

## COMPETITION AUTHORITY

### COMPETITION BOARD DECISION

File No: 2020-2-010

(Exemption)

Decision No: 21-61/859-423

Decision Date: 16.12.2021

#### A. MEMBERS IN ATTENDANCE

President : Birol KÜLE

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

**B. RAPPORTEURS:** Bilge YILMAZ, Hande GÖÇMEN, Esmâ AKSU, Ali GEZBELİ,  
Sabriçan SARAÇ

**C. NOTIFYING PARTY:** BŞH Ev Aletleri Sanayi ve Ticaret A.Ş.

FSM Mah. Balkan Cad. No:51 34771 Ümraniye İstanbul

- (1) **D. SUBJECT OF THE FILE:** The request for negative clearance/exemption for BŞH Ev Aletleri Sanayi ve Ticaret A.Ş.'s practice that prohibits authorized dealers' sales through online marketplaces.
- (2) **E. STAGES OF THE FILE:** The Exemption Preliminary Inquiry Report dated 10.12.2021 and no 2020-2-010/MM, was discussed and concluded. The Exemption Preliminary Inquiry Report was prepared upon the notification, which was submitted to the Competition Authority (the Authority) records with number 3053 on 30.03.2020 and the deficiencies of which were completed lastly with the response letter dated 09.12.2021 and no 23597.
- (3) **F. RAPPORTEUR's OPINION:** It is stated in the preliminary report that the following conclusions are made:
  - The contracts between BŞH Ev Aletleri ve Sanayi Ticaret A.Ş. and its authorized dealers and the notified circular contain provisions that violate Article 4 of the Act no 4054 on the Protection of Competition, therefore, negative clearance cannot be granted to the contracts issued with authorized dealers and to the circular that are the subject of the application,
  - The regulations in the circular attached to the dealership contracts issued between BŞH Ev Aletleri ve Sanayi Ticaret A.Ş. and its authorized dealers, which stipulate that BŞH Ev Aletleri ve Sanayi Ticaret A.Ş.'s authorized dealers are completely prohibited from making sales in the platforms so called online marketplace and authorized dealers who do not comply with the relevant prohibition will be imposed sanctions, are not in the scope of Block Exemption Communiqué no 2002/2 on Vertical Agreements and cannot benefit from individual exemption because they cannot meet any of the conditions listed in Article 5 of the Act no 4054 on the Protection of Competition,
  - The provisions in the dealership contracts issued between BŞH Ev Aletleri ve Sanayi Ticaret A.Ş. and its dealers on restricting active or passive sales to end users of the selective distributing system members operating at the retail level and imposing an exclusive purchasing obligation on authorized dealers, thereby preventing purchase and sale among selective distribution system members are not in the scope of Block Exemption Communiqué no 2002/2 on Vertical and they cannot benefit from individual exemption because they cannot meet any of

the conditions listed in Article 5 of the Act no 4054 on the Protection of Competition,

- The provision in the contract between BSH Ev Aletleri ve Sanayi Ticaret A.Ş. and Media Markt Türkiye Ticaret Limited Şirketi, that covers a requirement to receive permission of BSH Ev Aletleri ve Sanayi Ticaret A.Ş. to make sales on the internet violates article 4 of the Act no 4054 on the Protection of Competition, it cannot benefit from Block Exemption in the scope of the Block Exemption Communiqué no 2002/2 on Vertical Agreements and individual exemption cannot be granted to the said restriction within the framework of Article 5 of the Act no 4054 on the Protection of Competition; it would be appropriate to examine the relevant provision in the investigation launched with the Board's decision dated 09.09.2021 and no 21-42/617-M.

## **G. EXAMINATION AND ASSESSMENT**

- (4) In its application, which was submitted to the records of the Competition Authority (the Authority) on 30.03.2020 with the no 3053, BSH Ev Aletleri ve Sanayi Ticaret A.Ş. (BSH) requested that the circular, which provides for that BSH's authorized dealers are completely prohibited from selling products in the platforms called as online marketplace such as Doğu Planet Elektronik Ticaret ve Bilişim Hizmetleri A.Ş. (N11), Amazon Türkiye Perakende Hizmetleri Limited Şirketi (AMAZON), DSM Grup Danışmanlık İletişim ve Satış Ticaret A.Ş. (TRENDYOL), Boyner Büyük Mağazacılık A.Ş. İstanbul Morhipo Branch (MORHİPO), D-Market Elektronik Hizmetler ve Tic. A.Ş. (HEPSİBURADA), and that authorized sellers who do not comply with the relevant prohibition are imposed sanctions, be granted negative clearance/exemption. The examinations, findings and assessments in the scope of application are given below.

### **G.1. Information about the Parties**

#### **G.1.1. General Information about BSH**

- (5) BSH operates in the fields of manufacturing, import, export, distribution and marketing of small and big household appliances and providing after-sales services. BSH currently operates with Bosch and Siemens brands, as well as its local brand Profilo and its private brand Gaggenau in Türkiye. The product portfolio of these brands consists of large household appliances/white goods such as refrigerators, washing machines, dishwashers, ovens, and small appliances such as vacuum cleaners, irons and food processors. BSH distributes Bosch, Siemens and Profilo branded products in Türkiye mainly through the dealership system, and the Gaggenau branded products are distributed through the agency system<sup>1</sup>.
- (6) (.....) has (.....) % of BSH shares.

#### **G.1.2. BSH's Distribution System**

##### **Dealership Contracts**

- (7) According to the information given by BSH, BSH carries out the retail sale of the products it produces or supplies under the Bosch, Siemens and Profilo brands through a selective distribution network<sup>2</sup>. BSH signs standard contracts with authorized sellers of Bosch, Siemens and Profilo brands, which are arranged separately for each brand. The provisions in those contracts state that authorized sellers will sell BSH products to

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<sup>1</sup> BSH also sells products through electronics stores.

<sup>2</sup> The members of the selective distribution system are referred to as "authorized sellers".

final consumers at the retail level and will not make sales to unauthorized There are 1966 authorized sellers selling these brands all over Türkiye totally in 2021. The distribution of this amount by brand is shown in the following table.

Table 1: Distribution of BSH Authorized Sellers by Brand

Brand	Number of Authorized Sellers
Bosch	(.....)
Siemens	(.....)
Profilo	(.....)
Total	(.....)
Resource: BSH Response Letter	

- (8) It is seen that authorized sellers of Bosch and Siemens brands that make up BSH distribution system work as exclusive dealers. The expression (.....) is included in the Paragraph 5 titled (.....) of the Article 2 titled (.....) of the Siemens Brand Exclusive Dealer Contract and the Bosch Brand Exclusive Dealer Contract. The period of the contract is ensured with the provision "(.....) (.....) under the title (.....) of the contracts. According to this, authorized sellers do not sell any other branded big and small household appliances other than Bosch or Siemens branded products in their stores. In addition, authorized sellers of Bosch and Siemens do not sell any products competing with the products supplied by BSH in another outlet with the same business name as required by the dealership contract.
- (9) Profilo authorized dealership system is different from Bosch and Siemens. Profilo authorized dealership contracts, although their contents are identical, are classified as "Profilo Dealer Authorized Seller Contract", "Profilo Chain Store Authorized Seller Contract" and "Profilo Dowry Store Authorized Seller Contract". All Profilo authorized sellers (regardless of the type of contract) can also sell products other than Profilo branded products in their stores. Profilo Dealer Authorized Seller Contract includes 3rd (.....) provision of article 3 titled (.....). Similarly, the contract periods of Profilo authorized sellers are regulated by the provision (.....) under the title (.....) of the Contracts. It is understood from this provision that Profilo authorized sellers can sell products other than Profilo branded products in their outlets.
- (10) On the other hand, it is stated that the main purpose of BSH in establishing a selective distribution system is to "protect the brand value and image of BSH products". Bosch and Siemens Brand Exclusive Dealership Contract includes (.....) provision under article 4.2. titled (...) and Profilo Authorized Seller Contract includes (.....) provision under article 3.1. titled (.....). In this respect, it is expected that the sales consultants working at authorized sellers will guide the consumers in line with the needs of the consumers and that the consumers have sufficient information about the products, that the brand image is formed in the eyes of the consumer and that the corporate identity is reflected to the consumers in the desired way. It is stated in the response letter sent by the BSH representative that there is no instruction, training, study, or similar work that includes the rules to be followed regarding the protection of the brand image for the dealers who want to sell products in online marketplaces. On the other hand, there is a training activity regarding online sales to be made by the dealers on their own websites, but the relevant study could not be completed yet due to the pandemic.
- (11) However, there are some regulations under the title (.....) of Bosch and Siemens Brand Exclusive Dealership Contract for the freedom of online sales by BSH authorized sellers. The expression (.....) is included under the relevant title within the framework of the relevant regulation. It is understood that the authorized seller has the freedom to sell on online sales channels such as its own website and/or marketplace, provided

that it complies with the standards and rules set by BSH pursuant to the provision in the contract.

- (12) The provision (.....) is included under the same title of the contract. (.....) expressions are also included in the Article.
- (13) In addition, it is stated that a guide including some standards/rules on the sales made by authorized sellers on their own website has been published within the framework of the information provided by BSH. When the aforementioned guide is examined, it is seen that there are detailed criteria such as domain name, color, resolution, page view, logo to be used, brand images, product content description on the products page of the authorized seller's own website. BSH authorized sellers are prohibited from using BSH brands or expressions that remind these brands and are identified with brands in the domain name of the website they will establish as the rule on "domain", one of the aforementioned criteria. The rule is also valid for authorized sellers of other BSH brands (Bosch, Profilo).
- (14) On the other hand, the internet sale channel, which is one of the pillars of today's sale channels, is also used by BSH itself in addition to BSH's authorized sellers. Bosch branded products are sold at [www.bosch-home.com.tr](http://www.bosch-home.com.tr), Siemens branded products are sold at [www.siemens-home.bsh-group.com.tr](http://www.siemens-home.bsh-group.com.tr), Profilo branded products are sold at [www.profilo.com](http://www.profilo.com) by BSH. BSH gives priority to its authorized sellers for supplying goods in the sales made through the mentioned websites. When a consumer purchase a product from these websites, BSH asks the authorized dealer, located at the closest point to the address where the product will be delivered, if it can supply the product. If the authorized dealer accepts the offer, they sell the ordered product to BSH and then delivers the product to the consumer on behalf of BSH. If the authorized dealer rejects the offer, BSH contacts the second nearest authorized seller. In the event that the authorized sellers do not have the product or all of the authorized sellers refuse to supply the product, BSH supplies the relevant product from its own stocks. Therefore, in case BSH is able to obtain the product from the authorized seller, the price determined by the authorized seller for the relevant product will be covered by BSH and the price reflected to the consumer will be the price determined by BSH.

### **Contracts with Electronics Stores**

- (15) In addition to the aforementioned distribution model, BSH also distributes its products through electronics stores, which are stated by BSH to be outside the selective distribution system. BSH employs<sup>3</sup> promoters<sup>4</sup> by purchasing services from personnel agencies in order to promote its products in electronics stores and to inform consumers. According to the information provided, the electronics stores that are currently selling BSH's products, when needed, send the identification file including the features and images of the BSH products they put up for sale on their websites to BSH and request that it be filled in.
- (16) On the other hand, although it is stated by BSH that electronics stores are not members of BSH's selective distribution system, when the contracts with these markets are examined, it is seen that the conditions for outlets of the electronics stores are

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<sup>3</sup> Electronic stores do not have any obligation according to social security legislation and occupational health and safety legislation regarding the promoters' occupational health and safety.

<sup>4</sup> Those staff -so called promoter by BSH – are responsible for marketing the products of firms for which they are working to the consumers who visit electronics stores. Service is purchased from agencies to promote products to final users in electronics stores. Currently (.....) promoters are promoting BSH brand products in such stores.

designated with the title (.....) of the contracts and some criteria are determined in this regard. The conditions regarding the store design in these contracts are not exactly the same as the standard contracts signed by BSH authorized dealers and as the conditions that physical stores are subject to with respect to the decoration, equipment and furnishing. However, electronics stores, like authorized dealers, are under the obligation not to act contrary to BSH's corporate identity and brand image. Media Markt Türkiye Ticaret Limited Şirketi (MEDIAMARKT) and Teknosa İç ve Dış Ticaret Anonim Şirketi (TEKNOSA) are not subject to the standards and rules set by BSH for its authorized dealers regarding the websites that they will use for online sales<sup>5</sup>.

- (17) Regarding commercial contracts concluded by BSH with the electronics stores, BSH informed that the contract period with MEDIAMARKT has expired, but a new contract could not be concluded due to the pandemic, although both parties agreed. It is stated that in the current period without a contract, in principle, sale services are carried out within the framework of the expired contract articles. After-sales services are provided within the standard service processes of BSH upon customer request/direction. The contract which has expired, has been submitted to the Authority. According to the contract, MEDIAMARKT cannot sell contract products online without the written permission of BSH. It is stated in article 6.1.1. titled (.....)<sup>6</sup> of the contract (.....), this provision (.....) is expressed in the continuation of the article.
- (18) In addition, it is stated in the contract that (.....) 3.1. titled (.....). According to the relevant Article, (.....)(.....) with the 4th article of the contract titled (.....).
- (19) It was stated in the response letter sent by the representative of the party that they started to work with TEKNOSA, another electronics store that sells BSH products, in May 2020. Although the parties agreed on the contract articles the contract could not be signed yet due to the pandemic, and the contract sample that was planned to be signed was sent to the Authority records. According to the draft contract, TEKNOSA, (.....) moreover, TEKNOSA, (.....).
- (20) On the other hand, in article (.....) 3.1. of the contract, it is stated that BSH, (.....). (.....) is stated in the draft contract. In article 4 of the contract titled (.....) (.....) It is understood from the said provision that Teknosa will not use any intellectual property rights such as trademarks, emblems or logos or similar elements of intellectual rights which are not related to the contracted products and which BSH owns or retains right to use.
- (21) Finally, when the contracts with electronics stores are examined, it is understood that BSH has established a reseller relationship with the relevant undertakings, although it is stated that the electronics stores are not included in BSH's selective distribution system. There is no provision that no other branded big and small household appliances other than BSH branded products can be sold in the stores of the electronics stores in these contracts. Therefore, both MEDIAMARKT and TEKNOSA can display and sell competing products together with those supplied by BSH in the same store. Finally, sale personnel who will work in these channels are employed in

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<sup>5</sup> The following explanations were made: BSH employs promotion staff (promoters), who is trained specially and knows all the features of its products very well in order to protect brand image, so consumers are informed in person and correctly. However, electronics stores prefer online sales as a result of the developments stemming from the outbreak such as closing outlets. This new situation will be re-evaluated by BSH in line with the decisions to be taken by the Competition Authority. In case exemption is granted, electronics stores will be allowed to make sales in their outlets only, which will be an ideal solution to protect the brand image.

<sup>6</sup> (.....)

these markets, and it is expected that this will ensure that they guide the consumers in line with their needs and have sufficient information about the products, the brand image is formed in the eyes of the consumers and the corporate identity is reflected to the consumers in the desired way.

## **G.2. The Notified Practice**

- (22) BSH requested that a negative clearance/exemption be granted its practice of prohibiting BSH's authorized dealers from selling products on platforms such as N11, AMAZON, TRENDYOL, MORHİPO, HEPSIBURADA, which are called online marketplaces, in its application.
- (23) Considering whether such disposal is included under a provision in the contract, article 1 of the contract titled "(.....)" is remarkable. The said article includes (...) provision. According to this provision, authorized dealers have the right to sell BSH products through their own website and/or marketplace.
- (24) The notified prohibition is shaped in the circular prepared by BSH. In the circular authorized dealers are prohibited from making sales through the marketplaces, on the grounds that there is misleading information about BSH products, and content such as explanations and pictures that do not comply with the corporate identity, brand image, quality and safety standards in the sales made through marketplaces. According to the circular, in case of violation of the sales prohibition, the authorized dealer will be warned in writing by BSH to end the violation, and if the violation is not resolved within the specified time despite the written warning, the contract of the authorized dealer may be terminated by BSH for valid reason. (...)
- (25) The aforementioned circular was sent to Bosch and Profilo authorized dealers on 07.04.2020 and to Siemens authorized dealers on 10.04.2020 but according to the information given by BSH, the sanctions in the circular have not been applied yet.

## **G.3. Previous Decisions of the Competition Board about BSH**

### **Preliminary Inquiry Decision Dated 19.02.2015 and No 15-08/107-44**

- (26) The first Competition Board (Board) decision on BSH dealership contracts is the preliminary inquiry decision dated 19.02.2015 and no 15-08/107-44, examining the allegation that BSH discriminates between dealers that distribute Siemens branded products and that have equal status in the center of assumed rights and obligations. It is stated in the decision that there no agreements between undertakings could be found, indicating that BSH makes discriminatory practices among its dealers. It is found that BSH is not dominant in the relevant markets and it is stated that BSH's practices in its sales to its dealers, cannot be considered as a violation within the scope of article 6 of the Act no 4054. "Siemens Exclusive Dealership Contract" was also examined and the relevant contract was evaluated in the framework of the Block Exemption Communiqué no 2002/2 on Vertical Agreements (the Communiqué no 2002/2). It is concluded that BSH's market share is below 40% in all of the markets defined within the scope of the file and there is no restriction that would exclude the examined contracts from the scope of the block exemption, therefore, the relevant exclusive dealership contracts benefit from the exemption granted under the Communiqué no 2002/2.

**Exemption Decision dated 06.10.2015 and No 15-37/573-195**

- (27) After the preliminary research decision dated 19.02.2015 and no 15-08/107-44, BSH requested for negative clearance for the "Brand Exclusive Dealership Agreement" concluded between BSH and the retailers within the scope of the application made by BSH to the Authority on 05.08.2015. In the decision dated 06.10.2015 and no 15-37/573-195 taken about the application, the following explanations were made: BSH signed a "Brand Exclusive Dealership Agreement" arranged in a standard manner with each of the dealers operating in the field of white goods trade. This agreement is a "standard contract". The agreement is in the form of a vertical agreement with a provision of exclusivity. The contract, which is an exclusive dealership agreement, violates article 4 of the Act no 4054 and therefore, a negative clearance certificate cannot be given to the contract. Then, the contract was analyzed with respect to block exemption within the scope of the Communiqué no 2002/2. It was concluded that the market share of BSH is below 40% in all of the markets that were examined, the vertical relationship does not exceed the five-year period envisaged in the article 5 of the Communiqué no 2002/2 and it was decided that the "Brand Exclusive Dealership Agreement" issued between BSH and the dealers benefit from the block exemption within the scope of the Communiqué No. 2002/2.

**Preliminary Inquiry Decision Dated 22.08.2017 and No 17-27/454-195**

- (28) The decision is similar to this file considering its subject. The allegation that BSH restricts the sales of its dealers via the internet were examined in this decision. An evaluation was made considering the following facts: The provision of the contract that *"BSH has its rights and powers on the sale and marketing/electronic commerce of the contracted products via the internet and a dealer cannot actively sell the contracted products on the Internet without prior written permission of BSH"*. Evidence showing that BSH warned some dealers that are selling on platforms such as N11 was obtained during the on-site inspection. Users are redirected to BSH's web page on online sales tab on dealers' websites. As a result of the examination, it was concluded that the sales made through the internet channel are in the nature of passive sales within the framework of the Guidelines on Vertical Agreements (Vertical Guidelines) and that the restriction of internet sales in this respect is a hardcore vertical restriction that excludes the agreement from the scope of the block exemption within the framework of the Communiqué no 2002/2. The withdrawal of the exemption is discussed subsequently. It was decided that block exemption granted with the Board Decision dated 06.10.2015 and no 15-37/573-195 be withdrawn; there is no need to launch an investigation on BSH based on the following grounds: the existence of significant competitors in the market for the products in which BSH operates, the nature of the product and the fact that no concrete sanctions are imposed on dealers due to their online sales; if the dealership contract is amended so that it complies with the block exemption conditions or an individual exemption is granted by the Board to the amended contract, the agreement shall enter into force and an opinion stating that it is necessary to avoid the practices that are contrary to the contract that is within the scope of the block exemption or that is deemed to be able to benefit from the individual exemption, as well as the behavior that creates or is likely to create a distorting effect on competition to the undertaking pursuant to the third paragraph of article 9 of the Act.

## G.4. Relevant Market

### G.4.1. Information about the Sector: White Goods<sup>7</sup>

- (29) Durable goods cover various goods whose economic lives are more than one year and they are categorized into three as white goods, small appliances and consumer electronics. Within this scope, white goods are comprised of refrigerator, washing machine, dishwasher, oven, cooker, vacuum cleaner; small appliances are comprised of sandwich toaster, food processor, fruit reamer, blender, mixer, freezer, air conditioner, water heater and water clarifier, and consumer electronics are comprised of products that are generally used for entertainment such as TV, DVD player, telephone and computer. However, concerning the practice under investigation within the scope of the file, durable goods are related to white goods and small appliances, thus, evaluations about white goods and small appliances are given below.
- (30) In addition to Turkish firms, foreign firms operate in the sector. In order to improve the quality of the sector, White Goods Manufacturers' Association of Türkiye (TÜRKBEŞD) was established. ARÇELİK, BSH, CANDY HOOVER, ELECTROLUX, SILVERLINE and VESTEL are the members of TÜRKBEŞD and represent 90% of the sector<sup>8</sup>.
- (31) The largest four white goods manufacturers and TÜRKBEŞD members operating in Türkiye and their brands are given in the table below:

Table 2: TÜRKBEŞD members and their brands

Undertakings	Brands
ARÇELİK	ARÇELİK, BEKO, Grundig, Blomberg, Elektrabregenz, Arctic, Leisure, Flavel, Defy, Altus and Dawlance
BSH	Bosch, Profilo, Siemens, Gaggenau
CANDY HOOVER	Candy, Hoover
SILVERLINE	Silveriline, Schock, Esty
VESTEL	Vestfrost, Regal, Vestel, Finlux, Seg

Source: The websites of undertakings and TÜRKBEŞD

- (32) The market shares of BSH and its closest competitors operating in the sector are given in the table below:

Table 3: The market shares of undertakings operating in white goods sector (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)

Source: GfK<sup>9</sup> data sent by BSH

- (33) In addition, the tables below show turnover-based market shares of the said firms in refrigerator, washing machine, dishwasher, oven, tumble dryer, freezer product groups:

<sup>7</sup> The Board decision dated 08.02.2018 and no 18-04/49-26, the website of TÜRKBEŞD, and white goods sector report of A&T Bank were used.

<sup>8</sup> See <http://www.turkbesd.org/turkbesd.php>

<sup>9</sup> [GfK Araştırma Hizmetleri A.Ş. \(GfK\)](#), is a search institution operating in market inquiries

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Table 4: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Refrigerator Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 5: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Washing Machine Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 6: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Dishwasher Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 7: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Oven Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 8: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Freezer Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)

BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 9: The market shares of undertakings in 2017, 2018, 2019 and 2020 in Tumble Dryer Product Group (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

- (34) Within the scope of the file, information request was made to (.....), which is a competitor of BSH; it was understood that the said undertakings' turnover-based market share was (.....)%.
- (35) On the other hand, regarding Türkiye's white goods market in relation to global markets, Türkiye has surpassed Germany and Italy, who are known to be leaders in manufacturing white goods. Türkiye exports 75% of its 25-million output to 150 million countries.<sup>10</sup> The main export market is Europe, corresponding to 77% of its export with an export volume of 2 billion USD. United Kingdom (17%), France (10%), Germany (9%), Poland (7%) and Spain (6%) are the countries with the highest shares in Europe. The export made to those countries amounts to 50% of the total white goods export. Türkiye is in the third place with an export amount of 3.1 billion USD, after China, which is the first in global terms with an export value of 11 billion USD, and Mexico, which is in the second place with an export amount of 4.1 billion USD. Türkiye is followed by Poland with 2.1 billion USD and Germany with 1.6 billion USD.<sup>11</sup>

### **Small appliances**

- (36) Small appliances are intended for facilitating daily lives. This product group consists of kitchen utensils such as pan, pot, sandwich toaster, toaster, iron, heater, devices for preparing food, vacuum cleaner, blender, mixer, food processor, and personal care products such as hair styler.
- (37) The table below shows some firms and their market shares in the sector:

<sup>10</sup> See <http://www.turkbesd.org/bilgiler.php>, Accessed: 21.09.2021.

<sup>11</sup>See A&T Bank's 2019 white goods sector report, [https://www.atbank.com.tr/documents/BEYAZ%20ESYA%20SEKTORU\\_EKIM%202019.PDF](https://www.atbank.com.tr/documents/BEYAZ%20ESYA%20SEKTORU_EKIM%202019.PDF), Accessed:21.09.2021.

Table 10: The market shares of undertakings operating in small appliances sector (Turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

- (38) In addition, the tables below show turnover-based market shares of the said firms in bagged vacuum cleaner/bagless vacuum cleaner, hot drinks, food preparation and electrical cooking product groups.

Table 11: The market shares of undertakings in bagged vacuum cleaner product group (turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 12: The market shares of undertakings in bagless vacuum cleaner product group (turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data sent by BSH				

Table 13: The market shares of undertakings in hot drinks product group (turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)

Source: GFK data sent by BSH

Table 14: The market shares of undertakings in food preparation product group (turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)

Source: GFK data sent by BSH

Table 15: The market shares of undertakings in electrical cooking product group (turnover-based)

Undertakings	2017	2018	2019	2020
ARÇELİK- BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GROUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)

Source: GFK data sent by BSH

(39) It is possible to talk about six sales channels for undertakings operating in the small appliances sector<sup>12</sup>:

- Distributors/Exclusive outlets

<sup>12</sup> See Board Decision dated 13.02.2020 and no 20-10/109-65.

- Traditional stores/local dealers (small glassware shops)
  - Local chain stores (Evmur, Yön, Evshop vb.)
  - E-commerce platforms (HEPSİBURADA, GİTTİGİDİYOR etc.)
  - Technological product outlets (MEDIAMARKT, TEKNOSA, Vatan Bilgisayar etc.)
  - Hypermarkets (CarrefourSA, Metro etc.)
- (40) While some of the sales channels have a narrow product range, some of them sell white goods, consumer electronics and other products together with small appliances. However, exclusive stores display and provide products of the brand they are affiliated to. On the other hand, as consumers' shopping habits are changing, organized retail channels that provide services with more brands in a larger area become widespread. With respect to small appliances, products of different brands are displayed in the channels such as technological product outlets. Local outlet chains are outlets with a large area and many branches. They sell all household devices. They sell white goods, furniture, carpet, etc. as well as small appliances. Traditional stores are commercial enterprises that sell glassware products and small appliances. Lastly, as the demand for e-commerce has increased, small appliances are sold via online marketplaces.

#### **G.4.2. Relevant Product Market**

- (41) The Guidelines on the Definition of the Relevant Market refers to the Communiqué no 2010/4 and lists the factors to be taken into account for the definition of the relevant product market. Accordingly, a market which is comprised of a product and other products that are highly substitutable for the product in question is the relevant product market. In order to be in the same market with another product, the products in question should be identical in the eye of consumers in terms of their characteristics, intended use and prices and they should be substitutable.
- (42) The investigated undertaking BSH's product portfolio is comprised of small and big household appliances such as oven, dishwasher, washing machine, tumble dryer, refrigerator, freezer, air conditioner, iron, vacuum cleaner, food processor, instantaneous water heater, house comfort products and electronic devices. According to the market share information provided by BSH, the products are categorized as refrigerator, washing machine, dishwasher, oven, freezer, tumble dryer, bagged/bagless vacuum cleaner, hot drink, food preparation and electrical cooking. As seen, durable goods are divided into different sub-categories covering wide range of product groups. In this sense, first, whether a market will be defined on the basis of each sub-segment of products for the relevant product market assessment for BSH products.
- (43) From the perspective of consumers, it is clear that products such as refrigerator, washing machine and iron are different with respect to their characteristics and intended use. Therefore, it is not possible that the demand for a refrigerator will be oriented to a washing machine in case of a relative increase in the price of refrigerator.
- (44) Consumers do not buy durable goods frequently. Regarding those products of low purchasing frequency, consumers pay attention to price and quality differences among products and visit different outlets before purchasing such products. Therefore, brand image is not sufficient for consumers. Consumers take into account all product characteristics, try to be more informed about differences among products and consent to high search costs as the monetary value is high and economic life is long. Within

this framework, a consumer may choose an electronics retailer who increases the prices of all products except refrigerators because of the price of the refrigerator.

- (45) Products under small appliances category are, in some aspects, different from other durable goods. With respect to white goods and consumer electronics, the ability of the products to be evaluated independently is higher than the ability of the products in small appliances sector to be dealt with independently. Even if the products are different in that they are used in kitchen, for personal care or daily housework, they can be evaluated in a common group due to the manner they are provided to consumers. Moreover, undertakings operating in the sector are active in a large part of the said product groups. However, it should be noted that small appliances are differentiated due to intended use, characteristics and prices. The said groups are different from each other with respect to many criteria such as intended use, where they are used and characteristics.
- (46) According to the previous Board decisions about the issue, the decision dated 12.06.2012 and no 12-32/916-275 defines the relevant product markets as *“on a product-basis and separately, refrigerator (coolers), dishwasher, washing machine, vacuum cleaner, tumble dryer, microwave oven, panel TV, oven, cooker, small appliances retailing markets and other electronic devices retailing market as there is no need to make a distinction further within the scope of the file.”* It is stated in the Board decision dated 06.10.2015 and no 15-37/573-195 that *“on a product-basis and separately, oven, refrigerator, washing machine, dishwasher, freezer, tumble dryer, vacuum cleaner, instantaneous water heater and water heater product groups are independent relevant product markets.* In the Board decision dated 25.09.2008 and no 08-56/892-353, sector and market details are examined in detail. In the upstream market defined as retail sales services for in-home consumption products, many products such as refrigerator, washing machine, dishwasher, oven, air conditioner, vacuum cleaner, tube TV and panel TV are each different product markets because they are different in the eye of consumers in terms of especially their intended use and characteristics.
- (47) As a result, taking into account the explanations, the said Board decisions, market data submitted by BSH and the fact that the products are different in the eye of consumers in terms of their intended use and characteristics, for defining the market within the scope of the file, it is concluded that oven, refrigerator, washing machine, dishwasher, freezer, tumble dryer, bagged vacuum cleaner, bagless vacuum cleaner, hot drink, food preparation and electrical cooking product groups are each independent relevant product markets.

#### **G.4.3. Relevant Geographic Market**

- (48) The fact that the conditions of competition are sufficiently homogeneous in the area where undertakings operate and are appreciably different from neighboring areas is determinant in defining the relevant geographic market. Therefore, in terms of the file, the relevant geographic market is defined as “Türkiye” since it is not possible to make such distinction throughout the country with respect to BSH’s activities.

## G.5. Definition of E-Commerce, Nature and Functioning of Online Marketplaces and Their Impact on Competition

### G.5.1. The Concept of E-Commerce and Relevant Regulations

- (49) Electronic commerce (e-commerce) can be defined in the widest sense as shopping where product or service order is given via an online channel, delivery is made via an online or offline channel (by hand, by shipping), payment may be made via online or offline channel (cash on delivery, wire, etc.). E-commerce is used in every area of our daily lives as a result of the developments in [information technologies](#) (IT) and especially the internet. Although widespread use of internet is the most important factor in the development of e-commerce, the use of internet is not sufficient alone for the global increase in e-commerce. It should be supported by other factors. Lack of those factors is the reason why e-commerce is not so developed in some countries<sup>13,14</sup>.
- (50) Previously, e-commerce was done in a limited area by limited number of players. E-trade volume has been growing parallel to wider internet infrastructure and increased variety and use of devices enabling internet access. In this process, some pioneer entrepreneurs installed e-commerce websites, improved their service quality and increased product and service variety to attract consumers and be competitively superior, and developed efficient methods to keep prices competitive. As a result, consumers have the opportunity to reach wider product range more easily and at more reasonable prices. Not only firms and consumers but also governments are interested in the growth of e-commerce. Within this scope, legislation regarding the regulation and promotion of e-commerce has been prepared.
- (51) The Act no 6563 on the Regulation of Electronic Commerce (the Act no 6563) was adopted and put into effect in 2015. The Act no 6563 brought some legal arrangements regarding all e-commerce transactions and e-commerce in general in Türkiye and e-transaction in general, for which The Ministry of Customs and Trade was competent. “The Directive on Commercial Communication and Commercial Electronic Messages” was published on 15.07.2015 and “the Directive on Service Providers and Intermediary Service Providers in Electronic Commerce” was published on 26.08.2015 according to the legislation of the Ministry of Customs and Trade Within the scope of its relevant power. Those two directives show service providers’ and intermediary service providers’ obligations and the content of commercial electronic messages, which are important for marketing.
- (52) Although the main legal ground for e-commerce is the Act no 6563, the following legislation is also closely related to e-commerce: the Act no 6502 on the Protection of Consumers, the Act on the Regulation of Webcasting and Fighting Against Crimes Committed through Those Webcasts, the Act on Intellectual and Artistic Works, Law On Payment And Securities Settlement Systems, Payment Services And Electronic Money Institutions, The Act on Payment Systems. In addition, there are provisions concerning e-commerce in Turkish Code of Commerce and Turkish Code of Obligations. Another regulation related to e-commerce is the Act no 6698 on the

<sup>13</sup>[http://www.tubisad.org.tr/tr/images/pdf/tubisad\\_e-ticaret\\_2019\\_pazar\\_buyuklugu\\_raporu.pdf](http://www.tubisad.org.tr/tr/images/pdf/tubisad_e-ticaret_2019_pazar_buyuklugu_raporu.pdf), Accessed: 29.03.2021

<sup>14</sup> Nielsen lists the ten key drivers of e-commerce growth as follows: market size, bank account penetration, internet penetration, smart phone penetration, ease of doing business, population density, postal reliability, trust, savings culture, maturity of FMCG retailing and other factors (household income, social media prevalence). <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/future-opportunities-in-fmcg-ecommerce.pdf>, Accessed: 29.03.2021

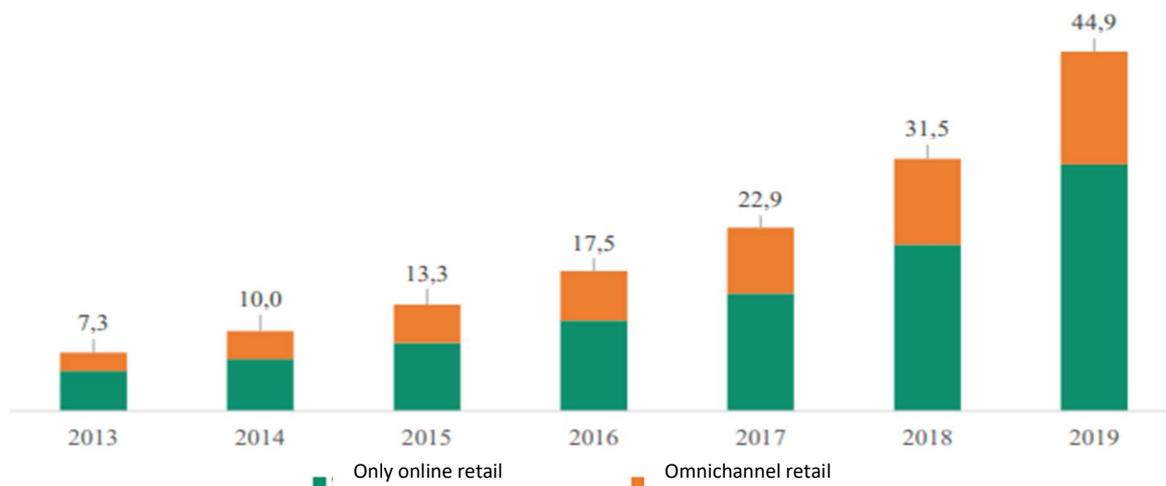
Protection of Personal Data (LPPD), which was adopted and put into effect in 2016 LPPD gives an important responsibility to undertakings with respect to processing and storing personal data.

- (53) In summary, legal legislation regarding e-commerce has been put into effect following the developments. However, since e-commerce is related to many different issues and is shaped according to current needs, it is an area where more than one public institution is concerned. For instance, export transactions made via electronic channel are under the responsibility of the Ministry of Trade whereas the Ministry of Health is in charge of products and services about consumer health supplied via the internet. The Banking Regulation and Supervision Agency is empowered about the use of credit cards in internet shopping. Therefore, it is not possible to refer to a single legislation regulating e-commerce and its functioning.

### G.5.2. E-Trade in Türkiye in Light of Current Figures

- (54) Statistics published on E-Trade Information Platform of Ministry of Trade of the Republic of Türkiye<sup>15</sup> and a study prepared by the Presidency of Strategy and Budget of the Presidency of the Republic of Türkiye<sup>16</sup> are used for the presentation of the quantitative data for the purpose of measuring the impact of e-commerce on competition.
- (55) E-commerce has been increasing in Türkiye recently, like other parts of the world. According to TÜBİSAD sector size report, which has been announced since 2013, while e-commerce market size was 7.3 billion in 2013, it increased nearly by six-fold and amounted to 44.9 billion in 2019 in Türkiye.

Table 16: The size of retail e-commerce sector in Türkiye (Current billion TL)



Source: TÜBİSAD (2014, 2020)

- (56) According to TÜBİSAD data, the share of retail e-commerce in total retail commerce in Türkiye was 1.3% in 2013<sup>17</sup>. It rose to 6.2% as of the end of 2019<sup>18</sup>. Despite this,

<sup>15</sup> <https://www.eticaret.gov.tr/istatistikler> Accessed: 28.03.2021.

<sup>16</sup> <https://www.sbb.gov.tr/wp-content/uploads/2021/01/Perakende-E-Ticaretin-Yukselisi.pdf> Accessed: 29.03.2021

<sup>17</sup> [http://www.tubisad.org.tr/tr/images/pdf/tubisad\\_2014\\_e-ticaret%20tahminleme%20ve%20olcumleme%20calismasi.pdf](http://www.tubisad.org.tr/tr/images/pdf/tubisad_2014_e-ticaret%20tahminleme%20ve%20olcumleme%20calismasi.pdf), Accessed:30.03.2021.

<sup>18</sup> [http://www.tubisad.org.tr/tr/images/pdf/tubisad\\_e-ticaret\\_2019\\_pazar\\_buyuklugu\\_raporu.pdf](http://www.tubisad.org.tr/tr/images/pdf/tubisad_e-ticaret_2019_pazar_buyuklugu_raporu.pdf), Accessed:30.03.2021.

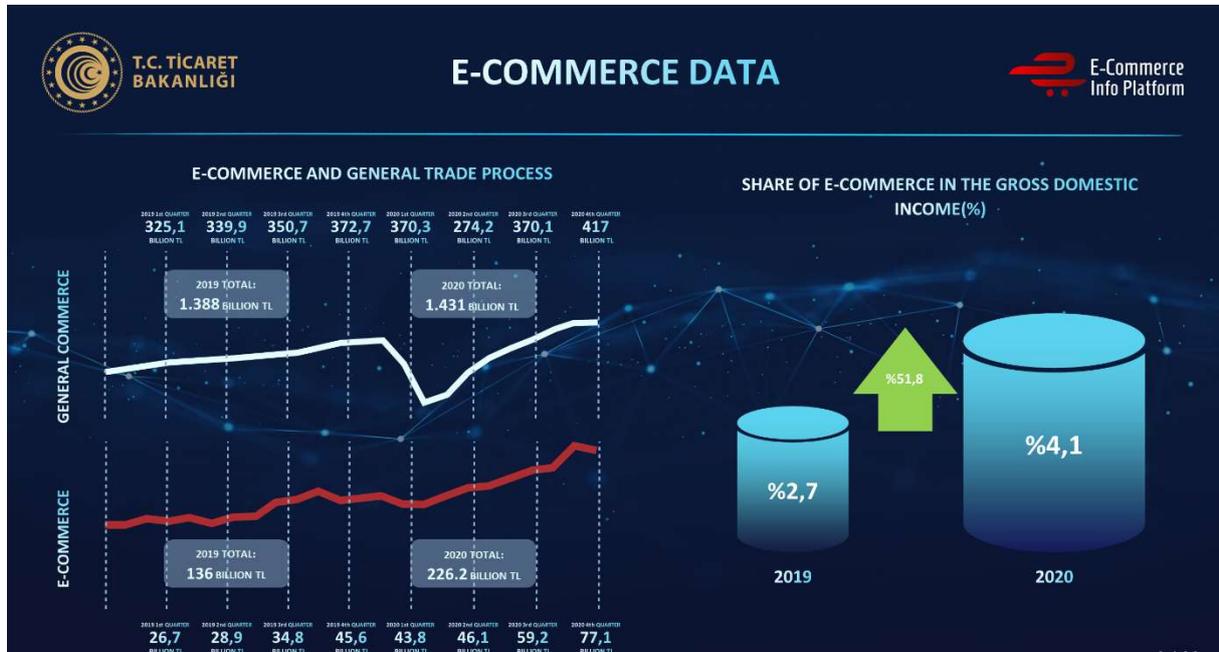
the share of e-commerce in total retail e-commerce is still low compared to developed countries. However seasonally and calendar adjusted volume index of retail sales and sales by e-mail and internet sales, published by TÜİK (Turkish Statistical Institute), shows that e-commerce is increasing more rapidly than retail trade. The index is shown in the chart below. If this increasing trend continues, the share of retail e-commerce in total will rise in the future.

