From the Presidency of the Competition Authority

DECISION OF THE COMPETITION BOARD

File number: 2021-2-038 **(Acquisition)**

Decision Number: 21-43/639-318
Decision Date: 16.09.2021

A. MEMBERS IN ATTENDANCE

The Chairman: Birol KÜLE
Members: Şükran KODALAK, Ahmet ALGAN, Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN, Cengiz ÇOLAK

B. RAPPORTEURS: Osman Tan ÇATALCALI, Harun ÇALI

C. NOTFYING PARTY: - The Kraft Heinz Company
Representatives: Atty. Hakan ÖZGÖKÇEN, Atty.Sinan DİNİZ, Atty. Ceren GÖKTÜRK, Av Cem BURAN
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(1) **D. SUBJECT OF THE FILE: The acquisition of the sole control of Assan Gıda Sanayi ve Ticaret A.Ş. and therefore its subsidiary Ege Assan Gıda Pazarlama Sanayi ve Ticaret A.Ş. by The Kraft Heinz Company through Kraft Heinz NoMa B.V.**

(2) **E. PHASES OF THE FILE:** The Acquisition Preliminary Examination Report dated 14.09.2021 and numbered 2021-2-038/Öİ was prepared depending on the notification, which entered the Competition Authority's (the Authority) records on 22.06.2021 with the number 18810 and was completed with the letter dated 14.09.2021 and no 21170 finally. The Report was discussed and concluded.

(3) **F. RAPPORTEUR OPINION:** The Rapporteur's Report about this acquisition states that the acquisition would not result in a significant lessening of effective competition particularly in the form of creating or strengthening a dominant position.

G. EXAMINATION AND ASSESSMENT

(4) In the application made by The Kraft Heinz Company (KRAFT HEINZ), which entered the Competition Authority records on 22.06.2021 with the number 18810, a request was made that the acquisition of the sole control of Assan Gıda Sanayi ve Ticaret A.Ş. (ASSAN GIDA) and Ege Assan Gıda Pazarlama Sanayi ve Ticaret A.Ş. (EGE ASSAN) by KRAFT HEINZ through Kraft Heinz NoMa B.V. be allowed within the framework of the Act no 4054 on the Protection of Competition (the Act no 4054) and the Communiqué no 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (the Communiqué no 2010/4). Kibar Holding A.Ş. (KİBAR HOLDİNG) and Salih Serdar KOÇTÜRK are shareholders of ASSAN GIDA and ASSAN GIDA owns the entire shares of EGE ASSAN.

(5) Within the framework of the file, retailers such as Yeni Mağazacılık A.Ş. (A-101), BİM Birleşik Mağazaları A.Ş. (BİM), Carrefoursa Carrefour Sabancı Tic. Merkezi A.Ş. (CARREFOURSA), Hakmar Mağazacılık Ltd. Şti. (HAKMAR), Metro Grosmarket Bakırköy Alışveriş Hizmetleri Ticaret Ltd. Şti (METRO), Migros Ticaret A.Ş. (MİGROS) and ŞOK Marketler Ticaret A.Ş. (ŞOK), as well as undertakings with tomato processing facilities such as Global Salça Gıda Tarım Sanayi ve Ticaret A.Ş. (AKFA), Burcu Gıda A.Ş. (BURCU), Salsa Tarım Ürünleri Salça ve Salamura San. Tic. A.Ş. (SALSA), TUKAŞ Gıda San. ve A.Ş. (TUKAŞ), Yonca Gıda San. İç ve Dış Tic. A.Ş. (YONCA), TAT Gıda San. A.Ş. (TAT) ve Unilever San. ve Tic. Türk A.Ş.

(UNILEVER), Acemoğlu Gıda San. Tic. Ltd. Şti. (ÖNCÜ), Pınar Süt Mamulleri A.Ş. (PINAR), Tamek Gıda ve Konsantre Sanayi ve Ticaret A.Ş. (TAMEK), Çelenlioğlu Gıda Turizm İnşaat Sanayi ve Ticaret Ltd. Şti. (İPEK) and bigger buyers of ASSAN GIDA in the on-trade consumption channel such as Fasdat Gıda Dağıtım Sanayi ve Ticaret A.Ş.[1] (FASDAT) and Köfteci Yusuf A.Ş. (KÖFTECİ YUSUF) provided information. On the other hand, (.....) sent an objection petition about the transaction in question, which entered the Authority records on 10.08.2021 with the number 20167.

G.1. Parties

G.1.1. KRAFT HEINZ

(6) Founded in US, KRAFT HEINZ is the final public main company of Kraft Heinz Group. KRAFT HEINZ carries out activities in the following product groups both on local and global level: flavorings, cheese, dairy products, shelf stable food, frozen and chilled products, meat products, drinks and baby formula. KRAFT HEINZ's main brands are Kraft, Heinz, Oscar Mayer and Ore-Ida.

(7) KRAFT HEINZ operates in Türkiye with its 100% subsidiary Heinz Gıda A.Ş. under "Heinz" brand in the sale and marketing of ketchup, mayonnaise, sauces and canned food. KRAFT HEINZ does not have a private label product in Türkiye. KRAFT HEINZ does not have a production facility in our country. It imports products that are produced in other countries such as the Netherlands and Egypt to Türkiye.

(8) It is stated in the notification form that KRAFT HEINZ is a publicly held company and is controlled neither by a person or an economic entity. The table below shows information about KRAFT HEINZ's shareholders.

Table 1- KRAFT HEINZ's Shareholder Structure

Shareholders	Shareholding Rate (%)
Berkshire Hathaway	(.....)
3G Global Food Holdings	(.....)
Other (publicly held)	(.....)
TOTAL	100.0

G.1.2. ASSAN GIDA and EGE ASSAN

(9) Founded in 1998, ASSAN GIDA operates in the food sector. It has two factories, one in Susurluk (production) and one in İzmir (packaging). With its brands Kingtom, Colorado and Oba, ASSAN GIDA operates in the following markets: (i) ketchup, (ii) mayonnaise, (iii) tomato paste and (iv) flavorings market with sauces segments. ASSAN GIDA makes contract manufacturing for KRAFT HEINZ's mayonnaise products and produces private label products for retailers such as BİM and METRO by way of subcontracting. In addition, ASSAN GIDA provides products to fast food chain restaurants such as Burger King, Popeyes, KÖFTECİ YUSUF and Arby's. The Notification Form informs that a significant part of ASSAN GIDA's sales in Türkiye in 2020 is composed of activities related to private label products.

(10) It is understood from the information sent by the parties that ASSAN GIDA, with its (.....)-ton tomato processing capacity, has (.....)% of the tomato paste production capacity in our country, which is estimated to be 900,000 tons. According to the Notification Form, although ASSAN GIDA's capacity utilization rate varies year to year, it is about (.....)%.

(11) EGE ASSAN was founded in 2010 in İzmir Free Zone and its shares are entirely owned by ASSAN GIDA. It has activities only in repackaging of mass tomato paste and other products

[1] The undertaking provides supply management service to the restaurants of brands such as Burger King, Sbarro, Popeyes, Arby's and Usta Dönerci.

purchased from ASSAN GIDA and/or third parties. EGE ASSAN does not engage in production activities and does not have any production capacity either.

(12) ASSAN GIDA's shareholders are Kibar Holding A.Ş. (KİBAR HOLDİNG) (with (…..)% shares) and Salih Serdar KOÇTÜRK (with (…..) % shares). KİBAR HOLDİNG has the final control of ASSAN GIDA and EGE ASSAN.

G.2. The Relevant Market and the Affected Market

(13) Being a tool to define the limits of the competition between undertakings, market definition helps identifying the competition conditions that undertakings face. It is necessary to define the market with product and geographic dimensions to reveal the competitors which have power to limit the behavior of undertakings examined and prevent them from behaving independently from efficient competitive pressure. However, as stated clearly in paragraph 20 of the Guidelines on the Definition of the Relevant Market (Relevant Market Guidelines), in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be made.

G.2.1. The Relevant Product Market

(14) With respect to the definition of the relevant product market, article 5 of the Notification Form attached to the Communiqué no 2010/4 states

> *"In order to define the relevant product market, the market consisted of all goods and services which are regarded, by consumers, as substitutes by reason of price, intended purposes and characteristics is taken into account; and other factors that may affect the defined market are also evaluated."*

and emphasizes demand substitution. Paragraph 13 of the Relevant Market Guidelines includes the following expression: *"Supply substitution may also be taken into consideration where it has equivalent effect to demand substitution".*

(15) In acquisitions, relevant markets are defined by taking the activities of the acquired undertaking into account. The acquired undertaking in the acquisition in question, ASSAN GIDA, is active in tomato paste, pepper paste, ketchup, mayonnaise and sauces areas.

G.2.1.1. Tomato Paste and Pepper Paste

(16) Tomato paste is produced by cleaning out tomatoes from skin and stem, putting tomatoes under certain processes and drying them. Being the most produced crop in our country[2], tomato is produced generally in the Aegean, Southern Marmara, Mediterranean and South Eastern Anatolia Regions. According to the data of the Ministry of Agriculture and Forestry, tomato production in 2020 corresponds to 13.2 million tons[3].

(17) Tomato paste is used both for cooking by consumers and for producing many other products such as ketchup and pepper paste as a raw material. It is generally accepted that one kilo of tomato paste is produced out of 6.5-7 kg tomatoes.

(18) 20% of the tomatoes produced in our country is processed and the remaining amount is

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[2] https://uib.org.tr/tr/kbfile/yas-meyve-sebze-sektor-raporu, Accessed: 20.08.2021

[3]https://arastirma.tarimorman.gov.tr/tepge/Belgeler/PDF%20Tar%C4%B1m%20%C3%9Cr%C3%BCnleri%20Piyasalar%C4%B1/2021-Haziran%20Tar%C4%B1m%20%C3%9Cr%C3%BCnleri%20Raporu/Domates,%20Haziran-2021,%20Tar%C4%B1m%20%C3%9Cr%C3%BCnleri%20Piyasa%20Raporu,%20TEPGE.pdf, Accessed: 20.08.2021

consumed fresh. 80% of the processed tomatoes is used for producing paste, 15% is used for producing canned food and the remaining amount is used for producing other products such as ketchup and tomato juice[4].

(19) In the report prepared by the Southern Aegean Development Agency in October 2020[5], it is stated that there are 107 paste production facilities in Türkiye; the paste production capacity is 900,000 tons; production amounts to 460,000 tons and capacity utilization rates vary between 50-60%[6].

(20) Depending on the information given by undertakings that have tomato processing facilities, the table below shows the estimated cost of a new paste production facility with a medium-sized tomato processing capacity and when this cost can be met.

