

**COMPETITION AUTHORITY****COMPETITION BOARD DECISION**

**File No** : 2023-3-033 **(Investigation/Settlement)**

**Decision No.** : **23-41/808-287**

**Date of Decision** : 07.09.2023

**A. BOARD MEMBERS IN ATTENDANCE**

**Chairman** : Birol KÜLE

**Members** : Ahmet ALGAN (Deputy Chairman), Şükran KODALAK  
Cengiz ÇOLAK, Berat UZUN

**B. RAPPORTEURS** : Kemal KÜÇÜKKAVRUK, Ahmet Buğra KAZAK, Zeynep  
KUŞDEMİR, Oğuzhan ÇİFÇİ, Şenol SUAT, Zeynep Özge AĞRI

**C. COMPLAINANT** : - Ex Officio

**D. RELEVANT PARTY:** - L'Oreal Türkiye Kozmetik San. ve Tic. AŞ

Representatives: Atty. Şahin ARDIYOK, Atty. Bora İKİLER  
Büyükdere Cad. Bahar Sok. No:13 River Plaza Kat:11-12  
Levent Şişli/İSTANBUL

(1) **E. SUBJECT OF THE FILE:** Within the framework of the investigation launched with the Competition Board decision dated 13.04.2023 and numbered 23-18/343-M(9) in order to determine if L'Oréal Türkiye Kozmetik Sanayi ve Ticaret AŞ violated Article 4 of the Act no 4054 on the Protection of Competition by maintaining the resale prices resellers and restricting internet sales, termination of the investigation as a result of the submission of a commitment text by L'Oréal Türkiye Kozmetik Sanayi ve Ticaret AŞ.

(2) **F. SUMMARY OF THE CLAIMS:** The allegation that L'Oréal Türkiye Kozmetik Sanayi ve Ticaret AŞ (LOREAL) violated Article 4 of the Act no 4054 on the Protection of Competition (Act no 4054) by maintaining the resale prices of resellers and restricting online sales.

(3) **G. PHASES OF THE FILE:** The Competition Board (Board) decision dated 23.06.2022 and numbered 22-28/467-M launched an *ex officio* preliminary inquiry on Avon Kozmetik Ürünleri Sanayi ve Ticaret AŞ (AVON), Farmasi Enternasyonel Ticaret AŞ (FARMASI), Kosan Kozmetik Pazarlama ve Tic. AŞ (KOSAN), NAOS İstanbul Kozmetik San. ve Tic. Ltd. Şti. (NAOS), Pierre Fabre Dermo Kozmetik Ltd. Şti. (PİERRE FABRE), Yöntem Profesyonel Kozmetik Ürün. San. ve Tic. Ltd. Şti. (YÖNTEM) and LOREAL under the Act no 4054. As part of this preliminary inquiry, an on-site inspection was conducted at LOREAL on 13.09.2022.

(4) The Preliminary Inquiry Report dated 12.10.2022 and numbered 2022-3-040/ÖA, prepared as a result of the preliminary inquiry process, was discussed in the Board meeting of 20.10.2022, where the Board took the decision no 22-48/696-294 not to launch an investigation on LOREAL, as well as decision no 22-48/696-M(1-6) which initiated an investigation on AVON, FARMASI, KOSAN, NAOS, PİERRE FABRE and YÖNTEM.

(5) Within the framework of the investigation launched on the abovementioned undertakings, on-site inspections were conducted at the undertakings under investigation on 13.09.2022, where documents raising infringement suspicions were recovered, which referred to undertakings that were not under investigation at the time. Accordingly, the Board decision dated 03.11.2022 and numbered 22-50/739-M was

taken to exercise the powers granted by Articles 14 and 15 of the Act no 4054 with regard to all undertakings operating in the cosmetics and personal care sector. Within the scope of this power, and in accordance with the consent of the Presidency of the Authority, on-site inspections were conducted at the premises of the undertakings in the cosmetics and personal care sector. The Information Note dated 21.12.2022 and numbered 2022-3-040/BN-05 that was prepared in light of the information and documents obtained at the on-site inspections was discussed in the Board meeting of 22.12.2022, and the Board took the decision no 22-56/875-M(2) launching a preliminary inquiry concerning LOREAL with an on-site inspection conducted at the premises of the relevant undertaking on 14.03.2023.