Chart 1: The growth of retail commerce and retail e-commerce in Türkiye (Constant prices 2015=100)



Source: TÜİK

Chart 2: The course of e-commerce and general commerce and the share of e-commerce in GDP (%)



Source: <https://www.eticaret.gov.tr/istatistikler>, Accessed: 22.09.2021.

- (57) Within the framework of the statistics in E-Commerce Information Platform, as seen in Chart 2, total trade decreased in 2019. Covid-19 outbreak began in March, 2020, in

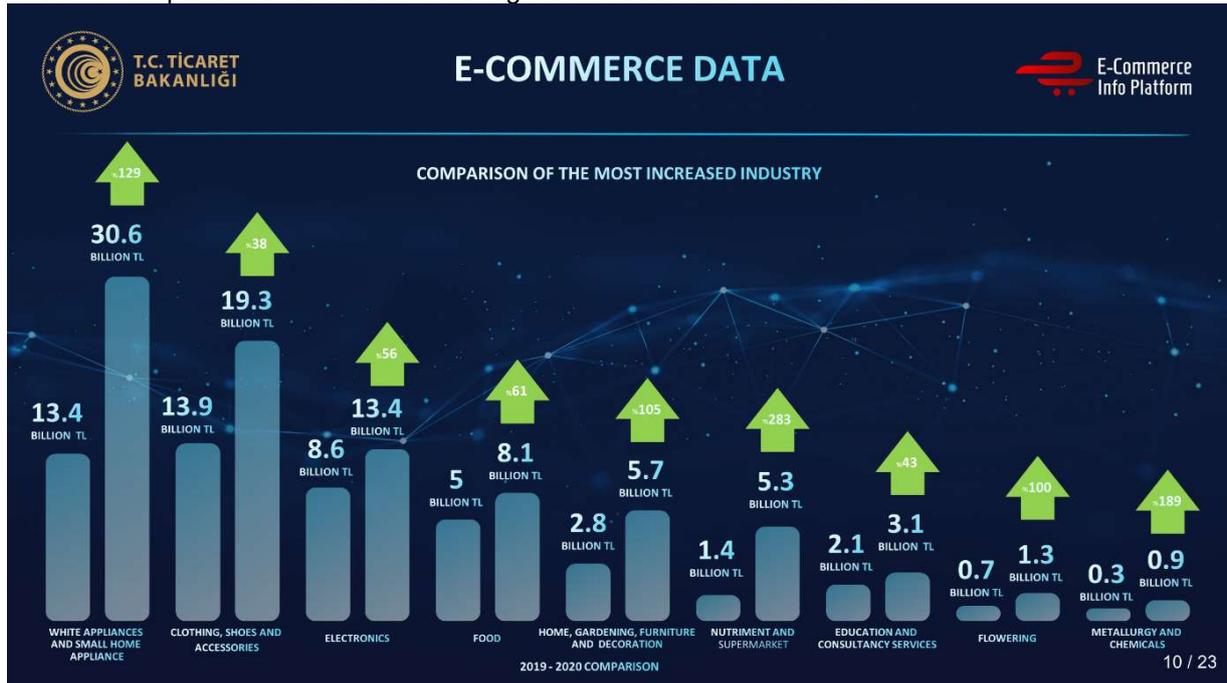
Türkiye; the significant fall started as of February 2020. In addition, after the outbreak spread rapidly and became a global problem, trade through traditional channel was affected negatively and consumers preferred e-commerce in the relevant period. The share of e-commerce in general trade is 9.7% and 15.8% in 2019 and 2020 respectively. In 2020, the share of e-commerce in GDP increased by 51.8% compared to the previous year and rose to 4.1%. The 51.8% increase in 2020 is a fraction in e-commerce volume, which has an increasing tendency. The outbreak changed consumption habits. This change indicates that e-commerce volume is increasing in Türkiye and in the world irrevocably. E-Marketplace Platforms Sector Inquiry Preliminary Report<sup>19</sup> (the Preliminary Report) highlights this fact. The Preliminary Report argues that the changes seen in consumer habits in favor of e-commerce with Covid-19 outbreak may create a domino effect in other e-commerce areas because consumers had to do online shopping for products, which they do not normally tend to buy online. Therefore, they started to believe that e-commerce is possible in every field.

- (58) In addition, the chart below shows the comparison of sectors with the highest increase and decrease in e-commerce transactions in 2019 and 2020 in Türkiye.

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<sup>19</sup> [https://www.rekabet.gov.tr/Dosya/geneldosya/e-pazaryeri-si-on-rapor-teslim-tsi\\_son-pdf](https://www.rekabet.gov.tr/Dosya/geneldosya/e-pazaryeri-si-on-rapor-teslim-tsi_son-pdf), Accessed: 25.05.2021

Chart 3: Comparison of sectors with the highest increase in 2019 and 2020



Source: <https://www.eticaret.gov.tr/istatistikler>, Accessed: 22.09.2021.

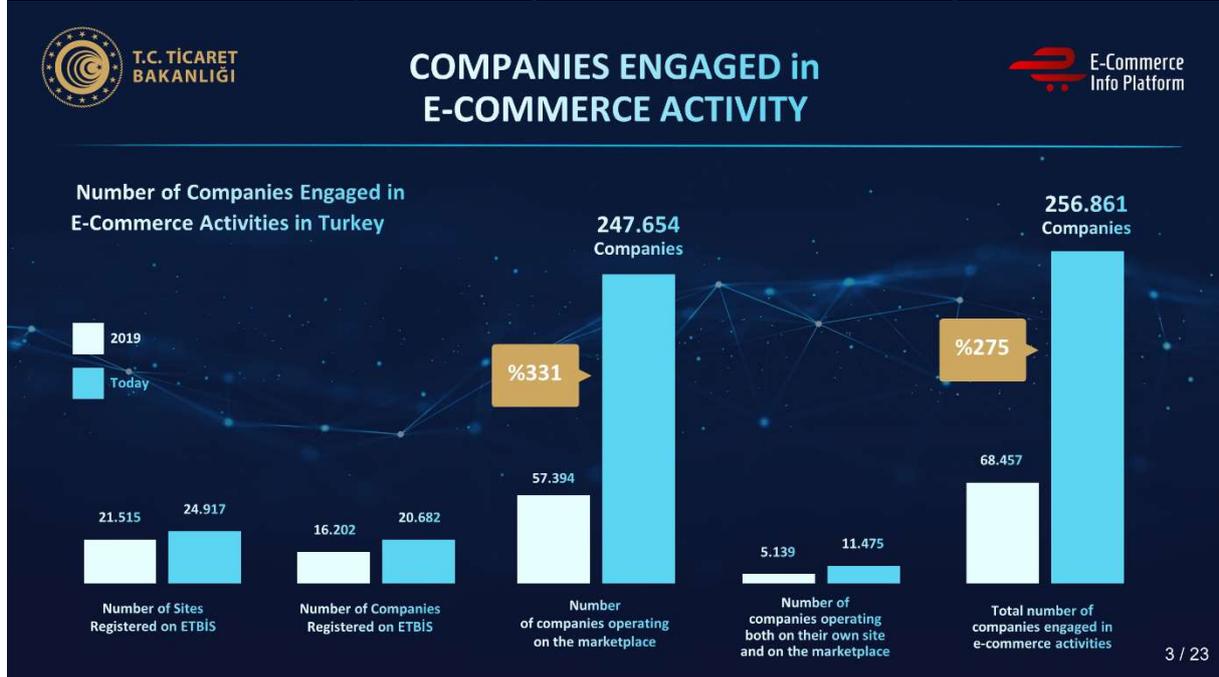
Chart 4: Comparison of sectors with the highest decrease in 2019 and 2020



Source: <https://www.eticaret.gov.tr/istatistikler>, Accessed: 22.09.2021.

- (59) According to charts 3 and 4, when the year 2020 and the year 2019 are compared, white goods sector shows the highest increase - 129% and the airline sector shows the highest decrease - 40% due to the global pandemic.

Chart 5: The number of enterprises that carry out e-commerce activities in Türkiye



Source: <https://www.eticaret.gov.tr/istatistikler>, Accessed: 22.09.2021.

- (60) There is a significant rise in the number of enterprises that carry out e-commerce activities due to Covid-19 outbreak. According to Chart 5, while the number of enterprises that carry out e-commerce activities was 68,457 in 2019, this number was 256,861, corresponding to an increase by 275% in 2020. The number of enterprises operating in online marketplaces was 57,394 in 2019. Today this number is 247,654, showing an increase of 331%. While the number of enterprises operating in their website and online marketplaces was 5,139 in 2019, this number is 11,475 in 2020, showing an increase of 223%.
- (61) According to the statistics, the breakdown of e-commerce throughout Türkiye in 2020 for three cities is as follows: İstanbul 35%, Ankara 11% and İzmir 6%. 52% of the total e-commerce shopping is done in those cities. The share of installment sales in total sales on a sector basis is as follows: 68% for house decoration, 45% for white goods, 32% for electronic products, 9% for clothing and 7% for books and magazines.
- (62) E-commerce volume corresponds to 226.2 billion TL in 2020. 207 billion TL in those expenses are domestic expenses (91.4%). Türkiye's purchase from other countries corresponds to 9.9 billion TL (4.14%), other countries' purchase from Türkiye is 9.3 billion TL (4.1%). When the said period is compared to 2019, e-commerce increased by 69%.
- (63) The e-commerce volume in Türkiye has been growing in time, this is also seen at a global scale. In 2020, global e-commerce was over 4.3 trillion USD. The increase in e-commerce volume is estimated as 18%. The said amount was 3.5 trillion USD in 2019. It is estimated that the amount will rise to 4.9 trillion USD in 2021, 5.6 trillion USD in 2022 and 6.5 trillion USD in 2023<sup>20</sup>.
- (64) Regarding developed countries, average e-commerce rate is over 12% (for US, Germany, France, Japan and Spain). If we leave China out, with its high rate of 28%,

<sup>20</sup> <https://www.eticaret.gov.tr/cevrimiciegitim/sayilarla-dunyada-e-ticaret-21> Accessed: 22.09.2021

the average for developing countries is 6.7%<sup>21</sup>.

- (65) Compared to the countries with a similar development level, the share of e-commerce in trade services in our country is limited and significantly below its potential. One of the reasons for this is that large retailers started e-commerce activities relatively late and SMEs' activities in this area are still insufficient.
- (66) On the other hand, payment security is more reliable and payment transactions are faster. Thus, it is estimated that many more users will prefer e-commerce platforms in 2021. Especially the number of companies so-called fintech that produce financial technologies has increased. Such companies have launched new payment solution products, so it is likely that payment platforms independent of banks will gain importance. Crypto money based on blockchain technology is becoming globally more popular. They are being used in e-commerce payment methods now. This also shows that the scope of e-commerce will widen in 2021.
- (67) As stated in 2016-2020 Strategic Plan published by KOSGEB<sup>22</sup>, as of 2014, the number of enterprises in Türkiye is slightly over 3.5 million. Taking into account those with less than 250 employees, 98.8% of them are SMEs. Considering the number of employees again, the share of enterprises with less than ten employees, in other words, micro enterprises, is 93.7%<sup>23</sup>.
- (68) The most important barrier in front of SMEs to be active in e-commerce area is that digital literacy is weak, and they lack expertise, process and teams to lead them properly in this area that requires technological knowledge and infrastructure. E-commerce oriented growth strategies are inevitable for increasing competitive power and reaching new markets. They should be manageable for SMEs in the existing business models. Therefore, SMEs must strengthen their activities and experiences in this area.
- (69) It is important that a comprehensive e-commerce program should be developed to improve SMEs digital literacy and to help them benefit from e-commerce channels more efficiently. This objective should not be considered with an understanding limited to only financial support. Developing platforms to bring SMEs and experts, processes and teams which will lead them properly together is a significant requirement in this area that requires technological knowledge and infrastructure. This is a striking issue in the dealer survey made within the scope of the file. 52% of the participants in the dealer survey think that suppliers should provide training regarding online sales.<sup>24</sup>

### G.5.3. Omnichannel Concept

- (70) With the growth of e-commerce, we see omnichannel marketing strategies as required by integrated operation of online and physical outlets. Today, consumers can reach every kind of information and various shopping opportunities by using different communication channels. As a result of the development of IT, online channels are

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<sup>21</sup> TÜBİSAD E-Commerce Report, [https://www.tubisad.org.tr/tr/images/pdf/tubisad\\_e-ticaret\\_2019\\_pazar\\_buyuklugu\\_raporu.pdf](https://www.tubisad.org.tr/tr/images/pdf/tubisad_e-ticaret_2019_pazar_buyuklugu_raporu.pdf) Accessed: September 21, 2021.

<sup>22</sup>Republic of Türkiye Small and Medium-Sized Enterprises Development Organization

<sup>23</sup>[https://www.kosgeb.gov.tr/Content/Upload/Dosya/Mali%20Tablolar/KOSGEBN%20Stratejik%20Plan/KOSGEB\\_Stratejik\\_Planı\\_\(2016-2020\).pdf](https://www.kosgeb.gov.tr/Content/Upload/Dosya/Mali%20Tablolar/KOSGEBN%20Stratejik%20Plan/KOSGEB_Stratejik_Planı_(2016-2020).pdf) Accessed: 17.06.2021.

<sup>24</sup> Within the framework of the investigation, consumer survey and dealer survey were made by an independent survey firm in order to examine the preference of white good sellers regarding online sales channels and consumers' purchasing decisions via internet and especially marketplaces. Within this scope, a sample covering competing brands, especially BSH (taking into account the differences among dealers on side streets, in shopping malls, etc.) and several questions are asked.

used as sales channels in both wholesale and retail trade. Many firms started to operate together physical and online sales channels, which used to function separately. The integration between physical and online channels has gained importance at last in this process. Omnichannel marketing aims that the customer has the same experience in different channels by means of integration. This requires the coordination of information and communication among different sales channels. For instance, in this new process, customers can return a product they buy online to a store. Such case is the result of the growth in technology and e-commerce and negatively affects the retail enterprises using single channel marketing methods. Retail enterprises that follow global growth tendencies prefer omnichannel marketing methods which brings together electronic and physical stores.

#### **G.5.4. The Functioning of Online Marketplaces**

- (71) This section deals with the following processes: putting up the products for sale via marketplaces, payment by final consumers to buy products, delivery of the products by sellers to shipping firms and transferring the sales amount to the seller.

##### **Product sales process in online marketplaces:**

- (72) Real or legal persons who want to make sales via online marketplaces have to subscribe to those marketplaces first. At the subscription process, those persons submit the requested information and documents such as trade registry gazette and tax certificate. Marketplaces check the validity of the documents submitted. The main reason for this check is to ensure that only reliable undertakings supply products via the marketplace in other words to protect the reliability of the marketplace before consumers. After that stage, sellers<sup>25</sup> can put up their products for sale.
- (73) Sellers supply their products to final consumers via the sales ads in the marketplace. Sellers put the headline, visuals, sales price, technical information, intended use, method and timing of delivery, id information and additional explanations regarding the products on the sales ad. In addition, some marketplaces prepare catalogs of product visuals and features for sellers. Marketplaces get that information directly from the main supplier/distributor or from supplier's/distributor's official website. However, if there is not an existing catalog prepared beforehand for the product in the seller's portfolio, information is posted by the sellers. Marketplaces check product information and visuals uploaded by sellers to the platform. Ads including visuals that do not comply with the criteria set by the marketplace or ads that are found to display incorrect information about the product are corrected upon the marketplace's warning or removed.
- (74) Moreover, sellers determine the sale price, stock information and time for delivery to the shipping firm. Sellers may send the products to the consumers by shipping/logistics firms that have contracts with the marketplace or by shipping/logistics firms that they have contracts. Sellers indicate how many days it will take them to give the product to the shipping firm and the marketplace follows whether the product is given to the shipping firm in the said period of time. Sellers who fail to give the products to the shipping firm may be imposed sanctions such as lowering seller's ranking, suspension of seller's sales via the platform and terminating membership agreement. In addition, if the seller does not give the product to the shipping/logistics firm in the time period

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<sup>25</sup> Real/legal persons who supply goods via online platforms that have the nature of a marketplace are referred to as "sellers" and real/legal persons who buy products via those platforms are referred to as "buyers".

set, the buyer has the right to cancel the order and take a refund.

- (75) Consumers are provided with various payment options in the payment stage such as credit card, debit card, EFT/wire and shopping loan<sup>26</sup>. When the buyers make a payment, the amount is first transferred to the marketplace's account. After the product is delivered to the buyer properly or the buyer confirms the product, the marketplace transfers the product price is transferred to the seller's account. While transferring the price, marketplaces cut the price at a set rate for the intermediation service they provide to the seller. Buyers do not pay any fee for shopping via the marketplace.

**Product return process in online marketplaces:**

- (76) Buyers have the right to return the products they have bought via marketplaces within the scope of the provisions of the Act no 6502 on the Protection of Consumers and Distance Contracts Directive. Article 9 of the Directive "the Right of Withdrawal" includes the following provision: "*The consumer has the right to withdraw from the contract within 14 days without showing reasons or paying penalties.*" Moreover, online platforms having the nature of a marketplace have their own return procedure provided that they do not to narrow the terms in the legal regulation to the disadvantage of the buyer. For example, (.....) gives buyers the right to return a product within 30 days without any reasons.
- (77) When the buyer wants to return a product, they make a request for return through the marketplace. The request for return is accepted or refused by the seller within the period set by the marketplace. If the seller refuses the return, the product is sent back to the buyer's address. In cases where the seller refuses the return, the marketplace where the shopping transaction is realized ensures that the procedure complies with the legislation. Buyers return the product free of charge by means of the shipping/logistics firm with a return code determined by the marketplace. Also, buyers can return the product by means of a shipping firm they choose directly. After the return process is completed, platforms transfer the payment to the buyer's account.

**The sales process for consumer electronics and durable goods in online marketplaces:**

- (78) As known, online marketplaces mediate for the sale of many different types of products under various categories. The sales process for technological products of high sales value and high brand image such as consumer electronics and durable goods via those platforms is the same as the products under other categories. However, (.....) states that sellers under this category are trained about sales rules and customer services principles.

**The process related to the evaluating and publishing product reviews and answering customers' questions in consumer electronics and durable goods categories:**

- (79) Consumers usually contact sellers to ask questions before or after shopping via marketplaces. Moreover, they can also ask questions regarding the product/seller by means of customer services provided by the marketplaces. In (.....), buyers can directly contact the marketplace via call center, WhatsApp support or other social media tools; the marketplace talks with the seller and recalls the buyer.
- (80) In addition, buyers who have done shopping via the marketplace can write reviews

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<sup>26</sup>(.....), provides cash on delivery option in addition to those. However (.....) and (.....) do not offer Wire/EFT payment option.

about and rate the product. The marketplace checks the reviews and remove reviews and ratings that are not compatible with the criteria set by the marketplace. The relevant criteria set by the platform are almost the same. Platforms publish all positive/negative reviews about a product as long as they are compatible with public morality.

**The process regarding the reviews and ratings about the sellers in online platforms:**

- (81) Similar to product review process, buyers can also evaluate a seller with respect to criteria such as delivery time, packaging, product status. Moreover, marketplaces measure sellers' performance by means of algorithms they design. The algorithm takes into account criteria such as delivery of the orders free of problems, delivery of correct products in a complete and undamaged way and shipping the product in time committed by the seller for each order. A seller's rating is measured on the basis of feedback by buyers about a seller and calculations made by the algorithm.

**Installment/assembly and guarantee process for the products under consumer electronics and durable goods categories:**

- (82) In case installment/assembly is needed for a product under consumer electronics and durable goods categories, buyers apply to the authorized service of the distributor for the product they have bought and the authorized service deals with the installment/assembly process or the seller, like the sales in a physical outlet, contacts the authorized service of the distributor on behalf of the customer and gives the address of the buyer. The authorized service that installs/assembles the product gives the guarantee certificate to the customer.
- (83) In the response letters of BSH authorized dealers, it is stated that in sales made via marketplaces BSH authorized dealers provide assembly/installment services:
- Bosch authorized dealer (.....): *"...Shipping company delivers the product to the customer. An authorized service installs the product..."*
  - Bosch authorized dealer (.....): *"...The firm who sells the product absolutely delivers the product. Regarding the assembly, if the product is new, the consumer can make an authorized service install the product if they wish..."*
  - Bosch authorized dealer (.....): *"...in sales via marketplaces, BSH services install/assembly the product like the sales in outlets..."*
  - Profilo authorized dealer (.....): *"...upon the customer's request, the authorized service installs the product..."*
  - Profilo authorized dealer (.....): *"...Our customers call the relevant firm's customer services and register for assembly/installment..."*
  - Profilo authorized dealer (.....): *"...In case of online sales via marketplace platforms, (.....) delivers the products to the customer, the authorized service installs and assembles the product..."*
- (84) Depending on the abovementioned flow, it is possible to say that one of the most important developments resulting from the growth of e-commerce is online marketplaces<sup>27</sup>. New sales platforms and new business models have occurred,

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<sup>27</sup> The expressions online marketplace, marketplace and third-party platform are used to refer to the same meaning.

facilitating shopping for consumers and fulfilling their demands more quickly compared to the traditional channel. The section below gives information about online marketplaces, which bring sellers and buyers together in online channels. Marketplaces also bring new business models to the trade ecosystem in sales and after-sales services such as payment, delivery, assembly and return.

### G.5.5. Online Marketplaces in Türkiye

- (85) Online marketplaces are intermediary platforms that bring together different user groups such as sellers, buyers and potential advertisers and facilitate the transactions between those<sup>28</sup>. In other words, those platforms provide a marketplace to sellers who aim to offer their products to consumers via internet channel and consumers visit that marketplace and reach many products and sellers through a single channel. The leading online marketplaces in Türkiye are *AMAZON*, *HEPSİBURADA*, *GİTTİGİDİYOR*, *N11*, *TRENDYOL*<sup>29</sup>. In addition, while some online marketplaces do not carry out activities as a seller and only function as a sale platform (pure marketplaces) others may carry out activities as a retailer in addition to providing a sale platform (hybrid marketplaces). For instance, *GİTTİGİDİYOR* only functions as an intermediary between the buyer and the seller whereas *HEPSİBURADA* operates as both a marketplace and a direct seller.
- (86) Considering its basic feature - the intermediary function - a marketplace both provides benefits to consumers, producers/sellers and important contribution to competition. In addition to offering a wide range of options for consumers, those channels provide an opportunity for a competitively transparent and easily accessible market. Moreover, consumers may find prices, technical features and delivery options of products as well as different suppliers while searching for a product listed in an online marketplace. In this way, consumers may access the information they need more easily and decrease searching costs. The easiness of shopping through marketplaces is determinant compared to offline retail channel because other parameters (price, quality, brand, etc.) being fixed, consumer surplus and social welfare will be higher<sup>30</sup>. Increased transparency supports allocation efficiency and competitive power of markets, which result in more reasonable prices, better quality and services because thanks to better informed consumers who are aware of market offers, more investments will be made to technology, quality and services in not only online but also offline outlets<sup>31</sup>.
- (87) From the perspective of sellers/producers, it is undeniable that marketplaces contribute to the widening of resellers' operation area limits. The first reason for this is that resellers may eliminate the costs they have to incur when they build an e-trade website by means of making sales via a marketplace. Although the minimum costs of building an e-trade website change due to a lot of factors, it can be summarized in a general sense as follows<sup>32</sup>:
- Initial e-trade setup website cost: 2,300 TL

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<sup>28</sup> E-trade Sector Report, para. 99-103.

<sup>29</sup> Taking into account the most visited websites with respect to internet traffic, there are four marketplaces among the first 20 (*SAHİBİNDEN*, *TRENDYOL*, *HEPSİBURADA* and *N11*). <https://datareportal.com/reports/digital-2021-Türkiye>, Accessed:18.06.2021.

<sup>30</sup> IDOLOR, M. (2019), *Selective Distribution Systems and Online Platform Bans*, Unpublished Master's Thesis, Accessed: 29.03.2021.

<sup>31</sup> EZRACHI, A. (2016), "The Ripple Effects of Online Marketplace Bans", [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2868347](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2868347), Accessed: 29.03.2021.

<sup>32</sup> <https://www.turkweb.com.tr/e-satis-sitesi-ve-e-ticaret-sitesi-kurmak>, Accessed:16.06.2021.

- Website cost including product input: 5,500 TL
  - Website cost including product input and SEO<sup>33,34</sup> 15,000 TL<sup>35,36</sup>
- (88) Being findable among keywords as a result of organic traffic<sup>37</sup> is important for carrying out activities in online channel. Therefore, it is important that a website have SEO compatible design and appropriately prepared content. Since attracting organic traffic is more critical for firms with low advertisement budget, all those costs are challenging for a reseller new in e-trade. In the surveys made within the scope of the file, 15% of the sellers state that the costs for increasing the number of visitors for their websites are high and 12% of the sellers states that the necessary infrastructure costs are high when asked for the reason for preferring to make sales via online marketplaces.
- (89) In addition, with respect to resellers, high cost of building a website is not the only reason why sales via marketplaces are desirable. The said sellers can carry out their activities more easily, securely and comprehensively by benefiting from marketplaces' ready infrastructure such as interface design, payment systems and existing consumer demand. Considering the data of dealer survey, the most important reason why resellers prefer making sales via online marketplaces is reaching consumers more easily. The consumer survey made under the scope of the file shows that marketplaces such as HEPSİBURADA, TRENDYOL, AMAZON and N11 are the channels where consumers buy white goods via the internet the most. Moreover, according to the results of the dealer survey, six out of ten dealers who prefer online marketplaces think that they will lag behind their competitors unless they make sales via online marketplaces. Besides, taking into account the increasing trust in mobile shopping, the benefits of sales via marketplaces for sellers are more significant because from the perspective of consumers, mobile interface means a faster and easier tour in online channel. Since resellers do not have fund and size to provide efficient and reliable mobile application without marketplaces functioning as a bridge between resellers and consumers, they will be out of the mobile market if they do not make sales via marketplaces. In addition, consumers see not only the products they search but also the products they are interested in by coincidence and thus create additional demand. This will increase sales volume of sellers. In summary, in addition to being an important bridge between sellers and consumers, marketplaces provide sellers with an environment where they can compete with undertakings with brand recognition and sufficient financial power.
- (90) Marketplaces affect actual/potential competition by providing an environment where both intra-brand and inter-brand competition is strong. The ability to compare prices arising as a result of a more transparent market will provide the consumers with the opportunity to refer to a seller who offers a cheaper price, so sellers' incentive to increase prices will be suppressed. Moreover, online marketplaces are two-sided

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<sup>33</sup> Search Engine Optimization is the name given to all activities made to raise the ranking of websites in search engines and enables search engines to categorize websites with qualified content according to the words searched by users.

<sup>34</sup>SEO ensures that the website appears on the first page of search engines.

<sup>35</sup> The numbers are current numbers dated 15.02.2021.

<sup>36</sup> In addition there are infrastructure costs such as design, functionality, data import, integration, taxes to be paid to the state and domain name cost, SSL cost, e-trade package renewal cost, hosting and maintenance cost if ready trade packages are not used, annual service cost paid to the supplier if XML (markup language that standardized the communication between the platforms which realize web-based shopping). <https://www.hazirticaret sitesi.com/blog/e-ticaret-sitesi-masraflari/>, Accessed: 17.06.2021.

<sup>37</sup> Visitors using a website as a result of queries made with different keywords are called organic traffic.

markets and this encourages the improvement of the service level. In another words, competition in marketplaces is aimed at innovation rather than price, consequently, increasing competitive pressure will accelerate the improvement of services provided to both consumers and sellers in marketplaces<sup>38</sup>. Lastly, marketplaces provide a quantitative benefit: increasing the number and volume of transactions by providing an opportunity to bring together simultaneously too many people who are not able to gather physically otherwise. Especially, marketplaces that enable small and medium size sellers to compete in the same environment with big sellers also provide the sellers with the opportunity to be visible in mobile application interfaces. Moreover, sellers can announce their discounts and offers to consumers effectively thanks to marketplaces. In this way, there will be more competitive environment with more participants during campaign and discount periods.

- (91) Despite the opportunities and advantages provided by marketplaces, main suppliers may argue that in a dealer system, the main supplier loses its dominance over product sales/presentation/marketing, brand image should be protected, there are counterfeit/imitation products, pre-sale or after-sales services are not sufficient. This shows that marketplaces may sometimes contradict with main suppliers' strategies.
- (92) Price competition is used extensively as a marketing tool especially in sales made through marketplaces. Marketplaces may encourage suppliers that apply higher prices to decrease their prices because marketplaces promote intra-brand and inter-brand competition, it is easier to compare prices, product prices are competitive due to offers made to increase platform's sales volume and traffic. Within this framework, marketplaces offer discounts to consumers by means of cart discount, discount coupon and similar methods, selling the products at a lower price than the outlet. Similarly, marketplaces may sell several products such as product insurance, guarantee, additional guarantee, etc. In addition, the platform may provide additional benefits to consumers in payment conditions such as the number of installments as a result of bargaining with banks depending on the platforms' commercial advantages.
- (93) While sellers can monitor and control easily sales prices, marketing strategies, the campaigns applied by the reseller as well as whether the products are displayed properly, the services provided by a platform can go beyond the control of suppliers who make sales at platforms through their dealers. Therefore, the main reason why suppliers avoid online channels is that they lose their control over sales/marketing channels unlike the traditional channel.
- (94) Marketplaces have a separate and completely independent structure related to the clarifications, memberships, personal data to be collected and their use as a third party within the framework of personal data protection law. Suppliers and resellers cannot be involved in or control this process. Moreover, the consumer who buys its branded product is the consumer of the platform not the supplier's or the reseller's. Consequently, suppliers may argue that it is not possible to have right to communicate with their consumers, provide them with personalized consumer experience and process and use their data with commercial purposes within the framework of laws but they can only reach consumers through the marketplace. On the other hand, products' technical features and designs are protected all over Türkiye within the framework of intellectual property. In this sense, another argument posed by suppliers is that they

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<sup>38</sup> ANASTASIADIS, V. "Online Marketplace Bans: Mapping the Landscape Under the Light of the Commission's E-commerce Sector Inquiry", *The Interdisciplinary Centre for Competition Law and Policy-Global Antitrust Review*, No:10, p. 86-130.

do not want third parties who do not contribute to the brand or product to benefit from certain brands or products by means of allowing the use of those outside authorized sellers' (online or offline) outlets. Therefore, suppliers think that the use of brands without bearing any costs leads to unfair gains.

- (95) Another important argument raised by suppliers is to protect the brand image. Brand image is important especially for luxurious and prestigious products. Brand image consists of different components such as the belief about the brand (opinion about product or service quality related to the brand), brand performance (fulfilling consumer needs, formal facts - security, design, style, price, etc. -), brand meaning (product's external meaning), brand experience (the sense and behavioral reactions caused by the brand) and brand personality (the facts representing the brand's characteristics) from the perspective of the consumers. As consumers consider brand image as important, they expect that the brand always renews itself and provides new offers, so investments are made to expensive promotion and advertisement activities for products with brand image in order to maintain that image. Brand owners argue that marketplaces do not meet the expectations of the customer related to the product such as sufficient information, service, and advice, moreover, marketplaces sell products with lower quality or defects together with the products with brand image, which harms the brand image. To explain in detail, product display or information may sometimes be incomplete or misleading in marketplaces. Consumers have to submit their demands and complaints via the marketplace they have bought the product at pre-sale consultancy, sale, delivery, assembly, return and repair stages; their ability to contact the seller is limited. As a result, sellers may argue that sales through marketplaces may harm brand image. On the other hand, 19% of resellers that participated to the dealer survey think that sales through marketplaces do not affect the image of the brand they represent.
- (96) Another argument is that pre-sale and after-sales service quality cannot be provided. It is also suggested that certain factors related to marketplaces such as different delivery processes, delay in delivery, failure to deliver at all, failure to deliver the product to door free of damage, different practices concerning return, receiving an old product and collecting package waste, using different logistics firms, reluctance to get back a return product, reselling damaged or return product may lead to customer dissatisfaction. Suppliers say that a customer blames the brand/supplier if they experience a problem with a product sold through a marketplace. According to the survey results, 42% of the consumers holds the marketplace whereas 39% holds the brand itself (the brand of the product) responsible for the sale/after-sales services when they buy a product. The rate of customers who hold the outlet selling products through the marketplace is 19%. In case of a problem, 54% of the consumers applies to the marketplace, 30% applies to the brand itself and 16% applies to the outlet selling products via the marketplace.
- (97) Although the concerns seem justifiable in the eye of suppliers at first, some of the marketplaces have developed mechanisms in order to resolve or balance those concerns. For instance, AMAZON states that it follows two different methods to resolve the concerns of brand owners depending on the preliminary findings of EU Commission's (the Commission) E-commerce Sector Report<sup>39</sup>. First it builds "landing

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<sup>39</sup> Report from the Commission to the Council and the European Parliament Final report on the E-commerce Sector Inquiry", *Commission Staff Working Document*, [https://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_swd\\_en.pdf](https://ec.europa.eu/competition/antitrust/sector_inquiry_swd_en.pdf), Accessed:10.07.2021.

pages” that identify with the corporate identity of a brand so that manufacturers and sellers can offer their products. Another method to resolve such concerns aims to protect the image of prestigious brands. To this end, AMAZON builds “Premium Beauty Stores” to display prestigious brands, especially cosmetics products, and argues that there is no difference between the reseller’s website and AMAZON’s website in practice for selling the products<sup>40</sup>.

- (98) (.....) states that during the sale process of technological products of high sales value and high brand image in the eye of customers such as electronic (mobile phone, tablet, computer, etc.), durable goods/white goods (refrigerator, washing machine, dishwasher etc.),
- Before starting to sell products via the platform, sellers are informed about online sale rules and customer services principles by means of online training programs, also there are many training programs about packaging and after-sales services,
  - There are product reviews in pre-sale services, thanks to those reviews, customers have the opportunity to see the experiences of those who have used the product before buying that product. Similarly, customers are provided with the ability to communicate with the seller before the sale, which aims to inform customers about the products in detail,
  - Since most of the sellers who sell the products are authorized, customers are able to have detailed information about the product features before taking the purchasing decision,
  - In order to ensure customer satisfaction after the order is given, customers can ask questions to sellers in any stage,
  - In some cases, customers have right of withdrawal for fifteen days. Independent of the seller’s initiative, the costs are incurred by (.....) and the right of withdrawal is accepted for the sake of customer satisfaction.
  - Since the transport of products in the product group in question is special, sellers are provided with options of cargo/logistics firms with private transport services, in this way, sellers can deliver their products to customers by choosing the cargo/logistic firm they want.
- (99) (.....) states that the process is the same for both customer electronics, durable consumer goods and other product categories and there is no difference among those. They are open to cooperation in order to resolve the issues of negative effects on brand image, if the manufacturers share catalog information and product display with the platform, they process those in their catalogs and the information conveyed to the seller pages can be reflected by means of automation. As an example, (.....) opened its enriched content in product display to access by its authorized resellers making sales via online channels
- (100) Moreover,(.....), (.....), (.....) and (.....) states that the process is the same for both customer electronics, durable consumer goods and other product categories and there is no difference among those.
- (101) Another argument about the sales via marketplaces is that counterfeit/imitation

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<sup>40</sup> Preliminary Report of the European Commission on the E-commerce Sector Inquiry-Comments of Amazon EU Sàrl”, [https://ec.europa.eu/competition/antitrust/e\\_commerce\\_files/amazon\\_eu\\_en.pdf](https://ec.europa.eu/competition/antitrust/e_commerce_files/amazon_eu_en.pdf), Accessed:01.04.2021.

products are sold. Counterfeit/imitation products not only pose risks to waste investments made for brand image, proper product display, product promotion and quality for manufacturers but also lead to security and health problems for consumers<sup>41</sup>. Most of the manufacturers that participated to E-commerce Sector Report presented by the Commission underlines that counterfeit products sold in marketplaces are an important problem. Moreover, marketplaces charge commission from the sale of counterfeit products and thus do not suggest any solutions to prevent counterfeiting<sup>42</sup>. According to consumer survey data, 26% of the consumers say that the reason for shopping from a physical outlet is that counterfeit products may be sent in online sales. Therefore, taking into account that there are not any concrete measures to prevent the sale of counterfeit products by marketplaces, this may lead to important problems for both consumers and sellers. However in the response letters of (.....) and (.....), it is stated that there are not cases of counterfeit products or those cases are very limited. Measures are taken against possible risks and investments are made to prevent counterfeiting. (.....) states that in case outlets give incorrect or misleading information or fail to fulfill their acts, they impose penal sanctions within the framework the contracts made with the outlet. If there is an irreparable contrariness, the contract may be terminated.

- (102) In summary, the importance of online marketplaces is increasing day by day with the developing technology and the increase in use of internet and smart phones. Marketplaces provide search cost advantages to consumers. At the same time they increase transparency and enable comparing products, services and prices. Marketplaces provide manufacturers with the opportunity to reach a lot of consumers simultaneously and benefit from the existing infrastructure for the services they cannot offer alone. Moreover, transparency makes downward pressure to prices and contributes to the development of inter-brand and intra-brand competition. On the other hand, suppliers argue that there are risks such as damage to brand image, counterfeit/imitation products presented in the same place, insufficient pre-sale and after-sales services or impossibility to provide customer-oriented service understanding with respect to certain products.
- (103) According to consumer survey results, the main motivation for shopping in a physical outlet is the ability to see/touch/try and buy quickly the product and to bargain. Moreover, the survey also shows that regarding consumers buying white goods, 57% purchase goods from the physical outlets at the most, 20% only from the internet and 23% from both. Dealers who sell white goods from the internet make 60% or more of their sales in the physical outlets. For white goods, physical sales are meaningfully more efficient for dealers. Accordingly, a product with the same model and price is purchased from the physical outlet of the brand's authorized dealer at most with a rate of 35%. It is understood that physical outlets are very important for consumers.
- (104) Lastly, the tables below show the revenues related to the sales made by undertakings acting as online platforms in 2018,2019, 2020 and first month of 2021 in white goods and small appliances markets:

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<sup>41</sup> "The Impact of Counterfeiting on Online Consumer Rights in Europe", <https://www.eccireland.ie/wp-content/uploads/2017/03/counterfeiting-report-final.pdf>, Accessed: 01.04.2021.

<sup>42</sup> E-commerce Sector Report, p. 147.

Table 17: Sales revenues of online platforms in white goods and small appliances sector (TL)

Platforms	White goods				Small appliances			
	2018	2019	2020	2021	2018	2019	2020	2021
HEPSİBURADA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİGİDIYOR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
N11	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TRENDYOL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AMAZON	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

## G.6. Response Letters from BSH, Suppliers, Platforms and Dealers

### G.6.1. Response Letters from BSH

(105) Following their application, BSH was requested detailed explanations about the drawbacks or negative consequences of sales via platforms having the nature of a marketplace (including sale, presentation of product features and sales conditions to consumers, after-sales guarantee services, installment services). BSH submitted the explanations to the Authority on 21.05.2020 with the no 4751, on 10.08.2020 with the no 8338 and on 09.04.2021 with the no 16906. The important parts are summarized below:

#### ***Protecting Brand Image***

- The obligation to log in the third party's website (website carrying the logo of the third party)/always being on a page carrying the third party's logo, brand and domain name: Even if the dealers can have their own area on some marketplace sales platforms owned by third parties, in order to reach that area, users have to log in the third party's website, more importantly, even if the user visits the dealer's area, third party's name/logo is always displayed at the top, BSH products have to be marketed on a page carrying the domain name with the third party's brand, those facts are contrary to BSH's corporate identity and harm its brand image.

- In-site communication: Technical infrastructure, financial power, technical capacity, management, functioning and business models of each marketplace are different. In general, product display and product information in marketplaces that can be regarded as a sales platform may be incomplete or misleading. BSH does not have the ability to intervene to those areas de jure and de facto.

- Delayed solutions to customers' problems: Consumers submit their demands and complaints via the marketplace where they buy the products in the processes of pre-sale consultancy, sales procedure, delivery, assembly, return and repair. Their ability to contact the seller is limited and they are unable to find an addressee. It is actually impossible to follow consumer complaints stated in reviews sections about the product, seller or the process in lots of sales platforms having the nature of a marketplace. Thus, there may be delays in solving the problems and sometimes problems remain unsolved. Legally, BSH does not have the possibility to control and intervene in the areas owned by a third party. Even if it is assumed that BSH is able to intervene, it is actually impossible to monitor, control and intervene in many sales platforms having the nature of a marketplace. If the problems are solved albeit late, customers are dissatisfied. E-mails and social media reviews are given in the attachment. Customer satisfaction ultimately damages brand image.

