

COMPETITION AUTHORITY DECISION

File No: 2020-4-052

(Exemption)

Decision Number : 21-13/175-76

Date of Decision : 11.03.2021

A. BOARD MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE

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

B. RAPPORTEURS: İmren KOL, S. Gözde BİRCAN, Osman AYAR

C. NOTIFYING

PARTIES : - Türk Havayolları A.O.

THY Genel Yönetim Binası Yeşilköy Mah. Havaalanı Cad.
No:3/1 Bakırköy/İstanbul

- ERKA ETKİNLİK VE TURİZM A.Ş.

Rüzgarlıbahçe Mah. Şehit Sinan Eroğlu Cad. No:3/3
Beykoz/İstanbul

- ERKA TK TURİZM BİLİŞİM A.Ş. Same Address

- (1) **SUBJECT OF THE FILE:** Request for the grant of negative clearance/exemption to the practice under the Holiday Package Sales Cooperation Agreement signed between Türk Hava Yolları A.O. on the one side and Erka Etkinlik ve Turizm A.Ş. and Erka Tk Turizm Bilişim A.Ş. on the other, which involves offering consumers holiday packages to be created by Erka Etkinlik ve Turizm A.Ş. and Erka Tk Turizm Bilişim A.Ş. for the duration of the Agreement, using a holiday package brand that will be set up by THY.
- (2) **E. PHASES OF THE FILE:** The Negative Clearance/Exemption Report dated 10.03.2021 and numbered 2020-4-052/MM, which entered into the Competition Authority (Authority) records on 16.07.2020 with the number 7325 was discussed and a decision was taken.
- (3) **F. RAPPORTEUR OPINION:** The relevant report states the following:
- A certificate of negative clearance cannot be granted to the Holiday Package Sales Cooperation Agreement (Agreement) under Article 8 of the Act no 4054 on the Protection of Competition (Act no 4054),
 - However, an individual exemption for a period of two years may be granted to the Agreement, provided it is amended so as to clarify that the provision in its Article 7.1.4 concerning the setting of prices for service fee amounts is intended as a recommendation.

G. EXAMINATION AND ASSESSMENT

G.1. Undertakings Concerned

G.1.1. Türk Havayolları A.O. (THY)

- (4) Founded in 20.05.1933 under the name Havayolları Devlet İşletmesi (State Airlines Administration) with a fleet of five planes, THY was turned into a company with the Law

no 6623 adopted in 1955, which is guided and managed under private law and was given the name Türk Havayolları A.O.

- (5) With its fleet of more than 362 planes flying to more than 120 countries, THY holds the title of the airline that flies to more countries than any other airline in the world, and the share of the public in the company has dropped below 50% with the public offering executed in May 2006. Currently, 49.12% of THY's shares are held by the Türkiye Wealth Fund.

G.1.2. Erka Etkinlik ve Turizm A.Ş. (ERKA)

- (6) Founded on 12.04.2017, ERKA was established to conduct agency and mediation activities in the tourism sector both domestically and abroad, to arrange relevant organizations and sightseeing tours, and to set up and operate travel agencies. It has been active in the corporate travel agency business since its establishment. The current partnership structure of ERKA is comprised of (.....)% Aslan EMRE and (.....)% Serhat KAHRAMAN.

G.1.3. Erka Tk Turizm Bilişim A.Ş. (ERKA BİLİŞİM)

- (7) Founded on 30.04.2020 as a subsidiary of ERKA, ERKA BİLİŞİM's current partnership structure is comprised of (.....)% ERKA and (.....)% Muhammet Emin BİLGENER.

G.2. Information on the Sector

- (8) Consumers who wish to set up their vacation programs on their own can first research and choose suitable travel, transfer and accommodation services individually, decide which provider to use for each of them, combine them as they like, and determine the best vacation options offered to them by contacting each service provider separately. It is also possible for consumers to avoid the costs related to research and signing individual agreements with each service provider by accessing all or some of these services in a bundle, through companies that provide the relevant holiday packages.
- (9) THY notes that the Agreement in the application will allow the creation of holiday packages under the THY-owned brand to be offered to consumers, and the relevant packages are defined as "individual holiday packages". To use the most general definition, holiday packages are a bundle of services offered to the consumers containing at least two of the travel, accommodation, sightseeing tours and insurance components. Holiday package services can be divided into "group holiday packages," "individual holiday packages" and "corporate holiday packages," according to the method of provision and consumer desires. In fact, these categories are explained as follows by the shareholders in the sector.
- (10) According to THY, group holiday packages are a kind of holiday package which are offered to the final consumer at a predetermined price with set conditions (such as transfer options, accommodation and sightseeing tours, length of stay, range of dates for the start of the travel, number of passengers, etc.), generally by getting prior periodic capacity and price guarantees from the providers. With these packages, final consumers must generally travel with a guide and as part of a group (the size of which is mostly determined by the vehicle capacity allocated to the relevant destination), and they can be cancelled by the operator if the demand is lower than the established

capacity. Individual holiday packages, on the other hand, are a type of package where the final consumers choose many elements of travel such as the date, accompanying persons, accommodations, sightseeing tours and activities, etc. on their own and request a quotation. Corporate packages are defined as those services aimed at meeting the domestic or foreign travel needs of companies. Travel agencies which were requested to provide information under the file made similar definitions for the relevant services. For instance, Club Jolly Turizm ve Ticaret A.Ş. (JOLLY) defined group holiday packages as cultural tours, cruise tours and foreign tours; individual holiday packages as tour packages other than cultural tours, cruise tours, foreign tours and corporate travel services which are individually prepared and sold to customers; and corporate holiday packages as those packages which offer accommodation, transfer and travel services to corporations, either individually or as a bundle. Ets Ersoy Turistik Servisleri A.Ş. (ETS) defined group holiday packages as those aimed fully at domestic residents in terms of demand which are offered for sale with the program and price predetermined by the package organizers and which have more than one option for air travel and thousands of options for accommodation; individual holiday packages as those whose supply is fully dependent on demand; corporate holiday packages as those comprised of hotel accommodation services, airline ticket sale services and meeting organization services, which are generally provided within the framework of annual agreements signed with companies.