- (6) The Preliminary Inquiry report dated 12.04.2023 and numbered 2023-3-001/ÖA, prepared as a result of the preliminary inquiry process was discussed in the Board meeting of 13.04.2023, and the decision no 23-18/343-M(9) was taken to launch an investigation on LOREAL to determine if it violated Article 4 of the Act no 4054 through practices aimed at resale price maintenance and restriction of internet sales.
- (8) While the investigation process was ongoing, LOREAL submitted a petition to the Authority records on 13.07.2023 with the number 40459, applying for commitments regarding internet sales, which was accepted with the Board decision dated 26.07.2023 and numbered 23-34/638-M, and online commitment discussions were held with representatives from LOREAL on 27.07.2023. In accordance with Articles 6.1 and 6.3 of the Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations concerning Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position (Communiqué no 2021/2), the undertaking was provided information on the content of the relevant allegations, nature of the alleged infringement, main documents forming the grounds of the alleged infringement, and the procedure that would be followed in case the process was concluded with commitments. The commitments text submitted by the party in response to the relevant Board decision entered into the Authority records on 31.08.2023, with the number 42070.
- (9) As a result of the process summarized above, the Information Note dated 06.09.2023 and numbered 2023-3-033/BN-03 prepared within the framework of the commitment application was discussed and a decision was taken.
- (10) **H. RAPPORTEURS' OPINION:** In summary, the relevant Information Note states that the commitments submitted by LOREAL were acceptable since they were proportionate with the competitive issues identified, sufficient to remove those issues, and effectively applicable in a short period of time, and that the ongoing investigation with regard to the infringement through the restriction of internet sales could be terminated in line with the commitments package submitted by the undertaking.

## I. EXAMINATION AND ASSESSMENT

### I.1 Assessment Concerning the Restriction of Internet Sales

- (11) The emergence of the internet as a novel distribution channel provides consumers with a chance to easily utilize a wide set of information, compare prices and access more products and sellers on the one hand, while helping producers market their products to a larger territory at lower costs on the other. For this reason, online commerce has been growing increasingly widespread not only around the world but also in our country<sup>1</sup>.

<sup>1</sup> See E-Commerce Report, [http://www.eticaretraporu.org/wp-content/uploads/2017/04/TUSIAD\\_E-Ticaret\\_Raporu\\_2017.pdf](http://www.eticaretraporu.org/wp-content/uploads/2017/04/TUSIAD_E-Ticaret_Raporu_2017.pdf).

(12) The protection provided by granting undertakings an exclusive region or customer group is not an absolute kind of protection; instead, buyer undertakings are only protected from the active competition of other buyers in the system when they are selling to their allocated region or customer group. In other words, the supplier undertaking may restrict active sales to exclusive regions or customer groups assigned to itself or to a buyer. Restriction of passive sales to that region or customer group is considered an infringement, which excludes the agreement from the block exemption. Paragraph 21 of the Guidelines on Vertical Agreements also notes that restriction of passive sales to a particular region or customer group can be seen as a violation that removes the agreement from the block exemption. Within this context, sales made by means of customers visiting the website owned by the dealer or getting in contact with the dealer, or requesting automatic updates from the dealer are passive sales, and in principle, every dealer must be allowed to make sales over the internet.

(13) Online sales are also addressed under the selective distribution system. As stated in article 4.1(c) of the Block Exemption Communiqué on Vertical Agreements (Vertical Communiqué), members of a selective distribution system may not be prohibited from making active or passive sales to end users. Even if the undertaking in the position of a supplier forms exclusive regions by stating that it would supply goods to a limited number of buyers in a certain region, active or passive sales by the buyers to end users outside the region may not be prevented. In other words, buyers who are members of a selective distribution system may engage in active or passive sales to end users in any region, including through internet channels. In case of a selective distribution system, if the supplier prevents resellers from making sales over the internet, this practice will be excluded from the scope of the block exemption.

(14) However, the supplier may require certain conditions concerning the use of the internet as a sales channel. For instance, the provider may place quality conditions on the website where its products are offered for sale, and it may also impose a condition to offer certain services to the customers shopping over the internet. In a selective distribution system in particular, the supplier may lay down an obligation that distributors own at least one physical point of sales, as well. However, this condition must not seek to foreclose the market to those players who sell exclusively over the internet (*pure players*) or restrict their sales. The conditions imposed on online sales may not, directly or indirectly, intend to prevent online sales by the distributor. In other words, the justification of the conditions introduced must be objectively concrete, reasonable and acceptable in terms of the factors such as increasing the nature and quality of the distribution, brand image and/or potential efficiency, etc.