- Delivery and return process: Marketplaces may lead to customer dissatisfaction due to reasons such as different delivery processes, delayed delivery, failure to deliver at all, failure to deliver the product to door free of damage, different practices concerning return, receiving an old product and collecting package waste, using different logistics firms, reluctance to get back a return product, reselling damaged or return product. All kinds of customer dissatisfaction damages brand image and corporate identity.
- The existence of unauthorized sellers in marketplaces: Authorized resellers form the basis of BSH's selective distribution system. There are authorized and unauthorized sellers in marketplaces. Authorized seller and unauthorized seller are equal in the eye of consumers, which harms selective distribution system as well as corporate identity and brand image. Generally, in sales platforms having the nature of a marketplace, the marketplace, which is not an authorized seller, may also be a seller. For instance, a marketplace - (.....) - puts up a product it does not have for sale or decides alone to make a discount on the sales price regarding the sellers there<sup>43</sup>, make the seller meet the discount amount or the marketplace itself subsidizes it. In this case, a dealer in BSH's selective distribution system becomes a wholesaler or a third party enters the distribution channel. Those issues are contrary to competition law.
- Sellers using nicknames in marketplaces: The sellers in marketplaces use nicknames. In most marketplaces, even real titles are not disclosed to consumers, which is contrary to transparency principle - a part of corporate identity. Moreover, those nicknames are usually titles such as "(.....)", "(.....)", "(.....)" etc. Marketing of BSH products in an environment where sales are made under nicknames harms brand image.
- Equivalence: Due to conjugation principle, BSH should be able to impose the same restrictions that it can impose to offline sales in outlets to online outlets. In the selective distribution system, BSH dealers make sales only in their outlets but not in outlets owned by third parties. Likewise, dealers should make sales only in their websites but should not make sales in websites owned by third parties having the nature of a marketplace.
- Products are put up for sale together with competing products and advertisements of other products: BSH established a selective distribution system for its brands. The system is brand-exclusive for Bosch and Siemens. Within this framework, BSH products should not be displayed with competing products. However, BSH products may be marketed in marketplace sales platforms belonging to third parties. Consumers may be directed to competing products with explanations such as "those who look at this look at that too", etc. at the bottom of a page containing a BSH product. This is under the control of neither BDH nor its dealers. In this way, brand exclusivity is violated. Besides the consumer is exposed to a perception that both products are equivalent. All of these facts affect brand value and image negatively.
- Sale of product insurance-additional guarantee etc.: In sales platforms having the nature of a marketplace, some products may be sold under the name of product insurance, additional guarantee, etc. Third parties that own those platforms may sell such products for BSH's branded products without giving sufficient information about the scope and use of those products. In that case, BSH's branded products might be marketed with those products that are completely irrelevant to BSH. Customers'

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<sup>43</sup> There are not any documents submitted about this case. It is an argument by the party.

negative experience because of such products affect brand image and corporate identity negatively.

- Marketing strategies: In sales made via marketplace sales platforms owned by third parties, products may be sold by tying them with other products. Certain products may be given together with the products sold as a promotion. As such practices are made by marketplace sales platforms, BSH's products may be subject to bundling or tying without taking the consent of or informing BSH or its dealers, which poses the risk of brand image being negatively affected. As BSH does not have any commercial relation with those platforms, it is not possible to control those situations.

- BSH products are used to attract visitors and generate advertisement revenues in marketplace sales platforms owned by third parties: Since BSH brand products' image is high; third parties want to have those products in their marketplace sales platforms. Those products are subsidized by marketplace sales platforms. In this way website traffic is increased and unfair profits are acquired.

- In order to avoid the same problems in sales made via dealers' own websites, brand corporateness and its process will be monitored regarding the online sales made via websites. In case the service level does not meet the desired standards, the relevant dealers will be warned and imposed sanctions, if necessary. Consumers will solve their problems more quickly when they contact the dealer from whom they have bought the product or BSH. BSH brand products will never be displayed or sold in an outlet that carries out a third party logo and that does not have a commercial relationship with BSH.

### ***Intellectual Property Rights***

- The subject of the application is Bosch, Siemens and Profilo branded products manufactured and marketed by BSH. The brand, technical features and design of each product is protected all over Türkiye within the framework of intellectual property legislation. BSH permits its authorized dealers in the selective distribution system to use products' brands and visuals but BSH, with good reason, does not want third parties who do not make any contributions to the products to benefit from those brands and products by allowing their use apart from (online or offline) outlets of authorized dealers. Under no conditions, can BSH be forced to allow the use of brands and visuals in favor of third parties who do not have a commercial relationship with BSH.

### ***Data Security, Protection of Personal Data and Personal E-mail Authorization***

- BSH always makes investments in the area of data security in order to offer personalized consumer experience to its consumers.

- While doing this, BSH acts very prudently in order to fulfill the requirements of PDPL and E-Mail Law, and expects the same prudence from its dealers.

- Clarifications to be made, consents to be taken and storing the data collected, ensuring their confidentiality, fulfilling legal deleting demands within the framework of the laws are the most important legal requirements.

- BSH works with its dealers while fulfilling those requirements but it is not possible to work together with marketplaces. While the said laws regulate the relation between the supplier and the dealer, marketplaces are not included in that regulation. Marketplaces will be completely independent in clarifications to be made, consents to be taken and storing and using the personal data collected.

- It will not be possible for BSH and its dealer to be intervene or control these issues. The consumer who buys its branded product will be the consumer of the platform not BSH's or its dealers.
- BSH's right to communicate with its consumers, provide them with personalized consumer experience and process and use their data with commercial purposes within the framework of laws is prevented in this way but the marketplace acquires unfair profits in this way.
- Moreover, in the channels where consumers do shopping by credit cards, system security is very important with respect to protecting personal data. BSH can provide for and monitor security requirements for its dealers' websites but does not have a right to do so for marketplaces.

(106) Consequently, the explanations above can be summarized as follows:

- Consumers searching for technological, high quality and branded products have high expectations regarding pre-sale and after-sales services, brand image and sales atmosphere. BSH has created certain brand positioning to differentiate itself from its competitors in the same segment in the market throughout Türkiye.
- BSH's selective distribution system ensures that the retail sale of the products which BSH manufactures or supplies is of the same quality all around Türkiye.
- Consumers can visit any authorized sellers they wish thanks to the widespread dealer network in Türkiye, see and buy the products of the same high standard and suitable for their needs. They can have reliable information, in person, about using the product correctly and efficiently from sales consultants who are trained specially. They can also have face-to-face service of high quality directly from the authorized seller in terms of using their rights arising from consumer legislation if necessary.
- BSH constantly invests in its selective distribution system and improves it to offer and maintain quality consumer experience. Such improvements include opening outlets offering experience opportunities, remote training given to sales consultants, measuring the quality of service in outlets constantly. BSH tries to maximize and maintain customer loyalty by means of such innovative practices and constant marketing investments. Harming the customer loyalty, which BSH has gained with huge investments and efforts, by sales through sales platforms having the nature of a marketplace and providing BSH's brand image, corporate identity and customer loyalty for the use of marketplaces and competing brands in the marketplaces that do not make any contributions to those will create free-riding problem as well as unfair competition under the scope of Turkish Commercial Code.
- BSH maintains its brand strategy with a sound dealer channel it has created with years of efforts and has maximized brand image and brand confidence to the utmost level in the eye of the consumers. The atmosphere created with the place, workers and decoration of the outlet reflects brand prestige.
- BSH does not have the possibility to control, intervene or impose sanctions de jure or de facto over lots of sales platforms having the nature of a marketplace, which do not have any commercial relationships with BSH.
- In case sales are allowed via sales platforms having the nature of a marketplace, selective distribution channel will be distorted. Consumers will not have the opportunities such as visiting, seeing and buying the product in one of the outlets throughout Türkiye, and having correct information face-to-face. After the dealer

channel is eliminated, consumers will have fewer choice and consequently consumers will be affected negatively by the prices that increase due to that unfavorable picture.

### G.6.2. Response Letters from Platforms

- (107) (.....) stated that it did not make a study previously concerning whether the sale of products that are technologically complex, have a high brand image in the eye of consumers via marketplaces affect consumers' perception of brand/quality etc. in the eye of consumers. (.....) stated that its business partner (.....)<sup>44</sup> sells Bosch, Siemens and Profilo products under the body of BSH. Those products' value vary between (.....) TL. However since BSH prevents its dealers from making sales directly via (.....), (.....) outlet purchases products from the dealers it has agreements and sells those via (.....). (.....) stated that outlet rating based on user reviews is 100/100 and there are more than (.....) favorable consumer reviews. (.....) stated that customers express their satisfaction about the process via outlet reviews. It is a convenient example of taking customer satisfaction in the traditional channel to online channel.
- (108) (.....) states that it has not launched durable goods category in Türkiye yet and sees every kind of restrictions on selling products via marketplaces as competition infringement to prevent intra-brand competition. (.....) states that the advantages of online market places such as facilitating product purchase, decreasing search and effort costs, decreasing prices to the benefit of consumers due to transparency, offering a lot of product options, ability to compare different product features, making it easier to find the best offer for the product chosen, benefiting from uniform complaint and payment management services serve for promoting competition in the market. Those advantages also cover durable goods. (.....) states that if BSH's exemption application is accepted, while BSH products are sold via (.....) in European countries, they cannot be sold in Türkiye and consumers will be devoid of the above-mentioned benefits. (.....) also highlights that when brands make sales in (.....) outlet, they will benefit from (.....)'s reputation before the consumers and additional sales traffic. On the other hand, (.....) argues that the free-riding argument of the supplier means to overlook (.....)'s additional value and investments.
- (109) (.....) sells durable goods/white goods in (.....) outlets outside Türkiye<sup>45</sup>. (.....) outlets state that they do not process those products differently compared to other products and apply the same high standard to all products and offers. It is a part of the holistic buying experience (.....) offers to all customers.
- (110) It is stated that in the sample screen shots in the response letter in (.....) among the product offers available on "(.....)" and "(.....)" in (.....) outlets, there are a lot of brands including Bosch and Siemens. (.....) provides specially prepared search terms (brand, size and colors) to facilitate looking at the current offers for the products that are the subject of the file. In addition, durable goods are generally large and heavy, therefore the transporters should have the necessary capacity and experience to deliver the products soundly in a short time in the transport process. It is stated that delivery details and options vary according to customers' address. Generally (.....) delivers products by normal transporters or special transport companies according to size, weight and delivery address. Third party sellers can benefit from (.....)'s logistic network and organize the transport of those products within the scope of (.....) program. Third party sellers may send heavy and large products directly to their customers from their

<sup>44</sup> The trade name of the seller is (.....) and it has an outlet in (.....) sales platform.

<sup>45</sup> (.....) and third party sellers sell durable goods in Türkiye whereas (.....) has not opened large size durable goods/white goods category (i.e. refrigerators, washing machines, dishwashers, etc.).

warehouses by a transporter they choose as long as the transporter meets minimum standards to ensure customer satisfaction and expectations such as delivery tracking.

- (111) Regarding another issue, (.....) states that third party sellers are always commercially independent from (.....) and can take decisions freely about pricing and whether products will be sold as a bundle or alone. (.....) emphasizes that when it opens “Durable Consumer Goods/White Goods” category in Türkiye, the said condition will also apply to sellers to sell products under this category and BSH products.
- (112) In addition (.....) organizes special promotion events such as Black Friday. (.....) states that such events provide benefits to third party sellers such as increasing the visibility of products and contribute to sales and product awareness. (.....) states that it designs some of those events to create special themes such as introducing small and medium-size enterprises or providing special offers and discounts such as (.....) sales and participation to those events are voluntary for third party sellers. However, if third party sellers want to participate in those events, they should fulfill the criteria regarding the theme of the event including promising special offers and discounts for customers. If third party sellers participate in such events without making competitive offers, this will lead to unfavorable customer experience and harm the reputation of not only the seller but also (.....) as a whole.
- (113) (.....) and (.....) states that in general sales via online platforms increase competition and provide various benefits to consumers while decreasing operation costs and enabling connection with a wide customer base for undertakings. The benefits of sales via online marketplaces and the reasons for the increase in such sales are listed as follows: more competitive prices charged from customers thanks to comparison between different retailers’ prices, decrease in customers’ searching costs, secure payment, fast logistics (such as delivery on the same day) and opportunity for potential customers to read outlet and product reviews by customers who have already bought a product. In addition, unlike sales via online marketplaces, brands’ own websites do not always include customer reviews. Even if there are reviews, brand owners may manipulate customers’ perception by not publishing negative reviews. Moreover (.....) stated that ECJ ruled in Coty decision that although it is possible to impose a “platform ban” for luxury products under certain conditions, such ban is not applicable to all branded products. Supporting the same opinion, (.....) states that this decision reflects the period before 2016, when internet sales were not as developed as today. ECJ’s reason that brands cannot control the conditions in marketplaces is not valid for themselves. Many brands use their concerns about brand image as a justification to avoid price competition to be faced after their products are launched in online marketplaces. (.....) states that Bundeskartellamt criticized the said decision and will interpret the decision narrowly in application. (.....) suggests that durable goods or white goods cannot be regarded as luxury because they are not kinds of products which gain value such as accessories made of precious materials (watch, bag, designer products) but they have a lifetime and their value decreases in time due to improving technologies. (.....) states that consumers’ addressee (until the delivery to the customer) in the dealings via (.....) is (.....) and emphasizes that there are solutions less restrictive (such as special logos for authorized sellers) to protect brand image in third party platforms. Using those less restrictive methods will ensure protection of brand image as argued by BSH. (.....) states that BSH products are sold widely via online platforms abroad but they are not sold even their own websites. If the prohibition is granted exemption, the online product portfolio offered by online retailers to customers will be narrower, geographic market distinction with respect to durable

goods will be strengthened and ultimately prices will increase.

- (114) (.....) states that it observes that brands such as (.....) and BSH are increasingly making pressure to prevent their dealers from making sales via online platforms in 2021. Documents prove the sanctions imposed by manufacturers such as canceling annual turnover premium and terminating dealership agreement. Moreover, a study concerning the number of complaints submitted to (.....) regarding sales in Bosch, Profilo and Siemens brand refrigerator, washing machine and dishwasher product groups in (.....) platform in 2021 is given below:

Table 18: The number of complaints concerning BSH sent to (.....)

Brand	Number of orders	Number of complaints	Rate of complaints (%)
Bosch	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)
Total	(.....)	(.....)	(.....)

Source: Response Letter

Table 19: The contents of complaints concerning BSH sent to (.....)

Content of the complaint	Subject	Number of complaints
Current code error	Service	(.....)
Arbitration Board complaint	Service	(.....)
Refusal to return	Return	(.....)
Request on behalf of a customer return	Return	(.....)
Return status query	Return	(.....)
Using coupons	Offer	(.....)
Wrong shipping number	Shipment and Delivery	(.....)
Shipment not out for delivery (.....)	Shipment and Delivery	(.....)
Customer shipping campaign number error	Shipment and Delivery	(.....)
Logistics that cannot be tracked	Shipment and Delivery	(.....)
The delivery person called to door did not come	Cargo and Delivery	(.....)
Branch's complaint- (.....)	Shipment and Delivery	(.....)
Request for delivery again	Shipment and Delivery	(.....)
The shipment waited in the sending branch	Shipment and Delivery	(.....)
Current code error	Shipment and Delivery	(.....)
Complaint about the shipping company employee	Shipment and Delivery	(.....)
Shipment returned without delivery to door	Shipment and Delivery	(.....)
Special delivery	Shipment and Delivery	(.....)
Shipment not out for delivery (.....)	Shipment and Delivery	(.....)
Sending to a place out of home delivery region	Shipment and Delivery	(.....)
Delayed shipment	Outlet	(.....)
Order cannot be supplied	Outlet	(.....)
Outlet's behavior	Outlet	(.....)
Damaged product is sent	Outlet	(.....)
Wrong product is sent	Outlet	(.....)
Outlet using an insulting language	Outlet	(.....)
Delayed repayment	Payment	(.....)

Installment options	Payment	(.....)
Invalid payment realized	Payment	(.....)
Process of Transferring product price to the account	Payment	(.....)
Product is sent without the invoice	Order	(.....)
Invoice request	Order	(.....)
Repurchase	Order	(.....)
Guarantee status	Product information	(.....)
Incomplete product information	Product information	(.....)
Total		(.....)
Source: Response Letter		

- (115) It is stated that in 2021, the average rate of complaints concerning all BSH sales (.....) made is (.....)% and this is very low. The explanations about the reasons for those complaints are as follows: out of (.....) complaints, (.....) are related to shipment and delivery process. As stated before, (.....) buy service from (.....), (.....) and (.....) logistics companies, which BSH also uses for product delivery. Thus, about (.....) % of remaining part of (.....) complaints is the cases which a customer who buys a product from not (.....) but BSH's own dealer may also face. Moreover, "delayed repayment" under the "payment" category is related to customers' bank not (.....) platform. On (.....) platform, after return is approved, repayment is made within 24 hours at the latest but there may be delays in this process due to the bank. If those complaints are not included in the scope of complaints attributed to (.....) platform, the complaint rate will decrease to (.....)%. This rate cannot justify restrictions in platform sales by reason of protecting brand image.
- (116) (.....) states that the most important factor that can affect consumer perception in the sale of products with high brand value in online channels is counterfeit products. Certain mechanisms in the ecosystem and measures can solve this problem. Especially, there are not counterfeiting cases in white goods and small appliances categories or there are very few cases. Many firms with high brand value operating in the area of consumer electronics such as mobile phone, tablet and PC ((.....) etc.) do not have a problem about perception with respect to consumer electronics due to high number of sales in e-commerce platforms. (.....) thinks that the main problem with respect to brand perception in white goods and small appliances category may stem from problems to be encountered at the time of delivery (delivering defective good). Inherently, this problem is not related to e-commerce or marketplace business model. Potential problems about brand perception can be solved quickly by means of simple measures to be taken (for instance the seller can show that it is an authorized reseller of the relevant brand). Stating that they do not see any different factors which affect brand perception negatively between a dealer selling products via its own e-commerce platform or website and a third party e-commerce platform, (.....) highlights that within the framework of the agreement between BSH and (.....), (.....) makes online sales via both e-commerce platforms and its own website. Concerning negative effect of sales via e-commerce platforms (.....) and (.....), states that the risk that consumers cannot distinguish between authorized and unauthorized sellers in e-commerce platforms can be solved by adding authorized sellers' status to the system. (.....) adds that there are various types of consumer complaints related to online sales BSH makes by means of its and its dealers' websites in "(.....)".
- (117) (.....) states that brands often resort to the argument that products are displayed with incorrect or misleading information, explanations, pictures or similar content not

suitable for the brand's corporate identity, image, quality and security standards in order to prevent sales via online channels but this argument is not true and should not be accepted as a sufficient argument to prevent sales. (.....) adds that the visuals and contents of products being listed under white goods category is posted by (.....) while the product is being created in (.....) system. The product picture is taken from the official website of the product's brand or from the brand itself directly. (.....) takes into account brands' requests for enriching or changing the content. The fact that they make sales via (.....) and (.....) outlets - their official outlet in (.....) and via (.....) through their authorized dealers is stated as an example of proof that the said arguments are baseless.

- (118) (.....) states that a solution according to which authorized sellers will be provided a visual different from other sellers showing that they are authorized is acceptable.
- (119) Online channel increases consumer choices, besides, it provides benefits such as enabling a lot of small and medium enterprises to make sales. (.....) states that with respect to white goods and durable consumer goods, it is integrated to the same logistics firms with BSH (like (.....), (.....) and (.....)) and gives importance to customer satisfaction in delivery. (.....) stated that there are contracted cargo companies and sellers are free to choose the cargo company to work with. In this regard, cargo standards to be set by BSH for its dealers for delivering e-trade sales (the cargo company and type of shipment) can also be applied in (.....) platform. Arguing that there should be improvements for private logistics firms in the sector, (.....) stated that they cannot do anything to increase the options in this area but is planning to organize the transportation of those product groups by organizing (.....) distribution network. In addition, (.....) emphasizes that sellers are free to work with the logistics firm they wish.
- (120) (.....) stated that they form a set of rules regulating the sanctions to be imposed on sellers under the name "(.....)" and within this scope if sellers give misleading information or make sales as if there are products in the stock, they impose sanctions on sellers according to both (.....) signed between the parties and the set of rules.

### **G.6.3. Response Letters from Competing Suppliers**

**(.....)**

- (121) In summary, the following was stated in the response letter by (.....) dated 01.04.2021 and numbered 16667:
- The undertaking operates in the white goods and small appliances market with (.....) and (.....) brands, as (.....), internet sales are made through (.....) and (.....) with respect to (.....) and (.....) brand products whereas with respect to (.....) brand products, through (.....) address and marketplaces on the basis of that brand,
  - (.....) and (.....) brand products are provided to consumers in a structure similar to selective distribution system by (.....) and (.....) authorized seller on (.....) in line with (.....)'s service standards<sup>46</sup>,
  - (.....) brand products are sold (.....) wholesalers and chain/electro-market and traditional/multistorey store around (.....),(.....) and (.....) brand products, whose share in (.....)'s sales is very low are sold mainly to that channel,

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<sup>46</sup> (.....) brand products are sold in (.....)'s some outlets – a (.....) company under (.....) concept but it is stated that those sales have a very small share both in (.....) brand product sales and (.....) brand product sales.

- Comprehensive criteria and standards to which (.....) and (.....) authorized sellers are subject to do not apply to (.....)'s sellers ((.....) and(.....)), in this way, it is possible to compete with competing brands in the lower price segment and provide products to consumers at partly lower standards but more reasonable prices,
- (.....) brand products have a very small share in (.....) sales as built-in products in the premium segment and sold by few (.....) and (.....) authorized sellers, who are chosen on the basis of voluntariness,
- Authorized sellers can sell all the products they bought from (.....) on the internet regardless of brand, they are included in price comparison websites such as (.....), (.....); there are two types of restrictions about the subject,
- Since 2017, (.....) and (.....) authorized sellers are asked not to sell (.....) and (.....) brand products through marketplaces, however there are no barriers to authorized sellers with respect to selling (.....) and (.....) brand products according to the standards through their websites and being displayed on price comparison websites,
- There are no barriers in front of (.....) sellers with respect to selling more than one product either via their websites or marketplaces or being displayed in price comparison websites regardless of number, there are no restrictions for internet sales by (.....) authorized sellers operating at retail level,
- In US and other countries, restricting buyers in making sales not only through marketplaces but also through their websites is allowed, it is possible to find the reasons of this approach in US Supreme Court's Leegin<sup>47</sup> decision in detail. This decision regards determination of resale price, which is a more serious hardcore restriction compared to prevention of internet sales, not as a per se violation. This approach has many economic justifications such as preventing free riding, increasing the options for consumers by offering low quality service-low price and high-quality service-high price options, partly decreasing intra-brand competition and increasing inter brand competition which is more important. This approach can also be seen in previous decisions of the Board such as *BSH*<sup>48</sup>,
- In the European Union (EU), preventing buyers from making sales through marketplaces different from their websites can benefit from block exemption if the market shares of undertakings concerned do not exceed 30%<sup>49</sup>. Even if the market shares of undertakings concerned exceed 30%, this prevention does not constitute a competition violation except for exceptional cases as it is not considered a hardcore restriction<sup>50</sup>,
- If the ban concerning marketplaces is removed, first, free riding problem will arise. Investments are made to many subjects such as (.....) and (.....) dealers' outlets concerning outlet decoration, display standards, qualified personnel recruitment and maintaining such quality under the leadership and support of (.....),
- However, such investments are not needed in internet sales especially in sales via marketplaces. The only or the most important criterion is the price. Therefore, once

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<sup>47</sup> 551 U.S. 877 (2007)

<sup>48</sup> BSH Decision dated 06.10.2015 and no 15-37/573-195

<sup>49</sup> With the amendment made by the Communiqué dated 2021/4 on the Communiqué no 2002/2, this rate is set as %30.

<sup>50</sup> See [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12751-EU-competition-rules-revision-of-the-Vertical-Guidelines\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12751-EU-competition-rules-revision-of-the-Vertical-Guidelines_en) ve *Coty*, Case C-230/16 [2017].

a customer gets detailed information about a product from the outlet, it is likely that they buy it from an internet seller who is able to sell it at a lower price as they do not bare such costs. This will cut the investments made to all dealers in the long run,

- In white goods and small appliances markets, there is a structure that responds to all kinds of consumer needs thanks to brands representing prices that differs on the basis of different service levels and distribution channels. For example, regarding (.....) brands, a consumer who prefers low service and low price may buy (.....) or (.....); a consumer who wishes to have detailed information at the outlet may buy (.....) at a higher price whereas a consumer who prefers a turnkey kitchen project may buy (.....) brand product. On the other hand, pushing sellers such as (.....) to make sales via the internet or at least marketplaces will eliminate such differences,

- Marketplaces gained important market power both abroad and in Türkiye. They abuse their power in an exclusionary, exploitative and discriminative way. There are increasing claims that marketplaces are involved in anticompetitive practices in cases where they are both marketplace and seller. In response to such claims many inquiries and investigations are made,

- Following the jurisdictions such as EU, Germany, United Kingdom, studies for a legislative regulation has begun in our country. In this case, forcing suppliers to allow sales via marketplaces will increase marketplaces' power further, which will contradict with the on-going studies,

- Similarly, the traditional channel is shrinking abroad and in Türkiye. The concentration in the market is growing in favor of big chains and internet. This increases the claims that this, in the long run, will decrease competition in the purchasing as well as selling market. Similar observations are made in the Preliminary Report on Türkiye Fast Moving Consumer Goods Retailing Sector Inquiry. In this sense, forcing suppliers to allow sales via the internet or at least via marketplaces will weaken dealer structure and thereby the traditional channel because of the reasons listed above. In addition, this will strengthen marketplaces and chains and in the long run will increase concentration and decrease competition in the market,

- Although closing of dealers that have the nature of SMEs does not have a direct relation with competition law, it will create effects decreasing employment,

- Since there is a direct contract relation with authorized sellers, quality standards can be developed more easily and clearly. In case of customer dissatisfaction, it is easier to interfere and solve the problems compared to a sale whose seller is unknown or difficult to understand in a marketplace. In this way, it is relatively easy to prevent distortion of brand perception which is created through years of efforts and investments,

- Currently, marketplaces are on the agenda of all competition authorities and lawmakers all over the world, including Türkiye. In case marketplaces function as both a seller and a marketplace, marketplaces may prioritize their sales, exclude competing sellers out of the platform, obtain and use the data about other sellers in line with its own interests. Sales via buyer's own websites do not pose such risks,

- Therefore, even if there are similarities between sales made by buyers via their own websites and marketplaces in issues such as sales process, payment, after-sales procedures such as assembly, guarantee and return, the abovementioned problems will remain.

(.....)

(122) The first response letter of (.....) dated 22.03.2021 and numbered 16195 included the following statements in summary:

- There are main distribution channels with respect to white goods, small appliances, electronic, etc. products distributed by (.....). Those channels are as follows: dealer sale channel comprised of (.....) (wholesale) and (.....) dealers; chain channel, dowry products channel, corporate sale channel for sales to collective projects and constructions over a tender system, e-trade channel including sales via (.....)'s own website and online marketplaces, direct outlet sales channel (.....) and outlet channel,
- (.....) adopted the selective distribution system, in this scope, authorized sellers are imposed certain criteria in order to offer products to consumers in a manner befitting (.....) brand's reputation by means of certain regulations in contracts made between (.....) and authorized sellers,
- (.....) does not prevent authorized sellers from making sales via online channels including marketplaces. Authorized sellers can make sales in line with the sales conditions they set in the said channels. In this scope, (.....) authorized sellers can make sales over online channels apart from the traditional channel,
- (.....) imposed certain criteria regarding online sales by authorized sellers in order to protect brand image and ensure that consumers shop securely,
- (.....) applies criteria such as complying with the terms that do not harm corporate identity and brand perception; positioning the brand within the scope of corporate identity; using titles; compliance with respect to content, visuality and design; providing after-sales services, transport and assembly services, controlling customer reviews and providing correct information about products,
- Online marketplaces enable sellers to open online outlets by bringing sellers and buyers together on the internet, such marketplaces reach lots of consumers by taking large traffic,
- Increasing volumes of online marketplaces create important opportunities for brands due to the effect of today's conditions and pandemic,
- (.....) makes direct internet sales, (.....) and (.....) has corporate outlets in marketplaces ((.....), (.....), (.....), (.....)).

(123) In summary, the second response letter of (.....) dated 08.07.2021 and numbered 19424 included the following statements:

- (.....) has made changes in its sales policy for online marketplaces with respect to white goods and refrigerator, washing machine, dishwasher, oven, tumble dryer, freezer markets under this category,
- (.....) sets its main goal as online and physical channels' growth by supporting each other by means of omnichannel strategy, within this framework, it aims to maintain its high quality service experience provided on physical outlets in online channels too, it attaches importance to and supports the existence of its business partners in online channels, accordingly, it has realized many services such as (.....), (.....)

- (.....) depends on quality-based objective criteria to be followed by its business partners in the selective distribution system in marketplaces and their own websites, all dealers who want to make sales in marketplaces within the framework of those principles are authorized to make sales in market places provided that they meet the said criteria, which are determined in a reasonable, equal and -non-discriminatory way,
- (.....) aims to create a process in all online channels which it gives authorization, monitors quality and service standards, ensures that its business partners offer services suitable for (.....) corporate identity and criteria in order to strengthen brand image and increase brand value. It aims increased turnover for its business partners and high customer satisfaction and brand value for consumers. Such process will also contribute to the elimination of problems arising from practices deceiving and misleading consumers,
- “(.....)” is the title given to customer-oriented, reliable business partners, which are monitored in order to ensure customer satisfaction and fulfill the criteria,
- “(.....)” is shared with all dealers in the (.....) process as shown in the picture below,

(...)

- (.....) process is initiated to protect and strengthen the value given by (.....) to the dealer network and (.....)’s brand value and image, therefore it is very important to protect a common, customer-oriented communication language suitable for corporate identity in all channels including marketplaces,
- As a result, during (.....) process, dealers are expected to fulfill certain criteria. (.....) categorized such criteria under four titles as outlet name criteria, saleable products criteria, website content criteria and commercial criteria,
  1. Within the framework of outlet name criteria, (.....) dealers must have “(.....)” title in order to make sales in online platforms. To have the said title, the outlets of the dealer must have the same trade name in its website and marketplaces, the dealers shouldn’t sell (.....) products under different outlet names and should submit their application form concerning their online sale demand to (.....) e-mail address devoted by (.....) to this issue.
  2. According to *saleable products criteria*, dealers can only sell brands and products provided by (.....) in their websites and marketplace accounts parallel to the regulations concerning physical outlets.
  3. According to *website content criteria*, it is expected that dealers who want to make online sales use corporate identity elements (logo, guide, visual and content texts etc.) and their website design is suitable for (.....). It is required that product information on the website where sales are made is complete and is not misleading.
  4. Under *commercial criteria*, as a requirement of selective distribution system, (.....) dealers are banned from resales to the resellers outside the system. In line with this, all sales on online platforms should be among the members of selective distribution system or to final consumers. The responsibility is on the authorized seller.
- (.....) process includes important innovations about fulfilling website content criteria with respect to marketplaces. In order to fulfill quality-based objective criteria imposed on (.....) dealers, marketplaces should fulfill certain technical criteria,

- At this point, (.....) regulates the criteria to be met by marketplaces in a reasonable, equal and non-discriminatory way,
- During (.....) process, marketplace business partners are expected to realize the following:
  - Improvements regarding mechanisms related to logo positioning and verifying mechanisms
  - Providing information about the rights of consumers and other issues regarding products purchased from (.....)
  - Monitoring within the framework of the rule that products other than those supplied by (.....) are not sold in online outlets.
- Within the framework of the relationship between the marketplace and the seller, it is possible that (.....) can make sales in all marketplaces fulfilling the said criteria,
- (.....) does not adopt an approach, with (.....) process, to restrict or prevent its business partners in online channels. (.....) process encourage business partners which do not make sales in online platforms to make sales in such platforms. Within this framework, business partners which do not make sales in online platforms are increasing their awareness about making sales in those platforms and making attempts to make online sales.

The table below contains the data concerning the results about the first impressions of (.....) after the relevant system was put into practice:

Table 20: Measurement of the (.....) process

Measured factors	Number/Rate
Total dealer number	(.....)
The number of dealers that currently make internet sales	(.....)
The rate of dealers that currently make internet sales (%)	(.....)
The number of dealers that currently make internet sales and make (.....) application	(.....)
The rate of (.....) dealers that currently make internet sales (%)	(.....)
Total number of dealers that make (.....) application	(.....)

Source: The response letter dated 08.07.2021 and no 19424

### (.....)

- (124) The response letter of (.....) dated 21.05.2020 and no 4761, dated 14.07.2020 and no 7267 and dated 22.03.2021 and no 16184 briefly included the following statements:
- The undertaking sells durable goods as of 2011 in Türkiye with (.....),(.....) and (.....) (planned to be launched in the last quarter of 2020) brands and provides after-sales services,
  - The products sold are washing machine, dishwasher, tumble dryer, oven, cooker, kitchen hood, refrigerator, freezer, microwave oven and vacuum cleaner,
  - Distribution channels are distributors, big customers ((.....)), dealers and other retail channel customers ((.....) etc.). There are four authorized distributors, and they sell products to their sub-dealers but there are not any agreements between the

undertaking and those sub-dealers. Wholesaler dealers make sales to their sub-dealers within the framework of their commercial relation,

- The undertaking sells products via (.....) and (.....) platforms. Both platforms are under "big customers" category that the undertaking make agreements. The undertaking is not a seller in those platforms. Products are bought from the undertaking and sold by (.....) and (.....),

- Authorized sellers of the undertaking also make sales via the said platforms. Under the contracts made, there are not any restrictions related to the sales made via the said platforms apart from the obligation to inform consumers,

- There are not any differences between sales by dealers via their own websites and via marketplaces in respect of assembly, guarantee and return. However, there may be penalties in case of delay in marketplaces due to the conditions imposed by the platform,

- Marketplaces may offer more options for payment conditions, especially in campaign periods. Brand recognition will be affected positively since visibility and sales in those platforms reach more consumers as the marketplace customer traffic is higher. Payment campaigns in marketplaces increase the demand of consumers for those platforms,

- Marketplace sales affect total sales positively in terms of customer confidence because sellers in a marketplace address more customers directly, it is easier and faster to compare competitors with respect to price and features, there are seller and product ratings, customer reviews and opportunities to communicate with sellers,

- All product groups sold by the undertaking is suitable for sale via marketplaces.

(.....)

(125) In summary, the following was stated in the response letters by (.....) dated 27.05.2020 and no 4865 and dated 22.03.2021 and no 16173:

- The undertaking deals with import, export and domestic wholesale of durable goods and sells (.....), (.....) and (.....) brand products in Türkiye,

- The products sold are refrigerator, freezer, dishwasher, microwave oven, washing machine, tumble dryer, extractor hood, built-in products, vacuum cleaners, cordless vacuum cleaner, air cleaning appliance, air conditioner, small appliances and accessories and spare parts related to those products,

- Authorized dealers work under selective distribution system, apart from authorized dealers, three regional distributors make sales to sub-dealers. There are not selective distribution contracts with sub-dealers. Moreover, the undertaking also works with market chains and hyper-markets,

- The undertaking does not sell products to customers via internet platforms that have the nature of a marketplace but plans to begin sales after the relevant infrastructure is completed,

- There are not any distinctions between the sales made by authorized sellers via their website and via marketplaces. All the relevant sales are defined as internet sales in the contract and there are some conditions regarding those sales. Those conditions also apply to marketplaces. The conditions are as follows:

- The dealer must announce on its trade name that it is (.....)'s authorized seller on the channel it makes internet sales.
- The visuals provided by (.....) on products must be used in a way determined by (.....) and product features must be stated.
- The dealer must establish customer services unit and announce the customer services hotline number on the website where the products are sold.
- The dealer must have at least three products in stock for each product sold and deliver the products in three workdays unless a written consent for otherwise is taken from the final user.
- The dealer should carry out return transactions immediately in case the end user uses their right of withdrawal within the scope of the legislation. If the right of withdrawal is used, the dealer may not demand anything from (.....).
- The dealer displays and promotes the products sold online physically in the outlet in accordance with the contract.

- Dealers prefer marketplaces as they cannot get sufficient interaction via their websites and try to increase online sales. Moreover, marketplaces can provide lower credit card interest rate and shipping fee, enable consumers to shop in a more secure and comfortable way with respect to delivery and return under certain conditions and there are not any differences in assembly services and guarantee terms,

- All product groups sold by the undertaking are suitable for sale via marketplaces.

(.....)

(126) In summary, the following was stated in the response letters by (.....) dated 21.05.2020 and no 4764 and dated 26.03.2021 and no 16420:

- The undertaking carries out activities in the fields of production, sale and marketing of white goods, readymade kitchen and built-in house products. A large part of its revenues come from direct or indirect domestic and foreign sales of contract manufacturing. In addition to contract manufacturing, the undertaking has registered "(.....)" and "(.....)" brands and sells and distributes such brands,

- The distribution network consists of kitchen decoration studios, electronics stores, construction markets, shopping malls selling household products, stores selling hardware accessories, white good outlets, showroom outlets, mixed built-in outlets and sales to wholesalers<sup>51</sup>,

- The undertaking does not have quantitative and qualitative selective distribution system or distribution network based on that,

- The undertaking does not make sales on the internet since it does not have a structure related to internet sales,

- Authorized sellers can make sales on the internet with their own initiative. There are not any restrictions on the sellers related to online sales via their websites or marketplaces,

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<sup>51</sup> Wholesalers make sales to their sub-dealers. Wholesalers' sub-dealers does not have an authorized dealer status.

- There are not any negative or positive differences between sales by dealers via their websites or via platforms having the nature of a marketplace,
- All product groups sold by the undertaking are suitable for sale via marketplaces.

(.....)

(127) In summary, the following was stated in the response letters by (.....) dated 01.06.2021 and no 5041 and dated 23.07.2020 and no 7689:

- In consumer electronics sector, the undertaking deals with import, marketing, sale and distribution of televisions, audio systems, coolers, washing machines, dishwashers, vacuum cleaners, air conditioners, built-in products, mobile phones, tablets, smart watches, corporate video systems and smart device accessories and after-sales services together with its authorized services,
- Sales, marketing and distribution are realized through different channels, products are sold through all sales channels apart from authorized dealers (.....) does not impose any restrictions in this subject. Those channels are (.....) channel, (.....)<sup>52</sup>, wholesale and distributor channel/channel where sales are made to non-exclusive sales points, modern retail channel/technology chain markets<sup>53</sup>, operator/distributor channel<sup>54</sup>, B2B Channel/Project based and corporate purchasing demands<sup>55</sup> and online channel/(.....)<sup>56</sup>,
- In addition to those, sales are made in supermarkets such as (.....), (.....), (.....), (.....), (.....) and outlets of dowry products such as (.....), which make long term installments sale,
- The undertaking does not sell products directly to customers via its website but sales are made via (.....) to end users,
- The undertaking does not make direct sales to customers via marketplaces but (.....) makes sales via the said platforms through (.....) account. (.....) provides product visuals and contents for the sales (.....) makes via (.....),
- Authorized sellers can make sales through marketplaces. There are not any quality standards/terms regarding sales via their websites or marketplaces,
- There is not a general difference between sales by dealers via their websites or platforms having the nature of a marketplace for (.....). Only payment options and return conditions may vary depending on the structure of the platform. It is not known whether there is a difference for other authorized sellers since (.....) does not grant authorization,

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<sup>52</sup> White goods, mobile phones and household electronic systems and accessories are sold in the dealer network formed with franchise agreements (.....)

<sup>53</sup> (.....).

<sup>54</sup> Contract and non-contract sales of smart devices with three operators. Commercial activities within the scope of distributor contract with six distributors belonging to operators. ((.....), (.....),(.....) (.....), (.....),(.....))

<sup>55</sup> Marketing and sale of (.....) mobile phone and tablet products and solutions for meeting the needs of end users who purchase with tax office number.

<sup>56</sup>Direct product sale to (.....) so that it can make sales via its website, direct product sale to (.....) so that it can make sales via its website; sales are made as (.....) seller on (.....) and third party online channels that are integrated to it.

- Comparing the relevant channels, marketplaces are more advantageous in issues such as recognition thanks to reaching large groups and monitoring security in their payment infrastructures. However, those advantages are valid as long as sales via marketplaces do not affect brand image negatively or consumers do not have a perception that products that are sold in those platforms are of lower quality. Once BSH application is concluded, taking into account the fact that the practice of one of the biggest firms in the sector will be widespread, not making sales on platforms will create a quality perception in the eye of the consumer,
- All product groups sold by the undertaking are suitable for sale via marketplaces.

(.....)

(128) In summary, the following was stated in the response letters by (.....) dated 05.06.2020 and no 5299 and dated 19.03.2021 and no 16111-16118:

- The undertaking sells and distributes washing machine, tumble dryer, dishwasher, washer dryer, oven, steam oven, microwave, cooker, kitchen hook/extraction fan, warming drawers, coffee machine, cleaner detergent and care products, accessories, refrigerator products,
- The undertaking works with two separate distribution systems: First is (.....) agency system. That system covers all white good product groups. When the products are bought from any (.....) contracted point of sale, (.....) realizes collection, delivery and invoicing,
- The second system is reselling to (.....) dealer. This covers all cleaner product group and selling accessories. With respect to cleaner and accessories, customers must buy the products from an outlet and take with them thus the products are invoiced with certain discount rates based on the retail resale price recommended to dealers. Sale prices are not determined by (.....),
- The distribution channels of the undertaking are retail outlets opened by (.....), (.....) online outlet, (.....) exclusive agency points, mixed white good agency outlets, agency outlets selling kitchen brands, outlet chains, sub-dealer sales by means of wholesale system (only for cleaner and accessories),
- The undertaking sells products directly to customers via its own website and marketplaces,
- Authorized sellers sell products to customers via internet platforms that have the nature of marketplaces. Authorized sellers are expected to use product visuals and information given by (.....) both on their websites and marketplaces. Regulations in the legislation on distant shopping are taken as a basis regarding distant shopping,
- There are not any differences between sales by dealers via their own websites and via platforms having the nature of a marketplace,
- All product groups sold by the undertaking are suitable for sale via marketplaces

(.....)