- (11) Based on the definitions given above, group holiday packages refer to holiday package services in the classical sense, provided by the package tour organizer to the consumer by setting up a bundle that includes at least two of the components of transportation, accommodation, sightseeing and insurance. In individual holiday packages, consumers choose the service criteria they prefer (destination, date of flight, duration of stay, whether they would like to use a transfer service, etc.), and then the package tour organizers procure services from service providers to set up suitable holiday packages within the criteria established, which they then offer to their customers. Corporate holiday packages, on the other hand, may be defined as packaged holiday services that involve corporations asking bids from package tour providers within the framework of a program set up for a certain goal (a meeting, a seminar or a business trip, etc.) and a certain number of employees and then choosing among the offers received. As a result, when examined in terms of supply and demand structures, holiday package services may be divided into the sub-categories of group holiday packages, individual holiday packages and corporate holiday packages.
- (12) While packaged holiday services are generally provided by tour operators/travel agencies whose main field of operation is to help bring together service providers in the tourism sector with their customers, it has also become a field of business that airline companies globally wish to enter with various business models when to take some steps to increase their revenues other than their flight income due to rising costs, low profit margins, exchange rate fluctuations and risks stemming from commercial/political uncertainties. Airline companies may use various means to offer holiday packages in the market, including through a tour operator founded by the company, by letting a third

party tour operator use the rights of a brand they establish themselves, or through the *white-label* method¹.

- (13) Many leading airline companies in the world, including American Airlines, British Airlines and Qatar Airlines are currently offering holiday packages (under the brands American Airlines Vacations, British Airlines Holidays and Qatar Airlines Holidays, respectively), and the first step in this direction in Türkiye was taken by Atlas Havacılık A.Ş. In 2015, which started to offer airfare, accommodation and transfer services in a bundle under the Atlas Holidays name, with the company handling technology provision, operation management and content provision activities within the company structure.

G.3. Relevant Market

G.3.1. Relevant Product Market

- (14) As mentioned in the Guidelines on the Definition of Relevant Market, the relevant product market is defined based on an assessment of demand and supply substitutability. Assessment of demand substitutability requires the identification of other products which the consumer considers to be substitutes for the relevant product. A relevant product market covers those markets comprised of all goods and services which the consumers consider to be completely interchangeable and substitutable in terms of their prices, intended purposes and characteristics. In this sense, in order for two products to be in the same market, they products must be similar and substitutable in the eyes of the consumers in terms of their characteristics, intended purposes and prices.
- (15) The business model in the notification essentially involves the creation of a holiday package brand by THY (Turkish Airlines Holidays and Turkish Airlines Holidays Plus), which will be used, in accordance with the terms and duration set out in the Agreement, by ERKA and ERKA BİLİŞİM, operating as travel agencies, for sale of the holiday packages (in the form of pre-made and dynamic packages) the latter will set up after establishing the required technical infrastructure. It also involves the provision of these holiday packages to the customers over an online platform, and, if required, the sale of the same through traditional and online agencies meeting the criteria that will be determined later.

(16) As mentioned above, holiday package activities can be divided into the categories of “group holiday packages,” “individual holiday packages” and “corporate holiday packages,” based on how the package was created, how it was presented, and what type of customer it targets. Group holiday packages can be seen as those which are created as a result of agreements between travel agencies/tour operators and service providers (travel, accommodation, transfer, etc.) with final consumer making no direct contribution to the creation process. For these packages, the main goal when determining the content of the packages is to reach to largest audience. Therefore they include vacation destinations that appeal to the general public, and they can be created and sold at an affordable price. Individual holiday packages are those which are created

¹ *White-label* may be defined as replacing the brand or logo on a product or service with the brand and logo of the person/company that purchases it, and it refers to the third-party tour operator designing its sales channels as if they are the airline channel.

according to the criteria selected by the customers (date of travel, destination, duration of stay, whether the customer would like to use a transfer service, etc.) by the procurement of the relevant services via the infrastructure set up between the travel agencies/tour operators and service providers. Lastly, corporate holiday packages may be defined as those which are created in a process that involves holiday package providers offering packages according to the goal of travel and number of travelers determined by the companies, which then select the most suitable offer among those submitted. In that context, group holiday package, individual holiday package and corporate holiday package services can be differentiated from each other in terms of their supply and demand structure. Within the framework of the file, leading travel agencies' opinions on the subject were requested. Tatilbudur Seyahat Acenteliği ve Turizm A.Ş. (TATILBUDUR), Setur Servis Turistik A.Ş. (SETUR), JOLLY and ETS noted that group holiday packages, individual holiday packages and corporate holiday packages should be defined as separate relevant product markets, while Gömü Turizm Seyahat Acent. Tan. Org. İnş. San. ve Tic. Ltd. Şti. (GÖMÜTUR) stated that it was not necessary to define them as separate markets.