(15) In that framework, the supplier may demand that the buyer only sell through “sales platforms/marketplaces” which fulfill certain standards and conditions. However, this restriction should not aim to prevent distributor’s online sales or price competition. As such, a general prohibition of sales over platforms without objective and uniform conditions and justifications in line with the specific characteristics of the product may be assessed as violations<sup>2</sup>.

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<sup>2</sup> In the Board decision dated 16.12.2021 and numbered 21-61/859-423, it is noted that individual exemption would not be granted to platform sales bans placed on authorized distributors.

## I.2 Commitment Application and Evaluation

### I.2.1 Competition Issues Covered by the Commitment

(16) Examinations conducted under the scope of the file found that LOREAL introduced online sale restrictions on resellers in its business relationship with them. The relevant findings are shown below:

#### Finding-1:

(17) The following statements are included in the e-mails sent by SAÇHANE Managing Partner (....) to LOREAL Sales Coordinator (....) on 08.09.2017 and which was replied by the General Manager of the LOREAL Professional Products Department (....) on 27.09.2017:

08.09.2017-(....)>(....)

(....) Hello

*First of all, apologies for having you work on this since yesterday, and thank you for forwarding our requests to the relevant people.*

*Unfortunately, there has been no further developments on the matter since yesterday. As I tried to explain a little on the phone, the problem here for us is unfair competition and the fact that as long as the current situation stands, we will continue to bleed and actors who distort this market we're trying to fix will continue to benefit.*

*Please take a look at my complaint on the picture in the attachment. You will see that currently Loreal only allows the websites (....) and (....) in Türkiye. The person who allowed this is Ms. (....), who I think consented to it because she does not sufficiently know the Turkish actors. However, it is a private shopping website owned by the (....) group. The other website, (....) is in the same business as us. Their only difference is that they are a Kerastase Salon distributor. However, the sale prices on their website is 20% lower than the PSF price, on average.*

*What I would like to ask here is, if you will only allow Kerastase salons to advertise on google, how can (....) advertise as well? Also, can these approved websites sell with a 20% discount? If we were to become a partner in a Kerastase salon tomorrow, can you guarantee that you will let us advertise as well?*

*(....), while I was unable to meet with you frequently due to my assignment, you are in close contact with my partner (....). You know that we are doing and are prepared to do whatever is needed to fix this market with you. However, our expectation is for you to support us against unfair competition. To be honest, I would have assumed malicious intent on this matter if I did not know you personally, but I am sure that you did not take this action to damage sachane.com but that you engaged in this practice to fix the market at a risk of losing sales. I believe it is an appropriate initiative but in the current situation it creates problems for us while benefiting those actors which distort the market. We will of course mention these matters to (....) in our meeting on September 28. However, our losses are increasing daily right now. For that reason, I have to ask for your help on this matter, despite your busy schedule.*

*This is an important matter for us, and your prompt response will be much appreciated.*

*Regards,*

08.09.2017-(....)>(....)

*I am sending the correspondence with Global in the attachment. There are 2 mail loops, the first of which I am sending for you to see the approved list. In the other mails I noted that (....) was not a website approved by us and that we wanted it removed; I even sent another mail today.*

*Concerning the subject discussed in the mail (....) sent, as you know, there is no privilege for any website. We are discussing and assessing with those who comply/wishes to comply with the guideline and there is only (....) with compliant conditions as of yet.*

*Second of all, we definitely have no connection with Leetal Chai they mentioned; from the beginning, we carried our correspondence together with our legal advisor (....), through (....)*

(Loreal Intellectual Property Department) and Loreal Global's Internet Consultancy agency (.....).

For your information,

(.....)

11.09.2017-(.....)>(.....)

(.....),

I would like to clarify one point in your message. The criteria and the authorization process for our authorized dealers who wish to sell our Kérastase brand products online are included in the agreements signed between our Company and dealers. The resale prices implemented in the salon or on the website of the firm with the domain address (.....), which is an authorized dealer for our company and which also has the ability to make online sales in accordance with the provisions of the aforementioned agreement, are fully its own commercial decisions, and our Company not only has no intervention on this matter, and we have no intention or work aimed at "fixing the market" as you mentioned in your message, either.

13.09.2017-(.....)>(.....)

Hello (.....)