(129) In summary, the following was stated in the response letters by (.....) dated 15.06.2020 and no 5812; dated 27.07.2020 and no 7826 and dated 31.03.2021 and no16585:

- The undertaking carries out sales activities by importing only (.....) brand electronic products to Türkiye. Those products are products under the category of

white goods such as television, refrigerator, washing machine, tumble dryer, oven, vacuum cleaner, air conditioner, audio system, monitor, projector and optic driver as well as other products,

- The undertaking adopted selective distribution system in dealer system and sells imported products to dealers, outlet chains and wholesalers,
- The undertaking does not sell products directly via its own website or marketplaces,
- Authorized sellers sell products to customers via their websites and marketplaces. Certain conditions are set regarding brand image in respect of the sales made by the sellers via their websites in the contract,
- There are not any conditions for authorized sellers regarding making online sales via platforms having the nature of a marketplace. Authorized sellers themselves carry out the process of payment and product return after the sale. Authorized sellers should pay attention to convey product visuals and features to the consumer correctly,
- No problems about payment, return, etc. processes arise when dealers make sales via their websites. After-sales assembly and guarantee process are carried out by (.....). However, if some consumer electronics products are sold at marketplaces by unauthorized sellers, this leads to some problems related to after-sales services and product safety. For instance, it is discovered that unauthorized sellers introduce themselves as (.....)'s authorized dealer and charge the product price from consumers but they send unsuitable devices to consumers without making technical infrastructure and compatibility inspection,
- They detected distributors who committed fraud by pretending to be authorized dealers, charging the product price but do not sending the product and filed a criminal complaint about those. In addition, unauthorized sellers sell stolen or illegal products and state that the products are under guarantee although they are not and deceive consumers in this way. Consumers suffer from fire risks and gas leakage because the devices are not convenient for the place, or they are installed in an incomplete or wrong way,
- Dealers can make more sales in marketplaces because marketplaces attract more consumers compared to dealers' websites. Therefore, if dealers spend ad budgets to marketplaces instead of their websites, they may increase the sales. Dealers can increase sales by using loan campaigns and reasonable commission opportunities offered by marketplaces,
- Also, consumers' perception and confidence about marketplaces facilitates sales for dealers. Campaigns made on special days in marketplaces may increase dealers' sales. Especially during the outbreak, customers avoid visiting physical outlets and prefer marketplaces, which is in favor of dealers making sales in this area,
- Out of the product groups sold by the undertaking, only hotel TV, commercial air conditioners, commercial led screens are not suitable to be sold via marketplaces.

#### **G.6.4. Response Letters Submitted by Dealers**

- (130) Within the framework of the inquiry, information requests were sent to some of the authorized dealers of suppliers that carry out activities in the market for white goods and small appliances throughout Türkiye. The information requests include questions including whether they make sales via their websites and online platforms and their

opinions about sales via online platforms. Information requests were sent to totally 445 dealers, comprised of 101 BSH, 81 (.....), 101 (.....), 65 (.....), 10 (.....), 30 (.....), 49 (.....) and 8 (.....) dealers. Response letters from 251 dealers are submitted to the Authority records, comprised of 38 BSH, 54 (.....), 59 (.....), 53 (.....), 3 (.....), 16 (.....), 22 (.....) and 6 (.....) dealers.

- (131) The response letters were submitted to the records of the Authority on different dates. As dealers prefer different sales channels, the letters are given below under two different headings: dealers that make sales via online marketplaces and that do not.

#### G.6.4.1. Response letters from Dealers that Make Sales via Online Marketplaces

- (132) Within the framework of the response letters, the tables below show the data concerning the rate of dealers who prefer to make sales via online marketplaces with respect to small household appliances and white goods in total of dealers and the percentage of sales via those platforms in total sales<sup>57</sup>.

Table 21: The rate of dealers that make sales via online market places on the basis of suppliers in small appliances product group in 2018, 2019 and 2020 (%)

Dealer	2018	2019	2020
(.....)	(.....)	(.....)	(.....)
BSH Group	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)

Source: Calculated on the basis of response letters sent by dealers.

- (133) According to the table, the rate of Arçelik-Beko dealers that operate in small appliances market and prefer to make sales in online marketplaces is very low. (%(.....))<sup>58</sup>. The rate of BSH dealers who prefer online marketplaces is (.....)% in 2018 and rises up to (.....)% in 2019 and 2020. All other suppliers' dealers<sup>59</sup> prefer to make sales in online platforms in increasing numbers in 2019 and 2020, compared to 2018.

Table 22: The rate of dealers that make sales via online marketplaces on the basis of suppliers in white goods product group in 2018, 2019 and 2020 (%)

Dealers	2018	2019	2020
(.....)	(.....)	(.....)	(.....)
BSH Group	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)

Source: Calculated on the basis of response letters sent by dealers.

- (134) According to the table, the rate of (.....) dealers that operate in whitegoods market and prefer to make sales in online marketplaces is very low. (%(.....)). The rate of BSH dealers who prefer online marketplaces is (.....)% in 2018 and rises up to (.....)% level in 2019 and 2020. An important part<sup>60</sup> of all other suppliers' dealers prefer to make sales via marketplaces in increasing numbers in the last three years.

<sup>57</sup> It is stated that (.....) and (.....) dealers that answered the information request do not make sales in online marketplaces.

<sup>58</sup> The rate of preference of (.....) dealers in 2018 and 2019 is (.....)%; it raised to (.....)% in 2020.

<sup>59</sup> The rate of preference of (.....) and (.....) to make sales via marketplaces is higher in 2019 and 2020 compared to 2018. (.....) dealers and (.....) dealers have a stable course with (.....)% and (.....) %, respectively.

<sup>60</sup> The rate of preference of (.....) dealers in 2019 is (.....)%; it fell to (.....)% in 2020.

Table 23: The rate of sales that dealers make via online marketplaces in total sales on the basis of suppliers in small appliances product group in 2018, 2019 and 2020 (%)

Dealers	2018	2019	2020
(.....)	(.....)	(.....)	(.....)
BSH Group	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)

Source: Calculated on the basis of response letters sent by dealers.

- (135) According to Table 23, in small appliances market, although the share of sales that (.....) dealers make via online platforms in total sales increased in the last three years, it is below (.....)%. The share of the sales that BSH dealers make via online marketplaces in total sales is (.....)% in 2018, this rate is (.....)% in 2019 and showed an important increase to (.....)% in 2020. The online marketplace sales of (.....) dealers increased importantly in 2019-2020 compared to 2018<sup>61</sup>. It is seen that marketplace sales of competing dealers decreased a little in 2020 compared to the previous year<sup>62</sup>.

Table 24: The rate of sales that dealers make via online marketplaces in total sales on the basis of suppliers in white goods product group in 2018, 2019 and 2020 (%)

Dealers	2018	2019	2020
(.....)	(.....)	(.....)	(.....)
BSH Group	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)
(.....)	(.....)	(.....)	(.....)

Source: Calculated on the basis of response letters sent by dealers.

- (136) According to Table 24, in the white goods sector, the sales of (.....)'s dealers made via online marketplaces has decreased in a stable way in the last three years<sup>63</sup>. The share of BSH group dealers increased by (.....) % in 2018, (.....) % in 2019 and rose to (.....)% in 2020. The sales of (.....) dealers increased in 2019-2020 compared to 2018<sup>64</sup>; while some competing dealers' sales decreased little in 2020 compared to the previous year<sup>65</sup>.
- (137) In the response letters, it is stated that about (.....)% of (.....) dealers stated that they do not approve the prohibition on the sales via online platforms. (.....) does not impose prohibition on its dealers about sales via marketplaces.
- (138) Regardless of provider, dealers who make sales via online markets and who do not

<sup>61</sup> The rate of (.....) dealers' sales via marketplaces to total sales is (.....) in 2018 and (.....) and (.....) in 2019 and 2020 respectively.

<sup>62</sup> The rate of (.....) dealers' sales on marketplaces to total sales fell from (.....) % in 2019 to (.....)% in 2020, the rate of (.....) dealers' sales on marketplaces to total sales fell from (.....) % in 2019 to (.....)% in 2020 and the rate of (.....) dealers' sales on marketplaces to total sales fell from (.....) % in 2019 to (.....)% in 2020.

<sup>63</sup> It is thought that the reason why (.....) group dealers sales on marketplaces have decreased gradually is (.....) does not allow its dealers to make sales on marketplaces.

<sup>64</sup> (.....) dealers' sales on marketplaces were (.....) in 2018. This rate was (.....) and (.....) in 2019 and 2020 respectively.

<sup>65</sup> (.....) dealers' sales were (.....) % in 2019 but fell to (.....) % in 2020. (.....) dealers' sales were (.....) % in 2019 but fell to (.....) % in 2020. (.....) dealers' sales were (.....) % in 2019 but fell to (.....) % in 2020.

want their sales to be restricted say that it is possible to make sales via marketplaces by protecting the brand value and ensuring consumer satisfaction. In addition, those dealers state that they find online marketplaces more advantageous compared to dealers' websites due to their reliable infrastructure, more opportunities for advertisement, mobile shopping facility, ability to reach large groups and easy membership infrastructure. The dealers at the same time argue that online sales are undeniable in today's commercial life so they should not be banned. The sales that cannot be made in physical stores that are closed in certain times due to recent Covid-19 outbreak can only be compensated via the internet. On the other hand, almost half of the dealers stated that rather than an unconditional freedom, standards should be applied for brand representation and proper product promotion. Similarly, an entire ban on sales via online marketplaces will unduly restrict competition and the dealer's freedom to make sales via online channels is important for ensuring efficient.

- (139) On the other hand, in the response letters, three BSH dealers said that they terminated sales in 2020 via online marketplace in order to avoid sanctions. The said three dealers of BSH products argued that competing suppliers' dealers make sales via marketplaces thus they cannot compete with other suppliers' dealers and sales via online marketplaces are necessary to establish efficient competition.
- (140) Another BSH dealer that stopped making sales via marketplaces stated in its response letter that it is possible to impose sanctions to close the dealer's website or stop sales by means of the specifications called "Online website rules for Bosch authorized dealers". The dealer argued that those rules are not for protecting BSH brand perception and quality and in case those restrictions are granted exemption, e-trade freedom will be narrowed continuously without any reasons, which will distort free price formation and efficient competition in e-trade.
- (141) In addition, in the response letters, 13 dealers who sell brands other than BSH stated that unauthorized dealers buy wholesale products at discount from dealers experiencing cash shortage in the free market and sell those below-cost in online marketplaces. This damages the brand image. Moreover, dealers suggest that online sales should only be made by authorized dealers in order to prevent negative experiences and customer dissatisfaction stemming from sellers selling unreliable and damaged products.
- (142) Lastly, dealers show reaching more customers thanks to ads and lower transport and ad costs compared to the market among the advantages of online marketplaces.

#### **G.6.4.2. Response Letters of Dealers That Do Not Make Sales via Online Marketplaces**

- (143) In the response letters submitted to the Authority records, (.....) dealers stated that (.....) prohibited its dealers from making sales via online marketplaces and allow dealers to make sales only via their own websites in line with the standards set. Accordingly except one of (.....)'s dealers, all dealers stated that they support the supplier's decision to restrict sales via online marketplaces. On the other hand, out of 38 BSH dealers who sent response letters, 15 dealers did not render opinions whereas 19 dealers support and four dealers object to the restriction. Out of 14 (.....) dealers that do not make sales via marketplaces, five dealers did not render opinions. While five dealers stated that they support any restrictions to be imposed, four dealers objected to the restrictions.
- (144) Regarding the opinions about the supplier's complete ban on sales via online

marketplaces, only six of the dealers<sup>66</sup> who do not make sales via online marketplaces object to the prohibition; other dealers support prohibitions to be imposed regardless of supplier. Dealers not supporting prohibition raise objections due to free market economy and argue that such sales should continue by ensuring service quality and customer satisfaction.

- (145) Dealers who want a prohibition on sales via online marketplaces indicate the following reasons: Sales via online platforms lead to free-riding problem. Brand value should be protected. Profitability of the physical outlets, to which investments are made, should be maintained in return for the expenses. Misleading or incomplete information about products may be given in marketplaces. Different firms sell the same product at different prices, which lead to fierce competition. Differences in prices raise doubts for customers. Delivery firms do not take on responsibility for the damages on products that require assembly during transportation and as a result customers experience dissatisfaction.
- (146) BSH dealers who do not make sales via online marketplaces but via their own websites said that they try to compensate the revenues from physical outlets that are closed during the outbreak by means of sales via their own websites. They also rendered the following opinions: Today less and less consumers visit physical outlets, so it is not possible to think about prohibiting internet sales completely. Brand value cannot be protected by prohibiting internet sales. If authorized dealers do not make sales, unauthorized dealers will fill that gap and they offer lower quality services and products. Internet sales should continue under certain standards so that consumers will not be disadvantaged.
- (147) Dealers who do not prefer making sales via online marketplaces explain their reasons as follows: High commission rates charged by online marketplaces reduce the profit. Transport costs increase in large volume products. Products may be harmed during transportation. Transfer of payment to the account takes a long time. The customer has unconditional return right. Large part of the trade in marketplaces is price oriented thus the service quality is lower. Marketplaces see the consumers as their customers and prevent direct contact the seller. Sellers who do not bare physical costs expenses create price fluctuations.
- (148) Dealers who do not make internet sales list the reasons of not creating their own website as follows: Consumers regard shopping via websites other than marketplaces as risky. They do not have the necessary equipment and infrastructure. Internet sales are not advantageous in respect of income despite the cost advantage.
- (149) In summary, while dealers that do not make sales via online marketplaces find a restriction on the sales via online platforms appropriate to prevent free riding problem and a decrease in their profitability as a result of intra-brand competition in online sales, dealers that make sales via marketplaces object to the relevant restrictions with respect to efficient competition.
- (150) Taking into account the response letters in general, it is seen that online marketplaces offer more advantageous opportunities compared to dealers' own websites due to reliable infrastructure, more ad opportunities, mobile shopping facilities, ability to reach larger groups and cost advantages for dealers. In this regard, dealers who have the potential to increase their sales via internet such as BSH and (.....) group especially, cannot use that potential sufficiently because of the restrictions.

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<sup>66</sup>Four of those six dealers are (.....)'s dealers, one is (.....)'s dealer and the other one is (.....)'s dealer.

## G.7. Surveys Made Within the Scope of the Inquiry

(151) In order to show e-trade trends of both authorized dealers of white goods and consumers, an independent survey company was commissioned to make a consumer and dealer survey. Within this scope, a sample covering competing brands, especially BSH dealers (located on the street, in shopping malls, etc.) and survey questions are asked. The data regarding the answers are given below categorized as dealers and consumers.

### G.7.1. the Data Regarding the Dealer Survey

(152) According to the results of the dealer survey<sup>67</sup> four out of every ten dealers (40%) sell white goods via online channels. This rate is higher in dealers located in shopping malls and on main streets. Internet sales are higher in premium brand's dealers compared to other brand's dealers.

(153) Dealers selling white goods via the internet have been making online sales for averagely 2.7 years. Dealers in shopping malls have been making online sales averagely for 3.4 years and their sales duration is meaningfully longer than other dealer types.

(154) The breakdown of the total sales made by dealers that sell white goods on the internet is as follows: 76% in their physical outlet<sup>68</sup>, 9.48% via the brand's/provider's website, 7.53% via its own website and lastly 7.48% via online marketplaces.

(155) The biggest motivation for three out of four dealers (75%) who prefer online channels is to reach more consumers. Another important reason is to make more sales (62%). Other reasons are as follows respectively: to set product sale prices better compared to the market (28%), it is easier to communicate with consumers via online marketplaces (24%), the brand/supplier supports internet sales financially (21%), it is possible to provide product information (product content) via the platform (20%) and there is a marketplace guarantee where some of the duties and risks in a purchase-sell relationship are taken by the mediating marketplace (17%).

(156) The three issues because of which the customers of dealers making online sales experience problems the most are return (32%), payment transactions (26%) and after-sales services (24%). Four out of every ten dealers (38%) did not encounter any problems.

(157) 38% of dealers who do not prefer online sales think that physical sales are sufficient. Problems about return/installment/delivery (24%) and failure to provide sufficient services to consumers via the internet (22%) are important barriers for those dealers.

(158) More than half of the dealers (54%) make sales by means of orders directed from the brand's/supplier's website in the sale of white goods on the internet. 41% of the dealers who say that they make sales via their own website is located in a shopping mall. The share of dealers who make sales via online marketplaces is 26%.

(159) The first choice of dealers who may prefer online sales is making sales via the

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<sup>67</sup> CAPI (computer assisted personal interviewing) is used in the survey. The survey is made between the dates 25.02.2021 and 22.03.2021 in the following 12 cities and shares: İstanbul 23%, Ankara 13%, İzmir 11%, Adana 10%, Bursa 10%, Gaziantep 9%, Samsun 5%, Malatya 5%, Kayseri 4%, Tekirdağ 4%, Erzurum 3%, Trabzon 3%. Totally, 441 interviews with the owners/partners or directors of white goods authorized dealers were made. 57% of the dealers are located on the main street, 20% is located on the small streets in districts and 20% is located in shopping malls.

<sup>68</sup> The rate of physical sales in outlets rises up to (.....)% in premium brands ((.....), (.....), (.....),(.....),(.....)).

brand's/supplier's website (61%). The share of those planning to make sales via their own websites is 35% while the share of those planning to make sales via online marketplaces is 22%. Six out of ten dealers who prefer online marketplaces think that they will lag behind their competitors unless they make sales via online marketplaces.

- (160) In dealers' opinion, the most important advantage of making sales via online marketplaces is to reach consumers more easily with a share of 74%. In addition, the share of those who think that the brand image will not be affected if they make sales via marketplaces is 19%. The share of those who think that the commission rates are reasonable is 16%. Those who think that the costs of increasing visitor number for their website are high is 15% and the share of those who say that the costs of necessary infrastructure for creating their own website are high is 12%.
- (161) The most important factors that the dealers think that they may affect the sales via online marketplaces negatively are as follows: concerns that it may not be convenient to the provider's policies (87%), consumer reviews and ratings about the seller (87%) and inability to monitor online sales efficiently due to insufficient information and technical staff. The share of those who think that return costs are high is 81%.
- (162) The most important motivation for dealers to create their own website is that their own website will offer more sales opportunities. The rate of dealers who currently make online sales is higher among the dealers who think so. The rate of dealers who think that they can advertise better is 44% whereas the share of those who think that the infrastructure costs for founding and managing their own websites are not high is 17%. 17% of dealers think that commission rates in online marketplaces are high.
- (163) Eight out of every ten dealers (81%) think that products with complicated technical properties can be marketed more efficiently in physical stores. The large part of this group is comprised of dealers located in a shopping mall and dealers selling premium brands. Dealers of brands in different segments prefer to sell a product of upper segment face-to-face (80%).
- (164) Dealers think that training offered by the provider concerning online sales is important (70%). Regarding the opinion that making only physical sales affect sales volume negatively, the share of those who do not agree is 61% while the share of those who agree is 39%.
- (165) Dealers think that brands in the white goods sector should make investments to first product quality (38%), price (27%) and product range (15%) in order to be different from their competitors. Apart from those, the shares of dealers who think that it is necessary to improve brand image (10%), widen service network (8%) and advertise (2%) are relatively lower.
- (166) 39% of dealers expect from their brands/suppliers not to impose any restrictions but criteria such as quotas, etc. as a primary business model. The share of those who does not want any restrictions on internet sales is 29% whereas the share of those who think that online marketplaces should be restricted totally but there should not be any restrictions in other channels is 22%. 10% of dealers think that internet sales should be restricted totally.
- (167) Six dealers out of every ten dealers (61%) reflect the discount made by brands/suppliers directly to product price. This group is largely comprised of premium brand dealers. Progress premiums or losing deductions by the brand/supplier are made depending on the following factors: whether sales are above/below the given target (64%), the channel where the sales are made (15%), customer satisfaction

score (13%) and the share of bulk product order (8%).

- (168) 45% dealers use price comparison websites in offering products to consumers. This group is largely comprised of dealers located in shopping malls, dealers on side streets, (.....), (.....), premium brand dealers and dealers making online sales. The primary reasons for benefiting from price comparison websites are ability to compare prices between dealers of competitors/their brands (42%) and adjust product prices better according to the market.
- (169) The reasons for not using price comparison websites in offering products to the consumers is creating a downwards pressure in prices for more than half of the dealers. (53%). The share of dealers located on the main streets or dealers on side streets who think so is meaningfully higher. 31% of dealers state that it complicates identifying the distinctive features of the brand they represent while 18% think that it harms the brand image. 6% of the dealers think that it is not necessary to use price comparison websites.

### G.7.2. The Data Regarding the Consumer Survey

- (170) According to consumer survey results<sup>69</sup> regardless of sales channels, in the past 12 months, the types of white goods that have been bought most are washing machine (%42), refrigerator (%33) and dishwasher (%27). According to the same survey, the brands that have been preferred in the last 12 months and their shares are as follows: 40% (.....); 26% (.....); 19% (.....); 12% (.....); 12% (.....); 9% (.....), 8% (.....) and 8% (.....)<sup>70</sup>.
- (171) The most preferred brand in the washing machine product group is by 34% (.....) followed by (.....) with 20%. 20% share belongs to (.....) while (.....) has 19% share and (.....) has 14% share. In the dishwasher product group, (.....) is the leader with 29% share, followed by (.....) with 21% share. In the refrigerator product group, (.....) is the leader with 26% share, followed by (.....) with 17% share and by (.....) 14% share. The most preferred brand in the freezer product group is by 28% (.....) followed by (.....) with 15%. 26% share belongs to (.....) while (.....) has 18% share and (.....) has 13% share in the oven product group. In the microwave product group, (.....) is the leader with 29% share, followed by (.....) with 20% share. The most preferred brand in the cooker product group is (.....) with 27%, followed by BOSCH with 17%. 32% share belongs to (.....) while (.....) has 16% share in the kitchen hood/extractor fan group. As a result, in the past 12 months, (.....) and (.....) are the most preferred brands for washing machines/dishwashers, refrigerators, freezers and stoves<sup>71</sup>.
- (172) The most important criteria for consumers in deciding about a brand before purchasing white goods is as follows: products are of good quality (21%), products are durable (21%) and price (16%).

<sup>69</sup> CAWI (computer assisted web interviewing) is used in the survey. The survey is made between the dates 24.02.2021 and 15.03.2021 in the following 12 cities and shares: İstanbul 23%, Ankara 13%, İzmir 12%, Adana 10%, Bursa 10%, Gaziantep 10%, Samsun 5%, Malatya 4%, Kayseri 4%, Tekirdağ 4%, Erzurum 3%, Trabzon 3%. Totally 1,013 interviews are made. Demographic and geographic quotas are applied to represent the target audience. Among the consumers who participated to the survey, 51% bought any of the white goods in the last 12 months and 49% is planning to buy a white good in the coming six months.

<sup>70</sup> The share of consumers who prefer (.....) and (.....) brands is 3% whereas the share of consumers who prefer (.....) and (.....) brands is 2% and the share of consumers who prefer (.....) brands is 1%.

<sup>71</sup> Consumers are planning to buy refrigerator, washing machine and dishwasher the most in the coming six months.

- (173) 57% of consumers prefer physical outlets<sup>72</sup> and 20% of consumers prefers internet for purchasing white goods. 23% of consumers prefer both sales channels for purchasing white goods.
- (174) Considering the consumer survey on the basis of product groups, in small appliances group, 24% of consumers prefer physical outlets and 27% prefer internet. 32% of consumers prefer both sales channels. In electronic products group, 30% of consumers prefer physical outlets and 29% prefers internet; 26% of consumers prefer both sales channels.
- (175) Considering the consumer survey on the basis of the reason why online shopping is preferred, 60% of the consumers seem to agree that product prices are more reasonable compared to physical outlets<sup>73</sup>. In addition, 60% of the consumers think that the product range is wider in sales via the internet. 57% of the consumers says that they prefer purchasing via the internet because it is time saving.
- (176) Regarding online shopping, 71% of consumers says that reasonable prices are important for the products sold online while 61% of the consumers say that the reliability of the website is important.
- (177) 56% of the consumers who buy white goods online use marketplaces such as (.....), (.....), (.....), (.....) and 19% uses the brand's own website, 13% prefers electronics stores' websites such as (.....), (.....), (.....). The website of the authorized dealer is the last in ranking with 12% share.
- (178) The breakdown of consumers regarding experiencing problems is as follows: 59%- did not experience any problems, 17% - after-sales problems such as installment and service, 12% - problems in return, 12% - product different from the visuals, 7% - problems in the sale process, 7%- problems in guarantee conditions.
- (179) 42% of the consumers hold the marketplace whereas 39% hold the main supplier of the product and 19% hold the outlets selling products in online marketplaces responsible for the sale and after-sales services.
- (180) When they purchase a product and experience a problem, 54% of the consumers who purchase white goods via online platforms regard online marketplaces, 30% regard the product brand and 16% regard outlets selling products in online marketplaces as the point of contact.
- (181) Looking at the future purchasing plans, 40% of consumers are planning to buy a white good at brand's authorized seller's physical outlet, 22% from online marketplaces, 16% from electronics stores' websites, 8% from the brand's own website, 6% from the website of an authorized seller, 5% from outlet chains selling different products such as (.....) and 2% from market chains such as (.....) and (.....).
- (182) The reasons for preferring physical outlets to buy whitegoods and their breakdown are as follows: 70% - buying the product by seeing, trying and touching the product, 41% quick purchase and delivery at the outlet, 40% - bargaining and 31% -not paying for shipping.
- (183) With respect to consumers who purchase white goods, 46% use search engines such as Google and Yandex, 44% use price comparison websites such as Akakce.com and

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<sup>72</sup> Consumers who purchase white goods from only physical outlets is mostly consumers in higher age group (45-55).

<sup>73</sup> Especially the consumers of (.....),(.....) and (.....) brands say that the prices are more reasonable compared to physical outlets.

Cimri.com, 40% use complaint websites, 36% use brand's own website, 30% use review websites such as "Donanimhaber" before they purchase a product. While 39% of the consumers take into account product reviews and features in online marketplaces, 37% and 34% of consumers prefer to examine the product and get information at authorized dealers and electronics stores respectively before shopping.

- (184) Before purchasing white goods and electronic products, search engines (46%) and price comparison websites (44%) are used the most. The frequency breakdown of consumers purchasing white goods to use price comparison websites are 61% always, 35% rarely and 4% never.
- (185) With respect to consumers who purchase white goods, 93% say that they compare prices, guarantee conditions etc. on different websites before buying an electronic product. 78% of consumers buy white goods and electronic products on the internet pay attention to whether the seller is a member of the distribution network of the main manufacturer. Moreover, 77% of the consumers say that they do more online shopping due to Covid-19. 60% say that after Covid-19 is over there will not be a decrease in their frequency of online shopping<sup>74</sup>.
- (186) With respect to purchase channel, when a product of a same brand, same model and same price is in question, 35% of the consumers prefer the physical outlet of an authorized dealer of the brand. They constitute the largest group. With respect to preferred purchase channel, the shares are as follows: 23% brand's own website, 20% online marketplaces, 9% authorized dealer's website and electronics stores' websites and 4% physical electronics stores. This result varies regarding consumers' preference when there are different brands and models - consumers have a wider choice - in that case, 56% of the consumers who plan to buy white goods use marketplaces such as (.....), (.....), (.....), (.....) and 19% use the brand's own website, 13% prefers electronics stores' websites such as (.....), (.....), (.....). The website of the authorized dealer is the last in ranking with 12% share.

## G.8. Assessment

- (187) As summarized above, within the scope of the exemption application concerned, BSH wants to completely restrict authorized sellers from making online sales through marketplaces. A look at the vertical relationship between BSH and its resellers, which was examined in detail in the relevant section, shows that the vertical relationship in question has the nature of a selective distribution system. Therefore, it must be examined under paragraph 171 of the Vertical Guidelines whether the selective distribution system that fundamentally includes restrictive effects on competition has reasonable and proportionate grounds. Thus, if the aforementioned conditions are not met, the agreement would infringe Article 4 of the Act no 4054 and it would require an exemption assessment. In that framework, this section will first include an explanation on the characteristics of selective distribution systems, and then address how restrictions on internet sales are examined under competition law within the scope of the relevant legislation and the case-law of the Commission and the Board. After that, assessments will be made under Articles 4 and 5 of the Act no 4054, on the practice comprising the subject matter of the application as well as on the agreements that establish BSH's distribution system.

### G.8.1. Information on Selective Distribution Systems

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<sup>74</sup> The rate of those planning to buy white goods (refrigerator, washing machine, etc.) via the internet is (.....)%.

- (188) Article 3 of the Communiqué no 2002/2 defines selective distribution system as "*a distribution system whereby the provider undertakes to sell directly or indirectly, the goods or services which are the subject of the agreement, only to distributors selected by it, based on designated criteria, and whereby such distributors undertake not to sell the goods or services in question to unauthorized distributors*".
- (189) The supplier may wish to restrict its distribution network with this distribution model due to the nature of the goods or services concerned. It is a widely-accepted assumption that when those products which are characterized as luxury items, which are technologically complex or the use of which require technical information (such as durable consumer goods, cosmetics, jewelry, motor vehicles), are sold at outlets that meet certain standards, by people with technical knowledge this will positively affect consumer demand. Thus, suppliers who wish to create or maintain a luxury brand perception and who demand that outlets meet certain criteria including qualification of the sales staff and outlet location can choose to use a selective distribution system<sup>75</sup>.
- (190) As noted in paragraph 33 of the Vertical Guidelines, especially in the marketing of brand products such as jewelry and perfumery where pre-sales promotion services are essential, physical characteristics of the outlets where such products are sold as well as the knowledge and qualifications of the sales personnel are of vital importance. Suppliers, who do not want such products with a certain brand image to be sold at unsuitable places by personnel with insufficient knowledge and qualifications, generally choose the selective distribution system as a distribution network. In order to ensure that such products are offered to the final users in the most efficient way, the supplier may introduce a requirement that the product be sold exclusively by the members of the selective distribution system.
- (191) In order for the effective operation of the distribution system set up with this goal in mind, the supplier may prohibit distributors from selling the relevant products to unauthorized distributors. In case products are sold by unauthorized sellers, these sellers may damage the brand image and thereby adversely affect the sales performance of the supplier<sup>76</sup>. Besides, a rational consumer would likely use the free pre-sales services offered by the authorized seller before purchasing the product at a lower price (from the unauthorized seller), reducing the authorized sellers' motivation to provide the relevant services<sup>77</sup>. In that context, protection of the brand image and the solution of the free-riding problem form the economic grounds for the prohibition in question. As such, the potential risks and positive contributions of the selective distribution system on competition are included in the following table.

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<sup>75</sup> JONES, A. and B. SUFRIN (2011), EU Competition Law, Fourth Edition, Oxford University Press, New York, p. 509

<sup>76</sup> GOYDER, J. (2005), EC Competition Law, Fourth Edition, Hart Publishing, North America (US and Canada)

<sup>77</sup> Ibid.

Table 25: Potential Effects of Selective Distribution Agreements on Competition

POSITIVE EFFECTS	NEGATIVE EFFECTS
<ul style="list-style-type: none"> <li>• Helps solve the free-riding problem between distributors and maintains pre-sales services at the desired level</li> <li>• Creates and protects brand image, maintains post-sales services at the desired level</li> <li>• The product is required to be sold exclusively at certain retailers as an indication of product quality or of the luxury product image</li> <li>• Helps rationalize distribution</li> <li>• Meets consumer choice</li> <li>• Solves the relationship-specific investment problem which may arise in case of know-how transfer</li> </ul>	<ul style="list-style-type: none"> <li>• Decreases intra-brand competition</li> <li>• Negative effects at the level of inter-brand competition</li> <li>• Facilitates cooperation between suppliers or distributors</li> <li>• Forecloses the market to other providers or buyers</li> </ul>

(192) As shown by the table, formed to remove the aforementioned commercial concerns, this system has the potential to negatively affect intra-brand competition by restricting the number of distributors and prohibiting sales to unauthorized distributors<sup>78</sup>. At this juncture, we must address the question of how to assess selective distribution systems under the competition law. The discussion on this topic was concluded with the ECJ's *Metro* decision<sup>79</sup>. Accordingly, distribution systems which meet the following criteria are deemed to fall outside the scope of Article 101 of the Treaty on the Functioning of the European Union (TFEU)<sup>80</sup>:

- Such an agreement must be required to reach the goal of maintaining product quality and ensuring proper use,
- The criteria adopted for the selection of resellers must be applied on a uniform and non-discriminatory basis for all potential resellers,
- Restrictions on the reseller must be serve the goals of protecting product quality and ensuring proper use, and should not go beyond those goals.

(193) This approach shows that the economic basis for the system was taken into account. In other words, it is accepted that brand image is valuable for the consumer, and that providing those elements such as the presentation of the product and pre-sales services which are impactful in terms of brand perception would contribute to the creation of a brand image and thereby encourage inter-brand competition, leading to the conclusion that a selective distribution system fulfilling the above-mentioned conditions would provide efficiencies to outweigh the reduction in intra-brand competition<sup>81,82</sup>.

(194) The Turkish competition law approach towards selective distribution systems is in parallel. The explanations in the Vertical Guidelines keeps selective distribution systems that fulfill the Metro criteria outside the scope of Article 4 of the Act.<sup>83</sup> To wit, paragraph 171 of the Vertical Guidelines states that "*Purely qualitative selective distribution is in general considered to fall outside article 4 of the Act for lack of anti-*

<sup>78</sup> Vertical Guidelines, para. 171.

<sup>79</sup> Case 26/76 *Metro v Commission* (I) (1977)

<sup>80</sup> Also see Vertical Guidelines, para. 171

<sup>81</sup> MARSDEN, P. and P. WHELAN (2010) "Selective Distribution in the Age of Online Retail", European Competition Law Review, Vol:31, No: 1, p. 27

<sup>82</sup> FAVERÍ, D. C. (2014), "The Assessment of Selective Distribution Systems Post-Pierre Fabre" Global Antitrust Review, Vol: 7, p. 169

<sup>83</sup> Vertical Guidelines, para. 171

*competitive effects, provided that following three conditions are satisfied. First, the nature of the product in question must necessitate a selective distribution system, in order to preserve its quality and ensure its proper use; that is, a legitimate requirement must exist owing to the nature of the product. Secondly, resellers must be chosen on the basis of objective criteria of a qualitative nature. These criteria must be laid down uniformly for all potential resellers and in a non-discriminatory manner. Thirdly, the criteria laid down must not go beyond what is necessary.*" Selective distribution systems that do not meet the criteria violate Article 4 of the Act. However, such a system may still benefit from block exemption or individual exemption. According to the Communiqué no 2002/2, if the market share of the supplier in the relevant market where it provides the goods or services in the vertical agreement does not exceed 30%, then the relevant agreement is exempt from the application of Article 4 of the Act. Thus, the Communiqué no 2002/2 grants block exemption to selective distribution networks, regardless of the nature of the product<sup>84</sup>. Where the relevant selective distribution agreement is found to have effects incompatible with the provisions set out in article 5 of the Act, the exemption granted may be withdrawn<sup>85</sup>. Moreover, Article 4 of the Communiqué no 2002/2 titled "Limitations Rendering Agreements Not Caught by Block Exemption" notes that vertical agreements which include limitations that aim to directly or indirectly restrict competition may not benefit from the block exemption. According to the aforementioned Communiqué, in selective distribution systems, it is a hardcore limitation to restrict active and passive sales by system members operating at the retail level to final users and to prevent sales and purchases between the system members themselves, with the right of prohibiting a system member from operating at an unauthorized location reserved. In such cases, the relevant agreement cannot benefit from block exemption. In selective distribution systems, any passive sale bans placed on the buyers that are members of the system fall outside the scope of the block exemption.

### **G.8.2. The Approach to Online Sale Restrictions in Competition Law**

- (195) In light of the fact that e-commerce is a rapidly growing and developing channel, it is important to determine how competition law will approach vertical agreements that include restrictions on internet sales. After e-commerce has become a global phenomenon, in an environment where the traditional consumption habits of economic units are changing, dealers and/or resellers who make up the intermediate links of the economic chain are trying to meet the consumers on all sales channels to carry out trade, while main producers/suppliers are attempting to prevent resellers from operating through the online channel on the grounds of brand image, free-riding, counterfeiting, lack of sufficient pre- and post-sale services and loss of control over the product. Prevention of dealers from making sales on their own websites or through online marketplaces is an example of the attempts in question related to the producers' restricting the online sales channel of resellers, who make up the downstream level of the supply chain.
- (196) When addressed from a competition law perspective, the case law which is an accumulation of the previous decisions and the legislation forming the legal grounds can present differing assessments for both restrictions, and therefore under the present file it was decided to address the prevention of a dealer in the selective distribution system from using its own website and the prevention of sales through

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<sup>84</sup> Vertical Guidelines, para. 172

<sup>85</sup> Vertical Guidelines, para. 172

marketplaces in separate sections.

### **G.8.2.1. Restriction of Sales through the Dealer's Own Website**

#### **G.8.2.1.1. Relevant Legislation**

- (197) Vertical agreements involving restrictions on internet sales are regulated under Article 4 of the Act no 4054 within the scope of competition law. According to the relevant article, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are prohibited. However, vertical agreements and/or practices that violate the article in question are exempt from the application of an administrative sanctions, provided they meet the conditions required under the Communiqué no 2002/2. In line with the amendment made to the Communiqué no 2002/2 with the Competition Board Communiqué no 2021/4, agreements between suppliers and resellers can benefit from block exemption, provided the market share of the supplier in the relevant market for the goods and services comprising the subject of the agreement do not exceed 30% and the agreement does not include any of the restrictions listed under Article 4 of the Communiqué<sup>86</sup>. In that context, note must be taken of the restrictions listed in Article 4 of the Communiqué no 2002/2 that may not benefit from block exemption, which include the restriction of internet sales in selective distribution systems.
- (198) Article 4.1(c) of the Communiqué no 2002/2 states that active sales to final users by system members operating at the retail level may not be restricted, with the right of prohibiting a system member from operating at an unauthorized location reserved. An examination of the provisions of the relevant Communiqué reveals solely a distinction between active and passive sales concerning the resale activity in the specific market for goods and services concerned, but there is no clear explanation as to which type internet sales fall under. Therefore, Vertical Guidelines must be consulted to clarify the issue.
- (199) In Article 24 of the Vertical Guidelines, "passive sales" are defined as the fulfillment of the demand of customers from the region or customer group belonging to another buyer which are not a result of active efforts by the buyer, even if the buyer delivers the goods to the customer's address. In addition, it is noted that internet sales or sales through similar means are also generally considered to be passive sales. Paragraph 25 of the Vertical Guidelines explains that in principle, each reseller has the right to make sales over the internet, and that sales made by means of customers visiting the dealer's website, getting in contact with the dealer or by means of the customer requesting automatic updates from the dealer all constitute passive sales. In that context, it is noted that the restriction, by a supplier, of distributors/dealers/buyers from making sales on their own websites is a type of passive sales restriction.
- (200) On the other hand, in order to forestall indirect prevention of internet sales, the Vertical Guidelines deems the following restrictions equivalent to the prevention of passive

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<sup>86</sup> Temporary Article 3 – (Amended: Competition Board Communiqué no 2021/4; RG- 05.11.2021, 31650) Agreements benefiting from the block exemption under the Communiqué no 2002/2 on the date on which this article becomes effective but which fall outside the scope specified under Article 2 of the Communiqué no 2002/2 as amended by the Communiqué no 2021/4 must be amended to comply with the requirements listed under Article 5 of the Act no 4054 within six months following the effective date of the Article herein. During this time period, the prohibition of Article 4 of the Act no 4054 shall not be applied to the agreements in question.

sales, and states that they may not benefit from the block exemption:

- Restriction of access to the website for customers located in the exclusive region of another distributor, or redirection of these customers to the website of the manufacturer or of the relevant distributor,
- Termination of the transaction if it is determined that the relevant customer is not located in the exclusive region of the distributor by using the customer's credit card information,
- Placing restrictions on the ratio of internet sales to total sales,
- Having the distributor pay a higher price for products it would resell over the internet in comparison to the products to be offered at the traditional outlets.

- (201) On the other hand, it is acknowledged that the supplier may introduce quality standards related to the use of the internet as a sale channel. Paragraph 28 of the Vertical Guidelines clearly stipulates that the supplier may place certain conditions on the use of internet as a sales channel, similar to the conditions it may introduce for physical outlets or on the catalogues that publish advertisements and promotions, including quality requirements for the website on which the supplier's products are sold or conditions requiring the provision of certain services to consumers shopping over the internet. The relevant provision states that the supplier, particularly in selective distribution systems, can place obligations on the distributors such as having at least one physical outlet, but the goal of the relevant obligation cannot be simply to foreclose the market to or restrict the sales of those players who only operate over the internet (*pure players*).
- (202) Additional conditions over the relevant one may also be placed by the supplier. However, the important point for the conditions to be placed by the supplier on the downstream unit is that the restrictive conditions must not be directly or indirectly aimed at preventing internet sales of the distributor. To that end, the justification of the conditions introduced on the downstream economic unit must be objectively concrete, reasonable and acceptable with relation to factors that serve to improve the nature and quality of the distribution, brand image and/or potential efficiency, etc.
- (203) Moreover, the equivalency rule was introduced to ensure that quality standards that may be imposed by the supplier for internet sales do not lead to a prohibitive effect on those sales. According to the equivalency rule, criteria placed on internet sales do not need to be exactly the same with those specified for the traditional distribution channel but they should be comparable, serve the same purpose, and the characteristics of the product must justify any differences between the two groups of criteria. In other words, the conditions must not, directly or indirectly, result in the prevention of internet sales. Accordingly, in case the conditions placed by the supplier violate the principle of equivalency and discourage the use of internet, the conditions in question may be considered severe restrictions.
- (204) The main competition law legislation on the subject is the Block Exemption Regulation no 330/2010 (Regulation no 330/2010) that serves as the source legislation as well as the Guidelines on Vertical Restraints (EU Guidelines) that include the principles for the application of the former. Both of these legislations include provisions similar to the Communiqué no 2002/2 and the Vertical Guidelines, assessing internet sales with a similar approach. In other words, they consider internet sales as passive sales and their prohibition constitutes hardcore restrictions that take agreements out of the scope of the block exemption. The EU Guidelines state that both the direct prevention of

passive sales and any other practice with the same outcome as the prevention of passive sales would restrict competition<sup>87</sup>.