Table 2- Information about the Cost of Establishing a Medium-sized Tomato Processing Facility

Undertakings	Estimated cost of establishing a medium-sized tomato processing facility	Estimated time for the facility to come to breakeven point
AKFA[7]	10-12 million USD	10-20 years
ASSAN GIDA	7 million USD	3 years
BURCU[8]	7.7 million USD	10.5 years
SALSA	10 million USD	10 years
TAT[9]	30 million Euro [10]	6-7 years
TUKAŞ[11]	23.5 million USD[12]	5-6 years
YONCA	7 million USD	8 years
Source: Information obtained from undertakings		

(21) It is understood from the table above that a new tomato paste production facility with medium-sized capacity is estimated to cost 7 to 12 million USD, notwithstanding the differences among undertakings, and such investment can pay off in 5 to 12 years.

(22) Undertakings' tomato paste production capacity and production amounts in the last three years are given below:

Table 3 - Tomato Paste Producers' Production Capacity and Amount

	Production capacity (ton)			Production amount (ton)			Capacity utilization rate (%)
	2018	2019	2020	2018	2019	2020	2020
AKFA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ASSAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

[4]http://www.megep.meb.gov.tr/mte_program_modul/moduller/Ket%C3%A7ap%20ve%20Mayonez%20%C3%9Cretimi.pdf, Accessed: 23.08.2021

[5] https://www.yatirimadestek.gov.tr/pdf/assets/upload/fizibiliteler/mugla-ili-butik-meyve-suyu-uretimi-on-fizibilite-raporu2020.pdf

[6] Although this rate does not overlap with the capacity utilization rates given in Table 3, the reason why this capacity utilization rate is taken into account is explained above.

[7] AKFA informed that they calculated the estimated cost by assuming an undertaking with their own annual production capacity (.....) tons.

[8] BURCU informed that they calculated the estimated cost by assuming an undertaking with an annual production capacity of (.....) tons.

[9] TAT informed that they calculated the estimated cost by assuming an undertaking with an annual production capacity of (.....) tons.

[10] Estimated cost except the land

[11] TUKAŞ informed that they calculated the estimated cost by assuming an undertaking with their own annual production capacity (.....) tons.

[12] Estimated cost except the land, including mayonnaise

İPEK[13]	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ÖNCÜ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SALSA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YONCA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total[14]	311,927	325,886	325,886	146,821	243,160	310,810	95[15]
Total except ASSAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information obtained from undertakings							

(23) It is inferred from the table that the capacity utilization rates of big tomato paste producers in our country in 2020 are generally[16] above 60%. However, it is understood from the information given by undertakings that there may be significant differences between their official capacity and production. An example of this fact is the letter sent by TUKAŞ. TUKAŞ's capacity utilization rate in 2020 is (.....)% according to Table 3. In its letter TUKAŞ makes the following explanation:

"Our tomato paste production facility is shown as (.....) in our explanations as indicated in our Capacity Reports. Capacity reports make calculations on the basis of certain campaign periods and the number of shifts. (For instance, 60 days, 40 days 24 hours, 20 days 8 hours). However, it is possible to produce paste above or below capacity in years depending on the tomato volume, efficiency and seasonal conditions.

2020 is the year, when the industrial tomato cultivation was the highest, with 2,450,000 tons since 2015. Moreover, our facility produced a record of total (.....) tons of tomato paste due to the length of campaign period, raw material productivity and no failures in raw material supply. (.....) tons were repack from tomato paste semi-finished product coming from 2019 and (.....) tons were produced from fresh tomatoes.

Those explanations show that paste production facilities have the capacity to produce much more paste than stated in capacity reports. Therefore, it is more appropriate to take into account the capacity and capacity utilization rates shown by the South Aegean Development Agency report dated October 2020.

(24) ASSAN GIDA's another business branch is pepper paste. Pepper paste is produced through a process similar to tomato paste but it is different in the eye of consumers in terms of the intended use and characteristics. However, it is possible to consider supply substitution with respect to the production of those paste types.

(25) Although there are Board decisions[17] which define tomato paste as a different relevant market, there is not an evaluation about pepper paste. Within the framework of the explanations above, it is possible to define the relevant market narrowly as tomato paste market and pepper market in terms of paste, or broadly as paste market due to supply substitution. However, since the transaction does not create competitive concerns under alternative market definitions, as will be explained later, it is not necessary to make an exact relevant market definition.

G.2.1.2. Ketchup and Mayonnaise

[13] İPEK's ketchup production amount refers to the period between 01.07.2020 and 30.06.2021

[14] The undertakings shown in this table are the biggest ones. The report prepared by Southern Aegean Development Agency in October 2020 indicates that the number of total enterprises is 107.

[15] When TUKAŞ's capacity utilization rate is not included in the said rate, the capacity utilization rate for tomato paste falls to 79%.

[16] İPEK is excluded from this generalization because it could not provide integrated data for 2020.

[17] Competition Board decisions dated 17.09.2014 and no 14-34/672-297, dated 05.09.2000 and no 00-33/355-199.

(26) The table below summarizes the responses of AKFA, BURCU, İPEK, ÖNCÜ, PINAR, SALSA TAMEK, TAT, TUKAŞ, UNILEVER and YONCA about ketchup and mayonnaise markets:

Table 4- Information about Production by Paste and Ketchup Producers and Their Opinions about the Transaction

		AKFA	İPEK	ÖNCÜ	SALSA	YONCA
Whether mayonnaise is produced		(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise production capacity (Ton)	2018	(.....)	(.....)	(.....)	(.....)	(.....)
	2019	(.....)	(.....)	(.....)	(.....)	(.....)
	2020	(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise production amount (Ton)	2018	(.....)	(.....)	(.....)	(.....)	(.....)
	2019	(.....)	(.....)	(.....)	(.....)	(.....)
	2020	(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise CUR[18]	2020	(.....)	(.....)	(.....)	(.....)	(.....)
Estimated cost of a new mayonnaise production facility		-	(.....)	(.....)	(.....)	(.....)
Estimated time for a new mayonnaise production facility to come to breakeven point		-	(.....)	(.....)	(.....)	(.....)
Paste purchasing amount for ketchup production (Ton)	2018	(.....)	(.....)	(.....)	(.....)	(.....)
	2019	(.....)	(.....)	(.....)	(.....)	(.....)
	2020	(.....)	(.....)	(.....)	(.....)	(.....)
Provider of the paste used in ketchup production		-	(.....)	(.....)	(.....)	(.....)
Ketchup production capacity in 2020 (Ton)		-	(.....)	(.....)		(.....)
Ketchup production amount in 2020 (Ton)		-	(.....)[19]	(.....)		(.....)
Ketchup production CUR in 2020 (Ton)		-	(.....)	(.....)		(.....)
Whether a medium-sized producer of tomato paste can produce private label ketchup/branded ketchup at a low cost		(.....)	(.....)	(.....)	(.....)	(.....)
Whether KRAFT HEINZ and ASSAN GIDA have intellectual property rights that will complicate/make more costly a new entry to ketchup and mayonnaise markets		(.....)	(.....)	(.....)	(.....)	(.....)
Whether the acquisition leads to competitive concerns		(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information obtained from undertakings						

Table 5- Information about Production by Paste and Ketchup Producers and Their Opinions about the Transaction

		BURCU	PINAR	TAT	TUKAŞ	TAMEK	UNILEVER
Whether mayonnaise is produced		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise production capacity (Ton)	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)[20]
	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise production amount (Ton)	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Mayonnaise CUR	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

[18] Abbreviation for capacity utilization rate

[19] İPEK's ketchup production amount covers the period between 01.07.2020 and 30.06.2021

[20] UNILEVER stated that Upfield İstanbul Gıda Üretim A.Ş. (UPFIELD) produces ketchup, mayonnaise and gourmet sauces for UNILEVER by means of contract manufacturing; thus, UNILEVER does not have a production facility. Moreover, UPFIELD's capacity for producing products such as ketchup, mayonnaise and gourmet sauces is (.....); when Saturdays are included, capacity goes up to (.....). Therefore, production and capacity information given by UNILEVER is not clear.

Estimated cost of a new mayonnaise production facility		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Time needed for a new mayonnaise production facility to come to breakeven point		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Paste purchasing amount for ketchup production (Ton)	2018	-		(.....)	(.....)	(.....)	(.....)
	2019	-		(.....)	(.....)	(.....)	(.....)
	2020	(.....)		(.....)	(.....)	(.....)	(.....)
Provider of the paste used in ketchup production		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Ketchup production capacity in 2020 (Ton)		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Ketchup production amount in 2020 (Ton)		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Ketchup production CUR in 2020 (Ton)		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Whether a medium-sized producer of tomato paste can produce private label ketchup/branded ketchup at a low cost		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Whether KRAFT HEINZ and ASSAN GIDA have intellectual property rights that will complicate/make more costly a new entry to ketchup and mayonnaise markets		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Whether the acquisition leads to competitive concerns		(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information obtained from undertakings							

(27) Depending on the information given in the table above, the following points are concluded:

- For ketchup,
  1. A medium-sized producer of tomato paste can produce private label ketchup/branded ketchup.
  2. A large part of the undertakings do not know whether KRAFT HEINZ has intellectual property rights that make a new entry to ketchup and mayonnaise markets more complicated/costly.
  3. Ketchup producers' capacity utilization rates in 2020 are low (between 9% and 64%).
- For mayonnaise,
  1. Establishment of an average new mayonnaise production facility costs approximately 2 to 5 million Euro.
  2. It will take 3 to 5 years for such facility to reach the breakeven point.
  3. Mayonnaise producers' capacity utilization rates are low (between 9% and 76%).

It is seen that six of the undertakings, which were asked for opinions related to the acquisition, do not have competitive concerns about those markets whereas three of them have.

(28) At this point, it is necessary to analyze ketchup and mayonnaise downstream markets in depth. There are different stages in the production chain from the production or import of ketchup and mayonnaise to their delivery to the final consumer. First is the supply stage for both branded and private label products. At this stage, produced or imported products are

supplied to the retailers or on-trade consumption points. At the second stage, those products are offered to the final consumer via the retail or the on-trade consumption channel. First, the supply market, then the retail and the on-trade consumption market will be discussed below.

(29) The purchase and sale processes for ketchup and mayonnaise are very similar. Therefore, the relevant markets for ketchup and mayonnaise are explained together.

- Ketchup/Mayonnaise Supply

(30) As stated before, ASSAN GIDA, which is the acquired party in the acquisition, produces branded and private label products via subcontracting. It sells those products to undertakings operating both in the retail channel and on-trade consumption channel.