- (17) In addition, sector shareholders were asked if "individual holiday package" services should be defined as a separate market from "digital individual holiday package" services, which refer to the sale of the former via online channels. The feedback received generally noted that individual holiday packages and digital individual holiday packages should not be assessed separately in terms of supply and demand substitutability, and that digital (online) sales should be seen simply as a sales channel instead of a separate market, since they allegedly offered no additional advantages other than the ability to make reservations outside business hours.
- (18) An overview of the Board's previous decisions on whether traditional and online channels should be considered to fall in the same market, it is generally the case that where online sales competed with traditional sales, these two channels were considered to be in the same market. However, in case of a completely new product that is exclusively sold online, or where selling a product online offers significant advantages, the e-commerce of the relevant product was defined as a separate market. In terms of the differences between the two channels with respect to competitive parameters, the *Sahibinden.com*² decision took into consideration those factors which determine the features of the service, including ease of use, accessibility (finding a large audience) and time savings, noting that complex channels such as newspaper advertisements and realtors' offices could not be considered as substitutes. Similarly, the *Booking*³ and *Yemeksepeti*⁴ decisions evaluated the fact that online channels included extensive images, allowed free cancellation within certain time periods, could be used as a tool to inform consumers quickly about all opportunities and discounts, allowed multiple transactions from a single point, and could compare all products with

² Board decision dated 01.10.2018 and numbered 18-36/584-285.

³ Board decision dated 05.01.2017 and numbered 17-01/12-4.

⁴ Board decision dated 09.06.2016 and numbered 16-20/347-156.

certain features and facilitate choosing the best fit (in terms of price, etc.), and ultimately concluded that the online channel was in a different market from traditional channels.

- (19) Also, in its *D&R* decision dated 29.05.2018 and numbered 18-16/293-146, the Board observed that, for retail book sales in Türkiye, the online and traditional channels could be considered in the same product market if it was established that the online channel could put competitive pressure on the traditional channel, regardless of whether the traditional channel could put similar pressure on the online channel, that better prices were by far the most important factor in Türkiye for an online shopping channel to be liked and preferred by the consumers, that the online channel was preferred by a large extent for books/music products, therefore the online channel could be said to put competitive pressure on the traditional channel. Based on these factors, the Board concluded that the online and traditional channels should be considered to exist in the same market.
- (20) When examined in this context, it is observed that holiday packages are sold in both traditional and online channels, which means that the holiday packages to be created under the THY brand (.....) can be sold by ERKA through the traditional as well as through the online markets. Travel agencies whose opinions were requested within the framework of the file stated that the function of online sales channels would not be any different from traditional channels of sales, that customers would not derive any significant advantage from the sales made online compared to traditional sales, and that online sales should be seen as a sales channel rather than a separate relevant market. According to the “Turkish E-Commerce Market Size in 2019” Report published by the Turkish Informatics Industry Association, the “Holiday and Travel Services” market comprised 36% of the volume of e-commerce in Türkiye in 2019, and the 36% growth in the “Holiday and Travel Services” market between 2015-2019 ranked second just below the 38% growth in the “Exclusively Online Retail” market. Thus, it can be said that the rapidly growing online holiday and travel services market has put competitive pressure on the traditional channels of sale. The Application Form states that the market in which the holiday package products and services will be offered could be defined as the “digital individual holiday package booking services” market. On the other hand, since the holiday packages to be created under the THY brand will be offered in both the traditional and the online channels as per the Agreement in question, and under the assumption that a potential separation would not make a difference in the conclusion of the file, it is decided that the relevant product market could be defined as the “individual holiday packages” market, without drawing a distinction between the traditional and online channels of sale.
- (21) Additionally, the flight content of the holiday packages that will be created under the Agreement will be provided by THY. In line with its main area of activity, THY will provide the airline passenger transportation services included in the package to the customers who purchase the THY branded holiday packages. As mentioned by the travel agencies whose opinions were requested under the file, the group or individual holiday packages created mostly make agreements with THY and Pegasus Hava Taşımacılığı A.Ş. (PEGASUS) for the airline travel portion. In that context, since THY will provide a service to be used in the holiday package content created for ERKA under the

Agreement, the relevant product market in the upstream can be identified as the “airline passenger transport” market.

- (22) In line with the assessments above, the relevant product markets are defined as the “*individual holiday package market*,” without a drawing a distinction between traditional and online sales channels, and the “*airline passenger transport*” market, which comprises THY’s main business.

G.3.2. Relevant Geographic Market

- (23) When identifying the geographic market, first a preliminary opinion is formed based on the indicators related to the market share distributions of the parties and their competitors, and on the price differences. Afterwards, undertakings in various regions are examined to see if they can really serve as an alternative source of supply for customers, in light of the demand structure. It also examined whether the customers of the undertakings under examination are able to switch their orders to undertakings at a different location, within a short period of time and with negligible costs.
- (24) When defining the relevant geographic market for international transactions in the airline transport sector, taking different criteria into account may result in different definitions for the geographic market. For instance in one transaction the geographic market may be defined to include the countries parties to the transaction in their entirety, or the same transaction may also allow geographic markets based on city pairs or airports.
- (25) In the decisions taken by the Board on airline passenger transport⁵, the general principle adopted is to define a separate geographic market for each route between a pair of departure-destination points. In route-based market definitions, departure and destination points are specified in the form of a pair of matched cities. In that context, for cities with more than one airport, every airport in the same city is considered to fall under the same geographic market. However, in the responses to the requests for information submitted, THY noted that it was currently unclear which routes would be affected by the Agreement and that all domestic and international routes THY operates could be included in the holiday packages covered by the Agreement. In light of the fact that THY flies to 319 cities in 127 countries as of 05.12.2019, and that the Agreement could cover all of these routes, the relevant geographical market was defined as “*routes whose departure/destination point is in Türkiye*,” without making a market definition with matched cities.

⁵ Board decisions dated 25.12.2014 and numbered 14-54/932-420; dated 11.04.2007 and numbered 07-31/323-119; dated 11.06.2008 and numbered 09-27/577-137; dated 16.06.2011 and numbered 11-37/768-236; dated 01.09.2015 and numbered 15-34/512-160.