- (205) The Commission examined the e-commerce sector in 2015, publishing a sector report in 2017 which included comprehensive observations on internet sales. The Report noted that recently there was a significant increase in vertical restrictions at the distribution level in e-commerce. Accordingly, depending on the business model and strategy, price constraints in the e-commerce channel, internet platform prohibitions, restrictions related to price comparison tools, removing undertakings which only engage in online sales from the distribution network and similar practices were gradually becoming more common<sup>88</sup>.
- (206) Even though the legislation concerning the restriction of internet sales may be guiding, it would be beneficial to include both the EU and the Board approaches in order to properly detail the observations related to the subject.

#### **G.8.2.1.2. EU and Board Decisions on Restriction of Sales through Dealer's Own Website**

- (207) When agreements and/or practices that involve the supplier restricting the reseller from selling through its own website are addressed within the competition law framework, ECJ's *Pierre Fabre*<sup>89</sup> decision plays an important role for the creation of the case-law on the subject. Concerning the sale of cosmetics and personal care products, the *Pierre Fabre* decision includes the ECJ's analysis under the TFEU Article 101, stating that, barring any objective grounds based on the characteristics of the product<sup>90</sup>, selective distribution agreements prohibiting (all) sales over the internet would have a restrictive effect on competition by object, based on the assessment that they significantly decrease the authorized seller's ability to sell to consumers located outside of its region of activity and that it would restrict competition by nature. In order to justify the internet sale restrictions, the undertaking claimed that i) The contract goods required expert advice at the time of purchase for proper usage, and ii) Sales over the internet damaged the brand image, both of which were rejected as objective grounds. It was noted that protecting the prestige of the brand image was not a legitimate reason for restricting competition. The ECJ avoided making an assessment of individual exemption in the relevant decision, and left the decision to the appellate court of the EU member state concerned.
- (208) In the exemption assessment conducted, the appellate court concluded that the agreement in question introduced a non-indispensable restriction in order to offer personalized advice to consumers, since the consumers could also get detailed information on the product via the customer services hotline including detailed user manuals, and they could also cross-check with similar products. On the other hand, concerning the counterfeiting claim, the court ruled that there were no findings to suggest there was an increase in counterfeiting due to internet sales which affected

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<sup>87</sup>The provisions of the Communiqué no 2002/2 and the Vertical Guidelines summarized above related to the restriction of resellers' ability to make sales through their own websites are largely parallel with the source EU legislation (Regulation no 330/2010 and the EU Guidelines), and therefore the provisions of the legislation concerned are not included in detail.

<sup>88</sup> [http://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_final\\_report\\_en.pdf](http://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf), p.6.

<sup>89</sup> *Pierre Fabre*, Case C-439/09 [2011]. The relevant decision is a preliminary ruling taken in response to the request of the Paris Court of Cassation.

<sup>90</sup> Paragraph 60 of the EU Guidelines states that restrictions in an agreement of a particular type or nature may fall outside Article 101 in case there are objective justifications for their existences, such as reasons of health or safety.

*Pierre Fabre* less than their rivals thanks to the restriction, and that therefore the agreement concerned could not benefit from individual exemption<sup>91</sup>.

- (209) Another decision that involves assessing the restriction of internet sales is the *Bang et Olufsen*<sup>92</sup> decision, where the French Competition Authority found that the ban on internet sales restricted intra-brand competition and prevented lower prices for consumers, and ruled that the agreement provision banning internet sales had a restrictive effect on competition by object where its objective justification could not be established.
- (210) The British Competition Authority (CMA) adopted a similar approach in its *Roma Medical*<sup>93</sup> decision, first drawing attention to the benefits of internet sales for consumers and to the fact that it increased price competition between sellers, concluding that bans on internet sales restricted intra-brand price competition and consumer choice, that selective distribution systems already led to restrictive effects on competition, and that restriction of internet sales prevented competition by object. The decision also touched upon the provision of pre- and post-sale services and free-riding, emphasizing that free-riding concern could not be allowed since the supplier only provided the product to those distributors with physical outlets, and the justification concerning the provision of pre-/post-sales services was rejected on the grounds that less restrictive measures were possible, such as providing this service to the consumers at their homes<sup>94</sup>.
- (211) In the decision<sup>95</sup> taken by the Polish Competition Authority concerning the vertical agreement signed between the suppliers and resellers in the stroller market, the authority addressed restrictions of sales made over the internet and by mail. The authority decided that the sales made by the reseller over the internet were passive sales and found that the agreement prevented forms of passive sales by resellers. The authority also added that the relevant restriction denied consumers the opportunity to choose between the traditional and online channels. In response to the manufacturer's claim that the restriction was implemented due to safety reasons, the authority ruled that the restrictions placed on online sales were not indispensable for that goal and referenced the Commission's vertical Directives, which state that the restriction of internet sales could be considered hardcore restrictions.
- (212) In the *Ping*<sup>96</sup> file on the sale of golf equipment, the producer/supplier noted that since the products were special-purpose equipment they needed to be sold face-to-face using particular methods, and prohibited resellers from making internet sales. CMA, on the other hand, ruled that even though the nature of the product could be asserted as a reasonable justification for restricting internet sales, this could be provided through less restrictive methods such as live chat services or demo videos, went on to emphasize that other golf equipment manufacturers were able to compete by non-price parameters without implementing such a prohibition, and ruled that the restriction was a competition infringement by object.

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<sup>91</sup> SAPELLO, M. (2014), "Distribution Agreements and EU Competition Law: The Pierre Fabre Case and Its Consequences On Internet Distribution", International Trade Law Working Papers Series, [http://workingpapers.iuse.it/wp-content/uploads/2014-1\\_12-ITL.pdf](http://workingpapers.iuse.it/wp-content/uploads/2014-1_12-ITL.pdf), p.20.

<sup>92</sup> Autorité de la concurrence, 12th December 2012, Decision n°12-D-23, *Bang et Olufsen*.

<sup>93</sup> *Roma Medikal*, [2013], CE/9578-12.

<sup>94</sup> YÜKSEK, C. (2017), *Seçici Dağıtım Sisteminde İnternetten Satış Sınırlamaları*, Competition Authority Expert Theses Series, Ankara.

<sup>95</sup> *Emmaljunga*, [2015], RGD 2/2015, 30.

<sup>96</sup> *Golf Equipment* [2017], Case 50230.

- (213) In its *Stihl*<sup>97</sup> decision concerning power garden tools, the French Competition Authority examined the contract provision that placed hand-delivery obligations on the resellers. The authority noted that even though the hand-delivery obligation did not expressly forbid internet sales, it nonetheless was equivalent to a *de facto* ban on internet sales. The authority rejected the argument that the hand-delivery obligation was intended to regulate delivery options instead of restricting internet sales on the grounds that the obligation forced the customer to go to the store since the final delivery would have to take place at the store. It also rejected the claim that security had to be ensured due to the nature of the products on the grounds that the current arrangement did not necessarily require hand delivery and that such restrictions were not implemented by the rivals either. As a result, the authority ruled that the prohibition implemented constituted a competition infringement by object<sup>98</sup>.
- (214) The *Bikeurope*<sup>99</sup> decision similarly examined an in-store pick-up requirement for the products offered for sale. The decision found that refusing to sell the products over the internet restricted competition and caused price increases, that the prohibition did not stem from any security concerns requiring in-store pick-ups at the national or EU level, and that the product could also be delivered to the user after it was duly assembled and checked, and therefore ruled that the restriction constituted a competition infringement by object.
- (215) Lastly, in its *Guess*<sup>100</sup> decision, the Commission examined a provision that required prior consent of the supplier for the ability to sell the brand's product over the internet and found that the supplier's failure to set any quality criteria for allowing internet sales meant the provision's purpose was to restrict internet sales by resellers, and therefore the relevant restriction was a restriction of competition by object<sup>101</sup>.
- (216) An examination of the Board's case-law on internet sales restrictions show that only a limited number of decisions involved the assessment of such restrictions. In the first decision on the subject, the *Antis I* decision<sup>102</sup>, the Board examined the negative clearance request for a provision in the agreement signed between the supplier and the authorized sellers, which required the consent of the supplier for internet sales. In that decision the Board ruled that the contract provision that prevented the members of the selective distribution system from making sales over the internet without the supplier's consent could not be assessed under the block exemption, and launched an individual exemption assessment.
- (217) The assessment concluded that it was necessary for the consumers to use the product suitable to their skin type in order to derive the most benefit, that internet sales could fail to determine the skin type of the consumer correctly or give insufficient information on using the product, which might result in a failure to maintain the brand image targeted by the manufacturer and that this restriction was therefore necessary to ensure consumer benefit. In addition, it was stated that banning internet sales would not significantly affect intra-brand competition where there is no restriction on sales

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<sup>97</sup> *Stihl*, [2018], Décision n° 18-D-23.

<sup>98</sup> MATERLJAN, I. and G. MATERLJAN (2019), "Selective Distribution of Trademarked Products and Restrictions of Online Sales", *EU and Member States – Legal and Economic Conference*, [https://www.researchgate.net/publication/333769704\\_SELECTIVE\\_DISTRIBUTION\\_OF\\_TRADEMARKED\\_PRODUCTS\\_AND\\_RESTRICTIONS\\_OF\\_ONLINE\\_SALES](https://www.researchgate.net/publication/333769704_SELECTIVE_DISTRIBUTION_OF_TRADEMARKED_PRODUCTS_AND_RESTRICTIONS_OF_ONLINE_SALES), p. 850-851.

<sup>99</sup> *Bikeurope*, [2019], Décision n° 19-D-14.

<sup>100</sup> *Guess*, [2019], Case AT.40428.

<sup>101</sup> *Ibid.* p. 30.

<sup>102</sup> Board decision dated 05.05.2008 and no 08-32/401-136.

between authorized dealers, that currently inter-brand competition was at a satisfactory level, granting a 5-year exemption to the relevant agreement as a result. The *Antis II*<sup>103</sup> decision made a similar assessment and granted an indefinite exemption to the relevant agreement.

- (218) On the other hand, the Board assessed the total ban on internet sales for the contract goods in the *Yatsan*<sup>104</sup> decision and, unlike the *Antis* decision, chose to make a distinction between active and passive sales. Afterwards, the Board emphasized that each reseller should be allowed to make internet sales in principle, and based on the approach included in the EU Guidelines, ruled that there would be no exemptions granted on the following grounds:

*“The Commission points out that there are alternatives much less restrictive of competition than a total prohibition of internet sales, aimed at preventing damage to the brand image or solving the free-riding problem and ensuring that internet sales are compatible with the distribution model of the supplier. In that framework, it was decided that Yatsan’s total ban on the internet sales of Tempur brand products did not meet the provision in Article 5(d) of the Act no 4054, which prescribes that competition should not be restricted more than what is necessary in order to attain the goal Yatsan wished to achieve with this prohibition.”*

- (219) The decision also emphasized the importance of internet, since internet sales were a strong tool for reaching a larger number of buyers than what is possible via traditional methods of sale and that as a natural result of technology internet sales facilitated the access of buyers or consumers to a particular product and decreased search and comparison costs. Therefore, it was concluded that an opinion should be rendered stating that the practice should be terminated.
- (220) In the *BSH*<sup>105</sup> decision dated 2017, the Board re-evaluated its exemption decision previously taken in 2015<sup>106</sup>, referencing the EU legislation and case-law to note that while the agreement did not include a restriction on passive sales, they could still face *de facto* restrictions since customers were re-directed to the suppliers website when they tried to access the distributors website, which was one of the examples of passive sale restrictions listed in the EU Guidelines. The Board did not accept the claim that internet sales were banned to protect the brand image, and revoked the exemption decision it gave in 2015.
- (221) Another decision on the subject of prohibition of internet sales was the *Jotun*<sup>107</sup> decision, in which the Board assessed the provision in the agreement between the suppliers and the resellers, which specified: *“sales of Jotun products over the internet is prohibited.”* The decision emphasized the importance of the internet in commerce and its development in Türkiye, and stated that the restriction introduced was disproportionate to the intended goal, that the introduction of an absolute restriction when less restrictive methods were available made it impossible to assess the agreement under the provisions of individual exemption. On the other hand, since the restriction was not likely to lead to restrictive effects on competition in a significant portion of the market and was in the form of a vertical restraint, it was decided to send an opinion stating that the relevant provision of the agreement should be amended.

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<sup>103</sup> Board Decision dated 24.10.2013 and no 13-59/831-353.

<sup>104</sup>Board decision dated 23.09.2010 and no 10-60/1251-469.

<sup>105</sup>Board decision dated 22.08.2017 and no 17-27/454-195.

<sup>106</sup>Board decision dated 6.10.2015 and no 15-37/573-195.

<sup>107</sup>Board decision dated 15.02.2018 and no 18-05/74-40.

- (222) The *Yataş*<sup>108</sup> decision had an assessment similar to the *Jotun* decision, with the Board addressing the provision “*Contract goods may not be marketed, displayed or sold, even temporarily, at any location (including online sales and internet sales) without the express written permission of Yataş.*” The Board considered the relevant provision a restriction on the dealers’ internet sales and decided that it could not benefit from block exemption. In the individual exemption assessment, it was noted that the provision failed to meet the first requirement for exemption and so it was not necessary to evaluate the other exemption requirements since it could not benefit from individual exemption. However, since *Yataş* had a low share of the furniture market, it was decided that the relevant restriction would have a limited impact and therefore an opinion should be sent stating that the practice should be terminated.
- (223) Lastly, in the *Baymak*<sup>109</sup> decision, even though the agreements did not include a clear provision restricting internet sales, the Board used the correspondence gathered during the on-site inspections to establish that Baymak restricted internet sales of its distributors to final users or downstream dealers/retailers over their own websites or through third party platforms, and therefore decided that the practice concerned could not benefit from block exemption. In addition, the Board also decided that the restriction could also not enjoy individual exemption, since the contract goods were not among those for which the restriction of internet sales could be justified on reasonable grounds.

## **G.8.2.2. Restriction of Dealer’s Sales through Online Marketplaces**

### **G.8.2.2.1. Relevant Legislation**

- (224) In order to interpret the legislation concerning the restriction of internet sales by resellers through online marketplaces/e-commerce platforms, the distinction between active and passive sales must be explained first. In basic terms, active sales are those made to individual customers located within the exclusive region or exclusive customer group of another buyer via direct marketing methods such as letters or visits, while passive sales refer to the fulfilment of the demand received from the customers located within the region or customer group of another buyer, which are not the result of the active efforts of the buyer. In that sense, internet sales or sales through similar means are also generally passive sales.
- (225) On the other hand, Article 4(c) of the Communiqué no 2002/2, titled “Limitations Rendering Agreements Not Caught By Block Exemption,” includes the provision “*In the selective distribution system, restriction of active or passive sales to final users, to be performed by the system members operating at the retail level, provided that the right is reserved as to the prohibition for a system member against operating in a place where he is not authorized*”. Therefore the provider’s prohibition of passive sales by system members would not benefit from the protection of the block exemption. Thus, a question arises regarding which types of sales can be characterized as passive sales and can be subject to certain types of sanctions.
- (226) Within the scope of the relevant legislation, the provision on the sales through marketplaces is included in Article 28 of the Vertical Guidelines. Accordingly, “*The justification of the conditions introduced must be objectively concrete, reasonable and acceptable in terms of the factors such as increasing the nature and quality of the distribution, brand image and/or potential efficiency, etc.*” Similarly, the supplier may

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<sup>108</sup>Board decision dated 6.02.2020 and no 20-08/83-50.

<sup>109</sup>Board decision dated 26.03.2020 and no 20-16/232-113.

*demand that the buyer only sell through 'sales platforms/marketplaces' which fulfill certain standards and conditions. However, this restriction should not aim to prevent distributor's online sales or price competition. As such, a general prohibition of sales over platforms without objective and uniform conditions and justifications in line with the specific characteristics of the product may be assessed as violations."*

- (227) Paragraph 29 of the Vertical Guidelines state *"Due to the differences between the terms of physical sales and online sales, the criteria introduced for these two distribution channels do not necessarily have to be exactly the same; although these criteria must serve the same goal, must ensure comparable results and must be of a nature that confirms the differences stemming from the nature of the two distribution channels ('principle of equivalency'). In other words, the conditions envisaged should not, directly or indirectly, result in the prevention of internet sales. Accordingly, in case the conditions placed by the supplier violate the principle of equivalency and discourage the use of internet, the conditions in question may be considered severe restrictions."*
- (228) An analysis of the provisions above reveal that the supplier may ask the dealers to sell through marketplaces which meet certain standards and criteria, i.e. it can restrict sales through marketplaces which fail to fulfill the specified terms and conditions. Thus, any measure taken by the supplier in the physical channel aimed at protecting the efficiency of the distribution system can apply for the internet channels, constituting a business process which can be managed through reasonable conditions (objective, uniform and compatible with the product characteristics) rather than completely restricting the internet channel.
- (229) An overview of the current regulation in the EU Guidelines concerning sales through online marketplaces show that the aforementioned provisions are applicable, but there are differences in the examples provided when explaining the relevant article of the Guidelines. Accordingly, if the distributor has a webpage/marketplace on a sales platform, then the supplier may request that consumers are not allowed to access the distributor's website through the webpage that carries the name and logo of that platform<sup>110</sup>. In light of the fact that the functioning of these marketplaces make it generally unlikely for consumers to reach a seller selling on the platform without first accessing the relevant marketplace, it seems that the EU Guidelines provision is more permissive towards the restriction of sales via marketplaces.
- (230) At the same time, the Commission conducted a study that continued for 2 years since the exemption regime applied in the EU to vertical agreements is going to expire on 31.05.2022, resulting in the publication of a draft guidelines that includes the ECJ's *Coty* decision<sup>111</sup> as well as the change in the Commission's approach to sales over the marketplaces in light of its E-Commerce Sector Report<sup>112</sup>. Therein the Commission first noted that the restriction on the use of online marketplaces were generally implemented in selective distribution systems. Commission went on to point out that where each buyer and supplier had a market share below 30%, the supplier was allowed to place restrictions on the sales resellers made through online marketplaces<sup>113</sup>. The draft text stated that the marketplace restriction concerned could

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<sup>110</sup> EU Guidelines, paragraph 54.

<sup>111</sup> The decision in question will be examined in detail in the following sections.

<sup>112</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOC\\_2021\\_359\\_R\\_0002&rid=7](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOC_2021_359_R_0002&rid=7) p. 82-84.

<sup>113</sup> The draft guidelines includes significant amendments on the evaluation of selective distribution systems and removes the provisions on the application of the equivalency principle.

benefit from the exemption, provided the market shares of the supplier or the buyer did not exceed 30% and the vertical agreement did not include a hardcore infringement. The rest of the text stated that the restriction to be placed by the supplier should not exclude the seller from all online channels, that authorized sellers should be able to sell on their own websites - despite the ban on online marketplaces - and advertise their own website on online channels. Thus, the prohibition in question should not deprive the sellers from a certain customer group and/or sales region.

- (231) The Commission stated that, where undertakings with larger than 30% market share did not conclude agreements with online marketplaces and therefore could not be sure that the selection criteria were met, introducing a ban or restriction to sales through marketplaces could meet the Metro Criteria and could be within what is necessary to maintain the quality of the contract goods and services and ensure their correct use. However, if the online marketplace is appointed by the supplier as an authorized seller in the selective distribution system, if the supplier itself sells through online marketplaces or if sales through marketplaces are allowed for certain authorized sellers but restricted for others, then it seems unlikely that the restriction of sales through marketplaces would meet the requirements for suitability and necessity.
- (232) The draft guidelines touched upon the possible competitive risks of online marketplace restrictions, noting that such restrictions could reduce intra-brand competition at the distribution level and could lead to market foreclosure by denying an important channel of sales to mid- and small-scale sellers, in particular.
- (233) In the draft guidelines, the Commission clearly explained what to look for when assessing a restriction related to the use of online marketplaces in individual cases where the market shares are above 30%. Accordingly, when assessing potential anti-competitive effects as a result of a restriction on the use of online marketplaces, the level of inter-brand competition must be evaluated first, since, in principle, sufficient inter-brand competition could alleviate the impact of all losses of intra-brand competition. To that end, the assessment should note
- Firstly, the market positions of the supplier and its competitors,
  - Secondly, the type and scope of the restrictions on the use of online marketplaces (for instance, prohibiting all sales through online marketplaces would be more restrictive than allowing the use of only certain online marketplaces or only those marketplaces which meet certain qualitative criteria),
  - Thirdly, the relative importance of online marketplaces as a sales channel in the relevant product and geographical markets, and
  - Lastly, the cumulative effect of the other restrictions placed by the supplier on online sales or advertisements.
- (234) The Commission also stated that restrictions on the use of online marketplaces could lead to efficiencies in terms of protecting the brand, maintaining a certain level of service quality or preventing counterfeiting, and that less restrictive methods to achieve such efficiency gains must be evaluated in order to fulfill the exemption conditions, provided the restriction does not fall outside the scope of the Article 101(1) of the TFEU.

### G.8.2.2.2. Competition Authorities' Approach to Sales through Online Marketplaces

- (235) In contrast to the agreement in the case-law concerning the restriction of sales through the dealer's own website, an examination of the case-law in the EU Member States on the *de facto* implementation of an agreement that includes sales through marketplaces reveal differing approaches. However, the Board does not yet have a decision in which it evaluated the restriction of sales through online marketplaces.
- (236) Bundeskartellamt decisions may be given as the first example to the decisions taken in the EU Member States on the restriction of sales through marketplaces. In the *Ciba Vision*<sup>114</sup> decision, Bundeskartellamt addressed the contact lens manufacturer's ban on the sale of its products over the internet and especially through the online marketplace E-bay. Though the manufacturer cited health and safety reasons as well as their intention to protect their investment against the risk of free-riding as justifications for the restriction, Bundeskartellamt rejected the health and security justification, noting that measurement and control services were done by the optician stores in Germany and the products were sold over-the-counter, and that soft lenses were currently available in a large number of pharmacies and supermarkets. Concerning the free-riding defense, it was ruled that the contract products did not require any special investment, and that the benefit expected from the ban on internet sales could be acquired via less restrictive methods<sup>115</sup>.
- (237) Unlike the *Ciba Vision* decision, in its *Sennheiser*<sup>116</sup> decision concerning the sale of consumer audio electronics, Bundeskartellamt assessed the fact that despite appointing AMAZON as an authorized distributor in its selective distribution system, the supplier tried to prevent its resellers from making sales on the platform. Bundeskartellamt assessed that where a marketplace is appointed as an authorized distributor while at the same time being used as a sales platform, the sale of the contract goods through the marketplace could not be prevented in any way, and rejected the defense that sales through marketplaces damaged the presentation and service quality of the product.
- (238) Bundeskartellamt showed a similar approach in its *Adidas*<sup>117</sup> and *Asics*<sup>118</sup> decisions, and, in its *Adidas* decision, it rejected the claims of preventing the free-riding problem and protecting the brand image which were presented as the justifications for the restriction. In response to the free-riding problem asserted in the relevant decision, Bundeskartellamt pointed out the consumer surveys, noting that free-riding was not a problem specific to online marketplaces, that it could emerge in both the traditional channel and the internet sales channels, and that the problem could be solved by establishing quality standards for the sale of the contract goods through these platforms, which are adopted by all authorized sellers. With relation to the justification of protecting the brand image, Bundeskartellamt stated that brand image was worth protecting for both the consumers' and manufacturer's benefit, however this did not

<sup>114</sup>Bundeskartellamt's press release,

[https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2009/25\\_09\\_2009\\_Ciba-Vision.html](https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2009/25_09_2009_Ciba-Vision.html)

<sup>115</sup> <https://www.oecd.org/competition/VerticalRestraintsForOnlineSales2013.pdf>, p. 115.

<sup>116</sup> *Sennheiser*, Bundeskartellamt [2013], B7-1/ 13-35.

<sup>117</sup> *Adidas*, Bundeskartellamt [2014], B3-137/12.

<sup>118</sup>*Asics*, Bundeskartellamt, [2015], B2-98/11., Press Release: <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2016/B2-98-11.pdf?blob=publicationFile&v=2>,

justify the complete prohibition on the use of marketplaces, and that criteria currently adopted for protecting the brand image could be applied to the relevant sales channel as well. The decision went on to analyze whether consumers benefited from this restriction. In response to the argument that “*the restriction made the consumers’ shopping experience more satisfactory since it aimed to protect the brand image and provide a consultancy service,*” it was pointed out that consumer demand for consultancy could vary depending on the type of the product, that some consumers could prefer to take advice from sales personnel while others could decide based on the reviews of previous consumers, and that therefore the consultation need for the same product could vary from consumer to consumer. In addition, studies were referenced showing that sales of online distributors which use sales platforms make more sales through those channels than they do over their own websites (online shops), suggesting that sales platforms work to the benefit of most consumers, that this restriction was not unavoidable in light of the arguments presented, and that the desired goal could be achieved by setting quality standards. Bundeskartellamt also stated that the relevant restriction damaged not only intra-brand competition but inter-brand competition as well, since other sports equipment brands’ implementing similar practices would result in relative price labels that weaken competition. As a result, the authority did not accept the justifications of protecting the brand image and preventing free-riding as objectively necessary criteria for prohibiting sales through marketplaces, stating that in its current form, the relevant practice would lead to competitive concerns.

- (239) In its *Asics* decision, Bundeskartellamt described the practice of prohibiting the use of Asics brand names by a third party in order to direct the consumers to the website of the Asics authorized seller and prohibiting the use of comparison shopping websites by setting up application specific interfaces as restrictive abuses by object, while stating that the restriction of sales through the marketplaces could be a competition infringement by object, since it prevented final consumers from accessing a significant sales channel. The decision noted that Asics’ prohibition of sales through marketplaces was unduly interventionist for the desired objective, and that the relevant concerns could be eliminated via less intrusive methods than the outright prohibition of marketplaces.
- (240) In contrast to this strict position of the Bundeskartellamt, some German domestic courts presented a more tolerant approach. In its *Scout*<sup>119</sup> decision, the court decided that the contract provision banning the sale of the contracted backpacks through auction sites was a qualitative restriction and was comparable to the requirements established for physical outlets under the equivalency principles, and decided that the contract provision did not infringe competition.
- (241) In another decision on the subject of school bags, the *Deuter*<sup>120</sup> decision, the lower court concluded that while the goal of protecting product quality was important it could be achieved via less restrictive methods, and assessed that the restriction of the sale of the relevant products through AMAZON was a *de facto* hardcore restriction under the Regulation no 330/2010 which did not lead to any gains in efficiency<sup>121</sup>. On the other hand, the appellate court ruled that the restriction was appropriate and proportionate under the Metro Criteria, emphasizing the importance of brand image to conclude that the restriction did not go beyond what was necessary to provide suitable

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<sup>119</sup> *Scout*, Higher Regional Court of Karlsruhe, [2009], 6 U. 47/08.

<sup>120</sup> *Deuter*, Higher Regional Court of Frankfurt, [2015], 11 U 84/14.

<sup>121</sup> *Deuter*, Regional Court of Frankfurt, [2014], 2-03 O 158/13.

customer services.

- (242) While the Commission's opinion to the restriction of sales through marketplaces in response to Bundeskartellamt's position was anticipated, the subject was brought on the ECJ's agenda with the Frankfurt High District Court's request for an opinion on the *Coty*<sup>122</sup> decision<sup>123</sup>. The ECJ first assessed whether the selective distribution system was necessary for luxury products, and concluded that the quality of luxury products was only due to their physical characteristics but also to the appeal and prestigious image which gives them their aura of luxury and that interfering with that aura of luxury could affect the actual quality of the products. The ECJ went on to evaluate whether a member of a selective distribution system could restrict sales through marketplaces altogether without first setting a quality standard. The ECJ concluded that the lack of a contractual relationship between the supplier and the marketplaces could prevent the supplier's ability to check compliance with the targeted sales standards and thus could harm the luxurious image of the product, noting that an obligation placed on the authorized distributors to sell the contract goods only through their own websites guarantees the supplier that the relevant products would only be associated with the authorized distributors. Thus, the court accepted that the restriction allowed the supplier to check whether its criteria for online sales requirements were met, i.e. that the prohibition of sales through marketplaces did serve the goal of protecting the luxurious image of the products.
- (243) On whether the relevant restriction went beyond what was necessary to maintain the luxurious image of the product, the ECJ referenced the Commission's E-Commerce Sector Report. The court referenced the results of the study, and concluded that since more than 90% of the retailers who participated in the survey used their own websites as the main online distribution channel, the restriction did not go beyond what was necessary to achieve the goal of maintaining the luxurious image of the products<sup>124</sup>.
- (244) Concerning the district court's question on the Regulation, the ECJ evaluated whether, within the framework of selective distribution systems, the restriction of a system member's sales through marketplaces would constitute a customer or region restriction by object or a restriction of passive sales to final users. Accordingly, the ECJ pointed out that it would be impossible to define the marketplace customers as a customer group distinct from those shopping on the online channel, also that the relevant contract provision did not prevent authorized distributors from advertising on the marketplaces or using search engines, and ultimately ruled that the contract provision would not mean customer/region restriction or restriction of passive sales to final users<sup>125,126</sup>.

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<sup>122</sup> *Coty*, Case C-230/16 [2017].

<sup>123</sup> In the *Coty* decision the first instance court referenced the *Pierre Fabre* decision to state that the goal of maintaining a prestigious brand image did not justify the implementation of the selective distribution system that restricts competition, and that the contract provision explicitly restricted internet sales (*Coty*, Regional Frankfurt am Main, [2014], 2-03 O 128/13).

<sup>124</sup> *Coty* decision para. 48-58.

<sup>125</sup> The Decision rules that Article 4 of the Regulation no 330/2010 should be interpreted to mean that, in situations like those of the main case, the restriction of online trade through third parties for selective distribution system members active in the retail sales of luxury products would not lead to customer group foreclosure as per Article 4(b) of the relevant legislation or restriction of passive sales to final users as per Article 4(c). See: The *Coty* Decision

<sup>126</sup> On the other hand, in his opinion on the decision Advocate General Wahl stated that the concept of competition restriction by object could be applied to certain types of coordination which do not even need their effects examined and which do have a sufficiently negative impact on competition, adding

- (245) Following this opinion of the ECJ, the Commission also released an opinion by its brief on the restriction of sales through marketplaces. Accordingly, the Commission stated that the restriction of sales through marketplaces would not constitute a hardcore restriction under the Regulation, and that marketplace prohibitions in the selective distribution agreements for other product categories in addition to luxury products, such as “high quality” and “high technology” products, would not be considered a violation, provided they meet the Metro Criteria<sup>127</sup>.
- (246) The most severe criticism to the Commission’s *Coty* opinion definitely came from the Bundeskartellamt. Bundeskartellamt stated that it did not agree with the Commission’s position, and that ECJ’s *Coty* opinion was limited to the luxury products only and should not be interpreted in a wider sense to include other product categories such as high-quality and high-technology goods. In addition, the authority emphasized that manufacturers could protect the brand image of high-quality products by setting quality standards for distribution through marketplaces, and that concerns on this matter could be eliminated by requiring that instead of instead of sharing the product’s webpage with the other sellers, the distributor should have a store on the marketplace and it should also provide consultancy services for the product. Another issue pointed out by the Bundeskartellamt concerned whether the complete prohibition of the use of marketplaces constituted a hardcore restraint. On this subject, the Bundeskartellamt stated that in the German market the main distribution channel was the marketplaces instead of the distributors’ own websites or search engines, and therefore criticized the ECJ for failing to consider this restriction a hardcore restraint based on a conclusion that the distributor’s own website was the most important sales channel in general throughout the Member States<sup>128</sup>. As a matter of fact, in its E-Commerce Sector Report, the Commission pointed out that the actual and contractual impact of online marketplaces and therefore the importance of marketplace bans could/did vary significantly between Member States and product categories<sup>129</sup>.
- (247) In the *Caudalie*<sup>130</sup> decision, which was taken by the French Competition Authority after *Coty* and which addressed the restriction of sales through marketplaces, the first instance court referenced the *Pierre Fabre*, *Adidas* and *Asics* decisions, finding that the prohibition of sales through marketplaces to resellers constituted a hardcore restriction in the absence of objective justifications. In response, the appellate court took the *Coty* case into account and stated that the contract goods were luxury products with an attractive and prestigious image that separated them from other products in the eyes of the consumers, but sales through marketplaces did not only cover luxury products, went on to add that marketplaces also had other products such as fire alarms and cameras, etc. which did not resemble cosmetic products at all, and decided that the prohibition was necessary and proportional<sup>131</sup>. In the *Aleo2Go* decision on food supplements and fitness drinks, the first instance court did not find that the restriction of sales through AMAZON and E-bay in order to provide personalized product recommendations to consumers was justified<sup>132</sup> and considered

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that the prohibition in the current case could not be classified as a competition infringement by object, in contrast to the *Pierre Fabre* decision.

<sup>127</sup> <https://ec.europa.eu/competition/publications/cpb/2018/kdak18001enn.pdf>

<sup>128</sup> [https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe\\_Digitales\\_IV.pdf?\\_blob=publicationFile&v=3](https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_IV.pdf?_blob=publicationFile&v=3),

<sup>129</sup> [https://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_final\\_report\\_en.pdf](https://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf) , Para. 41

<sup>130</sup> *Caudalie* [2007], Décision n° 07-D-07.

<sup>131</sup> *Caudalie* [2016], N° 2014060579, 2.

<sup>132</sup> *Aleo2Go*, Regional Court of Hamburg, [2016], 315 O 396/15.

the restriction a competition infringement. However, the appellate court assessed the previous decision within the framework of the Metro Criteria and reversed the ruling of the first instance court, concluding that while the products were not luxury goods as was the case in the Coty decision, they were nonetheless high-quality products manufactured by a complex process using quality materials, and that these characteristics of the products justified their provision with personalized recommendations. In addition, the appellate court also decided that the restriction was necessary for the success of the supplier's strategy of differentiating its high-quality products from other mass market products and providing pre-sales services to the consumers, and that these goals would be impossible to achieve if the products concerned were to be displayed on the marketplaces together with products of different characteristics that were in different price categories. In addition, it was noted that the distributors could also sell through their own websites and that therefore the restriction was proportionate<sup>133</sup>.

- (248) In the *Stihl*<sup>134</sup> decision, the French Competition Authority emphasized the dangerous nature of the contract goods and decided that since there was no contractual relationship between the supplier and the marketplaces, consumer safety could not be fully guaranteed and it would be difficult to monitor the obligations that had to be complied with. In terms of the proportionality assessment, the French Competition Authority referenced the Commission's E-Commerce Sector Report, determining that the marketplaces were not the most important sales channel for distributors.
- (249) Lastly, in the *Nike* decision<sup>135</sup>, the Amsterdam District Court made an assessment under the Metro Criteria, concluding that the contract goods were luxury products and therefore the restriction was necessary to protect the brand image, that since AMAZON was not a distributor authorized by Nike, the quality factor expected from the selective distribution system could not be ensured. Consequently, the court decided in the favor of Nike.
- (250) In summary, with decisions concerning the restriction of internet sales, the first point to establish is which channel for online sales used by the reseller is being restricted by the supplier. In fact, as explained above, the supplier's prevention of resellers sales over the latter's own website - in the absence of an objective justification - was considered to be a competition infringement by object and it was concluded that this practice was a hardcore restraint. The main reason for that conclusion is the fact that all resellers should have the right to sell over the internet in principle, as mentioned in article 25 of the Vertical Guidelines. However, on the matter of restriction of online sales through marketplaces, while the *Coty* decision allowed such restrictions within the framework of selective distribution systems, it does not look like there is clarity on how the *Coty* decision should be interpreted for other product markets. Following the decision, the Commission made a wider interpretation, stating that sales through marketplaces could be restricted not only for luxury products but also for "high-quality" and "high-technology" products, and formalized its view in the draft guidelines it issued. The wider interpretation also found favor in some later decision taken by the member states.
- (251) On the other hand, the Bundeskartellamt opined that the decision should be interpreted in a narrower sense, and that it was only limited to luxury products. Another point of

<sup>133</sup> *Aloe2Go*, Higher Regional Court of Hamburg, [2018], 3 U 250/16.

<sup>134</sup> *Stihl*, [2018], Décision n° 18-D-23.

<sup>135</sup> *Nike* [2017], C/13/615474 / HA ZA 16-959.

note put forward by the Bundeskartellamt is the fact that the usage rates of marketplaces vary between countries.

- (252) However, even though the grounds for the *Coty* decision states that the decision was based on the EU-wide data in the Commission's E-Commerce Sector Report, it bears repeating that the same report also pointed out that the results could vary from country to country.
- (253) On the other hand, in the E-Commerce Sector Report the Commission notes that while examining the restrictions placed on online marketplaces, the value of the arguments concerning the importance of the marketplaces for certain product and geographical markets, the nature of the restriction (absolute ban or qualitative criteria), brand image, and maintenance of high levels of pre- and post-sales services.
- (254) In light of the fact that each country has specific market conditions, demographical and socioeconomic structures and consumer choices, the relevant differences must have a significant effect on the consumers' choice of sales channel, and therefore when addressing agreements and/or practices on internet sales restrictions from a competition perspective, the specific market conditions and socioeconomic structures of each country must be taken into account.

### **G.8.3. Assessment under Article 4 of the Act no 4054**

- (255) As known, Article 4 of the Act no 4054 includes the following provision: "*Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal ad prohibited. Such cases are, in particular, as follows:*

- a) *a)Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any terms of purchase or sale,*

*(...)"*

The relevant article covers agreements restricting competition between rival undertakings operating at the same level (horizontal agreements) as well as agreements between undertakings which are not rivals, that is to say, which are on different levels of business (vertical agreements).

- (256) Article 2 of the Communiqué no 2002/2, titled "Scope" defines vertical agreements as "*Agreements concluded between two or more undertakings operating at different levels of the production or distribution chain, with the aim of purchase, sale or resale of particular goods or services*". In that context, agreements signed between BSH and its dealers and electronics stores have the nature of vertical agreements as per Article 2 of the Communiqué no 2002/2 titled "Scope".
- (257) Thus, the "Brand Exclusive Dealership Agreement" (Agreement) BSH signed with authorized sellers for the distribution of Bosch, Siemens and Profilo brand products, as well as the contracts signed with the electronics stores TEKNOSA and MEDIAMARKT provide for the resale of the contract goods by the authorized dealers in accordance with the terms to be determined by BSH. The agreements in question as well as the notified circular must be examined to determine whether they fall under the scope of Article 4 of the Act no 4054 when taken together with BSH's distribution system.

### G.8.3.1. Assessment on the Agreements BSH signed with Its Dealers and Electronics Stores and on the Selective Distribution System

- (258) As mentioned above, BSH is a multi-brand undertaking that handles the brands Bosch, Siemens and Profilo and the Agreement it signed with its dealers on the subject of the resale of Bosch, Siemens and Profilo brand products arranges sale of the contract goods by the authorized sellers in accordance with the terms to be determined by BSH. In addition to the abovementioned distribution model, BSH also uses electronics stores for the distribution of the products.
- (259) BSH works with personnel agencies to employ promoters in order to demonstrate its products and inform the consumer at the electronics stores. Similarly, it has established certain store criteria for the display of the products at the electronics stores. Thus, it may be said that BSH has selected both its dealers and the electronics stores as authorized sellers. In other words, BSH is implementing the selective distribution system for its dealers and electronics stores.
- (260) With the letter dated 30.03.2020 and numbered 3053, BSH has applied for negative clearance/exemption for the supplementary circular it sent to its dealers.
- (261) An integral part of the Agreement, the circular sent by BSH to its authorized sellers is on the subject, “*New Arrangement concerning Sales through the Websites Known as Marketplaces for the Year 2020*” and includes the following provision:

.....(TRADE SECRET).....

An assessment of the relevant provisions shows that authorized sellers can freely sell over their own websites, but sales through marketplaces are completely banned.