(31) Although branded and private label products are substitutable for consumers, production processes as well as sale processes for those products are different. Those differences can be summarized as follows:

- Branded products:
  i. They are produced based on the formula specified by ketchup producers.
  ii. The producer may need research and development activities (R&D), marketing and sales activities.
  iii. Their sales prices are higher than private label products.
- The producer recommends sales prices to resellers (sales points).
- Private label products:
  i. Retailers and on-trade consumption points commission producers, who are selected by means of tenders or bargaining, to produce those products via subcontracting.
  ii. Producers may change after the agreement has expired.
  iii. The producer does not need high R&D, marketing and sales activities.
  iv. They are cheaper than branded products.
  v. Retailers determine the prices.

(32) Branded product producers may choose to produce private label products to use their idle capacity. Since those products do not lead to costs such as R&D, marketing and sales, they can easily start producing private label products. It is understood that some of the branded ketchup/mayonnaise producers also produce private label products. However, it is not possible for private label manufacturers to start producing branded products in a short time since R&D, marketing and sales costs are high for branded products and creating and promoting a brand require time and resources. Therefore, it is possible to talk about only unilateral supply substitution in terms of the production of private label and branded products.

(33) As a result of the explanations made about ketchup/mayonnaise supply, it is appropriate to analyze the supply market by dividing it into downstream markets as private label products and branded products. Nevertheless, it is deemed unnecessary to make an exact market definition as the transaction does not create competitive concerns under even the narrowest market definition.

(34) A distinction is not made between the retail channel and on-trade consumption in terms of ketchup/mayonnaise supply because neither the production process nor the contents of the supplied products change depending on whether they are supplied to the retail channel or the on-trade consumption channel.

(35) In order to show the impact of the acquisition on supply market better, market shares based on sales volume and sales value related to the producers of branded products and private

label products in Türkiye in 2020 are shown in the chart below:

Chart 1: Undertakings' market shares based on sales volume with a breakdown of private label products and branded products in ketchup market (%, 2020)

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

Chart 2: Undertakings' market shares based on sales value with a breakdown of private label products and branded products in ketchup market (%, 2020)

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

Chart 3: Undertakings' market shares based on sales volume with a breakdown of private label products and branded products in the mayonnaise market (%, 2020)

Market shares (%, 2020)

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

Chart 4: Undertakings' market shares based on sales value with a breakdown of private label products and branded products in the mayonnaise market (%, 2020)

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

- **The Ketchup/Mayonnaise Market**

(36) The second stage of the production chain is the delivery of ketchup and mayonnaise to the final consumer. This stage is divided into two as the retail (off-trade) channel and the on-trade channel because there are important differences between those two channels and they are not substitutes. The differences between those channels in terms of consumers are as follows:

- The retail channel
  - i. Consumers themselves buy those products in return for a price.
  - ii. Consumers prefer private label or branded products according to their taste and budget.
  - iii. Branded product producers make branded products' formulas whereas retailers make private label products' formulas.
  - iv. Products are consumed in a place different from the sales point.
- The on-trade consumption channel
  - i. Consumers usually do not pay for ketchup and mayonnaise.
  - ii. Consumption amount at those points usually do not change according to the quality/brand of ketchup and mayonnaise.
  - iii. Certain undertakings which operate in this channel mostly commission ketchup producers to produce ketchup and mayonnaise products as private label products on the basis of the formula they make.

(37) The retail channel and the on-trade consumption channel are explained below.

- The Retail (Off-trade) Channel Ketchup/Mayonnaise Market

(38) Both branded and private label ketchup and mayonnaise products are supplied to the consumer in the retail channel. As mentioned in detail under the scope of the explanations about ketchup/mayonnaise supply, there are important differences in product development,

production and marketing for suppliers. Although prices differ[21], consumers may see those products as substitutes in terms of their intended use and qualifications. It is thought that private label and branded products are in the same relevant market; however, an exact market definition is not deemed necessary in terms of the retail channel because the transaction does not lead to competitive concerns within the framework of alternative relevant market definitions.

- The On-trade Consumption Channel Ketchup/Mayonnaise Market

(39) Like the retail channel, both branded and private label ketchup and mayonnaise products are offered to on-trade consumption points and thus to consumers who receive services from those points in the on-trade consumption channel. However, consumers in the on-trade consumption channel do not demand ketchup/mayonnaise essentially. In this channel, consumers demand ketchup/mayonnaise in addition to the product they order to flavor that product. Generally, ketchup/mayonnaise is offered to the consumer free of charge. In other words, consumers do not bear an obvious cost for consuming ketchup/mayonnaise in on-trade consumption points. Thus, it is the on-trade consumption point who demands the product essentially and who pays for the product. That means on-trade consumption point makes a decision at the purchasing stage, not the consumer, which excludes emotional factors in the decision making process and brings the focus on rational factors such as price and quality.

(40) As a result, it is concluded that decision makers in on-trade consumption points and indirectly consumers see private label products and branded products as substitutes. Therefore, although it is thought that private label and branded products are in the same relevant market in terms of the on-trade consumption channel, an accurate market definition is not deemed necessary in terms of the retail channel because the transaction does not lead to competitive concerns within the framework of alternative relevant market definitions.

(41) Market shares based on sales volume and sales value of big undertakings which operate in retail and on-trade consumption channels at possible breakdowns in 2020 are given below.

Chart 5: Undertakings' market shares based on sales volume in the on-trade consumption channel and the retail channel in the ketchup market, with a breakdown of private label and branded ketchup (%, 2020)

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

Chart 6: Undertakings' market shares based on sales value in the on-trade consumption channel and the retail channel in the ketchup market, with breakdown of private label and branded ketchup (%, 2020)

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

Chart 7: Undertakings' market shares based on sales volume in the on-trade consumption channel and the retail channel in the mayonnaise market, with breakdown of private label and branded ketchup (%, 2020)

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

Chart 8: Undertakings' market shares based on sales value in the on-trade consumption channel and the retail channel in the mayonnaise market, with breakdown of private label and branded ketchup (%, 2020)

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

[21] The differences in prices are important for determining whether products are close competitors rather than whether the products are in the same market. The details will be explained below.

G.2.1.3. The Sauces Market

(42) Another market where activities of the parties overlap is the sauces market. This market is divided into seven downstream markets: mustard (mustard, Dijon mustard, honey mustard), hot sauces (hot chili sauce, chili garlic sauce), Asian sauces (sweet chili sauce, soy sauce), other sauces (HP sauce, HP barbecue sauce, HP honey barbecue sauce, garlic sauce, burger sauce, meat sauce, Worcestershire sauce), salad sauces (caesar sauce, thousand island sauce, yogurt salad sauce), pasta sauces (Arrabiata sauce, Napolitana sauce, vegetable sauce, basilico sauce) and Tex-Mex sauces (Mexicana sauce, salsa sauce, taco sauce).

(43) While both undertakings operate in mustard, hot sauces and other sauces markets, KRAFT HEINZ is operating alone in Asian Sauces whereas ASSAN GIDA is operating alone in salad sauces, pasta sauces and Tex-Mex sauces markets.

(44) The parties indicate the following points:

- Sauces can be divided into two depending on the production stage and main compounds: “emulsified white sauces” and non-emulsified red sauces”.
- However, there are no differences between the said sauces in supplying those to the market.
- The production process is the same for every sauce category.
- The differences between flavors stem from the recipes and contents.
- Therefore, supply substitutability among sauces is high.
- Types of sauces are highly substitutable in terms of consumption because consumer preferences change according to seasons and personal taste.

G.2.2. Affected Markets

(45) In the Notification Form attached to the Communiqué no 2010/4, the affected markets are defined as follows:

“Markets which are likely to be affected by the transactions and

a) Where two or more of the parties are active in the same product market (horizontal relationship),

b) Where at least one of the parties is engaged in commercial operations in the downstream or upstream of any relevant market in which another party is active (vertical relationship).”

(46) The evaluations about affected markets made on the basis of each possible relevant product market which is addressed within the framework of the activities of the acquired party, ASSAN by taking into account also the activities of the acquiring party, KRAFT HEINZ, are given below.

- Tomato Paste and Pepper Paste

(47) ASSAN GIDA and KRAFT HEINZ produce paste at the global level. While ASSAN GIDA produces tomato paste, which is the main raw material of ketchup, in Türkiye, KRAFT HEINZ do not produce tomato paste in Türkiye. Thus, there is no overlap in Türkiye in terms of the parties’ activities concerning tomato paste and pepper paste.

(48) KRAFT HEINZ produces tomato paste, which is the raw material of ketchup, abroad. KRAFT HEINZ produces ketchup abroad, too. There is no supply relationship between the parties in terms of tomato paste. Since tomato paste is the main raw material for ketchup, there is a vertical overlap between the parties’ activities in the tomato paste market. The first affected

market is the “tomato paste market”[22].

-The Ketchup/Mayonnaise Supply Market

(49) While ASSAN GIDA is operating in both private label and branded ketchup/mayonnaise supply, KRAFT HEINZ is only operating in branded ketchup/mayonnaise supply. As stated in the relevant market section in detail, there is a unilateral supply substitution in the said private label and branded products, it is appropriate to analyze the supply of those products as different product markets since this will reflect an alternative definition where competition concerns are focused.

(50) In terms of the supply of private label ketchup/mayonnaise, there is no vertical or horizontal overlap between the parties. However, this market should be considered as a market where the transaction may have a significant impact within the framework of article 5.4 of the Notification Form[23] attached to the Communiqué no 2010/4, since a private label producer with a very high production capacity and market share in Türkiye is transferred to a branded ketchup/mayonnaise producer which does not produce private label products in Türkiye. Consequently, “private label ketchup/mayonnaise supply market” will be considered in terms of the transaction’s effects.

(51) In terms of branded ketchup/mayonnaise supply, there are not any horizontal overlaps between the parties. As a result, “branded ketchup/mayonnaise supply” markets are considered as affected markets.

- The Retail (Off-trade) Channel Ketchup/Mayonnaise

(52) The acquired party, ASSAN GIDA, carries out activities in private label ketchup/mayonnaise market whereas the acquiring party, KRAFT HEINZ carries out activities in branded ketchup/mayonnaise market in the retail channel. An exact relevant market definition is not made in terms of the retail channel. In case private label and branded products are evaluated in different markets, there will not be horizontal overlaps in parties’ activities; thus it is appropriate to consider the affected market as “the retail channel ketchup/mayonnaise market” in a way to cover private label and branded products together and to evaluate the alternative market where competitive concerns are concentrated[24].