Thank you for letting me know, but unfortunately you have not answered the questions I asked in my first mail. Can I please ask you to contact the relevant people once again to answer the following questions? We are looking forward to your response, since we will make our decision accordingly.

1) If you only allow Kerastase salons to advertise on Google how can (.....) advertise? (even though I saw your request concerning (.....) in the e-mail you forwarded to me, they are still advertising. Their ad budget runs out and ads get turned off within the day, but I am checking at 7 every morning and (.....) ads are still on. I would like to emphasize that you are causing unfair competition here. Currently, I'm of the opinion that if you are unable to get (.....) to stop, you need to approve us as well so that you do not allow others to gain unfair profits.)  
2) Do websites which you have allowed to advertise also have the right to sell with a 20% discount?

3) If we were to partner with a Kerastase salon tomorrow, can you guarantee that you will grant the same advertising rights to us?

4) Aren't the websites of the dealers which you have allowed to advertise required to comply with the rules in the E-tailer guide? If you believe they already are compliant, can you please compare (.....)'s website with the rules in the e-tailer guide and recheck if they are, in fact, compliant? Personally, I can confidently say that (.....) website is not in compliance with the rules in kerastase e-tailor.

I look forward to your urgent response and wish you a pleasant week.

P.S. I apologize for having the whole Loreal team deal with this matter.

All I want is to make sure that this message finds the relevant people in your team in full and correctly.

Rgds,

08.09.2017-(.....)>(.....)

Hello (.....),

Please find below our answers to the questions in your message dated September 13, 2017, which I received in September.

1- If you only allow Kerastase salons to advertise on Google how can (.....) advertise? Our company has not allowed (.....) to advertise about Kerastase. This matter has been forwarded to our relevant department and will be followed-up.

2- Do websites which you have allowed to advertise also have the right to sell with a 20% discount?

We do not in any way intervene with or control the retail sale prices of our authorized business partners, either in their salons or on their websites. This type of intervention would be in violation of competition law rules, anyway.

3- If we were to partner with a Kerastase salon tomorrow, can you guarantee that you will grant the same advertising rights to us?

*L'Oréal has implemented a selective distribution system for Kérastase brand products. Accordingly, salons which are in compliance with the selective distribution criteria included in our agreement are accepted into the selective distribution network by the company if they are deemed suitable, after signing an Agreement. Authorized salons that have been accepted into the selective distribution network by signing an agreement in this way may make sales over their websites, provided they meet the criteria listed in the relevant agreement concerning websites and are approved by L'Oréal. Thus, our response to your question concerning your firm partnering with a Kerastase salon would be determined by the specifics of the actual case. We are unable to make an assessment based on probabilities to provide a positive or negative response prematurely.*

*4- Aren't the websites of the dealers which you have allowed to advertise required to comply with the rules in the E-tailer guide? If you believe they already are compliant, can you please compare (....)'s website with the rules in the e-tailer guide and recheck if they are, in fact, compliant? Personally, I can confidently say that (....) website is not in compliance with the rules in kerastase e-tailor.*

*As noted in our answer to your third question, sales done over the websites of salons in our selective distribution network must fulfill the criteria attached to our Agreement. Compliance of the relevant website to these criteria is regularly monitored by our teams and we are unable to provide information to your Company or to another third party regarding this matter which falls under our contractual relationship with that company.*

*Have a nice working day,*

*Respectfully,*

## **Finding-2:**

(18) The following statements are included in the e-mails sent by SAÇHANE Managing Partner (....) to LOREAL employee (....) on 19.04.2018 and 27.04.2018, and which were replied by SAÇHANE Managing Partner (....) on 30.05.2018 and by the General Manager of the LOREAL Professional Products Department (....) on 18.06.2018:

19.04.2018-(....)>(....)

(....) Hello

*I am writing to you so that the issues we discussed on the phone are not left in the air but are put in writing. As part of one of the issues we mentioned in the 2017 meeting concerned Kerastase brand ad approvals, and you had told us that only authorized hairdressers would be approved in terms of Kerastase brand advertisements and that you were in talks with google to fix the non-compliant cases. Our advertisement approval was canceled since we are not an authorized hairdresser, but (....) has been taking out kerastase ads since then, creating an unfair situation (this has been going on for more than 6 months and damaging us financially). As another example, (....) has been approved for advertising even though it is not an authorized dealer.*

*We have very close relationships with many Kerastase hairdressers. However, if these hairdressers sell us product, they unfortunately face problems with maintaining their kerastase dealerships. However, Loral issues Kerastase invoices to (....), who is commercially no different than us. We believe this causes unfair competition. Moreover, the efforts to bury this mistake after the matter was uncovered by means of a merger between (....) and (....) (owned company) forces us to look for ulterior motives.*

*All I am asking is for you to approach everyone on the same, equal terms. To be honest, it seems clear that (....) is being favored and is allowed to buy and sell in violation of the system you explained to us. I am requesting you to please fix the abovementioned issues and ensure an environment of fair competition.*

*Respectfully,*

08.09.2017-(....)>(....)