- (262) On the other hand, BSH explained that the relevant practice was aimed to protect the efficiency of the selective distribution network and that the establishment of a selective distribution system was a legitimate requirement due to the nature of the product by stating that (.....).
- (263) BSH’s ban on resellers’ sales through marketplaces by the circular published must be examined within the framework of the criteria<sup>136</sup> set by the ECJ in the *Metro* decision, in light of the fact that the ban was allegedly planned to ensure the functioning of the selective distribution system. The qualitative and quantitative criteria known as the Metro Criteria and first established by the ECJ in order to establish the legality of selective distribution systems are explained in paragraph 171 of the Vertical Guidelines as follows:

*“Purely qualitative selective distribution is in general considered to fall outside article 4 of the Act for lack of anti-competitive effects, provided that following three conditions are satisfied. First, the nature of the product in question must necessitate a selective distribution system, in order to preserve its quality and ensure its proper use; that is, a legitimate requirement must exist owing to the nature of the product. Secondly, resellers must be chosen on the basis of objective criteria of a qualitative nature. These criteria must be laid down uniformly for all potential resellers and in a non-discriminatory manner. Thirdly, the criteria laid down must not go beyond what is necessary.”*

- (264) However, an overview of the decisions on selective distribution systems show that in

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<sup>136</sup> Case 26/76 Metro SB-Großmärkte v Commission (Metro I).

the *Metro* decision, for instance, “high-quality and technically advanced durable consumer goods” were characterized as suitable for selective distribution systems.<sup>137</sup> In the *Coty* decision, the court referenced the *Copad*<sup>138</sup> decision, concluding that cosmetics products in the distribution agreement were luxury products and therefore met the first condition. The *Copad* decision explains that the quality of the product is not dependent only on the material characteristics of the product, and that luxury products are defined as those which have an aura of luxury that help consumers separate them from others. In light of that assessment, rather than luxury products, BSH products are found to be general use products with relatively high demand price elasticity. Since white goods or small domestic appliances have a certain expected lifetime and their value drops down in time due to developing technologies, they cannot be considered to be luxury products. On the other hand, since the products are technologically complex and their design is an important factor in consumer choice, establishing and maintaining a brand perception would be to the commercial benefit of the manufacturer. In that context, it may be said that a selective distribution system may be necessary to maintain the characteristics and quality perception as well as the proper usage of the products under examination<sup>139</sup>. On the other hand, it was noted that electronics stores were supplied products for resale despite BSH stating that they are excluded from the selective distribution system. That the product can be sold to resellers outside the selective distribution system makes it harder to claim that the first requirement has been met. However, certain electronics stores were selected as authorized dealers by BSH and certain qualitative criteria were introduced for the sales to be made at the electronics stores. Thus, it is possible to conclude that BSH implemented the selective distribution system for the dealers and electronics stores and thereby fulfilled the first requirement.

- (265) An examination of the second and third criteria show that the circular including the ban in question was sent to all authorized sellers of BSH and thus the specified condition was applied equally to all authorized sellers on a non-discriminatory basis. The second condition can be considered to be fulfilled if the selective distribution system were comprised solely of dealers. However, when we take into account the fact that some electronics stores are included among the authorized sellers and electronics stores can sell BSH brand products through their own stores on online marketplaces, it becomes clear that the conditions concerned are not being applied in a uniform and proportionate manner to the dealers and the electronics stores. In fact, on this subject, the draft regulation of the EU notes that where a supplier restricts the use of online marketplaces for some selective distribution members while appointing some others as authorized sellers on online marketplaces, then the supplier concerned have failed the proportionality requirement of the selective distribution system and is unlikely to meet the objective criteria for the establishment of the system<sup>140</sup>.
- (266) The proportionality assessment for the criteria looks at whether the prohibition of sales through online marketplaces went beyond what is necessary, in light of the nature of the relevant product. For this file, the relevant analysis will address the following points, which the ECJ took into consideration for their response to the second question of the

<sup>137</sup> For another decision see: Judgment of 25 October 1983, *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken*, 107/82, EU:C:1983:293.

<sup>138</sup> Judgment of 23 April 2009, *Copad*, C-59/08, EU:C:2009:260.

<sup>139</sup> See: Case 75/84, *Metro II* EU:C:1986:399.; COMP/25.757, *Hasselblad* (1982) OJL161/18; Case 86/82, *Hasselblad v Commission* EU:C:1984:65; COMP/30.849, *IBM* (1984) OJL118/24.

<sup>140</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOC\\_2021\\_359\\_R\\_0002&rid=7](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOC_2021_359_R_0002&rid=7), Para. 319. Accessed: 06.12.2021

district court with relation to its *Coty* decision.

- (267) To that end, it would be beneficial to examine the assessments in the *Coty* decision. In that decision, the ECJ gave three justifications for its assessment that the proportionality requirement could be met. The decision noted that for luxury products, the quality of the product stemmed not only from its material characteristics but also from the appeal and prestigious image that gives the product an aura of luxury. That aura was fundamental for consumers to separate those products from similar ones and therefore a distortion that might occur in that luxurious image would be likely to affect the actual quality of these goods. Therefore, the decision found that the relevant prohibition guaranteed that the consumers associated the products only with the authorized sellers selected by the supplier. The second justification was that the relevant prohibition allowed the supplier to put the products on sale only via those parties with direct contracts and to monitor whether resellers complied with the criteria placed on them. The third justification referenced the findings of the Commission in the E-Commerce Sector Report, emphasizing the fact that the relevant prohibition did not significantly impede access to the internet channel.
- (268) As mentioned above, the quality of the product is not dependent only on the material characteristics of the product, and that luxury products are defined as those which have an aura of luxury that help consumers separate them from others. In parallel to that approach, it may be said that the reason for consuming luxury products is beyond a simple fulfilment of a material need. In other words, the reason for choosing such products are not always that the characteristics of those products are better or their quality higher, but that there is a value attached to the luxury perception consumers attach to them. Then, it is possible to assert that the luxury perception is fundamentally based on factors such as high sales prices or the nature of the sales channels. In fact, the *Coty* decision noted that, in light of these platforms acting as a sales channel for all types of goods, the refusal to sell luxury products through these platforms and allowing internet sales only over the web stores of authorized sellers would help to establish the image of luxury for the consumers and maintain that image which the consumers see as one of the fundamental characteristics of such goods. When analyzed with relation to the products under the file, this interpretation does not seem to be applicable due to the fact that consumer expectations are different in comparison to cosmetic products, the products are easily substitutable and the characteristics explained above in the *Coty* decision as specific to luxury products.
- (269) Since the concept of brand image is applicable for many products sold through online marketplaces and that quality or sophistication are intangible, perceptual concepts that change from user to user, the explanations made by BSH on the subject detailed below do not appear to have concrete grounds on the matter of the prohibition meeting the proportionality criteria. In fact, similar products from brands with stronger images which are thought to be of higher quality and have higher prices are being sold through online marketplaces. Among the products in the same markets as those from BSH, the responses submitted to the Authority from high segment brands such as (.....), (.....) and (.....) are in support of this argument.
- (270) When asked how the brand image BSH is trying to maintain is/would be damaged if authorized sellers marketed the products through marketplaces and whether the relevant prohibition was in accordance with the Metro Criteria, BSH pointed out the following issues and claimed that the prohibition in question would lead to efficiencies to solve those problems:

- I. ***“The products of our company are always forced to be marketed on a webpage with a domain name that includes a third-party brand. The consumers must always access this page by logging in to a third-party webpage (a webpage carrying the logo of a third-party).”***

(271) BSH’s concern seems to be stemming from the assumption that the consumers are not aware of the difference between the marketplace and the manufacturer/seller of the product. It seems that this assumption is beginning to change with the proliferation of e-commerce and the switch to the digital world in the shopping habits of consumers.

Table 26: The Channels Consumers Hold Responsible for Sales and/or Post-Sale Services When They Purchase from Online Marketplaces

The online marketplace ((.....) , (.....) etc.)	42
The brand itself	39
The store selling through the online marketplace	19
Source: Competition Authority Consumer Survey	

(272) The consumer survey performed for this file show that 42% of the consumers hold the relevant marketplace responsible for the sale and/or post-sale services when they shop from online marketplaces.

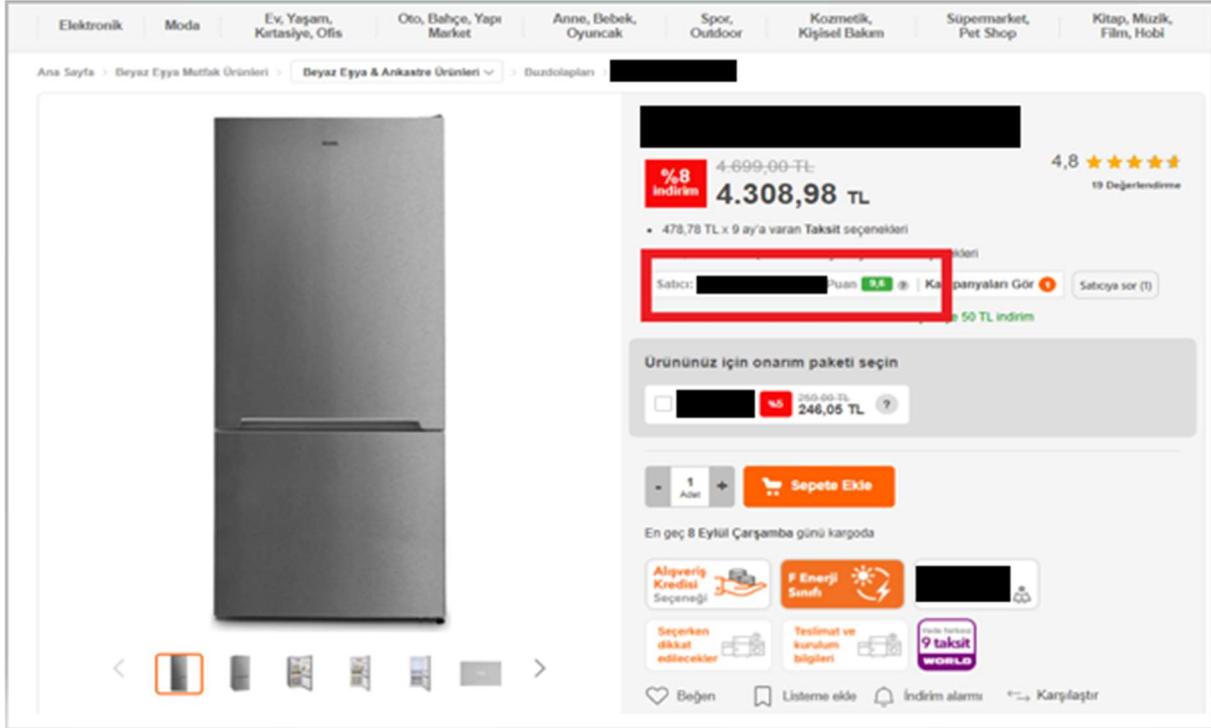
Table 27: The Channels Consumers Apply to When Faced with a Problem with a Product Purchased from an Online Marketplace

The online marketplace ((.....) , (.....) etc.)	54
The brand itself	30
The store selling through the online marketplace	16
Source: Competition Authority Consumer Survey	

(273) Similarly, the survey found that 54% of the consumers hold the online marketplace responsible when they encounter a problem with a product they purchased from an online marketplace. Consequently, it is concluded that in line with the rapid growth of marketplaces in e-commerce, the consumers are aware of the difference between the marketplace that serves as an intermediary and the seller.

(274) On the other hand, the marketplaces’ way of doing business include the sharing of the seller information, which contributes to the formation of such awareness. This can be seen in the following screenshot, which takes (.....) as an example. The relevant image shows that online marketplaces include the seller’s information and the details can be easily accessed.

Image 1: Seller Information on Online Marketplaces



(275) In addition, the examples presented by BSH under the title “online sales complaints” show that the consumers are aware of the product’s seller.

*“On 11.07.2019, the seller (.....) asked me to return the washing machine I ordered on 10.07.2019 from (.....)...”*

*“The (.....) brand, bd3056w3un model fridge I bought from the store (.....) on (.....).”*

(276) Online platforms have been facilitating consumer awareness on the fact that stores are independent from the platform by ranking according to store ratings and indicating store ratings beside the name of the store for each product.

(277) At the same time, it is noted that the platforms are willing to cooperate with BSH in order to implement the measures BSH requires to protect its brand image, that the necessary design work could be done, but that nobody contacted them on this matter. As a result, it has been concluded that BSH’s choice to completely prohibit sales through marketplaces instead of introducing certain criteria was not proportionate to the goal of protecting the brand image.

**II. “Product images and information may generally be incomplete or misleading on sales platforms such as marketplaces. BSH does not have the facility to control or intervene with these problems either in law or in fact.”**

(278) The data from the consumer survey on the subject show that, when asked why they preferred the physical channel for their shopping, 29% of the consumers said they chose online shopping to avoid inauthentic products sold on the internet and 26% said they did not prefer the online channel due to concerns of receiving counterfeit products. Thus, it is clear that the sale of counterfeit products over the marketplaces is a concern both for the consumers and the sellers.

(279) Even though the consumers are concerned, the survey results also show that the issue is not decisive for consumers when choosing online shopping.

Table 28: Consumers' Reasons to Shop from Physical Stores

Buying the product after seeing/touching/trying it	70
Fast purchase / delivery from the store	41
Being able to bargain	40
No cargo fees	31
Purchasing the product from the authorized seller / original	29
Sales assistants providing detailed product information	26
Internet stores sending counterfeit / inauthentic products	26
Late delivery of internet purchases	20
Internet stores sending wrong products	19
Problems in returning products over the internet	18
Product prices are more affordable than those on the Internet	10

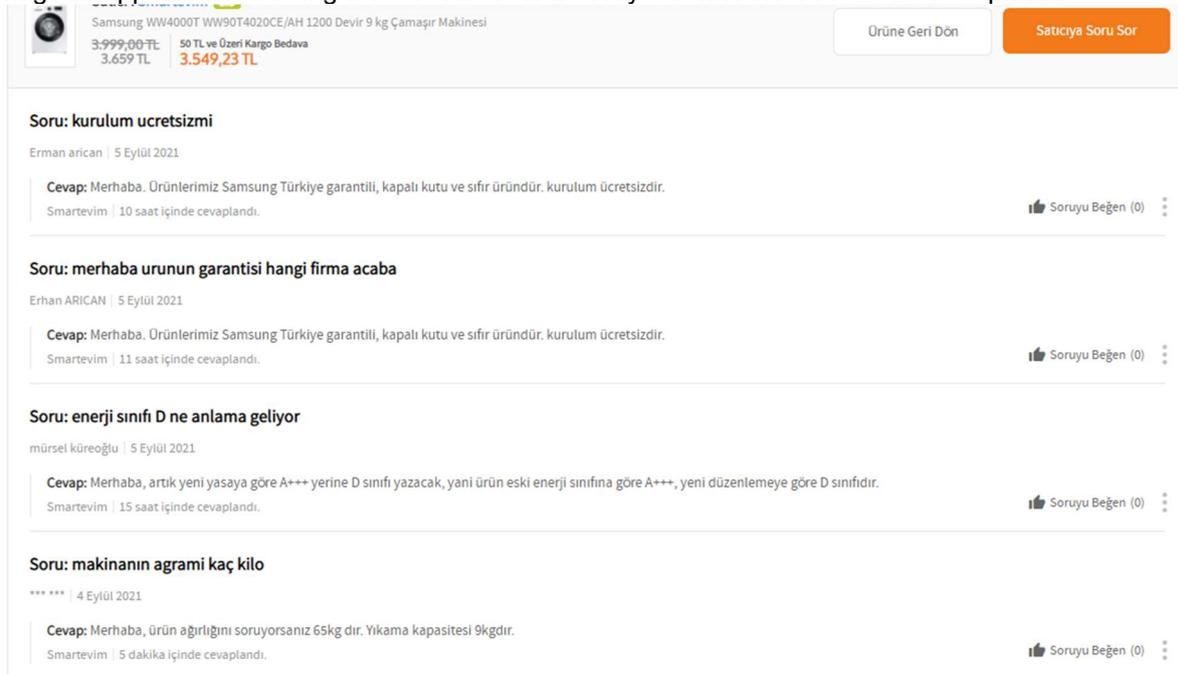
Source: Competition Authority Consumer Survey

- (280) On the other hand the responses sent by (.....) and (.....) state that there were no cases of counterfeit products or such cases were very limited in number, that precautions were taken against potential risks, and that they were investing to prevent counterfeiting. At the same time, some problems with relation to unauthorized sellers such as spot sales are not specific to online channels and may be seen with physical channels as well.
- (281) (.....) noted that if the seller store provided incorrect or misleading information or failed to fulfill the execution, they were imposed penalties under the agreement signed with the relevant store, and the agreement could even be terminated in case of an irreparable violation. On the same subject, (.....) stated that it issued a set of rules under the title (.....) regulating the sanctions to be imposed on sellers and that sellers faced various sanctions under both the (.....) signed between the parties or under the relevant rules set in case they provided misleading information or sold out-of-stock products.
- (282) (.....) stated that the images and content of the products listed in the white goods category were entered by (.....) when the product is added into the (.....) system and that these were procured from the official website of the brand of the relevant product or directly from the brand itself. It is also noted that (.....) took into consideration brands' requests to enrich or change the content. In order to show that the claims in question were baseless, (.....) was given as an example since it had been selling through (.....) with its official stores of (.....) and (.....) as well as its authorized dealers. The same response noted that of the (.....) complaints submitted to (.....) concerning BSH products in 2021, only (.....) was about incomplete product information.
- (283) The responses from the suppliers, on the other hand, argued that suppliers with plans to implement the online dealership process put the responsibility for "correct product information" on the seller that was granted the authorized online dealer status. Thus, the management of the responsibilities placed on the dealers and the costs incurred for product promotion in the physical channel, as well as the opportunity to control and intervene with these processes are available in the online channel as well. It is concluded that the contractual relationships set up directly with dealers would ensure the controlling rights of the suppliers. In that framework, the argument put forth by BSH is not in compliance with the principle of proportionality.

**III. Consumers are submitting their requests and complaints through the marketplace... in the pre-sales consultation, purchase, delivery, installation, return and repair stages. They have limited possibilities of direct contact with the seller... which leads to delays in the solution of the problems, and sometimes the problems remain unsolved altogether. Legally, BSH does not have any chance of control or intervention in these websites owned by third parties; even if we were to assume it did for a moment, BSH would then lack the actual capacity to monitor, control and intervene with the large number of sales platforms in the form of marketplaces.”**

(284) An overview of the practice of the marketplaces on the subject show that consumers are able to directly contact the seller either before and/or after the sale. As an example for this, below is a screenshot where the seller has replied to the questions from the consumers through the (.....) application implemented for sellers on the (.....) platform. The same type of application is available on other online marketplaces as well.

Image 2: Application Allowing the Consumer to Directly Contact the Seller on Marketplaces



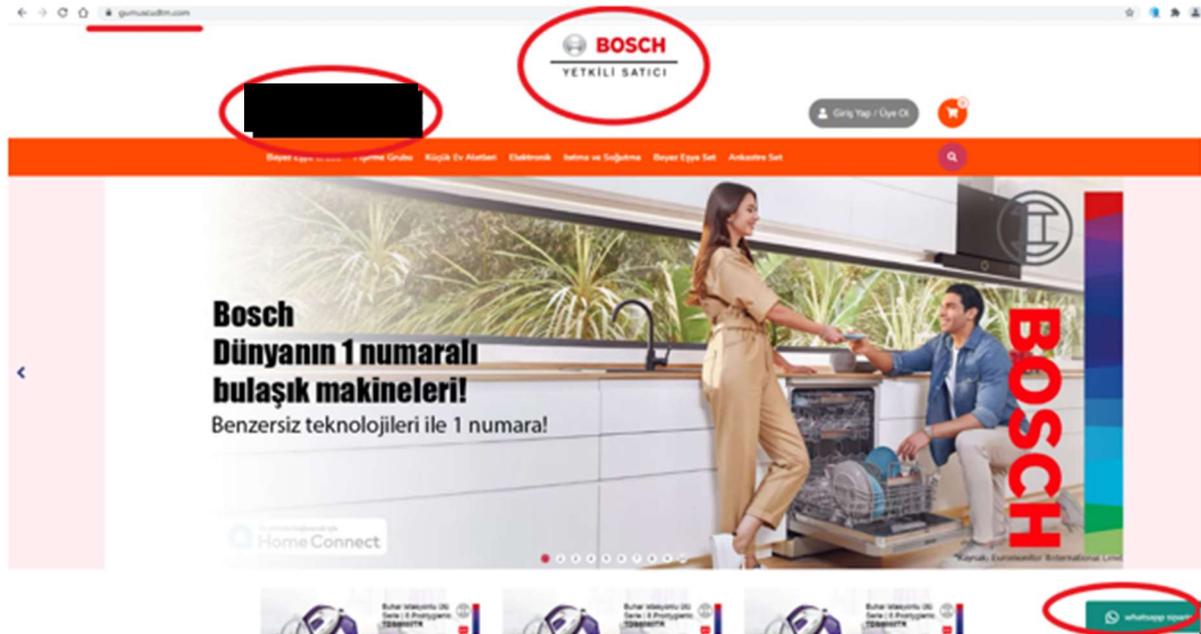
(285) The relevant problem can be first passed on to the dealer and then to the supplier, i.e. the brand, regardless of the fact that the channel used is the physical dealer channel or the online platforms. In fact, (.....) mentioned marketplaces' position as an intermediary between the seller and the buyer, noting that marketplaces did not have any commitment other than connecting the seller with the buyer, and that operating as intermediary platforms, they mostly transferred all the responsibility on the seller in case of a problem with the products that might become the subject of consumer complaints.

(286) Still, some marketplaces are creating a tracking system to maintain the benefits of these services provided to the consumer. For instance, on (.....), sellers are obligated to respond to customer questions within 2 days and their ratings are affected by how long it takes for them to reply consumer questions. On (.....), the communication between the seller and the consumer are monitored by the (.....) teams and various

sanctions are imposed if the consumer suffers any damages.

- (287) In comparison to these practices implemented by the marketplaces, a look at the customer communication process on the websites of the BSH authorized services have the following content where the authorized seller of the dealer is shown and the consumer can contact the dealer through online chat applications:

Image 3: Website of a Bosch Authorized Seller



- (288) When these two channels are compared, it can be said that the website of the dealer does not have any outstanding features with relation to customer communication.
- (289) In that sense, it is thought that, BSH could introduce service standards for authorized dealers, such as an obligation to respond to consumer questions submitted via the marketplace channel within 2 hours at the maximum, to ensure that the efficiency of the communication channel between the buyer and the seller is at the intended level. This would facilitate the monitoring of the processes on the online platforms as well as the answering and solving of customer questions or problems. A control mechanism operating in parallel with the monitoring process could be established as a result of a contractual relationship set up with authorized dealers, by placing the responsibility on the authorized seller concerned. In that framework, the argument put forth by BSH is not in compliance with the principle of proportionality.

**IV. “Marketplaces host authorized and non-authorized seller together, equalizing the authorized sellers with the unauthorized ones from the consumer perspective... Sellers on the marketplaces use nicknames on these platforms... which are generally in the form of “(.....),” “(.....),” “(.....),” etc., and such practices and nicknames are in conflict with the corporate identity and brand image of our company.”**

- (290) It is important to protect the authorized seller network in order to achieve the goal of protecting BSH’s brand image, which is the goal of the selective distribution system. However, it should be examined whether such protection can be achieved via more reasonable alternatives that are not fully restrictive instead of the complete prohibition of sales through marketplaces.

- (291) To that end, an overview of the operation of the marketplaces show that the supplier could make agreements with the dealer in order to ensure the product page includes information on whether the seller is an authorized dealer.
- (292) The relevant image shows that the suppliers are able to set up rules for the online dealership system and thus render its brand visible on marketplaces. In fact, on the matter of negative impact on brand perception, (.....), (.....) and (.....) stated that it was possible to solve the problem of consumers being unable to separate authorized sellers from unauthorized ones and the related problems by adding the status of authorized sellers to the system. The information gathered within the scope of the file show that clearly indicating the authorized seller title on the product page or on the information page for the seller would be a rational and applicable method. In fact, (.....) stated that its primary goal was to use the Omnichannel<sup>141</sup> strategy to ensure that the online and physical channels can both grow in support of one another, that it aims to provide for the online channels the same high level of service it offers in its physical stores, that at the same time it cares about and supports the presence of its business partners on online platforms and that it implemented many additional service such as delivery from the dealer, (.....) process, etc. (.....) noted that it based the (.....) process on qualitative objective criteria which the business partners in the selective distribution system had to obey on marketplaces as well as their own webpages, that it planned to authorize all dealers that wished to sell through marketplaces within the framework of those principles to be able to open a store on online marketplaces so long as they complied with the relevant criteria, that in order to reinforce the brand image and increase brand value it authorized the sellers itself for all online channels, that it monitored the quality and service standards, and that it aimed to create a process in which it was assured of the fact that its business partners could provide services in line with (.....) corporate identity and criteria.
- (293) It was also mentioned that the process in question would also help decrease the problems stemming from deceptive or misleading practices aimed at the consumers. For the execution of the process, (.....) established four separate groups of criteria for authorized dealers related to the store name, products that can be sold, website content and commercial practices. (.....) also added that the criteria on website content included significant innovations for marketplaces which had to meet certain technical standards in order to provide the quality-based objective criteria authorized dealers had to fulfill.<sup>142</sup> Lastly, (.....) clarified that the (.....) process encouraged those dealers with no presence on online platforms to sell through these platforms, that this helped create awareness in business partners which did not previously sell through online platforms which started to take steps to participate in the process and make online sales. To ensure that authorized sellers can sell under the (.....) process through online marketplaces, (.....) prepared a unilateral notification for the marketplaces to regulate the rules for authorized sellers making sales on these channels. At the same time, it also notified to its authorized sellers the criteria they had to meet as (.....) on online marketplaces.

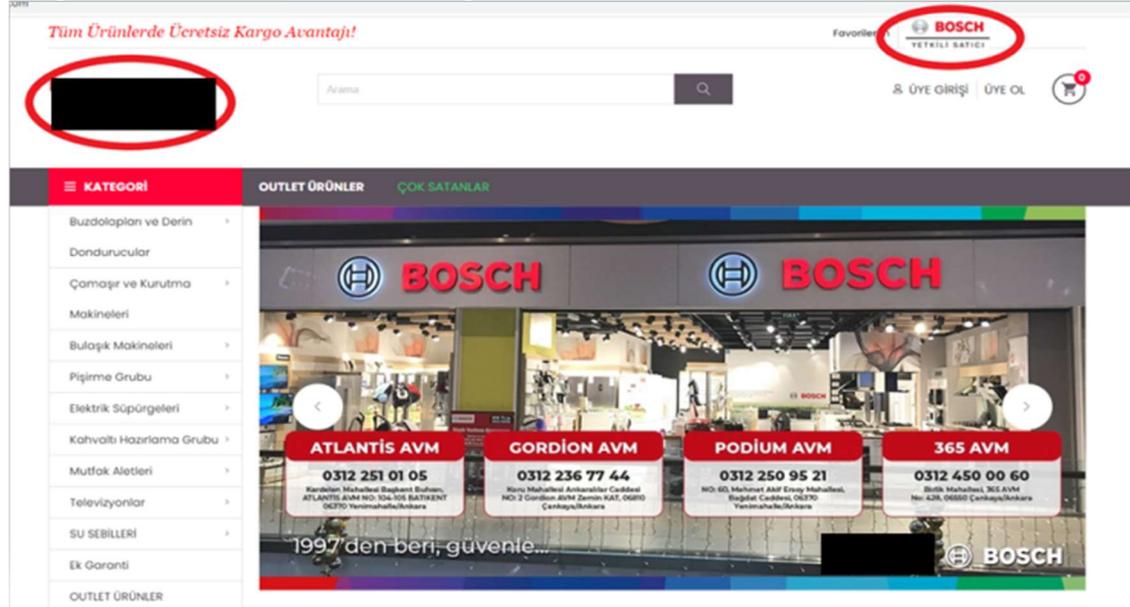
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<sup>141</sup> The Omnichannel is the provision of a complete customer experience by using all distribution and communication channels in an integrated and continuous manner.

<sup>142</sup> The criteria in question are performing the improvements related to logo positioning and verification mechanisms; making the necessary notifications concerning the rights of the consumers and similar matters relating to the products bought from (.....), and the provision supervision within the framework of the rule about (.....) not selling any products through their online stores other than those provided by (.....).

- (294) Within that context, and in parallel with (.....)'s (.....) practice, it is concluded that there was nothing preventing BSH from implementing its current standard of “authorized dealer badge” for the websites of its authorized dealers to sales made through marketplaces. The authorized seller badge practice is shown below with the Bosch brand.

Image 4: Bosch Authorized Seller Badge in Use



- (295) The information above show that BSH authorized dealers are able to identify themselves using various criteria when operating through online marketplaces. As a result, it is concluded that BSH's concerns on the subject can be managed by establishing operating principles for online channels and introducing certain standards. In that framework, the argument put forth by BSH is not in compliance with the principle of proportionality.

**V. In practice consumers may be left unsatisfied due to numerous reasons including the differing delivery processes of marketplaces, delays in delivery, delivery failures, failure to deliver the product to the apartment undamaged, product returns, delivery of old products, differing practices concerning the return of packaging waste, use of logistics firms of different standards, reluctance to receive returns, and reselling a product that was damaged in delivery or returned.”**

- (296) When addressing BSH's concerns on this subject in its response, (.....) noted that durable consumer goods were generally large and heavy items and therefore the logistics companies concerned had to have the required capacity and experience in the shipping process to ensure the safe delivery of the relevant products. It stated that the delivery details and the options provided could change based on the residence of the customer, but generally these products were transported either by normal carriers or by specialized transportation companies, depending on the size, weight and the delivery address. Third party sellers could use (.....)'s logistics network as well and organize the transportation of these products themselves. Moreover, third party sellers could also directly send heavy and bulky products from their own warehouses to the customers with any transporter they chose, provided that the transporter fulfilled certain minimum criteria to meet customer expectations and provide customer satisfaction.

(297) (.....), on the other hand, stated that the main problem in the white goods and small domestic appliances category in terms of brand perception would be due to problems during delivery (delivery of defective goods, etc.), that essentially this was not a problem related to e-commerce or to the marketplace business model and that any potential problems of brand perception could be rapidly solved with some small measures to be taken (such as indicating on the marketplace that the seller is an authorized seller of the brand, etc.) However, the general impression created by some marketplaces is that the sellers are free to work with any delivery company they wish. Thus, delivery policies BSH implements in the physical channel can be applicable to online channels as well. As a result, BSH's concerns about the problems that may arise during the logistics process can be eliminated by agreements to be signed with its authorized dealers. In that framework, the argument put forth by BSH is not in compliance with the principle of proportionality.

**VI. “BSH products are shown in the same showcases on the web pages of the marketplaces and the products by BSH and other well-known companies are treated as if the consumers perceive them in the same way, despite the fact that they are not equivalent, which greatly harms our brand value.”**

(298) First of all, since BSH's physical distribution network has been active for a long time, it is thought that there is a perception established with the consumers for BSH brands and other brands, and thus it is hard to agree with the claim that showcasing BSH products together with other brands would lead to confusion for the consumers concerning brand image and product quality. Secondly, examining the marketing of MEDIAMARKT, with which BSH is currently in a commercial relationship, as well as that of the previous partner TEKNOSA show that the same store can display products from different brands. Besides MEDIAMARKT is able to sell BSH products through (.....)<sup>143</sup> and (.....)<sup>144</sup>. Additionally, many different brands offering products with similar characteristics can provide services side-by-side at shopping centers, where physical sales are made. For those reasons, it is concluded that BSH would be unable to use this justification to show that the relevant ban is proportionate with the goal of protecting the brand image.

(299) The last point to mention under this heading is the examination of sales opportunities in the internet channel, in parallel to the proportionality assessment conducted in the *Coty* decision. Another point taken into consideration by the court in that assessment was the data showing that 90% of the authorized dealers preferred to sell from their own websites, despite the increasing importance of e-commerce as revealed in the Commission's e-commerce sector inquiry.

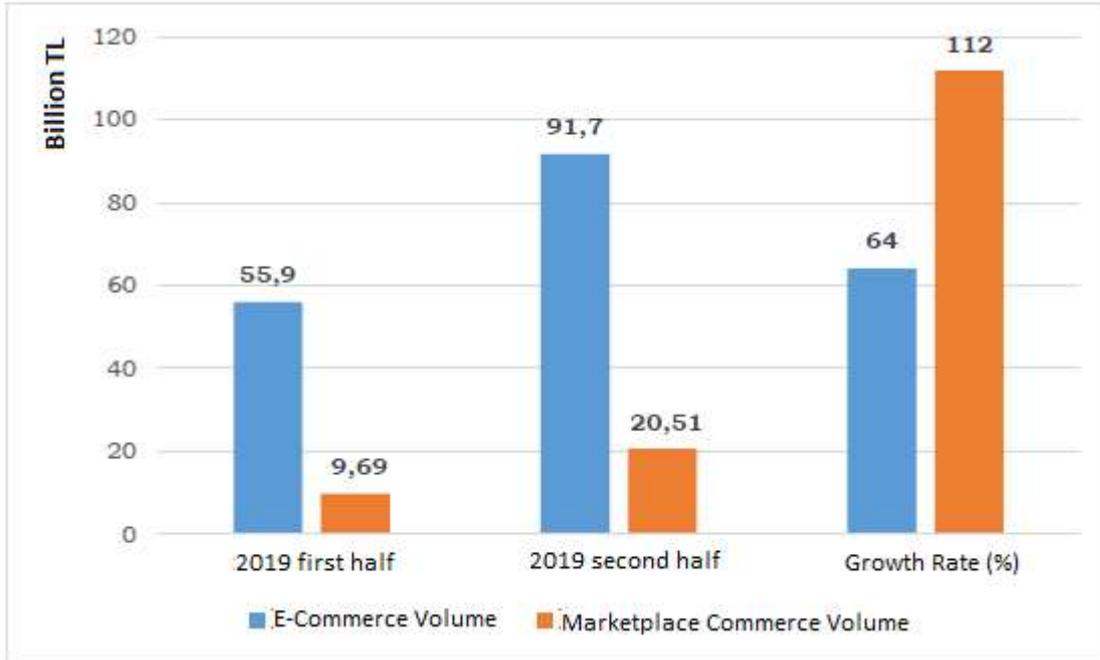
(300) Examining this matter for the Turkish market, the importance of online marketplaces for trade volume must be emphasized first.

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<sup>143</sup> <https://www.gittigidiyor.com/cadde/mediamarkt> Accessed: 07.09.2021

<sup>144</sup> <https://www.trendyol.com/magaza/mediamarkt-m-275331?sk=1> Accessed: 07.09.2021

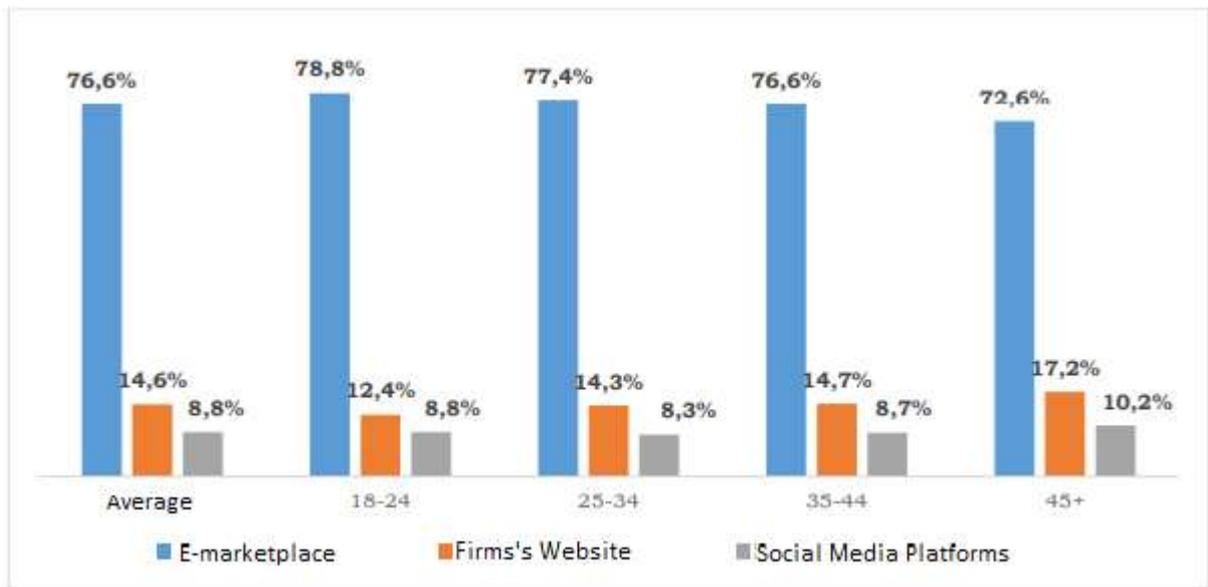
Chart 6: 2019-2020 (first half) Trade Volume Comparison



Source: E-Marketplace Platforms Sector Examination Preliminary Report

(301) As seen in the Chart 6 above, as e-commerce volume in Türkiye increase, the trade volume for marketplaces is increasing even faster.

Chart 7: Distribution of Online Channels Where Consumers Shop (%)



Source: E-Marketplace Platforms Sector Examination Preliminary Report

(302) Chart 7 shows that in addition to allowing product/seller research, e-marketplaces are also more preferred by consumers as an outlet. This indicates that consumers' preference to use online marketplaces more than sellers' own websites is not limited to the stage of product research, but is also reflected in the purchase stage. In fact, when asked "which channel they used for purchase," 76.6% of the consumers answered e-marketplaces, 14.6% answered brand/firm website, and 8.8% answered

social media. As made clear by the chart above, the ratio of those consumers who prefer online marketplaces at the purchase stage changes inversely by age, similar to the usage rates of mobile applications. Accordingly, 78.8% of the consumers between the ages 18-24 and 72.6% of those 45 and above choose marketplaces for purchase.

- (303) At the same time, data collected from the responses received leads to the conclusion that the share of dealers' sales through online marketplaces - with the ban still implemented by some suppliers - is around 9% for the white goods group and around 24% for the small domestic appliances group; the consumer survey conducted shows that 56% of the consumers purchased white goods from online marketplaces. Thus, in light of the fact that completely restricting such a channel would risk negative effects on competition beyond what is necessary, the relevant restriction is not consistent with the requirement of proportionality.
- (304) With relation to BSH's concerns that third party platforms could mismanage some processes related to its products, such as product insurance and warranty, and that third party platforms' sales strategies could bundle its products with products from other brands, it was established that such strategies were not used by all online marketplaces and therefore would not justify a wholesale prohibition. As a result, the prohibition examined is not found to be consistent with the principle of proportionality.
- (305) However, it must be noted that the dealership agreements under examination also include the following provisions. In the BSH dealership agreements, the provision titled *(.....)* states that "*(.....)*".
- (306) The same provision titled *(.....)* also includes the following statement: "*(.....)*".
- (307) In that framework, even in the absence of the online platform ban, the restriction of active and passive sales by dealers to final users and the obligation placed on the dealers to procure the products from BSH with the dealership contracts renders the relevant distribution system inconsistent with the Metro criteria. The relevant restraints are not found to be proportionate to the goal BSH wanted to achieve with the selective distribution system either.
- (308) As a result, it was concluded that the ban on the sales through marketplaces BSH implemented/planned to implement in order to ensure the efficiency of the selective distribution system and the provisions in the dealership contracts which restricts sales by the dealers to final users and forces dealers to procure their products from BSH were not intended to maintain the benefits of the pure qualitative selective distribution as listed in paragraph 171 of the Vertical Guidelines and therefore the relevant prohibitions were in violation of Article 4 of the Act no 4054.
- (309) At the same time, Article 2 of the Communiqué no 2002/2 titled Scope is as follows: "*The exemption granted by the Communiqué herein is applied where the market share of the supplier in the relevant market in which it provides the goods and services comprising the subject matter of the vertical agreement is no more than 30%.*"<sup>145</sup> In line with the market shares provided by BSH and referenced in the relevant section of the decision, the notified prohibition is found to be subject to block exemption assessment under the Communiqué no 2002/2.

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<sup>145</sup> The previous version of the paragraph was: "(Amended: Competition Board Communiqué no. 2007/2; RG- 25.05.2007, 26532) The exemption granted by the Communiqué herein is applied where the market share of the supplier in the relevant market in which it provides the goods and services comprising the subject matter of the vertical agreement is no more than 40%."

(310) In that context, the block exemption assessment concerning the transaction in the application is as follows:

**G.8.4. Assessment under the Block Exemption Communiqué on Vertical Agreements, no 2002/2**

(311) While the application by BSH concerned the exclusive agreements signed with dealers and the circular supplementing those agreements, it is necessary to also examine the agreements concluded with electronics stores. Since the circular in the application, dealership agreements and electronics store agreements all include different provisions, it is important to examine all of these agreements under separate sections due to the repercussions of certain provisions.

**G.8.4.1. Assessment on the Provisions of the Circular**

(312) Especially in those markets where inter-brand competition is high, practices that result in the restriction of intra-brand competition via vertical relationships can sometimes increase efficiencies and therefore inter-brand competition, and these practices may be granted exemptions.