G.4. Assessment

G.4.1. Scope of the Notified Agreement

- (26) The notified agreement covers ERKA and ERKA BİLİŞİM's use of a holiday package brand to be created by THY for the duration of the contract to offer individual holiday package products to consumers.
- (27) THY notes that there are two types of individual packages to be offered for sale under the Agreement. THY branded individual holiday packages comprising the subject matter of the Agreement are classified as pre-made packages and dynamic holiday packages.
- *Pre-made package*: These are packages that are created based on an agreed-upon price and dependent on pre-conditions (time of stay, date of travel start, number of passengers, etc.) which receive seasonal capacity and price guarantees from the providers; under these packages, at least two of the transport, accommodation and other tourism services are sold together at an all-inclusive price, and the service lasts longer than 24 hours or includes overnight stays.
 - *Dynamic package*: Under these packages, at least two of the transport, accommodation and other tourism services are sold together at an all-inclusive price by checking immediate price and availability information from the service provider, and the service lasts longer than 24 hours or includes overnight stays.
- (28) According to the agreement, ERKA will set up an online holiday package sales platform. The infrastructure, investment and operational aspects of the platform will be handled by ERKA together with ERKA BİLİŞİM, and ERKA will be the exclusive worldwide representative of the THY branded holiday package. In this context, ERKA will establish the technological infrastructure, sign the required content agreements for accommodation, transfer, and similar services, and manage operational processes such as after-sales support, etc.
- (29) With the agreement, the undertakings are planning to sell holiday package products and services created under the THY holiday brand for all markets where THY is active, which has Türkiye as the departure or destination point. The priority target is the sale of holiday package products and services that include airplane tickets whose destination is Türkiye.
- (30) THY notes that, in addition to the THY branded holiday packages, the platform to be established will also offer holiday packages and individual content by different tour operators. In addition, agencies that integrate with the platform will get the opportunity to offer THY branded holiday packages to their passengers. In this way, these agencies will be able to receive service or commission fees from the sales of the relevant packages.
- (31) It does not appear that the cooperation between THY and ERKA will harm THY's current relationships with other travel agencies. The agreement does not include any obligations or restrictions on THY's current or future agreements. THY will continue to offer the special prices to travel agencies for use in their current holiday packages, and

THY's relationship with ERKA will not prevent other travel agencies from taking advantage of these special prices.

(32) (.....). At any event, the term of the Agreement is set to expire automatically at the end of the five-year period starting from the date holiday package sales begin.

(33)

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

G.4.2. Nature of the Relationship between the Parties

(34) Paragraph 10 of the Guidelines on Vertical Agreements (Guidelines) explains: "*Since the limitations placed on the agency concerning the agreements it mediates or concludes on behalf of its client are not generally under the scope of Article 4 of the Act, they are, in principle, not a subject of the exemption regime. The fact that the agreement signed is called an agency agreement does not, by itself, mean that the agreement in question is not covered by Article 4 of the Act. In this situation, the factor which determines whether or not the relationship between the undertakings falls under article 4 of the Act is whether the agency takes a commercial or financial risk in relation to the activities assigned to it by its client. In case the agency does not assume any financial or commercial risks due to the agreement it concludes or mediates, then the relationship between the agency and its client is beyond the scope of article 4 of the Act. In such a case, the buying or selling activities of the agency is considered part of its client's activities. The client undertaking, as a result of the agency service it receives, will gain the right to determine the economic activities of the agency in this area, in exchange for taking the financial and commercial risks. In the opposite situation, the agency undertakes all of those risks itself and therefore would need to freely set its own marketing strategy in order to ensure a return of its investments. Under those circumstances, the agreement in question may fall under article 4 of the Act and may be assessed under the Communiqué.*"

(35) The Agreement signed between the parties include the provision (.....). In line with the explanations of the parties concerning the relevant provision, it seems that the provision is intended to allow THY to determine the accounting, technical, collection and operational flow of the prices of THY's flight services. ERKA will not receive progress payments such as incentives or commissions specific to agencies. In addition, as explained in the Guidelines, any commercial and financial risks that determine whether the agency relationship between the parties falls under the Act no 4054 must be assessed in light of the specific characteristics of each case. Accordingly, such an assessment must be made concerning the risks ERKA will assume as a result of the notified Agreement.

(36) Under the Agreement, ERKA is the main responsible party and will cover the technology, software, infrastructure investments for creating the platform; office costs for operating the platform; business costs such as advertisement costs, personnel and management costs, and ERKA will also assume the financial and business risks of these investments and costs as well. According to the Agreement, ERKA provides a minimum commission guarantee to be paid to THY as well as a minimum purchase

guarantee for the miles won in return for the products and services sold under the brand. These guarantees are set out in US Dollars and any risks stemming from exchange rates shall be borne by ERKA. ERKA is also responsible for any demands that may arise as a result of the defective performance of the service provided, and any financial (payments to customers) and commercial (loss of value for the platform or the brand) losses that may arise as a result of those demands. ERKA undertakes to carry out THY's demands to change the design and flow of the sales platform as soon as possible, and to bear the commercial and financial consequences of these changes. It is also ERKA's responsibility to collect the security deposits to be set within the framework of a plan that will be developed in cooperation with THY from the agencies, from third parties and from service providers. All financial responsibility for failing to receive a security deposit shall lie with ERKA.

- (37) In light of the information given above concerning the risks undertaken by ERKA within the framework of the Agreement, it would be impossible to consider ERKA's activities as part of THY's activities within the framework of the parties' relationship. The commercial and financial risks assumed by ERKA forces the undertaking to develop an independent marketing and sales strategy. As a result, it is concluded that while the Agreement refers to ERKA's status as an agent, this does not take the relevant Agreement outside the scope of the Act no 4054.