The On-trade Consumption Channel Ketchup/Mayonnaise

(53) The acquired party, ASSAN GIDA, carries out activities in private label products in the on-

[22] It is known that pepper paste is sometimes used as a raw material in ketchup in relatively small amounts. However, it is not necessary to define pepper paste as an affected market because the amount of pepper paste used in the production of ketchup is negligible, ASSAN GIDA’s share in pepper paste is (.....)% as sales volume and (.....)% as sales value and third parties who submitted opinion about the transaction did not mention about possible competitive concerns related to pepper paste market.

[23] Article 5.4.(c) of the Notification Form gives examples of markets where the transaction may have a significant impact: “Where any of the transaction parties in a product market with the nature of a closely-related neighboring market wherein another transaction party is active and where the individual or joint market shares of the parties exceeds twenty-five per cent in any of these markets. If the products are complementary or if they fall into a product range which is purchased by the same customer group for the same final use, the product markets are considered closely-related neighboring markets.” On the basis of the notified transaction, the following conclusions are made: Private label and branded product supply markets can be regarded as neighboring markets. Although not affected, the said markets should be considered as markets where the notified transaction may have a significant effect because ASSAN’s market share in private label ketchup supply is (.....)% and its market share in private label mayonnaise supply is (.....)%.

[24] The European Commission, in its COMP/M. 2097 SCA/METSÄ (Tissue) decision, does not regard branded and private label products in the wholesale market, which covers also production in terms of consumer goods, as substitutes but regards them as substitutes in the retail channel. Similarly, the said products are regarded as substitutes and evaluated under the same market in on-trade consumption channel.

trade consumption channel, whereas the acquiring party, KRAFT HEINZ carries out activities in branded products. There is a substitution relationship between the said products in the on-trade consumption channel and they can be considered in the same relevant markets. In the alternative market that can be defined in this way, there is a horizontal overlap between the parties' activities; thus "the on-trade consumption channel ketchup/mayonnaise" market is an affected market to be examined. In addition, within the framework of a possible relevant product market definition, taking into account that parties' activities overlap in "the on-trade consumption channel branded ketchup/mayonnaise market", this alternative affected market will also be evaluated.

- The Sauces Market

(54) It is stated in the Notification Form that parties' activities overlap horizontally in the sauces market. This market, which can be regarded as a downstream market of flavorings market, is divided into seven downstream markets: mustard, hot sauces, Asian sauces, other sauces, salad sauces, pasta sauces and Tex-Mex sauces. Both demand substitutability and supply substitutability are high in those markets. Therefore, market definition in a narrow sense is not deemed necessary in *"sauces"* market; the affected market is regarded as "sauces market".

(55) In light of the explanations above, the following affected markets are considered for examining the acquisition according to article 7 of the Act no 4054: *"tomato paste market", "private label ketchup supply market", "private label mayonnaise supply market", "branded ketchup supply market", "branded mayonnaise supply market", "the retail (off-trade) channel ketchup market", "the retail (off-trade) channel mayonnaise market", "the on-trade consumption channel ketchup market", "the on-trade consumption channel mayonnaise market"* and *"sauces market".* Since an exact market definition is not made for the said markets, in order to respond to possible competitive concerns, while "the on-trade consumption channel ketchup market" and "the on-trade consumption channel mayonnaise market" are examined, "the on-trade consumption channel branded ketchup market" and "the on-trade consumption channel branded mayonnaise market" are also discussed.

G.2.3. Relevant Geographic Market

(56) All of the products supplied by the parties in the identified affected markets can be sold throughout Türkiye. Consequently, the relevant geographic market is defined as Türkiye.

G.3. The Assessment of the Transaction

G.3.1. The Assessment of the Nature of the Transaction

(57) As a result of the notified transaction, all the shares as well as the sole control of ASSAN GIDA, which is currently controlled by KİBAR HOLDİNG alone, will be transferred to KRAFT HEINZ. Consequently, there will be a permanent change in ASSAN GIDA's and thus EGE ASSAN's control. Therefore, the transaction is an acquisition within the scope of article 5 of the Communiqué no 2010/4.

(58) Since KRAFT HEINZ's and ASSAN GIDA's turnovers in 2020 exceed the thresholds in article 7(1) of the Communiqué no 2010/4, the transaction is subject to Authorization.

G.3.2. The Assessment of the Transaction According to Article 7 of the Act no 4054

G.3.2.1. (.....)'s Petition of Objection and Negative Opinions of Some of the Competitors and Retailers

(59) After the transaction was published in the Authority's website, (.....) submitted a petition of objection. In addition, competitors and third party buyers, who were asked to provide their opinions during the preliminary examination process, expressed negative opinions.

(60) (.....)'s petition about the notified transaction highlights the following points in summary:

- KRAFT HEINZ and ASSAN GIDA's production activities overlap in ketchup, mayonnaise and gourmet sauces.
- Apart from those products, KRAFT HEINZ produces mustard and canned food whereas ASSAN GIDA produces tomato paste and pepper paste.
- Many producers use tomato paste, pepper paste and pepper juice produced by ASSAN GIDA as raw materials.
- Both undertakings operate in the retail as well as on-trade consumption channel with their products.
- The new undertaking to be established as a result of the transaction may restrict or stop supplying inputs to existing and potential competitors in the market (foreclosure).
- Also, the new undertaking may increase sales prices and deteriorate supply conditions compared to the conditions before the transaction.
- After the transaction, KRAFT HEINZ may access to important commercial information about (.....) (such as committed amounts in purchasing raw materials, the change of purchase amounts in years, changes in raw material types, new product development plans).
- KRAFT HEINZ may make new entries impossible or more costly with its intellectual property rights.
- By means of customer restriction, KRAFT HEINZ may stop purchasing or reduce the amounts purchased from its current suppliers.
- Apart from ASSAN GIDA, only BURCU, TUKAŞ and YONCA can produce private label products, which shows that the acquisition will lessen effective competition in private label products market.
- After the merger, ASSAN GIDA will increase the concentration in the retail channel by using KRAFT HEINZ's global power.
- Although nine undertakings have started to operate in the product categories to be acquired in the last three years, their total market shares correspond to 0.01%.
- In order to be affective in the said product groups, an investment of about 60 to 70 million euros is needed.

The applicant argued that the transaction would raise competitive concerns because of not only horizontal but also non-horizontal relations and requested that measures be taken.

(61) Within the scope of the examination, certain undertakings were asked whether the transaction would raise competitive concerns. Among those undertakings, (…..) and (…..) expressed their negative opinions.

(62) (.....)'s negative opinions about the transaction are given below:

With the purchase of Assan Gıda, Heinz brand will have more local production capacity by bringing its global know-how [to Türkiye]. In line with this, it will increase its shelf shares and market shares with its wide product range and flexible production capability. With such production capability, it can produce its products at more reasonable prices, increase its promotion activities for its brand and increase its market power, then become dominant in the market. By using its global marketing know-how, Heinz can enter the market with Assan's brands or a new brand, which is competitive in terms of prices and increase its share in the total category.

There are premium and mass points in OT[25] channel, which is important for sauces market. At premium points, Heinz is a powerful and well-recognized brand. It is difficult for brands to compete with Heinz in this channel due to its premium perception, visibility work for tables and distribution. Assan Gıda is positioned in mass points in this channel with its Colorado brand by applying low price strategy. It is estimated that Heinz will dominate OT channel by purchasing Assan."

(63) (.....)'s negative opinions about the transaction are given below:

There are a few players in Türkiye, who created ketchup and mayonnaise brands within the limits of their production. Two of those players are parties to the transaction, Assan and Kraft Heinz. Kraft Heinz followed a sales and marketing policy by positioning itself as a premium brand before the transaction. It can sell its products at higher prices compared to other big players, independently of price competition, thanks to this premium brand perception. Assan is a producer which mainly makes sales to on-trade consumption points with its brands. Since it makes sales to on-trade consumption channel, it is a separate brand in the Nielsen analysis below; in addition, Assan produces Bim Birleşik Marketler A.Ş.'s Bol Bol brand ketchup and mayonnaise products in private label product categories. This is the most-sold product in the market, making Assan the largest producer in the market.

Ketchup Market	*2021 first seven months total (Ton)*	*2021 First seven months total (1000 TL)*
Ketchup Total	*(.....)*	*(.....)*
TAT	*(.....)*	*(.....)*
CALVE	*(.....)*	*(.....)*
HEINZ	*(.....)*	*(.....)*
BİM PL[26] (ASSAN PRODUCT)	*(.....)*	*(.....)*

Mayonnaise Market	*2021 first seven months total (Ton)*	*2021 First seven months total (1000 TL)*
Mayonnaise Total	*(.....)*	*(.....)*
TAT	*(.....)*	*(.....)*
CALVE	*(.....)*	*(.....)*
HEINZ	*(.....)*	*(.....)*
BİM PL (ASSAN PRODUCT)	*(.....)*	*(.....)*

If the transaction is cleared, Kraft Heinz will be the only undertaking in the market, which can determine prices independently from its competitors and the largest producer in the market. According to the table given, if the transaction is cleared, in the retail channel, Heinz+ Assan sales will correspond to (.....)% of the ketchup market in tons and (.....)% in terms of turnover whereas they will correspond to (.....)% of the mayonnaise market in tons and (.....)% in terms of turnover.

Given the market data and the positions of the parties, if the Authority authorizes the transaction, there may be anticompetitive concentration in ketchup and mayonnaise markets. Considering the merged entity's production capacity, level of benefitting from economies of scope and scale, brand recognition and its strategy to determine the prices together, we think that other players will be affected negatively in terms of competition and the number of players may be reduced because of this anticompetitive concentration and prices may increase in these markets where there are few players.

(64) (.....) and (.....), who purchase goods from ASSAN GIDA say that they are concerned about the transaction. In its letter (.....) states the following:

"We are concerned. We have not faced any problems since we have been working with the same supplier for long years. We do not know and cannot estimate the new supplier's opinion about PL [private label products]"

(65) In its letter (.....) suggests the following:

[25] It is the abbreviation of on-trade channel.

[26] PL is the abbreviation for private label.

The acquired party has one of the biggest subcontracting capacity in Türkiye in terms of ketchup and mayonnaise production. If the undertaking in question stops subcontracting, it will be very difficult to find a new ketchup and mayonnaise supplier which will meet all of the conditions for subcontracting ketchup and mayonnaise. It will be very difficult to find a supplier that is equivalent in quality and price in terms of ketchup and mayonnaise and that has a high capacity to meet ketchup and mayonnaise production demand. If undertakings cannot find a supplier with a similar production capacity and make an agreement with suppliers with smaller capacities for subcontracting ketchup and mayonnaise, this will increase costs and the increase in costs might be reflected to sales prices.