(313) On the other hand, in Article 4 titled “Limitations Rendering Agreements Not Caught By Block Exemption,” the Communiqué no 2002/2 regulating the grant of block exemptions to vertical agreements states that vertical agreements which restrict competition by object, either directly or indirectly, cannot benefit from the block exemption. The article continues as follows:

*b) Introduction of restrictions in relation to regions or customers where or to whom the goods or services which are the subject of the contract shall be sold by the purchaser, other than the following cases.*

*1) Provided that it does not cover the sales to be made by customers of the purchaser, restriction, by the provider, of active sales to an exclusive region or exclusive group of customers assigned to it or to a purchaser,*

*2) Restriction of sales of the purchaser operating at the wholesaler level in relation to final users,*

*3) Restriction of the performance of sale by the members of a selective distribution system to unauthorized distributors,*

*4) In case there exist parts supplied with a view to combining them, restriction of the purchaser's selling them to competitors of the provider who holds the position of a producer.*

(314) Article 4(c) of the Communiqué no 2002/2 provides that “*In the selective distribution system, restriction of active or passive sales to final users, to be performed by the system members operating at the retail level, provided that the right is reserved as to the prohibition for a system member against operating in a place where he is not authorized.*”

(315) The provisions above show that region and customer restrictions as well as bans on the active and passive sales of system members to final users in selective distribution systems will be left out of the scope of the block exemption.

(316) Sales made over the internet and similar channels are also considered to be passive sales under competition law and prohibitions on internet sales are excluded from the block exemption unless certain criteria can be met. Thus, as mentioned above, the Vertical Guidelines state that a general prohibition on sales made through platforms

without objective and uniform conditions and justifications in line with the specific characteristics of the product may be assessed as violations.

- (317) On this subject, the provision of paragraph 24 of the Vertical Guidelines should first be emphasized, which states that *“Internet sales or sales through similar means are also generally passive sales,”* in order to clarify that a prohibition on internet sales, which are considered passive sales, would take the relevant vertical agreement outside the scope of the block exemption.
- (318) With relation to region and customer restrictions, Paragraph 25 of the Vertical Guidelines explain that *“the restriction, by a supplier, of distributors/dealers/buyers from making sales on their own websites is a type of passive sales restriction.”* Under that framework, the overall prohibition on the internet sales of authorized dealers by a supplier is considered to be against Article 4 of the Act no 4054, taking the agreement outside the scope of the block exemption granted by the Communiqué no 2002/2, and it may be unlikely for such a restriction to meet the individual exemption requirements within the framework of the previous decisions as well..
- (319) Paragraphs 28 and 29 of the Vertical Guidelines provide: *“Similarly, the supplier may demand that the buyer only sell through “sales platforms/marketplaces” which fulfill certain standards and conditions. However, this restriction should not aim to prevent distributor’s online sales or price competition. As such, a general prohibition of sales over platforms without objective and uniform conditions and justifications in line with the specific characteristics of the product may be assessed as violations.”* and *“Due to the differences between the terms of physical sales and online sales, the criteria introduced for these two distribution channels do not necessarily have to be exactly the same; although these criteria must serve the same goal, must ensure comparable results and must be of a nature that confirms the differences stemming from the nature of the two distribution channels (“principle of equivalency”). In other words, the conditions envisaged should not, directly or indirectly, result in the prevention of internet sales. Accordingly, in case the conditions placed by the supplier violate the principle of equivalency and discourage the use of internet, the conditions in question may be considered severe restrictions.”*
- (320) Since BSH introduced an overall restriction on sales made by dealers through online platforms without setting any qualitative criteria for those sales, the relevant prohibition led to the direct or indirect prevention of internet sales, the requirement specified by the supplier were against the equivalency principle and would deter buyers from using the internet as a distribution channel, and active and passive sales by the members of the selective distribution system to final users were prohibited, the practice in question was found to have the nature of a hardcore restriction taking the agreement outside the scope of the block exemption. According to the equivalency principle, physical and online sales channels in selective distribution systems must be operated based on the same or equivalent criteria and methods that serve the same purpose and lead to comparable results. In case unreasonable, strict restrictions are introduced on one of these channels in comparison to the other, the practice in question may be considered a hardcore restriction.
- (321) The responses from both the suppliers and platforms on the subject were examined and it was concluded that, in selective distribution systems, criteria equivalent to those imposed on the authorized sellers for their sales on the physical channels may be implemented for online platforms to achieve the same goal. Sales through these channels may be possible after the establishment of new business models for the

online channels based on policies of operation set up to achieve the relevant goals, without “completely” restricting these channels but introducing certain criteria for them. In fact, the results of the market study conducted within the framework of the file<sup>146</sup>, the services online marketplaces offer or state that they could offer, and the resale channels and methods used by the rivals that use the selective distribution system confirm this argument. Neither could BSH prove that it followed a policy in line with the “equivalency principle” by completely prohibiting sales through online marketplaces. It is clear that BSH failed to meet the conditions which require that the criteria introduced for the online and physical sales channels serve the same purpose, lead to comparable outcomes and confirm the differences stemming from the nature of these two distribution channels.

- (322) Noting that it uses the selective distribution system for the same type of products, (.....) was unable to reconcile the equivalency principle with the claim that in a selective distribution system where authorized sellers in the physical channel can be imposed criteria on the location of the store and the color of the walls, similar criteria could not be enforced for their sales through online marketplaces and that the supplier was unable to intervene with the sellers for non-compliance with those criteria. In fact, (.....) stated that with its Omnichannel strategy, it intended to grow both the online and physical sales channels in support of each other, that it cared for and encouraged the presence of its business partners on online platforms, and to that end it implemented many services such as (.....). Under the (.....) system, it placed a number of obligations on its authorized dealers, and sent notifications to online marketplaces to inform them that the (.....) in question would be implemented by (.....). (.....) noted that the (.....) process concerned the authorization of dealers wishing to sell through marketplaces to make sales on those platforms, provided that they meet certain reasonable, fair and non-discriminatory criteria, through the establishment of quality-based objective criteria authorized sellers in the selective distribution system must obey on marketplaces as well as on their own websites<sup>147</sup>.
- (323) To exemplify the information provided by online marketplaces on the subject, (.....) stated that explanations, images, and information on the store and product specifications for all durable consumer goods sold on its platform were provided by the sellers, that sellers were able to organize their own stores on the system to add information and images for the product, that sellers themselves determined how their store would look when accessed and selected which products to showcase, that sellers could add logos to these areas dedicated to their use as well as cover images and special banners, that they could thus feature certain products and promotion campaigns for the products while improving customers’ brand perception at the same time. (.....) noted that a product had pass through many steps before publication where the seller was able to fill out each field in detail and add all types of information on the product and the seller. Similarly, (.....), (.....) and (.....) stated that they could accept a solution in which authorized sellers were presented with a format different from other sellers on their platform to show their authorized seller status, and that the status of authorized sellers could be entered into their systems.
- (324) According to the information gathered from online marketplaces under the file, currently these platforms did not have a contractual relationship with the main

<sup>146</sup> In the dealer survey conducted under the file, 39% of the dealers stated that they wanted certain restrictions on internet sales, while 29% said that they did not want any restrictions.

<sup>147</sup> As a result of the interviews conducted with (.....) within the framework of the file, the Authority was informed that the (.....) process was put into implementation for marketplaces.

suppliers, but if demanded by the suppliers, platforms were ready to sign a contract with them to implement certain sales criteria. Some marketplaces were able to offer sellers the possibility to design their own seller stores within a special part of the marketplace where a brand would be able to reflect its specific characteristics or to own special showrooms dedicated to certain brands and designed in line with customer recommendations, while other marketplaces only allow sales made by those sellers that meet the criteria established by the provider within the framework of a selective distribution system. Therefore, it is clear that suppliers are able to establish various criteria for the sales made by authorized dealers through online marketplaces and thus transfer the sales policies they implement in the physical channel to the online world as well.

- (325) In line with the assessments above, it is concluded that the complete restriction of the sales by authorized sellers through online marketplaces via the notified circular constitutes a hardcore restriction on the grounds that it is in violation of the equivalency principle as explained by the Vertical Guidelines, taking the agreement outside the scope of the block exemption. The individual exemption assessment concerning the notified circular is in the following paragraphs.

#### **i. Individual Exemption Assessment concerning the Provisions of the Circular**

- (326) As known, Article 4 of the Act no 4054 is intended to prevent undertakings from restricting competition in a market for goods and services via agreements. In one sense, agreements that restrict competition can also lead to efficiency gains. When the welfare enhancing effects of an agreement is greater than its competition restricting/distorting effects, then the net impact of the agreement can be to increase consumer welfare and reinforce the competitive process. This point is also at the heart of the exemption regime. Agreements that meet the conditions set out in Article 5 of the Act are accepted to have a positive, or at least neutral net effect on the economy/consumer welfare, and thus the agreement is individually held exempt from the application of Article 4.
- (327) As regulated in Article 5, the implementation of this exemption is dependent on the concurrent fulfillment of a total of four requirements, two being negative and two positive:
- a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,*
  - b) Benefiting the consumer from the above-mentioned,*
  - c) Not eliminating competition in a significant part of the relevant market,*
  - d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).*

- (328) Within that context, the following paragraphs will examine whether the practice comprising the subject of the application by BSH met the requirements listed above.

#### **a) Ensuring New Developments and Improvements, or Economic or Technical Development in the Production or Distribution of Goods and in the Provision of Services,**

- (329) The goal of the assessment under paragraph (a) of Article 5 of the Act no 4054 is to define and establish the efficiency gains expected as a result of the agreement and to

be tested as per the other requirements of the exemption. As stated in paragraph 24 of the Guidelines on the General Principles of Exemption (Exemption Guidelines), in order to define the efficiency gains generated by the agreement, the following points must be clarified:

- The nature of the claimed efficiencies,
- The causal link between the agreement and the efficiencies,
- The likelihood of the efficiency to be achieved,
- How and when the efficiency would be achieved.

- (330) The assessment under Article 5(a) of the Act no 4054 must conclude that the expected beneficial effects would be applicable and tangible not only for the parties to the transaction, but for the economy in general. In that framework, tangible effects that can spread to the economy in general can include positive effects such as decreasing distribution costs, increasing the supply or variety of goods, maintaining supply stability and increasing the quality of pre-sales services. For a vertical agreement with a restriction that is considered to be a hardcore restraint under the Communiqué no 2002/2 and the Vertical Guidelines to receive individual exemption, the potential efficiencies expected from the restriction must be clearly demonstrated.
- (331) Within the framework of the application, it was stated that consumers would be able to get more detailed information on the product features from the dealers, that online marketplaces had misleading information and consumers had trouble finding a contact when they faced any problems with the product, that the relevant restriction would help protect BSH's brand image, that the free-riding problem would be solved and a more efficient distribution system could be established, and that consumers would receive better service if the dealers were prevented from selling through online marketplaces.
- (332) First of all, concerning the argument that consumers would get more comprehensive information on the product features from the dealers and that online marketplaces had misleading information, based on the assessments included in the previous sections, it is thought that this cannot be accepted as an efficiency gain that would follow from the relevant restriction. In addition to the consumer awareness that exist as mentioned before on the subject of shopping from online marketplaces, marketplaces are also able to follow different methods in order to respond to the changing consumer habits. As can be seen in the screenshots in the previous sections, the "ask the seller" application allows consumers to contact the sellers on the marketplaces.
- (333) BSH also claims that it chose such a restriction in order to protect the brand image. Defined as the "body of general views and impressions the brand evokes in the consumers," brand image encompasses all of the characteristics and features associated with the brand such as price, quality, level of approval and usability. In that sense, the brand image BSH attributes to itself seems to be based on a perception of "high price and quality". While that perception is hard to demonstrate since it can vary between consumers, trying to protect the brand image by prohibiting internet sales does not seem to be a method that is frequently used by the competitors in the sector.
- (334) As mentioned in the previous sections, (.....) encouraged its authorized sellers under (.....) to extend their sales to online marketplaces in order to strengthen the brand image and increase brand value, introducing quality and service standards for these sales with an aim to ensure higher turnovers for the dealers and customer satisfaction as well as to increase brand value for the consumers. The process in question was

also intended to contribute to decreasing the problems stemming from misleading practices. An examination of (.....)'s practices concerning these platform sales makes it hard to accept the claim that the restriction of the sales in question would lead to efficiency gains in terms of protecting the brand image, especially in light of the fact that (.....) allowed online platform sales after specifying quality-based objective criteria for its dealers and supervised the dealers compliance with those criteria.

- (335) The competitors also noted that trying to protect the brand image by prohibiting sales through online platforms was not a method frequently chosen by the competitors themselves. For instance, (.....) stated that both itself and its authorized dealers could sell through marketplaces, that especially during campaign periods they could offer more opportunities in terms of payment options on marketplaces, that since customer traffic was higher on marketplaces brand awareness would be positively affected as a result of the visibility on these platforms as well as the ability to reach more customers. (.....) noted that dealers preferred marketplaces since they were unable to receive sufficient number of interactions on their own websites. (.....) and (.....) stated that there was no difference, negative or positive, between the dealers selling on their own websites or through marketplace platforms. (.....) remarked that since marketplaces attracted more customers than the dealers' own websites and the traffic was managed more professionally, they were able to sell more on these platforms to the advantage of the dealers, and the customer perception of and trust in the marketplaces would make it easier for dealers to sell on those platforms. Thus, the argument that the overall restriction of the online sales channel would serve to protect the brand image seems unacceptable.
- (336) In addition, the perspective of the dealers does not seem to support the argument that the brand image was negatively affected by the sales made through online marketplaces. In fact, according to the results of the dealer survey, only 12% of the participant dealers stated that they did not sell through online marketplaces because this negatively affected the brand image. On the other hand, the data from the dealer survey shows that the dealers who did not choose to use the internet channel mainly did so because their physical store sales were sufficient. The concerns of protecting the brand image seems to be quite low. At the same time, 64% of the dealers stated that positive comments left for their products on the internet increased trust in the dealer and the brand, 57% stated that negative comments helped the dealer and the brand make improvements.
- (337) Another justification BSH presented for the online platform sales ban was the free-riding problem. In fact, in the electronic appliances market provides significant pre-sales services, and consumers may choose to get familiar with the product they wished to buy at the physical stores in the traditional sales channel, and then buy it from one of the third-party platforms cheaper. In that case, a reseller may unfairly benefit from the efforts of another reseller to increase its sales. In the final analysis, this leads to the problem known as free-riding in the literature.
- (338) Any potential free-riding problem that may be caused by online platforms would more generally affect the dealers. In case of a potential free-riding problem affecting the dealers, they would tend not to sell through online platforms - in case there are no prohibitions. As mentioned in the previous sections, in the current situation, a comparison between the sales made by suppliers who prohibit online marketplace sales and platform sales made by suppliers who do not restrict online channels reveals that dealers who are not subject to a prohibition can make more sales through online

marketplaces.

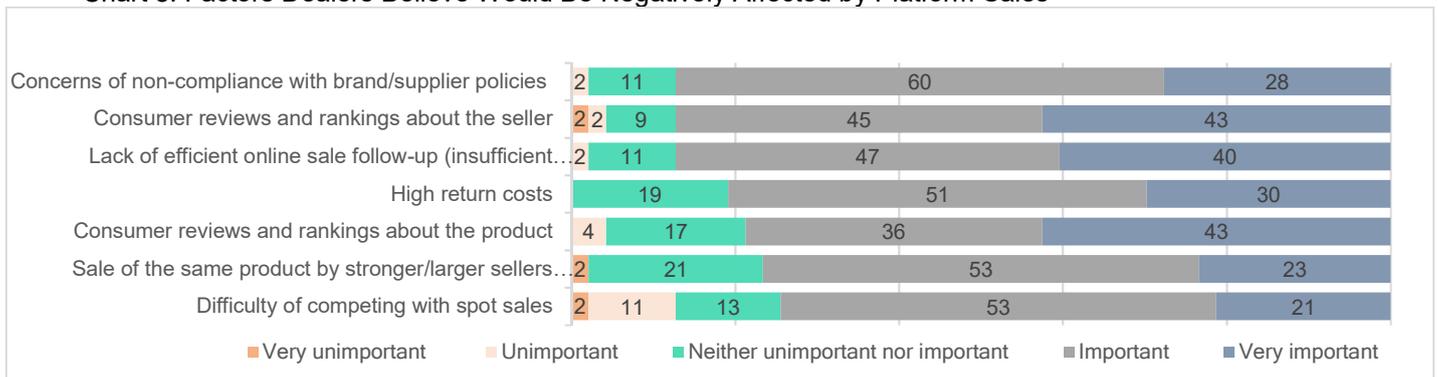
Table 29: Share of Marketplaces in Online Sales (%)

	2018	2019	2020
White Goods	72.1	78.8	72.7
Small Domestic Appliances	78.6	83.3	74.1
White Goods + Small Domestic Appliances	75.3	81.2	73.4

Source: Responses from the Suppliers and Dealers

(339) Compiled from the responses to the dealer survey, Chart 8 supports the conclusion above and shows that the main reason (60% + 28%) for dealers not attempting to sell through online platforms are due to concerns of failing to comply with the suppliers’ policies. According to the dealer survey results, 80% of the dealers believe that products with complicated technical specifications can be more effectively marketed physically, but the ratio of those who think that sales through online marketplaces should be completely banned is limited to 22%. Consequently, it can be concluded that dealers would like to sell on those channels as well, provided the supplier does not introduce any restrictions on sales through online marketplaces and/or selects certain platforms and establishes reasonable criteria.

Chart 8: Factors Dealers Believe Would Be Negatively Affected by Platform Sales



Source: Competition Authority Dealer Survey

(340) In addition, by propounding the efficiency claim, BSH seems to argue that the free-riding problem can be solved just by preventing platform sales. However, the free-riding problem is not specific to online channels and it may occur in the physical channels as well. In fact, this is confirmed by the data gathered in the Commission’s E-Commerce Sector Report. According to the report, 45% of the manufacturers who participated in the survey stated that after consumers learned about the product at the physical outlets, *they commonly (35%) or very commonly (10%)* purchased the product from the online channel, while 27% stated that this happened occasionally and 2% that it never happened. The same report found that 42% of the manufacturers thought consumers *commonly (32%) and very commonly (10%)* bought products from the traditional channel after searching for it on the online channel, with 20% saying it happened occasionally and 4% saying it never happened<sup>148</sup>. In that framework, it is possible to say that there is reciprocity between the online and physical channels of sale in terms of the free-riding problem. Thus, there seems to be no difference, with relation to the free-riding problem, between a consumer researching the product on the physical channel and then choosing to purchase from another outlet in the physical

<sup>148</sup> The Commission’s E-Commerce Sector Report, p. 98.

channel or from the online channel. Therefore, it seems unlikely that the problem could be solved by completely prohibiting sales through online platforms. Additionally, as mentioned in the previous sections, the responses collected under the scope of the file on the products under examination show that the sales in the physical channel comprise a significant portion of the total sales. In fact, the share of physical sales in total sales is 87,3% for the white goods product group, 62,39% for the small domestic appliances market. On the other hand, according to the consumer survey, 57% of the consumers buying white goods stated that they preferred physical stores. The leading reason for the choice of physical channel was the ability to make the purchase after seeing, trying and touching the product, with 70% of the consumers choosing this option. In light of this fact, it is impossible to agree with the argument that the absence of the relevant prohibition would weaken the traditional channel or harm the investments made in the physical channel. This is supported by the fact that, with the exception of (.....), the notified prohibition was not placed on the dealers by any of the rivals, including those who stated that they used the selective distribution system for distributing both to the physical and the online channel.

- (341) As a matter of fact, paragraph 116 of the Vertical Guidelines includes the provision: *“If the supplier and buyer are not in a dominant position, remaining three conditions become more important. The first condition is related to improving production and distribution as well as increasing technical and economic development. These efficiencies must have been realized and must have led to net positive outcomes. Speculative claims such as solution of a free-riding problem or general explanations such as cost-cutting shall not be deemed acceptable.”* In that framework, it is concluded that the justification presented by BSH relating to the benefits it plans to gain by eliminating the free-riding problem does not go beyond speculative claims. In addition, BSH failed to establish how the relevant restriction would lead to the creation of a more effective distribution system.
- (342) Lastly, BSH’s arguments related to the protection of personal data, referenced in the previous section, cannot be considered efficiency claims that can be related to the prohibition under examination. In fact, the Act on the Protection of Personal Data and the Electronic Mail Act are binding for all undertakings and none of the arguments presented under this heading can serve as a justification for a general prohibition.
- (343) In light of the points addressed above, it is concluded that BSH’s explanations for efficiency gains did not serve the goals of preventing free-riding and maintaining the efficiency of the distribution system or protecting the brand image. In other words, the restriction under examination is not found to serve the purpose of “achieving efficiency gains,” and that the practices comprising the subject matter of the application does not lead to the beneficial effects as listed under Article 5(a) of the Act no 4054.

**b) Benefiting the Consumer from the Above-mentioned,**

- (344) In individual exemption applications, the applicant must substantiate what benefits the consumers would derive from the agreement. Even though the application form for the exemption submitted by BSH stated that the restriction concerned would help prevent consumers from being misled or deceived, without explaining exactly how this would be achieved, it is important to analyze the claim of consumer benefit.
- (345) The benefit to the consumer may be in the form of a drop in the price of the relevant product/service, increase in its quality or variety, effective post-sale services, providing consumers easier access to the product, or passing on of the improvement achieved in the distribution of the product or provision of the service to the consumer. These

benefits are expected to occur directly as a result of the agreement, be proportionate to the restriction in competition that would result from the agreement in the application, and be passed on the consumers within a reasonable period of time.

- (346) An examination of the reasons why consumers prefer online shopping show that the product prices are more affordable and product variety is higher than the physical channel and shopping from this channel saves time. Consequently, the importance of this particular channel for the consumers is brought to the forefront once again once it is understood that consumers can access different prices and different types of products in a shorter time through the internet channel.

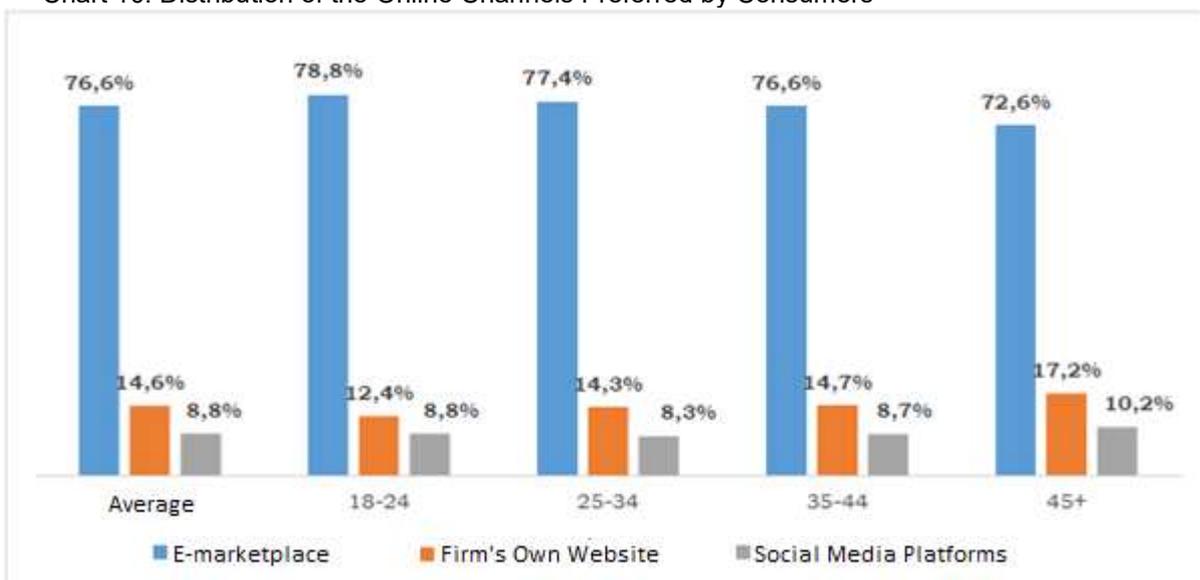
Chart 9: Reasons for Choosing Online Shopping (%)

Prices are more affordable than in physical stores	60
Lots of product variety	60
Time savings	57
Discount coupons and cart discounts are attractive	43
I can look at the reviews of previous buyers	42
I can see detailed product features	34
No cargo fees	28
Fast delivery	26
The sellers and the website is reliable	24
Easy returns	21

Source: Competition Authority Consumer Survey

- (347) Chart 10 below shows the distribution of consumers' online channel preferences according to their age. Based on the chart in question, marketplaces can be said to form an important buying channel for the consumers.

Chart 10: Distribution of the Online Channels Preferred by Consumers



Source: E-Marketplace Platforms Sector Examination Preliminary Report

- (348) At the same time, according to the Ministry of Trade data<sup>149</sup>, the share of e-commerce

<sup>149</sup> <https://eticaret.gov.tr/haberler/10040/detay>, Accessed: 29.08.2021.

expenditures in Türkiye within the gross national product was 4.1%, with a significant increase of 51.8% from the 2020 figures. The ratio of the e-commerce volume to general trade was 9.8% in 2019, and it increased by 5.9 points to reach 15.7% in 2020. As seen in the table below, the highest increases within that difference were in the white goods sector with 129%, in clothing, shoes and accessories with %38, in electronics with %56, in catering with %61, in home, garden, furniture and decoration with %105, in foods-supermarket with an increase of over %200, in education and consulting services with %43, in floriculture with %100 and in metallurgy and chemistry with %189.

Table 30: Increase rates in e-commerce by sectors

Sector	Increase (%)
Foods-supermarket	200+
Metallurgy and chemistry	189
White goods	129
Home, garden, furniture and decoration	105
Floriculture	100
Catering	61
Electronics	56
Education and consulting services	43
Clothing, shoes and accessories	38
Source: 2020 E-Commerce Data	

- (349) When assessed, the data given above show that the complete restriction of a channel that is largely preferred by the consumers would be in conflict from the beginning with the requirement of benefiting the consumer.
- (350) Table 31 below shows the channels through which white goods are purchased over the internet. This shows that 56% of the consumers who participated in the survey and bought white goods preferred online marketplaces. By extension, white goods are a group that shows a significant increase in trade volume and are commonly purchased through online channels, and subjecting that group to a prohibition on online marketplaces would negatively affect consumer welfare.

Table 31: Channels Where White Goods are Purchased over the Internet

Online marketplaces (hepsiburada, trendyol, amazon, n11, etc.)	56	46	47	52	60	50
Brand's own website	19	33	24	31	20	33
Electronic market website (Mediamarkt, Teknosa, Vatan Bilgisayar, etc.)	13	9	16	10	17	10
Website of the brand's authorized dealer	12	12	14	7	3	7

Source: Competition Authority Consumer Survey

- (351) At the same time, changing shopping habits of the consumers reveal that, when making a purchase, consumers have begun to search information on the product, price and quality not from the website of the supplier or the dealer, but from online

marketplaces.

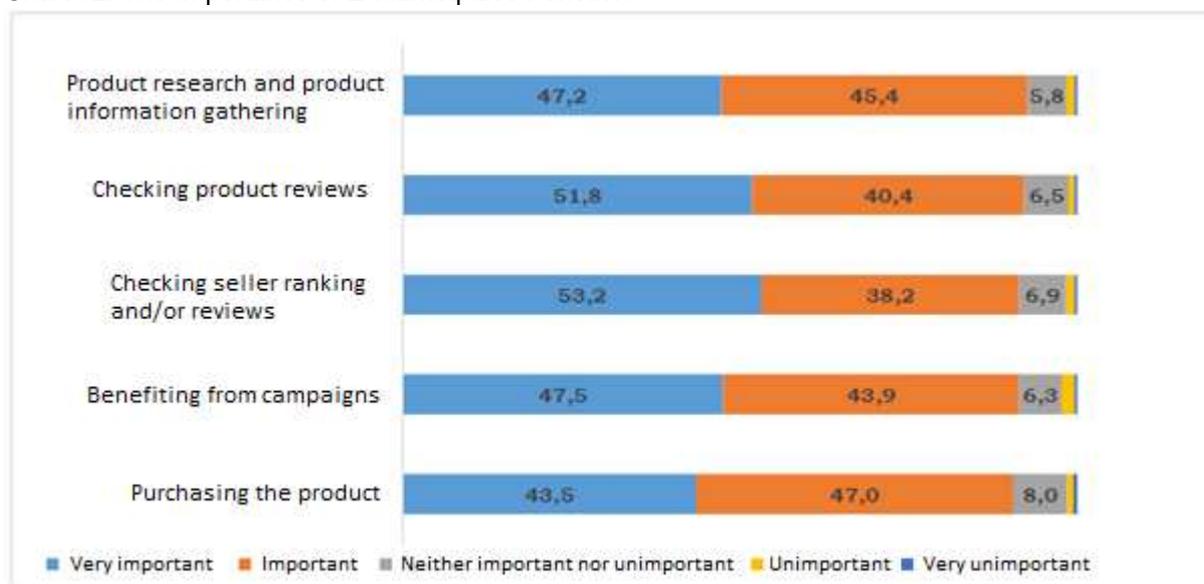
Chart 11: Starting Point for Product Search in Online Shopping (%)



Source: E-Marketplace Platforms Sector Examination Preliminary Report

(352) The distribution of the preferences given above show that half of the consumers start researching a product from the marketplaces and the brand’s website is rather behind in the rankings. This tendency means consumers think that marketplaces offer a search function which is not offered by the sellers’ own websites. In parallel, the responses of the consumers to the question “how important are the functions and roles of e-marketplaces in the shopping process” are as follows:

Chart 12: The Importance of E-Marketplace Function



Source: E-Marketplace Platforms Sector Examination Preliminary Report

(353) The graphic above reveals how important consumers think “product review” and “seller ranking and review” options are and what they expect from a search service. As a result, it is obvious that consumers are well-informed on this matter and they know that they can perform a more efficient market research online than they can in the physical channel. Thus, the above graphic illuminates the differences between online marketplaces and sellers’ own websites, making it impossible to agree with the argument that the relevant restriction would benefit the consumers.

(354) According to the results of the consumer survey, every 9 out of 10 consumers make price, warranty, etc. comparisons between different websites before buying white goods or electronic products. The following table reveals that the consumption habits created by the pandemic will continue once the pandemic is over. Consequently, marketplaces serve beneficial functions for the consumers beyond the transaction related to the purchase.

Table 32: Consumers' Preference of Using Online Platforms (%)

I make price, warranty, etc. comparisons on different websites before buying white goods and electronic products	93
When buying white goods, electronic products over the internet I make sure that the seller is the main manufacturer	78
My internet purchases increased after COVID-19	77
I may buy white goods (fridge, washing machine, etc.) over the internet in the future	65
The frequency of my internet purchases will not change once COVID-19 is over	60

Source: Competition Authority Consumer Survey

(355) In addition to the information above, the following table shows the channels on which consumers research products and then take their decision to purchase. As seen in this table, search engines, comparison-shopping sites, complaint sites and marketplaces are the primary channels where product research before purchase takes place, and the most important factor in the consumers' buying decision is the product reviews left on online marketplaces.

Table 33: Channels for Product Research and Purchase When Shopping for White Goods and Electronic Products

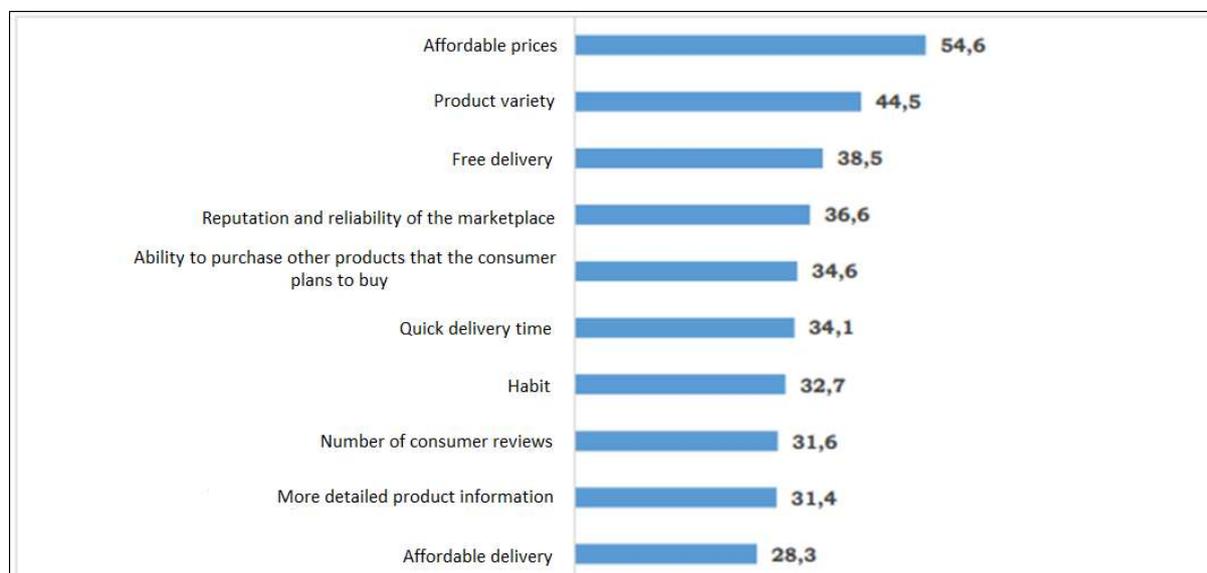
	Which sources are used for research?	Which source is most influential on the purchase decision?
I use search engines (Google, Yandex, etc.)	46	10
Comparison shopping websites (Akakçe, Cimri, etc.)	44	8
Complaint sites (Şikayetvar, etc.)	40	13
Product reviews/features on online marketplaces (Hepsiburada, n11, etc.)	39	18
Reviewing the product/getting information at the authorized seller's store	37	12
Brand's own website	36	7
Reviewing the product/getting information at the technology stores	34	7
Review sites (donanimhaber.com, etc.)	30	7
Acquaintances	27	4
Forums, blogs	25	5
Reviewing the product/getting information at chain stores	24	3
Social media (youtube, Facebook, Twitter, Instagram, etc.)	22	4
Websites of chain stores (A101, Migros, Carrefour, etc.)	11	2

Source: Competition Authority Consumer Survey

(356) At the same time, the following Chart 13 shows the reasons for consumers' preference for multi-category marketplaces instead of the sellers' e-commerce websites during

purchase. The most common reason for preferring the marketplace to the brand's website seems to be more affordable prices. Based on that, it is clear that marketplaces create consumer benefit with their low prices, and therefore it is impossible to claim consumer benefit from a complete restriction of such a channel.

Chart 13: Reasons for Choosing Marketplaces over the Brand's Own Website (%)



Source: E-Marketplace Platforms Sector Examination Preliminary Report

- (357) Considering the searching habits of consumers, dealers' websites may rank lower down in the results when product name is used as the search term and consumers do not generally tend to enter the dealers' name in the search engines. Thus, the notified practice would restrict access especially for smaller-scale dealers. On the other hand, taking into account the fact that dealers would have to incur the costs of creating and managing their own websites, the relevant prohibition would result in the dealers being ineffective in the online channel, reaching fewer consumers, which would restrict consumer choice in the current form.
- (358) The last argument to address under this heading is the claim that the prohibition concerned was intended to prevent the consumer from being misled. Regarding this argument, it is the Authority's assessment that suppliers would be able to provide some assurance by regulating and improving the conditions for doing business with the marketplaces, i.e. by adopting the measures against incorrect/misleading information in the physical channels to the online channels, in compliance with the equivalency principle. As mentioned in the previous sections, online marketplaces seem to be able take certain measures or develop solution mechanisms related to the issue. As a matter of fact, in their response letters (.....) and (.....) stated that they took precautions against counterfeit products and made investments to prevent counterfeiting, while (.....) noted that there were no issues related to brand perception in the consumer electronics field due to the fact that many companies with high brand value operating in that field such as mobile phones, tablets and computers ((.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....) etc.) had their products commonly available on e-commerce channels. (.....) noted that if the seller store provided incorrect or misleading information or failed to fulfill the execution, they were imposed penalties under the agreement signed with the relevant store, and the agreement could even be terminated

in case of an irreparable violation. In addition, it should be obvious that the counterfeit product or spot sales problem could also arise in the physical sales channels, in which case the consumer would be unable to find anyone else to contact, unlike in the case of online platforms. Responses to the consumer survey show that incorrect/misleading information about the product and/or counterfeit product problems on the internet are not a decisive factor for whether the consumers prefer online channels, with 26-29% of the consumers participating in the survey stating that they chose to purchase from the physical channel due to these types of concerns. On the other hand, 70% of the consumers stated that they chose the physical sales channel in order to purchase the product after seeing/touching/trying it, 41% stated they wanted to take delivery quickly from the store, and 40% stated that the physical channel offered a chance to negotiate the price. Thus, it is concluded that the complete prohibition of online sales channels to ensure that the consumers are not misled would be a practice that would lead to deeper consumer harm.

- (359) In light of the explanations given above, implementing the relevant prohibition today, when internet shopping is so widely used, would restrict consumers' choice as well as their ability to search for products and compare prices rather than providing benefits. As well, sales through online marketplaces benefit consumers in the form of time saving and lower prices while reducing search costs. In addition, these sales allow businesses to offer their products to more geographic locations and reach more consumers, which in turn make it easier for consumers to access the product. These sales can also have a downward effect on the prices, allowing consumers to procure similar products cheaper. In light of the fact that, generally, an important goal of restrictions implemented for internet sales is to prevent price competition, it is obvious that consumers would be negatively affected by such a restriction. In that context, it is concluded that the restriction in the application examined under Article 5(b) of the Act no 4054 would not fulfill the requirement of benefiting the consumer.

**c) Not Eliminating Competition in a Significant Part of the Relevant Market,**

- (360) The third requirement of an individual exemption assessment is not eliminating competition in a significant part of the relevant market. The main issue in the assessment is whether the competitive process in the relevant market is continuing. The negative effects of an agreement between competitors on the competition in the market are determined according to the impact of the agreement on the market structure and the market power of the parties to the agreement. Vertical agreements can have various positive effects as well as negative ones, including the restriction of intra- and inter-brand competition, market foreclosure and reduction of consumer choice.
- (361) Within this context, it would be beneficial to examine the market structure and the position of the competitors in the market where the relevant practice would take place. The tables reproduced below show that BSH's market share was below 40% both in the white goods and in the small domestic appliances markets, and close to its biggest rival, which is the market leader. Market powers of the other undertakings in the white goods market are relatively low and still close to each other. In the small domestic appliances market, the market shares of the three competitors following the market leader ARÇELİK-BEKO are relatively close, with the remaining undertakings commanding smaller shares of the market.

Table 34: Market Shares of the Undertakings Operating in the White Goods Sector (Turnover Based)

Undertakings	2017	2018	2019	2020
ARÇELİK-BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data submitted by BSH				

Table 35: Market Shares of the Undertakings Operating in the Small Domestic Appliances Sector (Turnover Based)

Undertakings	2017	2018	2019	2020
ARÇELİK-BEKO	(.....)	(.....)	(.....)	(.....)
BSH	(.....)	(.....)	(.....)	(.....)
Bosch	(.....)	(.....)	(.....)	(.....)
Siemens	(.....)	(.....)	(.....)	(.....)
Profilo	(.....)	(.....)	(.....)	(.....)
ARZUM	(.....)	(.....)	(.....)	(.....)
FAKIR	(.....)	(.....)	(.....)	(.....)
PHILIPS	(.....)	(.....)	(.....)	(.....)
SEB GRUP	(.....)	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)	(.....)
Source: GFK data submitted by BSH				

- (362) On the other hand, BSH stated that it used the selective distribution system, and this claim was accepted above with various assessments. However, (.....), (.....), (.....) and (.....) operating in the market also stated that they were using the selective distribution models. The prohibition of sales through online marketplaces is planned for implementation by BSH, an important player in the market, and it is claimed to be implemented by another important player of the market, (.....). In case it is implemented by other competitors operating in the market which have adopted similar distribution systems, it would lead to an increase in the negative impact of the vertical restraints introduced by the suppliers.<sup>150</sup> More than one undertaking that holds a small market share could be affected by rivals' policies and engage in similar behavior, constituting a relatively larger portion of the relevant market. In that context, the concentration rates of the four largest undertakings in the white goods market for 2019 (CR<sub>4</sub>)<sup>151</sup> is calculated to be (.....)%, while that value is (.....)% for the small domestic appliances market. In 2020, it was (.....)% for the white goods product group, and (.....)% for the small domestic appliances product group.<sup>152</sup> Based on this information, it may be said that the practice in question involves potential risks to restrict competition - especially

<sup>150</sup> This is known as "cumulative effect". (See: Vertical Guidelines)

<sup>151</sup> Concentration rates were calculated using turnover based market shares. (Low concentration if CR<sub>4</sub> < 30; intermediate concentration if 30 ≤ CR<sub>4</sub> < 50; high concentration if 50 < CR<sub>4</sub> < 70; very high concentration if CR<sub>4</sub> ≥ 70.)

<sup>152</sup> Since the market share of the market leader (.....) increased in 2020, concentration rates also went up in parallel.

in light of the chance that it could spread to the rest of the market as well. As a result, parallel networks resulting from vertical agreements with a similar nature implemented by competing providers or buyers would significantly impede market entry and competition in the relevant market, due to competition problems stemming from a cumulative effect as well.

- (363) Following shows the distribution of total sales in white goods and small domestic appliances to physical and online sales channels. It must be noted that the percentages concerned were calculated in the presence of an important player, (.....), which prevents dealers from selling through online marketplaces. It is expected that the share of online marketplaces in total sales would be higher in the absence of that prohibition. In its current form, this distribution shows that if sales through online marketplaces were banned, dealers of around 9% in the white goods product group, and about 24% in the small domestic appliances market would be unable to make sales.