*Hello,*

*I would like to make some additions to what I wrote in my mail of April 19.*

1) Despite only being a L'Oréal Dermocosmetics brand, "(....)" is approved for Kerastase ads and is currently taking out Google Adwords ads in the professional channel. This is another situation violating the rule that approves only authorized Kerastase dealers for advertising.

2) In their previous mail, (....) stated that Kerastase brand products are ONLY invoiced to authorized dealer hairdressers and that only those hairdressers are approved for advertising. Unfortunately these turn out not to be true, everyone can be invoiced and can advertise. The only exception seems to be Sachane.com.

3) I will ask you to send us our Kerastase order, which we will send through a notary. Since you have made similar sales previously, I will ask you to be fair and invoice this order directly to us. In fact, L'Oréal has repeatedly issued invoices to (....) and (....) in this way. We have copies of these invoices and we can use them as evidence if necessary.

4) While Sachane.com is an official L'Oréal Dermocosmetics dealer, we are still unable to get advertisement approval for brands such as Vichy and La Roche Posay. This is because Sachane.com's advertisement approval has been withdrawn in the professional channel.

(....) I would like to emphasize that we do not expect privilege. All we want is for everyone to be treated equally and fairly. We would like to solve the aforementioned issues in a meeting. As you know, you have been telling us that you would address the advertisement approval issue since 2017, yet nothing has been done. (....), for instance, continues to advertise Kerastase as well. For some reason, every decision taken by L'Oréal affects only Sachane.com negatively, and other companies are held exempt from these rules. This leads to unfair competition and causes us financial losses.

If your schedule permits, we would like to invite you to our office to discuss the aforementioned matters.

I look forward to your response and wish you a pleasant weekend.

Respectfully,

08.09.2017-(....)>(....)

Hello (....),

Thank you for your message and your interest in the Kérastase brand.

Please find below our response to your questions and comments on the system for physical and online sales of the Kérastase brand.

As mentioned in our previous talks and correspondence, in order to provide the best service to the customers and to maintain the technical value of the products, the Kérastase brand may only be sold by trained professional haircare consultants or salons which have been duly approved by L'Oréal, which fulfill the selective distribution criteria for the brand, and which have been included in the "selective distribution network" by signing an Agreement with L'Oréal. The principles concerning the online sales of the products by the authorized sellers who have signed those Agreements are regulated in the attachment to the Agreement.

It is a natural outcome of the selective distribution system that our authorized dealers, with which you mentioned to have close relationships, are unable to sell the products to an undertaking that is not a member of the selective distribution network. In that context, the criteria and rules for our selective distribution network, including the (....) Hairdresser example that you consider "unfair competition," are implemented equally and non-discriminately for all dealers in the system.

As we noted before, necessary actions related to the unauthorized use of our brand rights are taken in a similar non-discriminatory manner, with regard to all firms which are not in the selective distribution network. In that context, there are no discriminatory or exclusionary conduct against the Sachane.com website/company.

Concerning advertisement approvals of other brands under the L'Oréal brand for which Sachane.com is an authorized seller, I believe you will be able to get results more efficiently by talking with the relevant division.

We are continuing to work with Sachane in different projects for our Matrix and LP brands, and I hope that these relationships will continue to flourish.

Have a nice working day,

Respectfully,

08.09.2017-(....)>(....)

(....) hello

Thank you for your courtesy in replying to my email, even if it was a bit delayed.

I was very saddened after reading your email. However, my sadness was not because of what you wrote, but because you were unable to answer any of my questions. So I feel the need to reiterate.