G.3.2.2. The Assessment of the Markets with Vertical Overlap

(66) Parties' activities overlap vertically in terms of tomato paste market. The acquiring party KRAFT HEINZ is a producer of ketchup whereas ASSAN GIDA is a producer of tomato paste, which is the main raw material of ketchup. It is stated that there is no supply relationship between the parties.

(67) Unlike horizontal acquisitions, vertical acquisitions do not lead to eliminating or lessening of competition between undertakings operating in the same relevant market. It is accepted that such acquisitions generally restrict competition less than horizontal acquisitions. Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions (Non-Horizontal Guidelines) explains that

"Non-horizontal mergers are less likely to lead to a significant lessening of effective competition to create dominant position or strengthen an existing dominant position when compared to horizontal mergers.

It is also stated subsequently that vertical acquisitions may lead to significant efficiency gains as the products in question are complementary, provide incentives to decrease the prices for the final product or increase the output by eliminating double marginalization, create efficiencies with respect to the organization of the production, sales and distribution processes and decrease transaction costs.

(68) According to Non-Horizontal Guidelines, the most important drawback of vertical mergers is that they have the potential to create dominant position, strengthen an existing dominant position and lead to significant lessening of effective competition.

(69) In case the acquisition is cleared, it may be possible that the supply of tomato paste, which is the most important input for ketchup production, will be restricted or will be terminated for actual and potential competitors in the downstream market, as stated by (.....) in their petition of objection. (.....) indicated the following points in the petition of objection:

Considering Assan's capacity for producing raw materials and service level, after the acquisition, in case the merged undertaking does not supply and/or restrict the supply of the said raw materials (for instance because it decides to produce the products which it imports previously to produce in its own facilities), availability of the said raw materials may be reduced and prices of those raw materials may increase. This will foreclose the market by means of restricting input and distort efficient competition.
(...)
In addition, exclusive agreements between the merged entity and independent input suppliers may restrict the access to input for competitors in the downstream market and distort efficient competition. Therefore, we think that the merged entity will be able to restrict access to inputs significantly in the downstream market after the acquisition."

(70) The said situation mentioned above indicates "restriction of input" under "market foreclosure", which is one of the unilateral effects of a vertical merger or an acquisition in competition law. Non-Horizontal Guidelines explains the restriction of input in paragraph 33:

Input foreclosure refers to a merged undertaking restricting supplies of the inputs it provides to its downstream competitors after the merger, thereby increasing the costs of its rivals by making it harder for them to procure inputs for prices and conditions similar to those before the merger. This would significantly lessen effective *competition by enabling the merged undertaking to profitably raise the prices it charges to consumers."*

(71) Paragraph 34 of Non-Horizontal Acquisitions Guidelines lists the factors to consider when assessing input foreclosure as follows:

- Whether the merged entity has an important opportunity to restrict access to inputs in the downstream market
- Whether the merged undertaking would have the incentive to do so
- Whether a foreclosure to that end would significantly distort competition in the downstream market.

The factors in question are discussed below respectively.

(72) ASSAN GIDA's tomato paste capacity corresponds to (.....)% of the capacity of tomato processing facilities in Türkiye. ASSAN GIDA's tomato paste production facility is the largest tomato paste production facility in Türkiye. Capacity utilization rate of paste production facilities in our country is about 50-60%.

(73) According to the information obtained, ASSAN GIDA sold (.....) tons of tomato paste domestically and exported (.....) tons of tomato paste in 2020. Regarding domestic sales, (.....) tons are its own branded products, (.....) tons are private label products and (.....) tons are the sales made to branded ketchup producers. That is to mean that about (.....)% of total tomato paste sales and (.....)% of domestic sales are the sales made as raw materials to ketchup producers. Out of the sales ASSAN GIDA made to branded ketchup producers in 2020, (.....) tons of sales were made to UNILEVER, (.....) tons of sales were made to PINAR and (.....) tons of sales were made to Ak Gıda Sanayi ve Ticaret A.Ş.

(74) It is obvious that ASSAN GIDA's tomato paste sales as raw material are only a small part of the tomato paste sales in Türkiye, the said amount is negligible in the total tomato paste production in Türkiye, even if ASSAN GIDA sold all its tomato paste production as raw material, it would have only (.....)% of Türkiye tomato paste production capacity. Therefore, even if KRAFT HEINZ ultimately stops the sale of tomato paste as raw material, there are alternative sources for ketchup producers to purchase tomato paste.

(75) Our country is the third largest tomato producer in the world, which means there is adequate tomato production to be used to produce paste. It is understood from the information in Table-2 that 7 to 12 million USD is required to establish an average size paste facility and this amount can reach breakeven point in five to 12 years. Establishing an average size tomato processing facility does not require high costs but the return for the investment takes a long time. Consequently, there are no high barriers to entry.

(76) In addition, considering the information coming from PINAR, it is seen that PINAR, which does not have a paste production facility, purchased paste from five undertakings in 2019 (domestic: (.....); foreign: (.....)), and from three undertakings ((.....) and (.....)) in 2020. It is understood from those explanations that paste import is possible, more importantly, ketchup producers are not dependent on a single paste producer.

(77) As a result of those explanations, it is thought that after the acquisition, KRAFT HEINZ is unlikely to restrict other ketchup producers' access to paste as a raw material and even the merged undertaking restricts input, the competition in the ketchup market will not be distorted significantly.

(78) In respect of whether KRAFT HEINZ will restrict input, it is stated in the notification that KRAFT HEINZ does not use the tomato paste made of the tomatoes produced in Türkiye but uses the paste produced in California, USA and Spain, which is made of the tomatoes grown from the tomato seeds, which belong to KRAFT HEINZ. KRAFT HEINZ states in its

letter that it is not planning to produce tomatoes in Türkiye with its own seeds. Taking into account the fact that producing the paste by using tomatoes which are brought from abroad is not economically rational because transportation costs are high and the product can decay, KRAFT HEINZ will not have an incentive to spare ASSAN GIDA's paste production to only its ketchup products and thus restrict input for undertakings in the downstream market.

(79) ASSAN GIDA signed a contract with only (.....) in 2020 out of approximately 10 to 15 thousand tomato producers and there were not any exclusivity provisions in the contract. Given this, the claim that KRAFT HEINZ will stop purchasing or reduce the amounts purchased from its current suppliers by restricting customers is baseless.

(80) As a result, after the acquisition, it seems unlikely that KRAFT HEINZ will restrict efficient competition in the ketchup market by sparing the paste to be produced in ASSAN GIDA's facilities for its products or increasing paste prices due to the following reasons:

- The amount of paste which ASSAN GIDA supplies to ketchup producers corresponds to about (.....)% of its own sales.
- There are a lot of paste producers in Türkiye and their capacity utilization rates are low.
- Tomato, which is the raw material for paste, is widely grown in Türkiye and the current producers are able to increase their paste production capacity.
- There are a lot of alternative supply sources including import for ketchup producers.
- KRAFT HEINZ uses a type of tomatoes which are not grown in Türkiye for the production of ketchup and does not use the paste produced by ASSAN GIDA.

G.3.2.3. The Assessment of the Markets without Vertical or Horizontal Overlap

(81) Private label ketchup and private label mayonnaise supply markets are not affected markets in the sense of article 5 of the Notification Form because there are not any vertical or horizontal overlaps. However, private label ketchup/mayonnaise supply markets" and "branded ketchup mayonnaise supply market" can be regarded as neighbor markets and ASSAN GIDA is important for private label ketchup/mayonnaise supply market. Therefore, those are regarded as the markets where the markets may have important effects under the scope of article 5.4(c) of the Notification Form.

(82) ASSAN GIDA, which will be acquired, is the leading producer of branded ketchup and mayonnaise. According to Table 13 and 14, ASSAN GIDA's share in terms of ketchup production capacity in 2020 is (.....)% whereas its share in terms of total mayonnaise production capacity is about (.....)%. However, since ketchup and mayonnaise production capacities are not categorized into private label and branded, they are not sufficient to show ASSAN GIDA's position. As a result, market shares are examined. In 2020, ASSAN GIDA's share is (.....)% and (.....)% in private label ketchup sales and (.....)% and (.....)% in private label mayonnaise sales on the basis of value and amount.

(83) The tables below show the volumes and values of the sales made by undertakings operating in private label ketchup and mayonnaise supply markets as well as their market shares in detail.

Table 6 – Undertakings' Sales Volumes and Market Shares based on Sales volumes in the Private Label Ketchup Supply Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)	(.....)
OTHER	2082	9	3386	15
TOTAL	22,732	~100	18,030	100
Source: Information obtained from undertakings				

Table 7 – Undertakings' Sales Values and Market Shares based on Sales Values in the Private Label Ketchup Supply Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)	(.....)
OTHER	10,492	6	15,619	10
TOTAL	125,350	100	116,046	100
Source: Information obtained from undertakings				

Table 8 – Undertakings' Sales Volumes and Market Shares based on Sales Volumes in the Private Label Mayonnaise Supply Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
OTHER	1,619	11	1000	7
TOTAL	14,841	100	13,673	100
Source: Information obtained from undertakings				

Table 9 – Undertakings' Sales Values and Market Shares based on Sales Value in the Private Label Mayonnaise Supply Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
DİĞER	14,146	10	9,670	8
TOTAL	132,073	100	114,253	100
Source: Information obtained from undertakings				

(84) Currently, ASSAN GIDA is the largest private label ketchup and mayonnaise producer. The competitive concern that may arise in terms of this market after this producer is acquired by a producer of branded ketchup and mayonnaise is that in case KRAFT HEINZ transfer this capacity to export or the production of branded ketchup and mayonnaise, there may be a loss of about (.....) tons in private label ketchup supply market and a loss of about (.....) tons in the private label mayonnaise market according to 2020 data and the supply may be reduced, as a result of which retailers who have private label ketchup produced, or on-trade consumption points may not be able to find alternative supply sources. In this case, it is possible that the production amount of private label may be reduced and the prices of private label products may increase.

(85) According to the information obtained within the scope of the file,

- The capacity utilization rate of undertakings operating in ketchup and mayonnaise market is low (the idle capacity is 97,491 tons in ketchup production and 65,346 tons in mayonnaise production).
- It is easy for undertakings operating in branded ketchup and mayonnaise market to start production in this market. Sometimes they do so to use their idle capacity.
- Since subcontracting agreements for private label production are made with the suppliers designated by means of tender or bargaining seasonally, undertakings which supply private label ketchup and mayonnaise do not have a stable market share[27],
- It is possible for paste producers to start producing ketchup at a low investment cost.
- There are strong retailers and chain restaurants such as BİM and FASDAT[28] in this market (BİM and FASDAT made (.....)% and (.....)% of private label ketchup purchases and (.....)% and (.....)% of private label mayonnaise purchases). Those buyers state that the acquisition does not create competitive concerns for them.