Table 36: White Goods Sales Rates According to Sales Channels (%)

Sales Channel	White Goods		
	2018	2019	2020
Physical Sale	90	81.70	87.23
Own Website	2.75	3.80	3.09
Supplier's Website	0.04	0.08	0.37
Online Marketplace	7.22	14.44	9.29

Source: Responses

Table 37: Small Domestic Appliances Sales Rates According to Sales Channels

Sales Channel	Small Domestic Appliances		
	2018	2019	2020
Physical Sale	79.02	69.45	67.39
Own Website	4.35	4.90	7.34
Supplier's Website	0.11	0.19	1.09
Online Marketplace	16.50	25.44	24.16

Source: Responses

- (364) The closure of online channels of sale would remove one of the sales channels frequently used by consumers. As shown in the following table, 56% of the consumers make their white goods purchases through online platforms.

Table 38: Channels Where White Goods are Purchased over the Internet

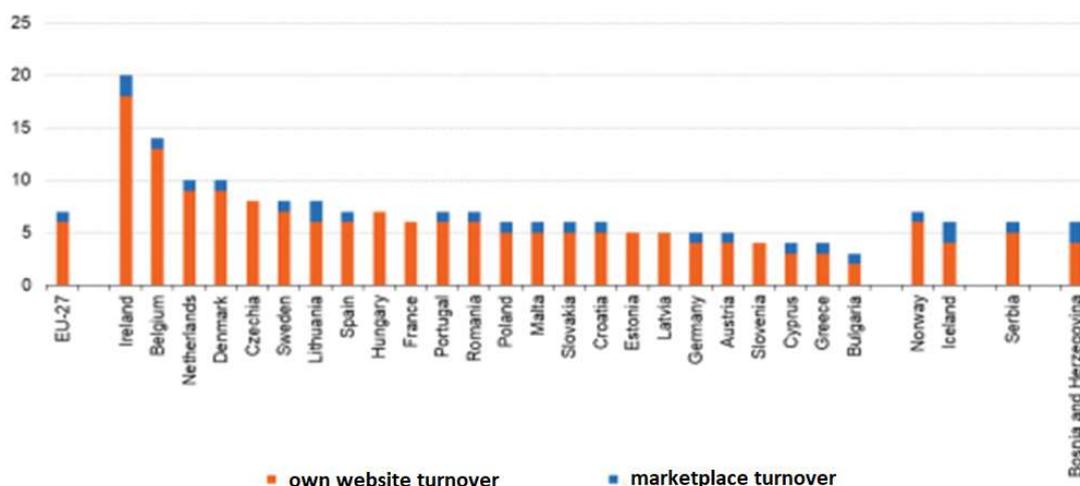
Online marketplaces (hepsiburada, trendyol, amazon, n11, etc.)	56	46	47	52	60	50
Brand's own website	19	33	24	31	20	33
Electronic market website (Mediamarkt, Teknosa, Vatan Bilgisayar, etc.)	13	9	16	10	17	10
Website of the brand's authorized dealer	12	12	14	7	3	7

Source: Competition Authority Consumer Survey

- (365) When assessing this requirement of the exemption analysis, it would also be beneficial to mention the findings of the *Coty* decision. The Advocate General's opinion in the *Coty* decision states that, despite the increasing importance of third-party platforms, the most preferred online distribution channel according to the results of the Commission's E-Commerce Sector Report was still the undertakings' own websites,

and therefore prohibiting distributors from using these platforms cannot be considered a complete or significant restriction of internet sales<sup>153</sup>. The grounds for the *Coty* decision referenced the Commission's E-Commerce Sector Report, noting that 90% of the sellers make their sales through their own websites<sup>154</sup>. The Sector Report concluded that despite the increasing importance of online marketplaces, the most important online sales channel for retailers was still their own websites. As can be seen from Chart 14 below, the turnovers undertakings generate from marketplaces in Member States comprise a relatively small share of the total turnovers they generate from online channels overall. On the other hand, it was found that the small- and mid-scale undertakings tended to use marketplaces more than larger undertakings. In other words, the dependency of the retailers in the target group of the study was inversely proportional to the size of the retailers.

Chart 14: Turnovers Undertakings Generate from Their Own Websites and from the Marketplaces in Member States (2019, %)<sup>155</sup>



**Note:** Only countries that have numbers available for both indicators are shown.

The turnovers generated from marketplaces in Czechia, Hungary, France, Estonia, Letonia and Slovenia are lower than 1% and are not shown in the chart.

Luxemburg, Finland, Italy, Montenegro and North Macedonia data are not included since they are confidential or unreliable.

- (366) However, despite the relevant findings in the Commission's E-Commerce Sector Report and the rules specified in the Draft Vertical Guidelines, it is debatable if the importance attached to third party platforms is valid and applicable for all countries<sup>156</sup>. According to the E-Commerce Sector Report data, marketplace utilization rates of resellers in Germany was 62%. The Germany data show that, in Germany, the main

<sup>153</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CC0230&from=en>, para. 111.

<sup>154</sup> <https://curia.europa.eu/juris/document/document.jsf?docid=197487&doclang=EN>, para. 54. [https://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_final\\_report\\_en.pdf](https://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf), para. 39.

<sup>155</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics)

<sup>156</sup> [In the opinion issued after the \*Coty\* decision, Bundeskartellamt noted that each member state had its own specific market conditions and consumer preferences, which significantly affected the consumers' choice of sales channels. It added that the ECJ's mentioning of the distributors' own website as the most important sales channel in its assessment in the \*Coty\* Decision was not applicable to Germany, since the utilization rates of marketplaces and comparison shopping tools were much higher in Germany than they were in other countries.](https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_IV.pdf?blob=publicationFile&v=3) [https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe\\_Digitales\\_IV.pdf? blob=publicationFile&v=3](https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_IV.pdf?blob=publicationFile&v=3)

distribution channel for resellers was not their own websites, unlike the EU countries.

- (367) A look at Table 36 and Table 37 above for the utilization rates of the authorized sellers' own websites for the white goods and small domestic appliances in Türkiye show that these rates within the total sales, including the physical channel, were lower than 4% for the white goods market and lower than 8% for the small domestic appliances market. The share of online marketplaces in total online sales was 83.5% in 2019 and 74.1% in 2020 for small domestic appliances, and 78.8% in 2019 and 72.72% in 2020 for white goods. Consequently, for the undertakings operating in Türkiye, online marketplaces are being utilized significantly more than the undertakings' own websites in terms of the sales made through online channels within the markets under examination. In light of the fact that authorized dealers are most visible on the online platforms right after the physical channels, it is believed that the prohibition of online channels would significantly restrict the authorized sellers' access to the internet channel and to the consumers.

Table 39: Share of Marketplaces in Online Sales (%)

	2018	2019	2020
White Goods	72.1	78.8	72.7
Small Domestic Appliances	78.6	83.3	74.1
White Goods + Small Domestic Appliances	75.3	81.2	73.4

Source: Responses from the Suppliers and Dealers

- (368) An overview of the responses to the dealer survey shows that just 17% thought that the infrastructure costs for setting up and managing their own websites were low, while those who believe the commission rates of online marketplaces were too high was limited to 17%. The following table shows the sales channels preferred by dealers of various sizes on the internet.

Table 40: Channels Preferred by Dealers for Internet Sales

	Type of Dealer (%)		
	Shopping Malls	On Main Streets	On side streets
Through the website of the supplier	49	58	54
Through own website	57	34	36
Through Online Marketplaces ((.....),(.....),(.....), etc.)	18	28	36

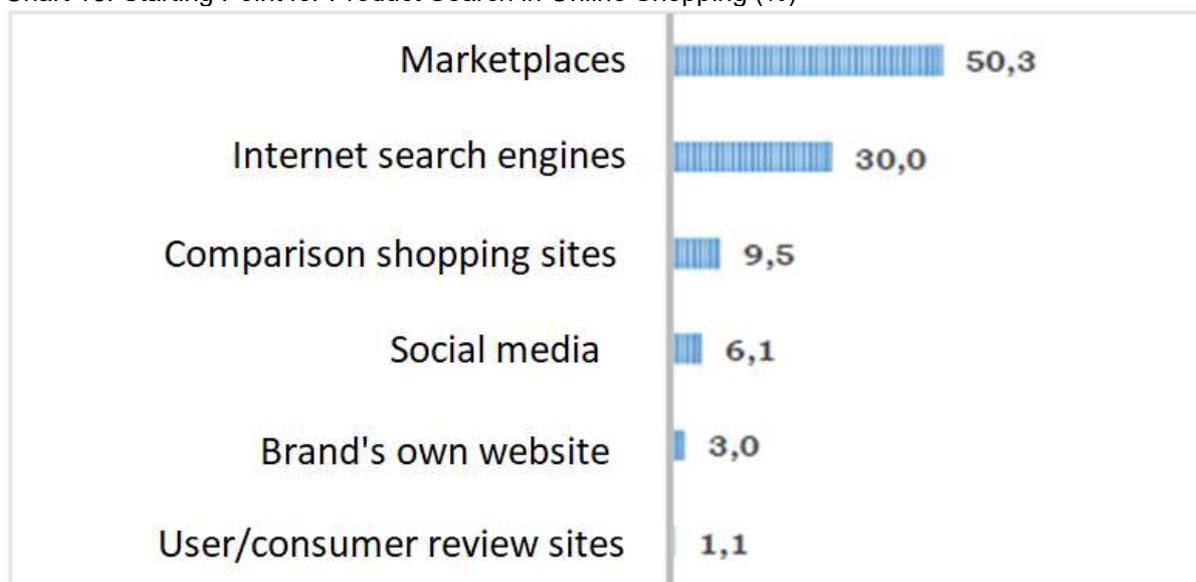
Source: Competition Authority Dealer Survey

- (369) Dealers who are located in a shopping center or on the main street prefer to use the website of the supplier or their own websites, while dealers on side streets mostly prefer online marketplaces. Dealers who, due to their location, have the capacity to pay more rent and reach more customers, in other words, who are more financially capable, are able to set up and manage their own websites. On the other hand, relatively smaller dealers who do not have that level of financial power prefer to reach their customers using the assurance of an online marketplace. Thus, prohibiting dealers from selling through online marketplaces poses the risk of distorting competition in the market to the detriment of relatively smaller and weaker undertakings.
- (370) Prohibiting the use of marketplaces would also reduce the authorized dealers' ability

to sell through mobile applications. In the E-Marketplace Platforms Sector Examination Preliminary Report, it was found that when shopping over the internet, consumers used computers 16.4% of the time and mobile devices 83.6% of the time at the purchase stage; for purchases made on mobile devices, the internet browser use rate was 20.4%, with the mobile applications getting a share of 79.6%. The prohibition under examination will restrict the dealers' access to the mobile applications of the online platforms, which are used frequently by the consumers. This could reduce intra-brand and inter-brand competition by allowing fewer sellers to benefit from effective competition in the online channel.

- (371) At the same time, due to the changing consumption habits, price and quality information are being researched not by brand name on the website of the supplier or the dealer, but from the online marketplaces.

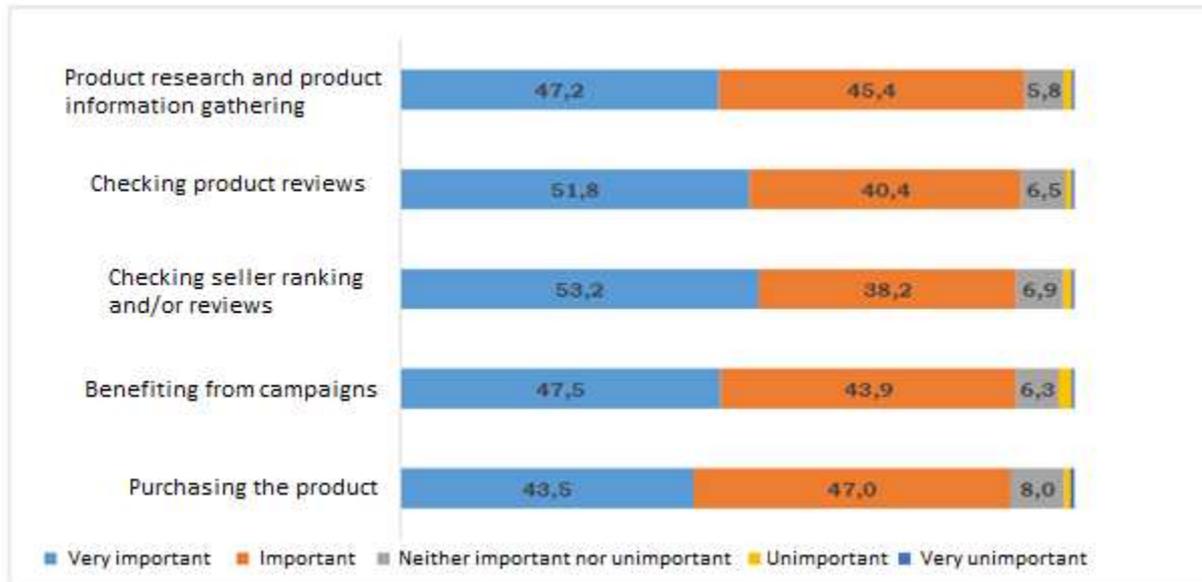
Chart 15: Starting Point for Product Search in Online Shopping (%)



Source: E-Marketplace Platforms Sector Examination Preliminary Report

- (372) The distribution of the preferences given above show that half of the consumers start researching a product from the marketplaces and the brand's website is rather behind in the rankings. This tendency means consumers think that marketplaces offer a search function which is not offered by the sellers' own websites. In parallel, the responses of the consumers to the question "how important are the functions and roles of e-marketplaces in the shopping process" are as follows:

Chart 16: The Importance of E-Marketplace Function



Source: E-Marketplace Platforms Sector Examination Preliminary Report

- (373) The graphic above reveals how important consumers think “product review” and “seller ranking and review” options are and what they expect from a search service. Thus, the chart above sheds light on the difference between the e-marketplaces and the sellers’ own websites. Consequently, the ban in the application will clearly reduce a significant portion of the competition existing in the market.
- (374) On the other hand, the following search engine result supports the claim that authorized dealers’ own websites have low consumer accessibility. The search with the term “bosch washing machine” offers the authorized dealers own website as fourth rank the second page of the results. Based on that, it is possible to say that when consumers want to shop for white goods over the online channels, they would need to work harder to access the authorized dealers’ own websites. At the same time, based on the charts included in the Preliminary Report conclusions included below, entering the trade name of the authorized dealer into the search engines seems to fall outside consumer habits for online shopping.

Image 5: Screenshot of the Search Results for the Query Bosch Brand Washing Machine

Google bosch çamaşır makinesi

Sayfa 2 / 7.240.000 sonuç (0,51 saniye)

<https://www.sikayetvar.com/bosch-çamaşır-makinesi> - **Bosch Çamaşır Makinesi Şikayetleri - Şikayetvar**  
Bosch Kuyutu Döndür Makine, Bosch serisi çamaşır makinesi bidedim 1 ay bile kullanmadan çamaşırın delmeye başladı kaç kere servis geldi baktılar ama hala ...  
★ ★ ★ ★ Kullanıcı oyu: 2,1 - 3.148 inceleme

<https://www.enpazar.com/.../Çamaşır-Makinesi> - **Bosch Çamaşır Makinesi Markaları Fiyatları ve Kampanyaları**  
Bosch Bütçenize en uygun Çamaşır Makinesi fiyatları EnPazar'da. Aradığınız marka Çamaşır Makinesi modellerini en ucuz fiyata gördü satın al!

<https://www.n11.com/.../Çamaşır-Makinesi> - **Bosch Çamaşır Makinesi Modelleri ve Fiyatları - n11.com**  
Çamaşır Makinesi - Bosch WAU24T00TR 1200 Devir 9 KG Çamaşır Makinesi - Bosch WGA25X00TR 1200 Devir 10 KG Çamaşır Makinesi - Bosch WAU24T90TR 1200 Devir 9...

<https://www.gizerler.com/.../Çamaşır-Makinesi> - **Bosch Çamaşır Makinesi Modelleri ve Fiyatları - Gizerler**  
Bosch WGA142X11TR 9 Kg 1200 Devir Beyaz Çamaşır Makinesi, 4.699,00TL 4.199,00TL  
Bosch WAL28PH0TR HOME CONNECT 10 Kg 1400 Devir C Enerji Beyaz Çamaşır ...

<https://www.gittigidiyor.com/.../Çamaşır-Makinesi> - **Bosch Çamaşır Makinesi Fiyatları & Modelleri - GittiGidiyor**  
Bosch Çamaşır Makinesi - Bosch WAU24T90TR Çamaşır Makinesi 9 kg 1200 Devir - Bosch WGA142X11TR 1200 Devir 9 kg Çamaşır Makinesi - Bosch WAW2856XTR A+++ 9 kg 1400 ...

<https://media3.bosch-home.com/Documents/> [PDF] - **Çamaşır makinesi WAK20202TR - Bosch**  
Yeni çamaşır makinemiz. Bosch marka bir çamaşır makinesi almaya karar verdiniz. Lütfen okumak için biraz zaman ayırarak çamaşır makinemizin avantajlarını.

<https://manual.info.tr/.../Bosch-Çamaşır-makineleri> - **Kullanım kılavuzu Bosch WAT20480TR Çamaşır makinesi**  
Bosch WAT20480TR Çamaşır makinesi kullanma kılavuzu. PDF formatındaki kullanma kılavuzunu inceleyin ve indirin, sıkça sorulan soruların cevaplarını bulun ve ...

<https://www.erdemleravm.com.tr/çamaşır-makineleri> - **Çamaşır Makineleri - Erdemler Avm**  
Bosch WAK28M5STR 10 kg 1400 Devir Silver Çamaşır Makinesi, 11.362,00 ... Bosch WGA142X5TR 9 Kg 1200 Devir Gümüş Çamaşır Makinesi, 4.989,00 ...

<https://www.morhipo.com/Markalar/Bosch> - **Bosch Çamaşır Makinesi Fiyatları ve Modelleri | Morhipo**  
Bosch Çamaşır Makinesi modellerini size özel taksit ve kargo avantajlarıyla Morhipo'da! Bosch Çamaşır Makinesi çeşitlerini indirimli fiyatlarla hemen satın ...

<https://www.iletgo.com/tr/tr/bosch-serie-6-çamaşır-m...> - **BOSCH Serie 6 Çamaşır Makinesi - İletgo**  
BOSCH Serie 6 Çamaşır Makinesi 9 kg Enerji Verimsizlik Sınıfı: A+++ Devir: 1200 Programlar: Mix, Spor giysileri,GömeK&Bluz, AlerjiPlus&Baby ...

**İlgili aramalar**

- Bosch Çamaşır Makinesi fiyatları 9 kg
- bosch wga142x0tr a+++ 1200 devir 9 kg çamaşır makinesi...
- Bosch Çamaşır Makinesi 10 kg 1200 Devir
- Bosch Çamaşır Makinesi Kurutmalı
- Bosch Çamaşır Makinesi Fiyatları
- Bosch Çamaşır Makinesi Yorumları
- bosch serie 6 çamaşır makinesi 9 kg 1200 devir a+++
- Bosch çamaşır makinesi şikayet

< Google >  
Önceki 1 2 3 4 5 6 Sonraki

(375) Lastly, looking the reasons why dealers prefer the internet channel, the biggest reason seems to be reaching more consumers and selling more products according to the dealer survey results. This allows dealers to reach more consumers with less cost, while presenting more options to the consumers at the same time. As mentioned above, the online marketplace channel offers more effective access to the internet in comparison to the undertakings' own websites in terms of ensuring visibility and access to the consumer. When asked why they preferred the internet channel, 24% of the dealers participating in the survey responded with easier communication with the consumer through the online marketplace, 29% with the ability to present the product information (product content) over the platform and 17% with the assurances offered by the online marketplace.

Table 41: Dealers' Reasons for Choosing the Internet Channel

75%	Reaching more customers
62%	Selling more products
28%	Setting the product prices more in line with the market
24%	Easier communication with the consumer through the online marketplace
21%	The support offered by the brand/supplier for internet sales
20%	Presenting the product information (product content) over the platform
17%	The assurance offered by the online marketplace

Source: Competition Authority Dealer Survey

(376) In addition to the information above, the dealer survey results also show that the most important motivation for the dealers to prefer online marketplaces was by far easy access to the consumer (Chart 17). It is stated that the use of this channel would not affect the brand image, and that dealers would enjoy cost advantages by reaching more consumers with less commission fees. Consequently, complete prohibition of such a channel would reduce the alternatives for both dealers and consumers, increasing the cost factors. Additionally, according to the survey results, every 6 out of 10 dealers (60%) that prefer online marketplaces think that they would be left behind by their competitors if they did not sell through the marketplaces.

Chart 17: Reasons for Dealers to Choose Marketplaces

Easier access to consumer	74
Does not affect brand image	19
Reasonable commission rates	19
Own website has lower chance to compete with the supplier's website	16
It is more costly to increase the visitor numbers for my own website	15
The infrastructure costs for setting up my own website is higher	12

Source: Competition Authority Dealer Survey

(377) The table below shows that where the supplier does not ban sales through marketplaces - when the sales of the rivals that do not implement this type of prohibition are examined - there is a higher number of dealers active on online marketplaces.

Table 42: Ratio of Sales Dealers Made Through Online Marketplaces to Total Sales by the Dealers in the White Goods Product Group for 2018, 2019 and 2020, Grouped by Supplier (%)

Dealers	2018	2019	2020
ARÇELİK-BEKO	(.....)	(.....)	(.....)
BSH Group	(.....)	(.....)	(.....)
LG	(.....)	(.....)	(.....)
SAMSUNG	(.....)	(.....)	(.....)
SILVERLINE	(.....)	(.....)	(.....)
VESTEL	(.....)	(.....)	(.....)

Source: Compiled and calculated based on the responses submitted by the dealers.

- (378) The popularization of e-commerce, and the undertakings' desire to operate through the online marketplaces as a response to the changing consumer habits have created an opportunity for both the sellers and the consumers to meet on a very large ecosystem. The restriction of the online marketplace channel, whose importance among other online channels in Türkiye has been demonstrated above, could reduce the sellers' ability to follow the market, thereby eliminating price competition and reducing intra-brand competition. If other suppliers in the market were to implement similar policies, this could also harm inter-brand competition by means of cumulative effects.
- (379) With trust in online marketplaces and mobile applications increasing, prohibitions on these channels could lead to bigger sellers getting stronger and reducing price competition. Increasing search costs could result in fewer or no searches being made in this context. Since time is important for consumers, they would be less likely to make multiple searches on online channels. Thus, such a scenario could harm those players with unfavorable financial capacity. Bans on online marketplaces would swing the balance to the advantage of larger retailers, with smaller ones finding it harder to enter and sell in the market, thereby limiting price competition. In light of the fact that authorized dealers are most visible on the online platforms right after the physical channels, it is believed that the relevant prohibition would significantly restrict the authorized sellers' access to the internet channel and to the consumers. The restriction concerned could reduce intra-brand and inter-brand competition by allowing fewer sellers to benefit from effective competition in the online channel. It seems likely that such restrictions would significantly impede internet distribution capabilities, negatively impacting market structure and competition in the market as a whole.
- (380) In light of the explanations above, the total prohibition of sales by authorized sellers through online platforms by the agreements under examination has the potential to negatively impact competition, since it can reduce intra- and inter-brand competition, prevent market entries, prevent authorized sellers from accessing a significant portion of the internet channel, and distort competition to the detriment of relatively smaller and weaker undertakings. Consequently, it is concluded that the practice in question does not fulfill the requirement of not eliminating competition in a significant part of the relevant market as specified in Article 5(c) of the Act no 4054.

**(d) Not Limiting Competition More Than What Is Compulsory for Achieving the Goals Set out in Sub-paragraphs (a) and (b)**

- (381) The last condition specified by Article 5 of the Act no 4054 requires that the agreement not limit competition more than what is necessary in order to achieve the efficiency gains targeted by the agreement. In that context, an assessment must be made on the necessity and indispensability of the competitive restraints in the agreement, and whether the benefits intended could be acquired via other methods that are less

restrictive of competition.

- (382) While the restriction concerned is a vertical one, vertical restrictions may have an enhancing effect on non-price competition and service quality by increasing the incentives of those players at the lower levels of the production and distribution chain to improve the commercial status of the brand that is the subject of the agreement.<sup>157</sup> By implementing certain vertical restraints, the free-riding problem can be solved and the participation of every distributor in the advertisement and promotion activities may be ensured<sup>158</sup>.
- (383) On the other hand, the assessment under Article 5(a) of the Act and the previous sections show that the efficiencies which expected to arise as a result of the restriction under examination according to BSH and which are mainly aimed at protecting the brand image and solving the free-riding problem could be achieved via other methods that are less restrictive of competition. The responses submitted by the platforms state that the platforms were ready to show the utmost cooperation in order to eliminate the suppliers' concerns about brand image. (.....) noted that it already allowed communication between the consumer and the seller, that concerns about the authorization status of the sellers were not intrinsically a problem with the marketplace business model, and that any potential problem related to the brand perception could be easily solved with simple precautions (such as the marketplace indicating that the seller is an authorized dealer of the relevant brand). In addition, (.....) stated that it was open to all kinds of cooperation to eliminate the problem of negatively effecting the brand image, that if the manufacturers shared their catalog information and product images with the platform, they would happily enter these information into their database to redirect the information to the sellers' pages automatically. As an example, it was noted that (.....) made the enriched content in their product images accessible for their authorized sellers operating through online channels.
- (384) (.....) stated that not only it checked for erroneous content itself, it also presented the option to report erroneous product content.(.....), (.....) and (.....) stated that they could accept a solution in which authorized sellers were presented with a display different from other sellers on their platform to show their authorized seller status, and that the status of authorized sellers could be entered into their systems. It is concluded that all of the justifications submitted in this framework could be addressed by contacting the relevant platforms or introducing concrete and objective standards like those implemented for the dealers' own websites. The dealers could then be asked to only work with those platforms which complied with those standards. However, instead of preferring one of these solutions, choosing to completely restrict sales through online platforms means restricting competition more than what is necessary.
- (385) In addition, the practices of the suppliers other than BSH in the relevant markets with relation to online platform sales have been referenced before, showing that the suppliers' concerns could be eliminated by placing objective criteria on the platforms and authorized sellers. In fact, (.....) ensures that its brand rights are protected by the agreements it concludes with the authorized sellers from the beginning. Adopting the view that the dealership network it established in the physical channel could also be transferred to the online channels and that this would reinforce its brand image, (.....) developed the (.....) system and thereby introduced certain obligations on its authorized dealers. On the other hand, it send a unilateral notification to the platforms, which are

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<sup>157</sup> Vertical Guidelines, para. 87.

<sup>158</sup> Vertical Guidelines para. 88.

the third-parties of the relationship, to inform that the (.....) process in question would be implemented by (.....). As a result, it seems contractual relationships established in the physical channel can be adopted to new business models for implementation in the online channels. In practice, this process is shown to be executable by the suppliers, and it looks like the marketplaces will comply with it as well. Based on this, there are alternative methods used by the competitors and marketplaces are open to implementing them. Therefore, the efficiency of the distribution network may be ensured by alternative solutions within the contractual relationship established with the dealers, without resorting to a complete prohibition of the platforms.

- (386) At the same time, as shown by the table below, out of the 441 dealers who participated in the survey, 39% opined that there should be no restrictions on any internet channels but certain criteria (quotas, etc.) should be implemented, 29% stated that there should be no restrictions on internet sales, 22% stated that online marketplaces should be completely restricted but there should be no restrictions for other channels. As a result, the survey concluded that around 70% of the dealers thought that sales through online marketplaces should not be restricted. In addition, 39% of the participating dealers believed that instead of a complete prohibition of online marketplaces, less restrictive measures such as the use of quotas could allow a more efficient implementation in the market. In that context, the opinions of the dealers submitted as part of the survey in question supported the view that BSH's decision to completely restrict the online platforms channel instead of imposing some order on this channel served to restrict competition more than necessary.

Table 43: Dealers Opinions on Internet Sales Restrictions

	Total	Dealers with Internet Sales	
		Yes (%)	No (%)
Total	441	178	263
Introducing certain criteria on internet sales	39	35	42
No restrictions	29	34	25
Total restriction of online marketplaces, no restrictions on other channels	22	24	21
Total restriction on sales over the internet	10	7	12

Source: Competition Authority Dealer Survey

- (387) Within the framework of the information provided above, motivations such as protecting the efficiency of the supplier's distribution network and the brand image, preventing free-riding, preventing the consumer from being misled are not sufficient justifications for the supplier imposing a total ban on online marketplaces. When such concerns can be eliminated simply by setting up contractual relationships with authorized dealers and using these agreements to place certain obligations and requirements for opening stores on online platforms - in compliance with the equivalency principle - on these authorized dealers, completely banning sales through online marketplaces in an environment where consumer habits are changing and new business models are being experimented on would be unduly interventionist.
- (388) On the other hand, as mentioned in the previous sections, the potential free-riding problem is not specific to the online channels, especially in light of the fact that white

goods and small domestic appliances are generally displayed with their prices and specifications, together with many other brands at shopping centers and electronic markets. Thus, it is concluded that there can be no unidirectional free-riding problem between the online and physical sales channels to the detriment of the physical channel, and the relevant argument cannot serve as a justification for the complete restriction of sales through online marketplaces.

- (389) However, restricting the authorized sellers from selling through online marketplaces may sometimes be a practice that allows suppliers to control the prices. As a result, price competition becomes more important for online platforms as compared to physical sales. Chart 18 below shows that consumers prefer to shop over the internet mainly because of more affordable prices, thus supporting the idea that price is the main element of competition in this channel. Charging different prices for a product over the internet, including the marketplaces, can sometimes get out of suppliers' control and is not preferred by suppliers. Any action taken by the supplier on this issue can serve to facilitate, either directly or indirectly, the supplier maintaining the resale prices of their authorized sellers.

Chart 18: Most Important Criteria in Internet Shopping (%)

Affordable prices for products	71
Reliability of the website I buy from	61
Attractive discount coupons or shopping cart discounts	50
Product reviews	47
Return options	41
Payment options	40
Delivery fees	38
Store reviews	37
Delivery time	35
Installment options	35

Source: Competition Authority Consumer Survey

- (390) At this juncture, it is important to include the Board's approach to the subject in light of the *Tefal*<sup>159</sup>, *Philips*<sup>160</sup> and *Arnica*<sup>161</sup> decisions. In these decisions, documents included in the files were assessed to arrive at the observation that the practices examined under the heading "suppliers intervening in the internet sales of authorized dealers," including online marketplaces, were intertwined with certain practices which constituted intervention in resale prices. Foreclosing online channels where price competition is more important to dealers based on selective distribution agreements would reduce intra-brand competition, and if this policy were to be followed by many suppliers in the market, the potential impact on the market could negatively affect inter-brand competition. Such a situation could make it easier for suppliers to control the resale prices of their authorized sellers, bringing all prices to the same level at the long term if followed by all suppliers, thereby damaging inter-brand competition. As a result, the restriction under examination risks going beyond its purpose to restrict competition more than what is necessary.
- (391) In that framework, it is concluded that the ban on sales made through online

<sup>159</sup> Board Decision dated 04.03.2021 and numbered 21-11/154-63.

<sup>160</sup> The relevant file was concluded with a settlement and the reasoned decision has not been published.

<sup>161</sup> The relevant file was concluded with a settlement and the reasoned decision has not been published.

marketplaces planned for dealers would restrict competition more than what is necessary to protect the brand image and solve the free-riding problem, and therefore did not meet the requirement in Article 5.1(d) of the Act no 4054.

- (392) In line with the observations and assessments above, it is decided that the circular BSH sent to its authorized dealers as a supplement to their agreements could not enjoy individual exemption, since it did not fulfill any of the requirements listed under Article 5 of the Act no 4054.

#### **G.8.4.2. Assessment concerning the Dealership Agreements**

- (393) An examination of BSH's dealership agreements revealed that they included some provisions with a restrictive effect on competition as defined under Article 4 of the Act no 4054, apart from those in the Circular notified. In that framework, the provision titled (.....) in the agreements provide that (.....). The same heading of the agreement includes the phrases (.....).
- (394) Article 4(c) of the Communiqué no 2002/2 titled "*Limitations Rendering Agreements Not Caught By Block Exemption*" is as follows: "*In the selective distribution system, restriction of active or passive sales to final users, to be performed by the system members operating at the retail level, provided that the right is reserved as to the prohibition for a system member against operating in a place where he is not authorized.*" Paragraph (d) of the same Article is: "*In the selective distribution system, prevention of purchase and sale between the system members themselves.*". Thus, restriction of active and passive sales to final users by selective distribution system members and introducing an obligation on the dealers to procure the products from BSH would take the relevant agreement outside the scope of the block exemption.
- (395) On the other hand, Article 2 of the dealership agreements for the Bosch and Siemens brands, titled (.....), includes the provision (.....) in paragraph 5.
- (396) As known, Article 4.1(c) of the Communiqué no 2002/2 specifies that the implementation of exclusive customer allocation together with selective distribution is a violation that is explicitly left out of the scope of the Communiqué. However, qualitative and quantitative selective distribution agreements may benefit from the block exemption up to the 40%<sup>162</sup> market share threshold, if combined with a non-compete obligation, provided active sales by the authorized distributors to each other and to final users is not restricted.
- (397) In that framework, the abovementioned (.....) provision of the BSH dealership agreements and the (.....) provision of the Bosch and Siemens brand dealership contracts are found to include restrictions that take these agreements outside the scope of the block exemption as per paragraphs (c) and (d) of Article 4.1 of the Act no 2002/2, and therefore a separate individual exemption assessment will be conducted below.

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<sup>162</sup> Although the new amendment reduced this market share threshold to 30%, Temporary Article 3 in the relevant Communiqué specifies that "*Agreements which, on the date this Article enters into force, are benefiting from the block exemption granted under the Communiqué no 2002/2 but which fall outside of the scope specified by Article 2 of the Communiqué no 2002/2 as amended by the Communiqué no 2021/4, must ensure their compliance with the requirements listed under Article 5 of the Act no 4054 within six months following the entry into force of this Article. During this time period, the prohibition of Article 4 of the Act no 4054 shall not be applied to the agreements in question.*"

### G.8.4.3. Assessment on the Agreement signed with MEDIAMARKT

- (398) BSH sells its products through the electronic markets TEKNOSA and MEDIAMARKT. The undertaking started to work with TEKNOSA in May 2020, the parties agreed on the provisions of the agreement, but they failed to sign the agreement due to the pandemic outbreak. On the other hand, BSH informed the Authority that the agreement with MEDIAMARKT expired, but even though the two parties came to an understanding, the new agreement could not be signed due to the pandemic. Currently, the parties are working without an agreement, and the sales services are conducted in accordance with the provisions of the expired agreement, in principle. The agreements signed with MEDIAMARKT include some provisions on the sales electronic markets can make over the internet. The agreement signed with MEDIAMARKT has the provision (.....) under the heading (.....). The provision of subjecting the sale of the contract products over the internet to BSH's consent without establishing any objective criteria risks preventing passive sales.
- (399) In addition, in its *Pierre Fabre* decision, the ECJ emphasized that, unless based on "an objective justification," behavior aimed at establishing a selective distribution system and ensuring its effectiveness would restrict competition by object.<sup>163</sup> As seen in the Competition Board decisions referenced in the previous sections, the Board's case-law rules that restrictions of this nature would take the agreement out of the scope of the block exemption on the grounds that they restrict passive sales. Consequently, the provision in the agreement signed with MEDIAMARKT by which MEDIAMARKT's sales over the internet are subjected to BSH's consent would violate Article 4 of the Act no 4054 and could not benefit from the block exemption under the Communiqué no 2002/2. However, it would be appropriate to conduct the individual exemption assessment for the relevant restriction, within the framework of the investigation initiated with the Board decision dated 09.09.2021 and no 21-42/617-M.

### G.9. General Assessment

- (400) In light of the information and documents as well as the observations and assessments included above, the selective distribution agreements comprising the subject matter of the application must be addressed under Article 4 of the Act no 4054. Article 171 of the Vertical Guidelines state that pure qualitative selective distribution systems can be considered to fall outside the scope of Article 4 of the Act no 4054 if they meet certain requirements, since they would not lead to restrictive effects on competition. The first of these requirements is that a selective distribution system must be necessary in order to protect the nature and quality of the relevant product and to ensure its proper use, in other words, there must be a justified necessity due to the nature of the product; the second one is that the redistributors must be selected in accordance with quality-based objective criteria which must be applied for all potential resellers uniformly and non-discriminately; and the third one is that the criteria imposed must not go beyond what is necessary. The relevant agreement was assessed for the aforementioned requirements and it was found that they were not fulfilled for the agreement examined. Consequently, an exemption examination was conducted for the agreement which is in violation of Article 4 of the Act no 4054.
- (401) The exemption examination scrutinized under separate sections the circular appended to the dealership contract as well as certain provisions of the dealership contract and the contract signed with MEDIAMARKT.

<sup>163</sup>Case C-439/09 [2011], *Pierre Fabre*, para. 39.

(402) Under the scope of this file and with relation to the circular concerned, first it must be noted that the prohibition of sales through online marketplaces could have important outcomes for suppliers, authorized dealers and consumers. For that reason, two surveys aimed at consumers and dealers were conducted under the file, in addition to which information was requested from and interviews were held with BSH, competing suppliers, BSH dealers and dealers of the competing suppliers and the relevant marketplaces. First of all, it was found that the restriction of sales through online marketplaces could be considered a violation of the “equivalency principle” set out in the Vertical Guidelines and a restriction on the active and passive sales of the selective distribution system members to final users, and thus the circular in question could not be granted a block exemption. Afterwards, all information, documents and evidence collected within the framework of the file were analyzed to conduct individual exemption assessment, resulting in the following assessments:

- BSH’s justification of efficiency gains did not serve the purpose of preventing free-riding or protecting the efficiency of the distribution system and the brand image, in other words, the restriction in question did not serve the purpose of “ensuring efficiency gains,”
- Prohibiting sales through online marketplaces were far from leading to consumer benefit in the current environment where internet shopping is used widely,
- The total prohibition of sales by authorized sellers through online platforms has the potential to negatively impact competition, since it can reduce intra- and inter-brand competition, prevent market entries, prevent authorized sellers from accessing a significant portion of the internet channel, and distort competition to the detriment of relatively smaller and weaker,
- BSH had other, alternative ways of reaching the goals of the relevant circular, and the practice concerned could make it easier for the suppliers to control the resale prices of authorized sellers,

with the conclusion that the restriction in the relevant circular could not be granted individual exemption.

(403) The examinations conducted also found that the dealership contracts introduced a “prohibition on active sales to final users,” “exclusive customer allocation,” and “obligation of exclusive buying” on the member dealers of the selective distribution system. Since these provisions of the dealership agreements in question would take the agreements out of the scope of the block exemption, the agreements were unable to benefit from block exemption. They also could not receive individual exemptions since they did not fulfill the requirements for individual exemption. At the same time, it was found that the electronics store agreement placed a requirement to “get prior consent from BSH for internet sales” on MEDIAMARKT. In this context, since the relevant provision of the agreement is among those restrictions which makes an agreement ineligible for block exemption, it was concluded that the provision could not benefit from block exemption and the individual exemption assessment concerning the relevant restriction should be made within the scope of the investigation launched with the Board Decision dated 09.09.2021 and no 21-42/617-M.

(404) As a result, it was found that the relevant provisions in BSH’s current dealership agreements that establish the distribution model as well as those in the electronic market agreements and the circular supplementing the dealership contracts were in

violation of Article 4 of the Act no 4054. It was concluded that the electronic market agreements could not benefit from the block exemption due to the provision that renders them out of scope, that dealer contracts and their supplementary circular could not benefit from the block exemption or the individual exemption under Article 5 of the Act no 4054.

## **H. CONCLUSION**

(405) In accordance with the report prepared and the contents of the file under examination, in relation to the application submitted by BSH Ev Aletleri ve Sanayi Ticaret A.Ş., it was decided UNANIMOUSLY that

- The agreements between BSH Ev Aletleri ve Sanayi Ticaret A.Ş. and its authorized dealers as well as the notified circular included provisions in violation of Article 4 of the Act no 4054 and therefore the agreements concluded with authorized dealers and the notified circular could not be granted a certificate of negative clearance,

- The arrangements in the supplementary circular to the dealership agreements between BSH Ev Aletleri ve Sanayi Ticaret A.Ş. and its authorized dealers which prescribes a complete ban on the sales made by authorized dealers of BSH Ev Aletleri ve Sanayi Ticaret A.Ş. through the platforms known as online marketplaces and which introduces various sanctions on those authorized dealers that do not obey the relevant prohibition was out of the scope of the block exemption under the Communiqué no 2002/2 and could not benefit from individual exemption since they did not fulfill any of the requirements listed under Article 5 of the Act no 4054,

- The provisions in the dealership agreements signed between BSH Ev Aletleri ve Sanayi Ticaret A.Ş. and its dealers, placing restrictions on the active or passive sales by the members of the selective distribution system operating at the retail level to final users, allocating exclusive customers and preventing sales and purchases between the members of the selective distribution system by introducing an exclusive buying obligation on authorized dealers did not fall within the scope of the block exemption under the Communiqué no 2002/2 and could not benefit from individual exemption since none of the requirements listed under Article 5 of the Act no 4054 were met,

with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision.

President  
Birol KÜLE

Şükran KODALAK

(On Leave)  
Ahmet ALGAN

Hasan Hüseyin ÜNLÜ

Ayşe ERGEZEN

Cengiz ÇOLAK