- Please provide your other dealers the same type of support you have been granting to (....), or stop favoring (....) right now. (I repeatedly mentioned the privileges you granted to (....) in my previous mails and I don't want to write the same things again).
- I request you to stop blackmailing your dealers who sell Kerastase brand products to our company. If you stop telling them "You can only sell this much product in your store this month, we can't supply any more to you," I believe you will have stopped discriminating between your dealers and acted more fairly, which is what I expect from you. I would also ask you to please refrain from threatening to terminate the dealership of those dealers who wish to pursue wholesale activities.
- Concerning advertisement approvals of other brands under the L'Oréal brand for which sachane.com is an authorized seller, I believe you will be able to get results more efficiently by talking with the relevant division. We have already been discussing the matter of these advertising approvals with our sales representative for the dermocosmetics channel, which you referred to as another brand of the L'Oréal Group, since the beginning of the year. As I mentioned in my previous channel, since unfortunately it was deemed necessary to block us in the professional channel (due to kerastase ad approvals), the dermocosmetics channel cannot add us to the whitelist for sales partners who are approved for advertising. Since this problem is caused by the professional channel, which is you, I am forced to discuss the matter not with the division, but with you. So I would appreciate it if you can fix the injustice you have done on this matter as soon as possible.

(....), as I said repeatedly, we are not expecting any privileges or concessions. All we are asking is for you to treat everyone equally. This style of market management you have been implementing to make more sales is troubling your dealers and us. Above all, this is in violation of the competition law rules clearly laid out by the competition board. My request is for you to be just in this unfair competition setting and treat everyone equally. If you refuse to take any action on this matter, we will be forced to seek justice elsewhere. I will appreciate your urgent response.

P.S Thank you for your good wishes regarding Matrix and SE brands. We want to work hard and prepare better projects and we are working towards that end by meeting with channel representatives.

Respectfully,

08.09.2017-(....)>(....)

Hello (....),

The terms of the commercial relationship between Kérastase authorized dealers and L'Oréal Türkiye are determined by the agreements signed between the parties, and the conditions under which our authorized dealers can sell Kérastase brand products and to whom they can sell them are also regulated in these agreements. Since your company is not an authorized dealer that is a member of our selective distribution network, the fact that our authorized dealers do not sell to you is not a result of blackmail by our Company, but rather a natural consequence of our selective distribution system, which is organized and implemented in accordance with the Competition Law and secondary legislation. I would like to take this opportunity to remind you once again that we do not have any exclusionary or discriminatory practices or goals regarding your Company, and that the rules on our selective distribution network are applied in a way that does not lead to any discrimination.

I would like to hold a meeting as soon as possible to explain to you how sensitive we are about equality in these matters and why we carry out all our actions in accordance with the law and rules.

**Finding-3:**

(19) The following statements are included in the e-mail titled "Loreal 3-piece set," sent by AKER KOZMETİK Official (.....) to LOREAL Sales Director (.....) on 31.01.2018, which was forwarded by LOREAL Sales Director (.....) to LOREAL employee (.....); which was similarly forwarded by LOREAL Sales Director (.....) to ARS KOZMETİK Sales and copied to ARS KOZMETİK Manager (.....) on 02.02.2018, and which was sent to LOREAL Sales Director (.....) by ARS KOZMETİK Manager (.....):

...

02.02.2018-(.....)>(.....)

...

(.....) the first 6 months ARE problematic don't do anything against the rules ars will ask for an invoice... you can't give it you can't get the budget

I'm just saying

WHY DO I DO EVERYTHING (.....) THE BUDGET AND EVERYTHING I've been saying for a month no funny business.

If I were to leave today I'd leave with a surplus not debt. but (.....) you've been after me about what I got for the dye you know and (.....) knows what I got I did not ask offer it to nebioglu if I had they wouldn't buy and ask for that price. BUT (.....) lp goods were brought but copped out about the matrix NOW (.....) got smart they'll switch and you'll suffer but it will be a stand you or vars shouldn't respond ...

Long story short, nobody will be invoiced without my say so. If those who bought lp don't get any matrix goods as well, if it doesn't show on the invoice their return won't be accepted I had this approved by (.....) I won't sell lp for 2 months if necessary

If an lp invoice doesn't have 25% matrix you won't get the return, not from me but from Loreal budget IMPORTANT

BY THE WAY matrix turkey targets (.....) the IDIOT, innumerate (.....) will either fix this market or will go away,,, made history in JANUARY cc matrix was 230%, lp was 385%

ANKARA HAD A DEFICIT OF 200 THOUSAND, AEGEA 100 THOUSAND, (.....) TEAM 90 THOUSAND, I CLOSED DOWN. Without getting a budget from Loreal .... (.....) got 7%.. Mr (.....) got 4 annually I got 10 from (.....). I didn't ask anything from you and didn't get anything.but you should know this so you don't ask what happened behind your back.. I didn't sell a single product from other dealers in your region,,I sold the (.....) target outside of your region..... check the panorama and you'll see.