Due to the above-mentioned reasons, even if KRAFT HEINZ reduces supply after the transaction, buyers will be able to access alternative supply sources; therefore, there will not be price increases in private label products because of a reduction in supply. In addition, KRAFT HEINZ made the following explanations to the Authority:

> *"Assan Gıda's private label business is complementary to the current activities in Türkiye for Kraft Heinz. Especially, Kraft Heinz believes that Assan Gıda's subcontracting activities and incumbent service to fast-food chain restaurants and other food service customers will provide opportunities for launching new products.*
>
> *As explained in detail below, Kraft Heinz does not plan to stop Assan Gıda's private label activities because (i) Kraft Heinz's branded products and private label products are not close competitors and (ii) private label brand production activities (especially services provided to BİM as a customer) are important sources for Assan Gıda's activities that are planned to acquire with the transaction. Stopping or losing those activities will remove the commercial reason of the transaction. Lastly, Kraft Heinz adds special provisions for BİM in the Share Purchase Agreement[29] and imposes responsibilities to sellers to help Kraft Heinz keep the said customers. This shows that Kraft Heinz values private label production*

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[27] As a hypothetical example, BİM may not renew its contract with ASSAN GIDA after its contract has expired. In 2020, ASSAN GIDA made (.....)% of its private label ketchup sales and (.....)% of its private label mayonnaise sales to BİM. In case the contract is not renewed and ASSAN GIDA does not make an agreement with another buyer to compensate this loss, its market share in those markets (…..) % and (…..)% respectively will fall to (…..)% and (…..)%. In fact, the European Commission in Case No COMP/M.4533 - SCA / P&G considers fluctuating market shares in private label supply markets as a factor that weakens competitive concerns.

[28] The undertaking provides supply management service to restaurants for brands such as Burger King, Sbarro, Popeyes, Arby's and Usta Dönerci.

[29] It is stated in article 4.1.4 of the "Share Purchase Agreement" between the parties that (.....).

and aims to maintain those activities."

(86) Consequently, it is concluded that effective competition private label ketchup and mayonnaise supply markets will not be significantly lessened as a result of the acquisition.

G.3.2.4. Assessment of Markets with Horizontal Overlap

(87) According to the Guidelines on the Assessment of Horizontal Mergers and Acquisitions (Horizontal Acquisitions Guidelines), horizontal mergers and acquisitions lessen effective competition significantly in two ways basically. The first is lessening of effective competition significantly in terms of unilateral effects, the second is the prevention of effective competition significantly because undertakings who do not coordinate before the transaction engage in coordination after the transaction.

(88) For the assessment of unilateral competitive effects, criteria such as the market shares of the parties, whether they are close competitors, customers' ability to switch suppliers, whether competitors will impose pressure on the merged entity and whether the transaction will eliminate an important competitive power are determinant. Not all of these factors need to be present but effects need to be assessed together.

(89) Article 22(b) of the Horizontal Acquisitions Guidelines explain coordinated effects as follows:

> *"Changing the nature of competition, undertakings that previously were not coordinating their behavior, significantly impede competition by making coordination (joint dominant position). Such merger, may make existing coordination between undertakings in the relevant market easier, more stable or more effective compared to pre-merger conditions.*

(90) The markets where there will be horizontal overlaps as a result of the transaction are "branded ketchup supply market", "branded mayonnaise supply market", "the retail channel ketchup market", "the retail channel mayonnaise market", "the on-trade consumption channel ketchup market", "the on-trade consumption channel mayonnaise market" and "sauces market". Since an exact market definition is not made for the said markets, in order to respond to possible competitive concerns, while "the on-trade consumption channel ketchup market" and "the on-trade consumption channel mayonnaise market" are examined and "the on-trade consumption channel branded ketchup market" and "the on-trade consumption channel branded mayonnaise market", which are narrower alternative markets, are also discussed.

(91) The capacity utilization rates in ketchup and mayonnaise markets in 2020 are given in the tables below:

Table 10- Capacity Utilization Rates of Ketchup Producers in 2020[30]

	Production capacity (ton)	Production amount (ton)	Capacity utilization rate (%)
ASSAN	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)
YONCA	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)
ÖNCÜ	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)
TOTAL	195,850	78,150	40
TOTAL EXCEPT	(.....)	(.....)	(.....)

[30] According to the information sent by UNILEVER, ketchup, mayonnaise and sauces are produced by UPFIELD by means of subcontracting. Since UPFIELD uses common equipment for the production of those, they do not have capacity information on the basis of each product. UPFIELD's total capacity for the products is (.....) tons on weekdays and is (.....) including Saturday.

ASSAN			
Source: Information obtained from undertakings			

Table 11- Capacity Utilization Rates of Mayonnaise Producers in 2020

	Production capacity (ton)	Production amount (ton)	Capacity utilization rate (%)
ASSAN	(…..)	(…..)	(…..)
BURCU	(…..)	(…..)	(…..)
TUKAŞ	(…..)	(…..)	(…..)
YONCA	(…..)	(…..)	(…..)
PINAR	(…..)	(…..)	(…..)
ÖNCÜ	(…..)	(…..)	(…..)
TAMEK	(…..)	(…..)	(…..)
TAT	(…..)	(…..)	(…..)
TOTAL	108,985	41,027	38
TOTAL EXCEPT ASSAN	(…..)	(…..)	(…..)
Source: Information obtained from undertakings			

(92) As seen from the tables above, capacity utilization rates of ketchup and mayonnaise producers are low.

- Branded Ketchup and Branded Mayonnaise Supply Markets

(93) The tables below show the volumes and values of the sales made by undertakings operating in branded ketchup and branded mayonnaise supply markets as well as their market shares in 2019 and 2020.

Table 12 – Undertakings' Sales Volumes and Shares based on Sales Volumes in Branded Ketchup Supply Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(…..)	(…..)	(…..)	(…..)
ASSAN GIDA	(…..)	(…..)	(…..)	(…..)
TAT	(…..)	(…..)	(…..)	(…..)
UNILEVER	(…..)	(…..)	(…..)	(…..)
PINAR	(…..)	(…..)	(…..)	(…..)
BURCU	(…..)	(…..)	(…..)	(…..)
TUKAŞ	(…..)	(…..)	(…..)	(…..)
ÜLKER	(…..)	(…..)	(…..)	(…..)
OTHER	2,169	5	2115	3
TOTAL	51,446	100	68,083	100
Source: Information obtained from undertakings				

Table 13 – Undertakings' Sales Values and Shares based on Sales Values in Branded Ketchup Supply Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(…..)	(…..)	(…..)	(…..)
ASSAN GIDA	(…..)	(…..)	(…..)	(…..)
TAT	(…..)	(…..)	(…..)	(…..)
UNILEVER	(…..)	(…..)	(…..)	(…..)
PINAR	(…..)	(…..)	(…..)	(…..)
BURCU	(…..)	(…..)	(…..)	(…..)
TUKAŞ	(…..)	(…..)	(…..)	(…..)
ÜLKER	(…..)	(…..)	(…..)	(…..)
OTHER	17,828	4	18,791	4
TOTAL	420,039	100	446,642	100
Source: Information obtained from undertakings				

Table 14 – Undertakings' Sales Volumes and Shares based on Sales volumes in Branded Mayonnaise Supply Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	474	3	766	4
TOTAL	17,882	100	17,705	100
Source: Information obtained from undertakings				

Table 15 – Undertakings' Sales Values and Shares based on Sales Values in Branded Mayonnaise Supply Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	18,445	6	12,855	5
TOTAL	290,658	100	234,641	100
Source: Information obtained from undertakings				

(94) As seen from the tables above, both parties to the transaction operate in branded ketchup and mayonnaise supply markets. Concentration will occur in the said markets after the transaction.

(95) Currently, KRAFT HEINZ's market share in branded ketchup supply market in 2020 on the basis of sales volume and sales value is respectively (.....)% and (.....)%; ASSAN GIDA's share is (.....)% and (.....)%. After the transaction, parties' total market shares will be (.....)% on the basis of sales volume and sales value. After the acquisition, in case KRAFT HEINZ transfers ASSAN GIDA's branded ketchup production to export, according to 2020 data, there will be a loss of about (.....) tons in branded ketchup supply market.

(96) The case is the same for branded mayonnaise supply market. Currently, KRAFT HEINZ's market share in branded mayonnaise supply market in 2020 on the basis of sales volume and sales value is respectively (.....)% and (.....)%; ASSAN GIDA's share is (.....)% and (.....)%. After the transaction, parties' total market shares will be (.....)% on the basis of sales volume and value. After the acquisition, in case KRAFT HEINZ transfers ASSAN GIDA's branded mayonnaise production to export, according to 2020 data, there will be a loss of about (.....) tons in branded mayonnaise supply market.

(97) The merged undertaking's market share will not reach such a high level to indicate dominant position. Considering the possible effects of the transaction on competition, it is concluded that even if the merged undertaking decreases supply amounts in branded ketchup/mayonnaise supply markets, this reduction will not have a negative effect on

competition in the market and lead to an increase in prices due to the following reasons:

- The capacity utilization rate of other undertakings operating in ketchup and mayonnaise market is low (the idle capacity is 97,491 tons in ketchup production and 65,346 tons in mayonnaise production).
- There are strong competitors such as TAT, UNILEVER and PINAR in the market.
- Third parties who are asked to provide opinions state that the transaction will not lead to problems for them on the basis of this market.

(98) Consequently, it is concluded that effective competition in branded ketchup and branded mayonnaise supply markets will not be significantly lessened as a result of the transaction.

- The On-trade Consumption Channel Ketchup Market

(99) In terms of the on-trade consumption channel, ASSAN is active with private label and branded products whereas KRAFT HEINZ is active with branded products. Although an exact market share definition is not made for the on-trade consumption channel, "the on-trade consumption channel ketchup market" is an affected market and should be examined due to the substitutability relation between private label and branded products as well as the horizontal overlaps between the parties. In addition, within the framework of a possible relevant product market definition, taking into account that parties' activities overlap in "the on-trade consumption channel branded ketchup market", this alternative affected market will also be evaluated.

(100) The tables below show the volumes and values of the sales made by the undertakings operating in the on-trade consumption channel ketchup market as well as their market shares in 2020 and 2019.

