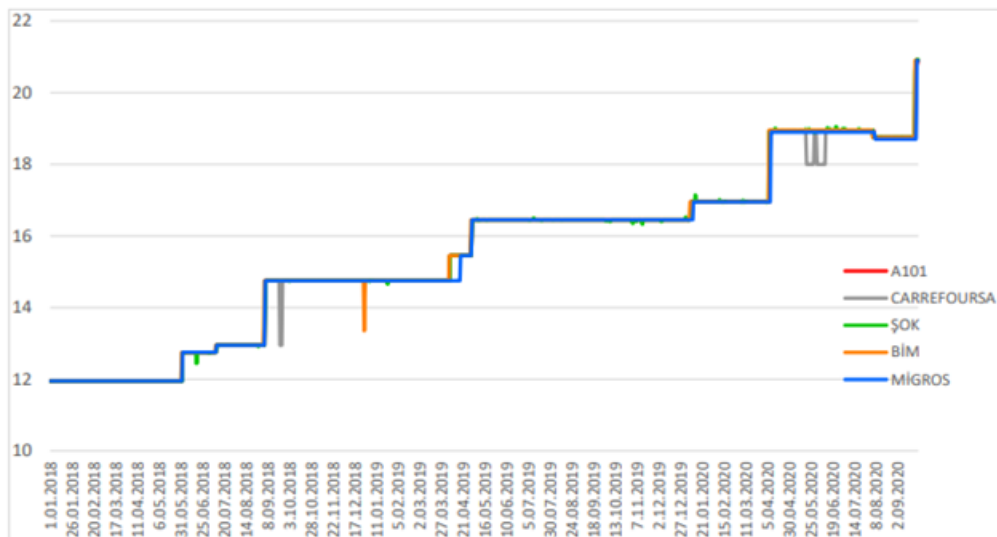
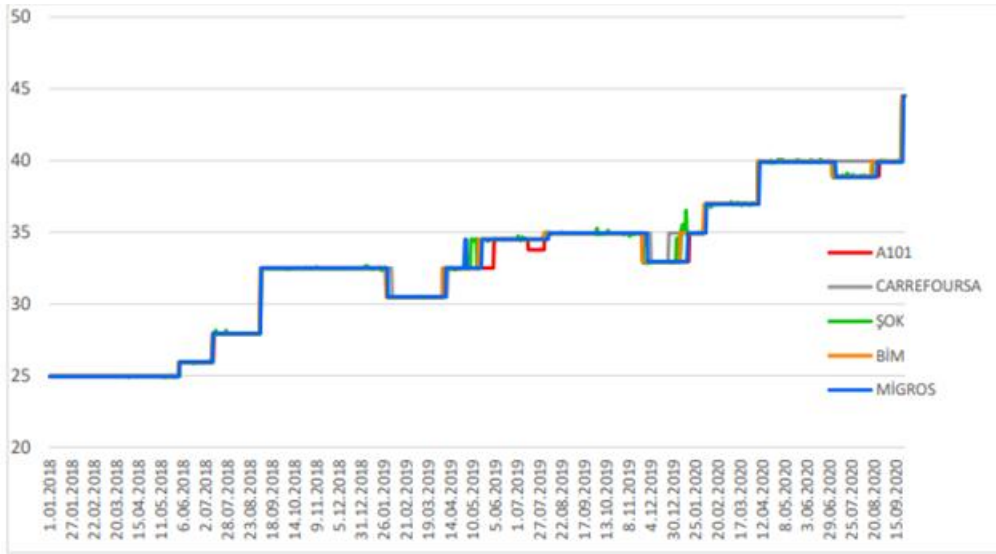


Figure 3. Private Label Sunflower Seed Oil (5 litres) Prices (TL, including VAT)



14. In this framework, the Board concluded that five of the investigated retailers operating at national level (A101, BİM, CARREFOURSA, MİGROS and ŞOK) shared competitively sensitive information such as future prices, dates of price changes, activities and campaigns directly or by means of common suppliers and coordinated prices and the changes in prices. Besides, the Board determined that in order to maintain coordination these retailers set mechanisms for monitoring retail prices of their competitors, detecting deviations from aligned prices and pushed suppliers to correct deviations and punished them if they failed to do that. It was also assessed that one of the suppliers under investigation, SAVOLA that is a supplier of edible oils, intermediated the sharing of competitively sensitive information between the retailers and helped ensuring coordination between them concerning the retail prices and price increases related to its own products. Considering this setup of collusion between the undertakings in question, the Board deduced that the conduct exhibited the characteristics of a hub and spoke arrangement. In the decision, it was underlined that as a result of this information exchange and coordination, the prices had increased to the disadvantage of consumers.

15. In addition to SAVOLA's abovementioned behaviors, the Board also determined that SAVOLA maintained resale prices of national and local/regional retailers by direct intervention to their retail prices since the beginning of 2017 until February 2021.

#### 4. Decision

16. Consequently, the Board decided that the abovementioned retailers and SAVOLA violated article 4 of the Competition Act by means of agreements or concerted practices which aimed to fix retail prices of many products they sell. Furthermore the Board assessed that the conduct in question also had the nature of hub and spoke cartel and along with the retailers, SAVOLA is equally and jointly responsible for the violation.

17. The following administrative fines were imposed by the Board;

- 958.129.194,39 TL to BİM
- 142.469.772,07 TL to CARREFOURSA

- 517.672.762,75 TL to MİGROS
- 22.210.998,63 TL to SAVOLA
- 384.369.037,15 TL to ŞOK
- 646.582.329,39 TL to A101

18. Moreover, the Board decided that SAVOLA violated article 4 of the Competition Act by resale price maintenance and imposed 11.105.499,32 TL administrative fine for this violation.

## 5. Conclusion

19. The investigation and the decision elaborated above have shaped the Turkish competition law enforcement in FMCG retail sector. Because, the holistic approach adopted in the investigation enabled the TCA to scrutinize elaborately the way of doing business in FMCG sector and helped to understand that common way of doing business may cause competition law violations such as hub and spoke cartels, exchanges of competitively sensitive information and resale price maintenance.

20. This understanding and evidence gathered in the investigation period made it necessary to examine the relations of the retailers which were sanctioned for breaching the Competition Act with their other suppliers which were not parties to the investigation. Upon this necessity, the Board initiated a similar investigation against these five retailers and 15 suppliers of them in order to inquire whether the parties breached the Competition Act by a hub and spoke cartel or resale price maintenance or both. Considering legal procedure, it is envisaged that this ongoing investigation will be concluded by the end of 2022. Moreover, some other evidences obtained in the retail investigation and considerable number of complaints induced the Board to open several other investigations on resale price maintenance in FMCG retailing. Three of these investigations are already in progress.

21. Concluded and ongoing investigations in the FMCG retail markets indicate that anticompetitive conduct in this sector may aggravate the inflationary effects of supply or demand shocks and, considering the importance of this sector for all consumers, it should be a prioritized enforcement field for competition authorities. Furthermore, challenges faced in this sector require authorities to search for new methodologies in their investigations and retail investigation is a clear example of the importance of holistic approach, which goes beyond to traditional way of examining the sector.