G.4.3. Relationship between the Activities of Travel Agencies and Airline Firms

- (38) According to Article 3 of the Travel Agencies and Travel Agencies Association Law no 1618 (Law no 1618), travel agencies may be categorized into three groups according to the services they offer. Group (A) travel agencies are for-profit undertakings that are authorized to provide tourism-related information to tourists, create package tours, offer accommodation, transportation, sightseeing, sports and entertainment services intended for tourism, and to market the products they have created on their own or through other travel agencies.

Table 1: The Number of Persons and the Airlines Used Falling under the Framework of the Group and Individual Holiday Packages with Air Transport, Provided by Travel Agencies between January 2017 and September 2020

	GROUP HOLIDAY PACAKAGES						INDIVIDUAL HOLIDAY PACKAGES					
	THY		PEGASUS		OTHER		THY		PEGASUS		OTHER	
	Number of Persons	%	Number of Persons	%	Number of Persons	%	Number of Persons	%	Number of Persons	%	Number of Persons	%
ETS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
JOLLY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TATILBUDUR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SETUR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GEZİNOMİ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRONTOTUR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

GÖMÜTUR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOURAMA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Calculations Made According to the Information Provided by Travel Agencies												

Group (B) travel agencies sell tickets for international land, sea and air transport vehicles and for the tours organized by group (A) travel agencies. Lastly, group (C) travel agencies, can only organize domestic tours for Turkish citizens. Group (B) and (C) travel agencies may not provide travel agency services that fall outside the scope of their own services. However, they may carry out those services contracted to them by group (A) travel agencies. In the Board decision dated 27.05.2018 and numbered 1840/645-315, it was noted that there were a total of 10,099 travel agencies registered with the Association of Turkish Travel Agencies (Türkiye Seyahat Acentaları Birliği – TÜRSAB), with 9,920 in group (A), 60 in group (B) and 119 in group (C); meanwhile, the letter submitted by JOLLYTUR states that currently there are 11,410 agencies registered with TÜRSAB.

- (39) According to the law no 1618, group (A) travel agencies provide domestic and international holiday package services, corporate travel services, cruise organizations and ticket sales, accommodation and airline ticket sales services. Consequently, certain information and documents related to the holiday package service they provide were requested from some of the leading group (A) travel agencies operating in Türkiye, namely ETSTUR, JOLLYUR, TATILBUDUR, SETUR, GÖMÜTUR, Gezinomi Seyahat Turizm Tic. A.Ş.(GEZİNOMİ), Tourama Tourism Seyahat ve Ticaret A.Ş. (TOURAMA) and Prontotour Ac Turizm Ticaret A.Ş. (PRONTOTUR). As well, some information and documents on air ticket sales channels were requested from THY and PEGASUS, which are active in the market for airline passenger transportation. The tables created based on the information and documents acquired are below.
- (40) An examination of Table 1 shows that there was a varied distribution of group and individual holiday package services provided by travel agencies, with some travel agencies focusing on group holiday packages while others focused on individual holiday package services. However, the average data showed that holiday packages provided by travel agencies were mostly group holiday packages, that THY's use for group travel packages varied between (.....) % and (.....)%, while PEGASUS was used for between (.....) % and (.....)% of the packages. For individual holiday packages, THY was used for (.....)% and (.....)%, while PEGASUS was used for between (.....)% and (.....)%. As a result, the table above shows that for every travel agency that offers individual packages, PEGASUS's share is currently higher than that of THY's.
- (41) When examined under the assumption that total data would yield more robust results, THY's share for group holiday packages was (.....)% and PEGASUS's share was (.....)%; while for individual holiday packages, THY's share was (.....)% and PEGASUS's share was (.....)%. Thus, based on the total data examined, THY is preferred more than its rivals for group holiday packages, and PEGASUS is preferred more for individual holiday packages.

Table 2: Air Ticket Sales Channels for THY and PEGASUS between January 2017 and September 2020

	THY		PEGASUS	
	Quantity	%	Quantity	%
Agency	(.....)	(.....)	(.....)	(.....)
Online Travel Agency	(.....)	(.....)	(.....)	(.....)
Other (website, call center, mobile app, ticket sale office, etc.)	(.....)	(.....)	(.....)	(.....)
Total	(.....)	100.00	(.....)	100.00
Source: Calculations Based on Information Submitted by THY and PEGASUS				

- (42) Table 2 shows that THY makes (.....)% of its flight tickets sales on its own through its website, call center, mobile app and ticket sales offices, and (.....)% through the agencies, while these ratios are (.....)% and (.....)%, respectively, for PEGASUS. Thus, agencies are an important sales channels for the flight ticket sales of the largest two airlines operating in Türkiye. In line with the information above, the average usage rate of THY is (.....)% for group holiday packages and (.....)% for individual holiday packages, with (.....)% of THY’s ticket sales being done via agencies.
- (43) On the other hand, travel agencies have different areas of operation apart from group and individual package holiday services. For instance, ETS noted that in the 2017-2020 period, the shares of individual holiday packages in its total revenues were (.....)%, (.....)%, (.....)% and (.....)% respectively, and the shares of group holiday packages were (.....)%, (.....)%, (.....)% and (.....)% respectively. TATILBUDUR stated that these shares were (.....)%, (.....)%, (.....)% and (.....)% for individual holiday packages, and (.....)%, (.....)%, (.....)% and (.....)% for group holiday packages. SETUR explained that the main source of revenue for the undertaking was “Duty Free,” with the share of holiday package services in the total revenues remaining below (.....)%.
- (44) As a result, it is possible to conclude that while travel agencies are not significantly dependent on THY to maintain their operations, while THY, with its main business of passenger transportation via airline, is somewhat more dependent on the agencies for its ticket sales. As a result, it becomes clear that agreements between the agencies and THY relating to ticket sales will continue without a significant reduction following the implementation of the notified practice by THY and ERKA. On the other hand, it is observed that THY’s share is much lower than that of its closest domestic rival PEGASUS in terms of individual holiday package sales, which comprise the subject matter of the Agreement.