Table 16 – Undertakings' Sales Volumes and Market Shares based on Sales Volume in the On-trade Consumption Channel Ketchup Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(…..)	(…..)	(…..)	(…..)
ASSAN GIDA	(…..)	(…..)	(…..)	(…..)
TAT	(…..)	(…..)	(…..)	(…..)
UNILEVER	(…..)	(…..)	(…..)	(…..)
PINAR	(…..)	(…..)	(…..)	(…..)
BURCU	(…..)	(…..)	(…..)	(…..)
TUKAŞ	(…..)	(…..)	(…..)	(…..)
ÜLKER	(…..)	(…..)	(…..)	(…..)
OTHER	2,119	6	2676	5
TOTAL	39,199	100	61,400	100
Source: Information obtained from undertakings				

Table 17 – Undertakings' Sales Values and Shares based on Sales Values in the on-trade Consumption Channel Ketchup Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(…..)	(…..)	(…..)	(…..)
ASSAN GIDA	(…..)	(…..)	(…..)	(…..)
TAT	(…..)	(…..)	(…..)	(…..)
UNILEVER	(…..)	(…..)	(…..)	(…..)
PINAR	(…..)	(…..)	(…..)	(…..)
BURCU	(…..)	(…..)	(…..)	(…..)
TUKAŞ	(…..)	(…..)	(…..)	(…..)
ÜLKER	(…..)	(…..)	(…..)	(…..)

OTHER	7,769	3	11,728	4
TOTAL	220,792	100	317,270	100
Source: Information obtained from undertakings				

(101) As seen from the tables above, according to 2020 data, the total post-acquisition ketchup market shares of KRAFT HEINZ and ASSAN GIDA in the on-trade consumption channel in terms of sales volume and sales value will be respectively (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)) . On the basis of 2019 data, the said figures will be (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). The other undertaking with the highest market share in this channel, TAT's market share in terms of amount in 2019 and 2020 is respectively (.....)% and (.....)% and in terms of sales value is respectively (.....)% and (.....)%. Each of other competitors has about 10% market share.

(102) It is concluded that the notified transaction will not lead to significant lessening of effective competition in "the on-trade consumption channel ketchup market" due to the following reasons: As a result of the notified transaction, the merged undertaking will have a market share below (.....)%. There are competitors who will countervail the merged undertaking's power. Third parties who are asked for opinions during the preliminary examination process does not point out any competitive concerns. The capacity utilization rates are low in the market.

(103) In order to see the transaction's effects when the market is alternatively defined in a narrower sense, in terms of "the on-trade consumption channel branded ketchup market", in terms of sales volume, KRAFT HEINZ has (.....)% market share and ASSAN GIDA has (.....)% market share whereas in terms of sales value, KRAFT HEINZ has (.....)% market share and ASSAN GIDA has (.....)% market share in 2020. In light of this data, it is seen that post-acquisition market share of the merged undertaking will be (.....)% in terms of volume and (.....)% in terms of value. Therefore, due to the reasons explained in the previous paragraph, even if the market is defined in a narrower sense, the notified transaction will not lead to significant lessening of effective competition with respect to the market in question.

- The On-trade Consumption Channel Mayonnaise Market

(104) Both KRAFT HEINZ and ASSAN GIDA carry out activities in the on-trade consumption channel mayonnaise market. Within this framework, parties' activities overlap horizontally under possible narrow and comprehensive market definitions. In this channel, "the on-trade consumption channel mayonnaise market" can be considered as the affected market because of the substitutability relation between private label and branded products. However, since an exact market definition is not made, "the on-trade consumption channel branded mayonnaise market" will also be examined under a possible narrow market definition.

(105) The tables below show the volumes and values of the sales made by the undertakings operating in the on-trade consumption channel mayonnaise market as well as their market shares in 2020 and 2019.

Table 18 – Undertakings' Sales Volumes and Shares based on Sales Volumes in the On-trade Consumption Channel Mayonnaise Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)

OTHER	1,073	8	1,068	7
TOTAL	13,996	100	16,235	~100
Source: Information obtained from undertakings				

Table 19 – Undertakings' Sales Values and Shares based on Sales Values in the On-trade Consumption Channel Mayonnaise Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
OTHER	9,679	7	8,280	6
TOTAL	129,501	100	139,659	100
Source: Information obtained from undertakings				

(106) As seen from the tables above, the market shares of KRAFT HEINZ and ASSAN GIDA in 2020 concerning mayonnaise sales in the on-trade consumption channel in terms of volume and sales value are respectively (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). In 2019, the said market shares were respectively (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). The other undertaking with the highest market share in this channel, UNILEVER's market shares in terms of sales volume in 2019 and 2020 are respectively (.....)% and (.....)% and in terms of sales value is respectively (.....)% and (.....)%. Other competitors' market shares vary (.....)%.

(107) After the acquisition, strong players such as TAT, PINAR, UNILEVER, TUKAŞ, BURCU and ÜLKER will stay in the market. KRAFT HEINZ, which is a small player in the market, will acquire leading ASSAN GIDA's market share. Afterwards, the merged undertaking's market share will be nearly (.....)%.

(108) Therefore, the effect of the acquisition on "the on-trade consumption channel mayonnaise market" should be analyzed within the scope of Horizontal Acquisitions Guidelines. Pre-acquisition CR4 value (.....) will rise to (.....) with the transaction. In addition, another indicator of the concentration in the market, Herfindahl Hirschman Index (HHI) will rise from (.....) to (.....) with the transaction. The change is calculated as (.....)[31] Therefore, it is seen that the market in question is concentrated and the transaction will increase the concentration level in the market. However, according to paragraph 24 of Horizontal Acquisition Guidelines

> *These HHI levels and HHI change values are initial indicators of the possibility that competition concerns will arise as a result of the transaction and they are not taken as a certain conclusion that competitive concerns exist.*

Other factors such as "whether parties are close competitors", "whether customers have the ability to switch suppliers", "whether competitors can increase production in response to price increase", "merged undertaking having enough capacity to hinder expansion by its competitors", "elimination of an important competitive force by the merger" and "entry to the market" should be considered.

(109) In terms of whether parties are close competitors, it is stated in the Horizontal Acquisitions

[31] It is stated in paragraph 20 of the Horizontal Acquisition Guidelines that competitive concerns are unlikely in transactions where HHI is over 2.000 but the change in HHI after the merger is lower than 150 in the market, except for certain cases.

Guidelines that in a relevant market of differentiated products, some products are closer substitutes for each other than others, the higher the degree of substitutability between the merging firms' products is, the more likely it is that the merged firm will raise prices significantly. For the assessment of whether products are close substitutes, the most important factor to consider is price.

(110) The tables below are prepared to show average sales prices of branded and private label ketchup and mayonnaise in 2020 by examining the prices of branded and private label ketchup and mayonnaise produced by different producers.

Average Prices of Ketchup Products Sold in Retail Points in 2020

2020	Branded Ketchup		Private Label Ketchup		How many times the price difference is
Retailer	Undertaking	Price (TL/kg)	Undertaking	Price (TL/kg)	
A-101	TUKAŞ	(…..)	TUKAŞ	(…..)	(…..)
	BURCU	(…..)	BURCU	(…..)	
	UNİLEVER	(…..)	-	-	
BİM	-	(…..)	ASSAN	(…..)	-
CARREFOURSA	UNILEVER	(…..)	-	-	-
	PINAR	(…..)	-	-	
	HEINZ	(…..)	-	-	
	TAT	(…..)	-	-	
HAKMAR	TAT	(…..)	RİKSOS	(…..)	(…..)
METRO	BURCU	(…..)	ASSAN	(…..)	(…..)
	HEINZ	(…..)	-	-	
	UNILEVER	(…..)	-	-	
MİGROS	UNILEVER	(…..)	TUKAŞ	(…..)	(…..)
	HEINZ	(…..)	-	-	
	PINAR	(…..)	-	-	
	TAT	(…..)	-	-	
ŞOK	TAT	(…..)	BURCU	(…..)	(…..)
	HEINZ	(…..)	-	-	
	UNILEVER	(…..)	-	-	
Average in general		14.52		5.96	2.44
Source: Information obtained from undertakings					

Table 21- Average Prices of Mayonnaise Products Sold in Retail Points in 2020

2020	Branded Mayonnaise		Private Label Mayonnaise		How many times the price difference is
Retailer	Undertaking	Price (TL/kg)	Undertaking	Price (TL/kg)	
A-101	TUKAŞ	(…..)	BURCU	(…..)	(…..)
	UNILEVER	(…..)	TUKAŞ	(…..)	
	HEINZ	(…..)			
BİM	-	-	ASSAN	(…..)	-
CARREFOURSA	UNILEVER	(…..)	-	-	-
	PINAR	(…..)	-	-	
	HEINZ	(…..)	-	-	
	TAT	(…..)	-	-	
HAKMAR	TAT	(…..)	RİKSOS	(…..)	(…..)
METRO	BURCU	(…..)	ASSAN	(…..)	(…..)
	HEINZ	(…..)	-	-	
	TUKAŞ	(…..)	-	-	
	UNILEVER	(…..)	-	-	
	HEINZ	(…..)	TUKAŞ	(…..)	

MİGROS	UNILEVER	(.....)	-	-	(.....)
	PINAR	(.....)	-	-	
	TAT	(.....)	-	-	
	TUKAŞ	(.....)	-	-	
ŞOK	TAT	(.....)	BURCU	(.....)	(.....)
	UNILEVER	(.....)			
	HEINZ	(.....)			
Average in genera		24.51		9.70	2.53
Source: Information obtained from undertakings					

(111) It is seen from the table that the price difference between branded and private label products is on average 2.44 times for ketchup and 2.53 times for mayonnaise. It is seen that there is an important price difference between mayonnaise products of ASSAN GIDA, which produces mainly private label products and of KRAFT HEINZ, which produces mainly branded products. Therefore, parties target different consumer groups. As a result, it is not possible to say that the products of the parties are close substitutes or the transaction eliminates an important competitive power.

(112) There are no barriers in front of consumption points to switch suppliers in this market. In case of a price increase, on-trade consumption points are free to provide their customers with other producers' products. Given that suppliers' mayonnaise production capacity utilization rates are low, after the transaction, competitors will be able to respond to a price increase or a reduction in production by KRAFT HEINZ by means of increasing their production. In this case, it does not seem profitable for KRAFT HEINZ to increase its prices profitably after the acquisition.

(113) Similarly, although it seems possible that KRAFT HEINZ may hinder competitors' access to customers and thus expansion by making long term agreements with large restaurant chains depending on its economic power, since buyers are strong and may diversify their supply channels, such concern is resolved.