We are suffering (.....) THEY WILL GET matrix over my price AND WITHOUT DISTORTING THE PRICE or they won't get lp either THEY WON'T GET IT from ANYWHERE,,, even if they call you, you won't get involved MATRIX MATRIX MATRIX

I have (.....) and (.....) with me on this, you'd better support me too.

RGS

02.02.2018-(.....)>(.....)

(.....)

You are not wrong but these are not matters we are involved with.

You should personally warn the guys and contact the superiors if necessary, don't get us in the middle of it.

Even if they are messing up right now it shouldn't be more than last year and we are trying to put an end to it by warning them and being careful.

We don't want to come under suspicion later as an accessory.

Loreal appointed 2 managers to us, one of them is the esteemed (.....) and the other is (.....), who is new and needs our trust.

We have to set up our system and deal with our own work (collection and logistics capabilities). Any issue between you, both sell in and sell out, are your responsibility, and I would appreciate it if you could refrain from pulling us towards pointless directions and having us deal with pointless things.

(....) maybe giving 7% or 4% annually but we can't even give 1% without getting the inventory right.  
Best Regards

(20) The e-mail titled “on google ads” sent by SAÇHANE Managing Partner (....) to LOREAL employee (....) on 08.09.2017 and the following correspondence clearly show that LOREAL was using a selective distribution system for Kérastase brand products, that only authorized salons accepted into the system could make sales online, and that their ability to make online sales was dependent on the condition that they meet certain criteria and get approved by LOREAL.

(21) In the subsequent correspondence on the same matter, SAÇHANE manager noted that resellers who wished to advertise online had to obey the rules listed in the sellers’ website “e-tailer guide” and that some advertising websites were currently in violation of them, which got a response claiming that resellers were constantly monitored to ensure that they met the aforementioned criteria. The Guidelines on Vertical Agreements specifies that undertakings using a selective distribution system may introduce certain conditions on online sales<sup>3</sup>. However, as clearly mentioned in the correspondence, LOREAL uses an approval system for granting a prior authorization to sales over a website<sup>4</sup>. On the other hand, it is clear that SAÇHANE was unable to take out Google ads for the products it was authorized to sell over its website for around a year since it was blacklisted in all products groups for selling products despite not being a member of their selective distribution system. It is assessed that a period of one year is more than what is needed to arrange ad approvals and that this practice restricted the online sales of the reseller in the selective distribution system.

(22) Regarding online sales, the Vertical Guidelines state that resellers should not intend to directly or indirectly hinder online sales by the distributor. Thus, any terms introduced by LOREAL on online sales must be objective. Taking out an advertisement aimed at a customer group in a certain region by making a payment to a search engine or an internet advertisement provider shall also be considered active sales to the region concerned.

(23) Similarly, in the e-mail chain titled “*Regarding Kerastase-2 (addendum)*,” sent by SAÇHANE Managing Partner (....) to LOREAL employee (....) on 19.04.2018, SAÇHANE official noted that internet ads required approval, that some unauthorized websites could take out ads but that they could not themselves. In the chain of correspondence that continued for close to a year, LOREAL repeatedly stated that internet approvals were granted to authorized sellers based on certain criteria, but the subsequent correspondence show that SAÇHANE was unable to get approval for online sales for LOREAL Dermocosmetics products, despite being an authorized seller.

<sup>3</sup> “On the other hand, the supplier may introduce certain conditions on the use of internet as a sales channels, similar to the ones it may introduce on physical points of sale or on the catalogues in which the advertisements and promotions are published. For instance, the provider may place quality conditions on the website where its products are offered for sale, and it may also impose a condition to offer certain services to the customers shopping over the internet.”

<sup>4</sup> Similar to online marketplaces and all advertisement channels, Google also has a portal to notify violations in order to prevent brand infringement. Brand officials can turn off internet ads by filling the form here [https://support.google.com/legal/contact/external\\_consult\\_wf?product=adwords](https://support.google.com/legal/contact/external_consult_wf?product=adwords) based on the explanation in the support unit <https://support.google.com/adspolicy/answer/2562124?hl=tr>. Since counterfeit products may pose health risks in cosmetics, all platforms are very sensitive about unauthorized sellers.