G.4.4. Assessment for Negative Clearance and Block Exemption

- (45) Article 4 of the Act no 4054 provides: “*Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal ad prohibited.* Examined under this framework, the provisions of the Agreement require ERKA to get THY’s consent before concluding an agreement with an airline other than THY for the flight inclusive packages of the brand to be founded for the duration of the Agreement, and therefore the Agreement includes a non-competition obligation. In

addition, ERKA will become the global exclusive representative for the brand to be created. Accordingly, it is concluded that the Agreement, which includes restrictive provisions such as exclusivity and non-competition, would fall under Article 4 of the Act, and that a certificate of negative clearance under Article 8 of the Act could not be granted to the Agreement.

- (46) The Block Exemption Communiqué on Vertical Agreements (Communiqué no 2002/2) defines vertical agreements as agreements concluded between two or more undertakings operating at different levels of the production and distribution chain, with the aim of purchase, sale or resale of particular goods or services. As explained in the previous sections, the notified Agreement specifies that the holiday package brand to be created by THY will be used by ERKA and passenger transport service under these packages, including flights, would be provided by THY. Thus, the relationship between the parties under the Agreement is a vertical one.
- (47) The Communiqué no 2002/2 specifies the principles of the block exemption from the prohibition of Article 4 of the Act with relation to vertical agreements. Article 2.2 of the Communiqué no 2002/2 provides that the block exemption would be applied where the share of the supplier in the relevant market does not exceed 40%. In addition, paragraph 51 of the Guidelines on Vertical Agreements explains, “*If a supplier company is using the same distribution agreement in the distribution of many products/services, then, due to the market share threshold, some of these groups may benefit from the block exemption while some of them may not. In such a situation, the block exemption shall be applicable only to those products or services below the market share threshold.*”
- (48) The Agreement signed between THY and ERKA covers all routes where THY is active in the market for passenger transportation.⁶ When market share data for both domestic and international routes submitted by THY under the file are examined, it is observed that THY’s market share in a small, negligible portion of the relevant routes was below the 40% threshold, but exceeded it for most routes. Additionally, according to the 2019 Airlines Sector Report issued by the State Airports Authority, THY is the market leader in domestic passenger transportation with a share of 61%. In line with all of these information, particularly in light of the fact that THY requested the evaluation to assume all flights were covered by the Agreement and in light of THY’s position in the market, it was concluded that an integrated evaluation would require individual exemption assessments for all routes covered by the Agreement.

G.4.5. Individual Exemption Assessment for the Agreement in General

- (49) Article 5 of the Act no 4054 provides that “*Agreements between undertakings, concerted practices and decisions of associations of undertakings are exempt from the*

⁶ An overview of the market share data prepared using the MIDT (marketing information data tapes) data submitted by THY, which are themselves based on DDS (direct data solutions) data prepared according to departure/destination information for each country in the last three years, shows that these datasets also include THY’s market shares not only for international flights from/to Türkiye, but also for domestic flights. In addition, as noted by the parties, the scope of the Agreement is not clearly defined in terms of the routes to be affected. Therefore, it is assessed that the potential cooperation could cover domestic flights, as well.

application of Article 4 provisions,” provided the four cumulative conditions specified in the same Article are fulfilled. These conditions are listed in the first paragraph of Article 5 as follows:

- a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,
- b) Benefiting the consumer from the above-mentioned,
- c) Not eliminating competition in a significant part of the relevant market,
- d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).

This section examines the Agreement in question in terms of whether it fulfills the conditions listed in Article 5 of the Act no 4054 for each heading, since it was concluded above that the Agreement could not receive a certificate of negative clearance, nor could it be included under the scope of a block exemption.

G.4.5.1. Ensuring New Developments and Improvements, or Economic or Technical Development in the Production or Distribution of Goods and in the Provision of Services

- (50) The individual exemption assessment determines whether this first requisite condition exists and which circumstances lead to efficiency gains, based on the characteristics of the present case. In general, this condition is considered to be met in case of decreasing production and distribution costs, increasing quality, ensuring continuous supply of goods, facilitating new entries into the market and invention of new products or production techniques.
- (51) Changes in consumer choices and provision of service aimed at meeting the varying needs and expectations of each consumer group has found repercussions in the tourism sector, as well. Barriers to undertakings' ability to respond to a dynamic demand structure in the services offered through traditional channels, such as the application of some limitations due to existing operational and financial risks and the setting of minimum and maximum capacities, can force consumers to travel independently. In other words, when consumer cannot meet their various needs, they can tend to travel according to the vacation programs they create in line with their own choices instead of choosing to travel with a fixed program as a group through traditional tour operators. Consumers can gravitate towards a more individualized holiday plan that directly meets their own choices. It seems that the new brand to be created by the Agreement will aim to increase the presence of personalized and flexible holiday packages in the market.
- (52) The fact that holiday package services offered for groups contain a limited number of pre-determined locations can be insufficient to draw tourists with different preferences to Türkiye, as well. In that framework, the individual holiday package services in the Agreement which grant a wider freedom of choice to consumers can make significant contributions to Türkiye's tourism sector. The number of regions in Türkiye that can be visited by those passengers who choose to travel independently according to their own personal preferences instead of through traditional tour operators will increase beyond

the limits determined by the holiday packages offered to groups. The cooperation under the notified Agreement will result in the creation of holiday packages that focus on traveling tendencies based on personal choices, which will both attract foreign tourists who wish to travel to Türkiye and increase variety for domestic tourists. This way, there will be an increase in the tourism traffic both from Türkiye to the rest of the world and vice versa.