(114) During the preliminary examination process, FASDAT and KÖFTECİ YUSUF, which are the largest buyers of ASSAN GIDA's products in this channel, were asked how the transaction would affect them. KÖFTECİ YUSUF's response is as follows:

> *"There are many producers with whom we can work if we want to have Köfteci Yusuf brand ketchup and mayonnaise produced. We have the opportunity to work with many producers if we want to purchase branded ketchup and mayonnaise. Heinz's acquisition of Assan Gıda will not change those conditions."*

FASDAT's response can be summarized as follows:

- They are working mostly with ASSAN GIDA and partly with UNILEVER.
- There are firms with capacity to produce private label ketchup and mayonnaise (such as TAT, UNILEVER, TUKAŞ and BURCU) however it will take time to switch from ASSAN GIDA to another firm.
- Their concerns will be shaped according to the merged undertaking's opinion about the market.
- If KRAFT HEINZ focuses on abroad, one of the main players will exit the market in terms of private label products. In that case, their ability to find a mayonnaise producer to fulfill their needs will change depending on other firms' and the market's supply/demand.

(115) FASDAT buys mayonnaise from both ASSAN GIDA and UNILEVER. In 2020, FASDAT's share in mayonnaise sales in the on-trade consumption channel is (.....)% on the basis of volume and (.....)% on the basis of value. These numbers correspond to (.....)% and (.....)%

of ASSAN GIDA's sales in the on-trade consumption channel on the basis of volume and value respectively. It is understood that FASDAT will remain as a strong countervailing player in the market after the transaction.

(116) On the other hand, there are strong players such as TAT, PINAR, UNILEVER, TUKAŞ and BURCU in the market. They will continue to make competitive pressure on KRAFT HEINZ after the transaction.

(117) On-trade consumption points state that they are able to work with alternative suppliers. This shows that those undertakings may switch to alternative suppliers in a reasonable time, trigger entries to the market and there is a countervailing buyer power in the market.

(118) Consequently, due to the following facts it has been concluded that the transaction will not result in significant lessening of competition in "the on-trade consumption channel mayonnaise market":

- Parties are not close competitors.
- Customers have the possibility to switch suppliers.
- Competitors can increase production in response to a price increase because of excess capacity.
- Strong players will continue to be in the market.

(119) At this point, for the sake of integrity, in order to see the transaction's effects when the market is alternatively defined in a narrower sense, "the on-trade consumption channel branded mayonnaise market" should be considered. In the said market, in 2020, in terms of sales volume, KRAFT HEINZ has (.....)% market share and ASSAN GIDA has (.....)% market share whereas in terms of sales value, KRAFT HEINZ has (.....)% market share and ASSAN GIDA has (.....)% market share. In light of this data, it is seen that post-acquisition market share of the merged undertaking will be (.....)% in terms of sales volume and (.....)% in terms of value. Therefore, due to the reasons explained in terms of the comprehensive market definition, even if the market is defined in a narrower sense, the notified transaction will not lead to significant lessening of effective competition with respect to the market in question.

- The Retail (Off-trade) Channel Ketchup Market

(120) In case the retail channel ketchup market is defined in a narrow sense as private label and branded, there will not be overlaps between parties' activities. In private label ketchup in the retail channel, KRAFT HEINZ does not carry out activities whereas ASSAN GIDA's share is (.....)% in terms of sales volume and (.....)% in terms of sales value in 2020. After the transaction, ASSAN GIDA's shares will be transferred to KRAFT HEINZ. KRAFT HEINZ's share is (.....)% in terms of sales volume and (.....)% in terms of sales value in 2020 in branded ketchup in the retail channel whereas ASSAN GIDA does not carry out activities. After the transaction, KRAFT HEINZ's market share will not change. Therefore, there will not be concentration after the transaction.

(121) As a result, "the retail (off-trade) channel ketchup market" is considered as the affected market, where the most significant competitive concerns arise due to post-acquisition concentration.

(122) The tables below show the volumes and values of the sales made by the undertakings operating in the retail channel ketchup market as well as their market shares in 2020 and 2019.

Table 22 – Undertakings' Sales Volumes and Shares based on Sales Volumes in the retail Channel Ketchup Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	1,882	6	2,532	9
TOTAL	34,479	100	29,655	100
Source: Information obtained from undertakings				

Table 23 – Undertakings' Sales Values and Shares based on Sales Values in the retail Channel Ketchup Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
TAMEK	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	17,792	5	22,682	9
TOTAL	323,195	100	248,203	100
Source: Information obtained from undertakings				

(123) As seen from the tables above, market shares of KRAFT HEINZ and ASSAN GIDA in 2020 concerning ketchup sales in the retail channel in terms of sales volume and sales value are respectively (.....)% totally (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). In 2019, the said market shares were (.....)% (%(.....) + %(.....)) and %(.....)' (%(.....)+ %(.....)). The other undertaking with the highest market share in this channel, TAT's market shares in terms of sales volume in 2019 and 2020 are respectively (.....)% and (.....)% and in terms of sales value are respectively (.....)% and (.....)%. Each of other competitors has market shares varying between (.....).

(124) While CR4 value in the market raises from (.....) to (.....), HHI increases by (.....) points from (.....) to (.....). However, it is concluded that the concentration will not lead to an increase in market power or prices since

- ASSAN GIDA and KRAFT HEINZ are not close competitors,
- Retail points are able to change their suppliers without high switching costs,
- Strong players will continue to be active in the market after the transaction,
- Alternative suppliers have idle capacity to respond to the demand to arise because of a possible price increase by the merged undertaking,
- The buyers in this market are strong retail chains, in other words, there is countervailing buyer power.

Consequently, it is concluded that the transaction will not lead to significant lessening of competition in the retail/off-trade channel ketchup market.

- The Retail (Off-trade) Channel Mayonnaise Market

(125) In case the retail channel mayonnaise market is defined in a narrow sense as private label and branded, there will not be overlaps between parties' activities[32]. Therefore, there will not be concentration after the transaction. As a result, "the retail (off-trade) channel mayonnaise market" is considered as the affected market, where the most significant competitive concerns arise due to post-acquisition concentration.

(126) The tables below show the volumes and values of the sales made by the undertakings operating in the retail channel mayonnaise market as well as their market shares in 2020 and 2019.

Table 24 – Undertakings' Sales Volumes and Shares based on Sales Volumes in the Retail Channel Mayonnaise Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	1020	5	698	4
TOTAL	18,727	100	15,142	100
Source: Information obtained from undertakings				

Table 25 – Undertakings' Sales Values and Market Shares based on Sales Values in the Retail Channel Mayonnaise Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
TUKAŞ	(.....)	(.....)	(.....)	(.....)
TAT	(.....)	(.....)	(.....)	(.....)
BURCU	(.....)	(.....)	(.....)	(.....)
UNILEVER	(.....)	(.....)	(.....)	(.....)
PINAR	(.....)	(.....)	(.....)	(.....)
ÜLKER	(.....)	(.....)	(.....)	(.....)
OTHER	22,912	8	14,245	7
TOTAL	293,229	100	209,235	100
Source: Information obtained from undertakings				

(127) As seen from the tables above, total market shares of KRAFT HEINZ and ASSAN GIDA in 2020 concerning mayonnaise sales in the retail channel in terms of volume and value are respectively (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). In 2019, the said market shares were (.....)% (%(.....) + %(.....)) and %(.....) (%(.....) + %(.....)). Other undertakings' market share in this channel vary between (.....)% on the basis of sales volume

[32] KRAFT HEINZ does not carry out activities in private label mayonnaise in the retail channel whereas ASSAN GIDA's share is (.....)% in terms of sales volume and (.....)% in terms of sales value in 2020. After the transaction, ASSAN's shares will be transferred to KRAFT HEINZ. In branded mayonnaises in the retail channel, KRAFT HEINZ's share is (.....)% in terms of sales volume and (.....)% in terms of sales value whereas ASSAN GIDA's share is (.....)% in terms of sales volume and (.....)% in terms of sales value in 2020. After the transaction, the change in KRAFT HEINZ's market share is negligible.

and sales value.

(128) As a result of the transaction, the merged undertaking's market share both in terms of amount and value will be over 40% in the retail channel ketchup market. While CR4 value in the market raises from (.....) to (.....), HHI increases by (.....) points from (.....) to (.....). However, it is concluded that the concentration will not lead to an increase in market power or prices since

- ASSAN GIDA and KRAFT HEINZ are not close competitors,
- Retail points are able to change their suppliers without high switching costs,
- Strong players will continue to be active in the market after transaction,
- Alternative suppliers have idle capacity to respond to the demand to arise because of a possible price increase by the merged undertaking (The idle capacity in mayonnaise production is 65.346 tons),
- The buyers in this market, which are strong retail chains, have countervailing buyer power.

Consequently, it is concluded that the transaction will not lead to significant lessening of competition in the retail (off-trade) channel mayonnaise market.

- The Sauces Market

(129) It is stated in the notification form that the sauces market is a downstream market of flavorings market and products apart from ketchup, mayonnaise and paste (like mustard and barbecue sauce) can be considered under the scope of this market. As stated before, KRAFT HEINZ does not engage in production in Türkiye and obtains all of its turnover in this market in Türkiye from imported products. The volumes and values of the sales made by the parties in the sauces market in 2020 and 2019 as well as their market shares based on those in 2019 and 2020 are given below.

Table 26 – Parties' Sales Volumes and Shares based on Sales Volumes the in the Sauces Market

	2020		2019	
	Amount (Ton)	Market Share (%)	Amount (Ton)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
Total	(.....)	(.....)	(.....)	(.....)
MARKET TOTAL	104,300	100.0	116,000	100.0
Source: Information obtained from undertakings				

Table 27 – Parties' Sales Values and Shares based on Sales Values in the Sauces Market

	2020		2019	
	Value (1.000 ₺)	Market Share (%)	Value (1.000 ₺)	Market Share (%)
KRAFT	(.....)	(.....)	(.....)	(.....)
ASSAN GIDA	(.....)	(.....)	(.....)	(.....)
Total	(.....)	(.....)	(.....)	(.....)
MARKET TOTAL	2,944,132	100.0	2,873,929	100.0
Source: Information obtained from undertakings				

(130) Depending on the information above, both KRAFT HEINZ and ASSAN GIDA have very low market shares in the sauces market. Therefore, it is concluded that the acquisition will not lead to significant lessening of effective competition in the sauces market.

H. CONCLUSION

(131) According to the report prepared and the scope of the file examined, it has been decided

UNANIMOUSLY that the notified transaction is subject to authorization under the scope of article 7 of the Act no 4054 and the Communiqué no 2010/4 on Mergers and Acquisitions Calling for the Authorization of the Competition Board, which was issued based on that article; the transaction shall be authorized as it would not lead to significant lessening of competition, with the decision subject to appeal at Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.