(24) On the other hand, correspondence dated 02.08.2018 show that resellers were warned not to distort prices and not to sell products online.

(25) When the information and documents acquired during the on-site inspections included above are assessed as a whole, LOREAL's practices restricting online sales by resellers has been evaluated as a competition problem under the Communiqué no 2021/2. In consideration of the fact that the undertaking submitted commitments to eliminate the relevant competitive issues, it was deemed unnecessary to conduct a separate exemption assessment for the practices in question.

### **I.2.2 Commitment Text**

(26) The commitment text received into the Authority records on 31.08.2023 with the number 42070 is summarized below:

- LOREAL commits to confirm and clarify with the authorized dealers that they are approved to take out ads about their authorized products and to use the relevant LOREAL brands for ad texts,
- Sale of technical-size products through online channels by sellers in LOREAL's online sale system will not be prevented. Such technical-size products are mainly manufactured for use in the services provided by hairdressers. Therefore, the buyer in the sales made through the online channel will be hairdressers, who are the main users and customers of the products. The same agreement will state that the relevant products may be sold online, provided the buyers of those products are professional end users.
- Technical products that require special training before use are aimed at professional use, since incorrect use may harm consumers. Technical products are not selective ones, but those with high chemical content, such as bleach in hair dyes. In case such products are sold online, consumers without the required knowledge and training to use those products may purchase and use them, which would lead to certain health and safety concerns for the user. Therefore, technical products (as distinct from technical-size products) are not covered by the above commitment.
- In order to increase the transparency of the current point system introduced for website sales, LOREAL commits to improve the language of the E-Commerce Guidelines, which includes the written criteria aimed at the candidate hairdressers who wish to make online sales, with an aim to ensure that it is easily understood by all hairdressers, to share those Guidelines with all applicant hairdressers, and to share all points won or will be won as a result of the assessments with the relevant candidate hairdressers.

### **I.2.3 Assessment of the Commitment Text**

(27) Article 2 of the Communiqué no 2021/2, titled "Scope," states that "*This Communiqué shall cover the commitments submitted by undertakings or associations of undertakings concerned in order to eliminate the competition problems which arise under the scope of Article 4 or 6 of the Act, except naked and hard-core cartels.*"

(28) Moreover, Article 5 of the Communiqué no 2021/2, titled "Commencing the commitment procedure," states

(1) *Parties who want to end an investigation conducted about them by means of a commitment may request to offer commitments during preliminary inquiry or investigation process. Requests to offer commitments during the investigation process shall be submitted to the Authority within three months after the notification of the*

*investigation has been sent under the scope of paragraph two, article 43 of the Act. Requests to offer commitments submitted to the Authority after the said period has expired shall not be taken into account.*

*(2) The parties shall commence the commitment procedure by submitting their request to offer commitments to the Authority in written form*

- (29) Since the restriction of online sales are not considered a naked and hardcore violation under the Communiqué no 2021/2, and since the application was duly submitted within the three-month period, the commitment application by LOREAL is found to have been submitted in compliance with the Communiqué no 2021/2.
- (30) Within the framework of the information above, it is concluded that the commitments submitted by LOREAL would eliminate the competitive issues and that the period specified for the implementation of the commitments was reasonable.

## **J. CONCLUSION**

- (31) The commitment application submitted by L'Oreal Türkiye Kozmetik Sanayi ve Ticaret AŞ within the framework of the investigation conducted in accordance with the Competition Board decision dated 13.04.2023 and numbered 23-18/343-M(9) to determine if there was a violation of the Article 4 of the Act no 4054 on the Protection of Competition was discussed in the Board meeting of 26.07.2023 and was accepted with the decision numbered 23-34/638-M, where it was decided UNANIMOUSLY that
  1. The commitments text submitted by L'Oreal Türkiye Kozmetik Sanayi ve Ticaret AŞ which entered into Authority records on 31.08.2023 with the number 42070 should be accepted since it was proportionate to the competitive issues, sufficient to eliminate those issues and effectively applicable in a short period of time, and that it should be made binding for the relevant undertaking,
  2. The amendments to be made in the agreements under the commitments should be documented to the Board within 60 days following the notification of the short Board decision to the relevant party,
  3. Within that framework, the ongoing investigation conducted under the Board decision dated 13.04.2023 and numbered 23-18/343-M(9) should be concluded with commitments in regard to the allegation of restriction of online sales,

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