- (53) Technological infrastructure investments are important in order to create content for individual holiday packages that will provide the aforementioned improvements as well as to fulfill all of the consumer choices and reach a wider group of consumers. To that end, the cooperation between THY and ERKA aims to provide all travel services, especially including accommodation and transportation, according to the personal choices of the consumers. In that context, the parties have included provisions in the Agreement related to the creation and operation of the technological infrastructure that is required for the platform to be founded.
- (54) Currently, undertakings providing tour-operating services in the Turkish market lack sufficient brand recognition when compared to those undertakings that provide similar services at the global scale. As a result, these undertakings mostly serve domestic consumers rather than foreign tourists. The platform to be set up under the Agreement is intended to offer services at the global scale, selling not only holiday packages of the THY brand, but content provided by other tour operators, as well. Thus, it is believed that the platform could ensure the access of the relevant undertakings to a global marketing network.
- (55) With the agreement, ERKA will become the exclusive global representative of the brand to be created. As the grounds for the exclusivity provision, the parties have noted that the creation and operation of the technological infrastructure requires a certain level of know-how. Thus, it seems that THY appointing an exclusive agent to set up and launch the platform for consumer use and to maintain the service quality at the maximum by ensuring a certain level of quality standardization and efficient monitoring is intended to protect the THY brand and ensure that the required investments are made by the agency when offering the new brand to the market. Concerning the provision that requires THY's consent for contracting an airline other than THY for the flight-inclusive packages of the brand, THY claims that an examination of the holiday packages offered by other airlines as part of their holiday package programs, it can be observed that the airline offering the package generally sold those holiday packages which includes their own flight tickets. THY explains that the main reason for this is that the holiday package platforms owned by the airlines must maintain the brand promise and quality standards of the airline in question and that these firms are adding the holiday package product to their portfolio as a sector standard, that this is required by the nature of the sector and the service provided, and that similar examples throughout the sector are structured in the same way. In that context, it is pointed out that the inclusion of an airline other than THY in the platform would have to be evaluated within the context of the quality standards of the holiday brand, the business relationship to be established with other carriers and operational facilities. Thus, the relevant provision seems to be related to the protection of the THY brand as well as to the creation and protection of an image for the new brand owned by THY.

- (56) In light of all of the information above, it is found that the planned cooperation between the parties will lead to technological improvements in the sector, ensure higher quality services personalized for consumer choices, and the players in the sector will have the opportunity to operate in wider markets thanks to this platform. As such, it is concluded that the the first condition of for exemption is fulfilled by the Agreement.

G.4.5.2. Benefiting the Consumer from the Above-mentioned

- (57) For an agreement with restrictive effects on competition as per Article 4 of the Act no 4054 to get an exemption under the Act, the consumers must also derive benefit from the new developments, improvements, or economic or technical developments in the provision of goods and services listed as a condition in Article 5(a) of the Act. When measuring and assessing the benefit to the consumer, factors such as price drops, increased efficiency in after-sales services, easier access to the product by the consumer and continuity of supply are taken into consideration.
- (58) The cooperation to be formed by the Agreement will not only provide cost advantages stemming from the increase in the marketing and sales of the individual holiday packages and from common services, but it will also allow the provision of higher quality services to the consumer which more directly meet their preferences. Through the platform to be set up, consumer will gain access to a new alternative in the market, and the increase in the number of market players will let them benefit from prices that are more competitive. Since the platform will include holiday packages offered by other agencies in addition to the THY-branded ones, the variety of products that the consumers can access on a single platform will increase.
- (59) In addition, thanks to the individual holiday packages, consumers will be able to compare the offerings from more than one competing tour operators, according to their personal preferences. Ready-made holiday packages are insufficient to meet the needs of those consumers who wish to create a personalized and flexible travel plan. Accordingly, consumers that wish to plan their travels according to their own preferences are forced to research travel components such as flight, hotel, transfer, vehicle, etc. from different suppliers, then assess the holiday packages they created in terms of preference, availability, flexible travel dates, payment security and service quality so as to determine the best option. The Agreement intends to set up a platform for those consumers who do not prefer ready-made holiday packages where, when setting up their travel plans, they can select content from different providers on a single platform, where they do not need to enter their information repeatedly, and which can recommend packages created according to their personal choices if given the required permissions. Thus, consumers will also be able to make the payment for all of the components of the travel through a single platform and filter these components according to personal taste, using a system that allows them to keep control over the process of planning their travels.
- (60) In addition, thanks to the after-sales support service of the platform, consumers will be able to solve their issues through a single supplier in case of a cancellation/return or change in their plans, instead of dealing with multiple suppliers. The call center service specified in the Agreement will help consumers easily resolve their issues. Under the Agreement, ERKA is obliged to support the most common payment methods used by

the customers. Therefore, consumers will not have to deal with payment difficulties or communication issues, particularly those caused by purchasing their services from foreign providers.

- (61) In light of the information above, it is found that the platform to be established will lead to an increase in service quality and product variety, and ensure the creation of a more competitive environment by increasing the number of players in the market. As a result, it was concluded that the Agreement fulfilled the second condition for exemption, which is to benefit the consumers.

G.4.5.3. Not Eliminating Competition in a Significant Part of the Relevant Market

- (62) According to this condition that must co-exist with the other three for the agreement in question to receive exemption, it should not lead to the elimination of competition in significant portion of the relevant market, i.e. the economic improvement and benefit and the advantage consumers derive from them should not result from the elimination of competition. When assessing whether competition was eliminated in a significant portion of the relevant market, the main points of consideration can be listed as whether there are existing barriers to entry in the market, whether there is a dominant undertaking in the market, whether vertical agreements create barriers to entry, the structure of the market, and to what extent consumer choices are restricted.
- (63) Within the framework of the Agreement, ERKA will become the exclusive global representative of the THY's holiday package brand. Consequently, it was examined whether the exclusivity in question would cause foreclosure of the individual holiday package services market to the rival undertakings operating in it.
- (64) As mentioned above, THY's appointing an exclusive agency can be justified since this is intended to protect the THY brand and ensure that the agency also makes the required investments during the launch of the new brand in the market. In addition to this, the exclusivity in question is not expected to lead to the foreclosure of the market to other travel agencies/tour operators. This is because, as specified in the Agreement provisions, the platform will include not only products by the THY brand, but also holiday packages from different agencies, so long as these meet the minimum quality standards. As a result, the relevant undertakings will be a part of the marketing network the Agreement plans to establish. Also, the B2B pillar of the cooperation set up by the Agreement will allow those travel agencies that integrate with the platform to offer holiday packages of the brand to customers, including those sales made over their own sales channels. On the other hand, ERKA, as one of the parties to the Agreement, does not currently have any operations in the market for individual holiday packages.
- (65) According to the information submitted in the Notification Form, the cooperation between THY and ERKA will not harm THY's existing relationships with other travel agencies and will not prevent THY continuing to offer certain advantages to those agencies. Any content THY will provide to ERKA under the Agreement will be at a similar scale to those provided to other travel agencies. Additionally, in order to prevent ERKA gaining a privileged position in the market, THY will not give any fee or capacity guarantees to ERKA. Consequently, it is concluded that the notified Agreement would not lead to a foreclosure effect in the market for individual holiday packages or in terms

of the other activities of the travel agencies. In light of the fact that ERKA's main field of business is corporate travel services, the cooperation notified will serve as the entry of one more player to the individual holiday packages market. An examination of the current market shows that it is an emerging market with not many players. Thus, ERKA's entry into the market is seen as a pro-competitive factor.

- (66) It is also important to address the effects of the Agreement for those routes included in the market for "airline passenger transportation," which will be used by the brand that will launch its operations in the individual holiday packages market. This is because, in order to protect the image of the THY-owned brand, contracting an airline other than THY for the brand's flight-inclusive packages requires THY's consent. On the other hand, THY also notes that it is unable to point out the routes that will be affected by the Agreement at this stage, since all routes in which THY is active can potentially be affected. THY's market shares in the routes it operates show that THY holds significant market power in certain routes. While it is currently impossible to make an evaluation concerning which routes will be directly affected by the Agreement, within the framework of the data acquired from the travel agencies under the file with relation to the January 2017 - September 2020 period show that PEGASUS had a larger share than THY from the flights included in the individual holiday packages comprising the subject matter of the file. It should also be noted that with the Agreement under examination, THY does not impose any obligations on the travel agencies not to deal with competing undertakings for any offerings that will not be used by the THY-owned brand. Consequently, even though it is impossible make a route-based evaluation under the application, it is still found that the Agreement will not lead to the elimination of competition in a significant portion of the relevant market under the present circumstances, especially in light of the fact that it does not prevent rivals in the airline passenger transport market from maintaining their existing agreements with travel agencies, or from creating their own brands via similar agreements. In consideration of the explanations above, it is concluded that the notified Agreement will lead to the entry of a new player into the individual holiday packages market, that ERKA's entry into the market would not result in the foreclosure of the market to existing agencies since the platform to be established will be open to all agencies, and that therefore the Agreement will not lead to the elimination of competition in a significant portion of the market,

G.4.5.4. Not Limiting Competition More Than What Is Compulsory for Achieving the Goals Set out in Sub-paragraphs (a) and (b)

- (67) This last condition required for an agreement to receive individual exemption specifies that there must not be any method available that can reach the benefits listed in the two previous positive conditions in a less restrictive way. In general, an assessment under this condition generally examines whether the restrictive provisions of an agreement are required for gaining the expected benefits, and looks at the duration of the agreement.
- (68) It is evaluated that THY's appointing an exclusive agency to use the brand in the relevant agreement is justified for the purposes of protecting the THY brand and ensuring that the agency makes the investments necessary for launching the new brand to the market. On the other hand, according to (.....) of the notified Agreement, ERKA

must receive THY's written consent before working with any airline other than THY for flight-inclusive packages it will offer. In addition, ERKA will not be able to offer individual flight tickets outside of the packages, unless otherwise authorized by THY in writing. This provision constitutes a non-competition obligation in that it restricts the use of competing airline offerings in the holiday packages to be created under the THY brand.

- (69) The Notification Form notes that offering content from a different airline under the THY brand could harm THY's brand image. In fact, consumers that purchase a holiday package under the brand which uses a flight offering from a different airline may form negative perceptions of the THY brand in case there is a problem in the holiday package stemming from the airline concerned. Thus, it seems that the parties have restricted flight options exclusively to those offered by the brand in order to ensure that the brand image is not harmed. ERKA will be able to present other content on the platform other than the brand, and it will be free to procure the flight options for these holiday packages from other airlines. As a result, it was concluded that the relevant provision of the Agreement was proportionate and reasonable for the purposes of protecting the brand image, and did not restrict competition more than required.
- (70) (.....) At any event, the Agreement is set to expire automatically at the end of the five-year period starting from the date holiday package sales begin. It was decided that the Agreement did not restrict competition more than necessary in terms of duration, either. Therefore, it was found that the Agreement met the condition specified in Article 5.1(d) of the Act no 4054.
- (71) Thus, it was concluded that the Agreement met the required conditions for individual exemption, and could be granted individual exemption under Article 5.1 of the Act no 4054.

G.5. CONCLUSION

- (72) In accordance with the report prepared and the contents of the file examined, it was decided, UNANIMOUSLY, that
- A certificate of negative clearance could not be granted to the Holiday Package Sales Cooperation Agreement under Article 8 of the Act no 4054,
 - However, an individual exemption should be granted to the Holiday Package Sales Cooperation Agreement, since it fulfilled the conditions listed in Article 5 of the Act no 4054,

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