

**From the Presidency of the Competition Authority**  
**DECISION OF THE COMPETITION BOARD**

**File number:** 2019-3-079

**(Investigation)**

**Decision Number:** 21-05/64-28

**Decision Date:** 28.01.2021

**A. MEMBERS IN ATTENDANCE:**

**The President:** Birol KÜLE

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

**B. RAPPORTEURS:** Necla SÜMER ÖZDEMİR, Mesut MORGÜL, Mehmet Mustafa ŞEREF, Funda GÖKTEPE

**C. APPLICANT:** - Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş.

Representatives: Metin Pektaş, Evren SESLİ, Atty. Şahin ARDIYOK Kızılırmak Mah. 1450 Sok. Ankara Ticaret Merkezi B Blok Kat:5 No:1/29 Çukurambar Çankaya Ankara

**D. COMPLAINANT:** Two applications with confidentiality request

- (1) **E. SUBJECT OF THE FILE:** Assessment of the commitment submitted by Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş., which is under investigation pursuant to the Competition Board decision dated 04.06.2020 and numbered 20-27/336-M.
- (2) **F. PHASES OF THE FILE:** As a result of the preliminary inquiry conducted into the claim that Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş. carried out exclusionary practices in the market for online food order-delivery market, an investigation about Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş. was initiated according to Article 41 of the Act no 4054 on the Protection of Competition (the Act no 4054) in order to determine whether Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş. violated articles 4 and 6 of the Act no 4054.
- (3) While the investigation process was ongoing, Yemek Sepeti submitted the first commitment text which entered in the records of the Authority on 02.11.2020 with the number 11712. The Information Note dated 09.11.2020 and numbered 2019-3-079/BN-02, which was prepared upon the first commitment text, was discussed during the meeting of the Board on 12.11.2020. It was decided that the commitment that entered in the records of the Authority on 02.11.2020 with the number 11712 would be rejected because it was not adequate to solve the competition problems.
- (4) On 11.12.2020, Yemek Sepeti received the investigation report dated 04.12.2020 and numbered 2019-3-079/SR prepared within the framework of the investigation.
- (5) The undertaking concerned made a request to submit commitments for the second time with the letter that entered in the records of the Authority on 25.12.2020 with the number 13953. Meetings were held on 04.01.2021 and 13.01.2021 upon the undertaking's request. Afterwards, the commitment text prepared by Yemek Sepeti entered in the records of the Authority on 22.01.2021 with the number 14610. The Information Note dated 25.01.2021 and no 2019-3-079/BN-04 prepared in respect of the commitment text was discussed and a decision was taken.
- (3) **G. RAPPORTEUR OPINION:** The Information Note dated 25.01.2021 and numbered 2019-3-079/BN-04 was prepared upon the commitment text that entered in the records of the Authority on 20.01.2021 with the number 14610.

The said Information Note concludes that the commitments in the commitment package submitted by Yemek Sepeti regarding narrow MFC, compulsory joker and compulsory minimum cart amount as well as valet pricing are proportional to the competition problems detected, able to solve those, quickly realizable and efficiently applicable and will be adequate to resolve the competition problems.

## **H. EXAMINATION AND ASSESSMENT**

### **H.1. Competition Problems listed in the Investigation Report**

- (4) Yemek Sepeti's practices concerning online food order-delivery platform services form the basis of the complaints in the investigation. Yemek Sepeti is a food order-delivery platform which connects restaurants with delivery service and users wishing to order food. It enables users to order food online from the restaurants in the platform's portfolio and restaurants to take orders online. The platform is a multi-sided market since it provides services to two different groups (users, restaurants). The users are not charged for the transactions through the platform generally whereas the restaurant pays a certain part of the order to the intermediary platform as a service fee/commission. In the business model where the platform provides the delivery service (Yemek Sepeti valet) users are generally charged an additional fee in addition to the restaurants. Users make payments online via the platform or at the time of delivery (cash/credit card). The platform collects a certain amount of commission per order from order revenues and transfers the remaining amount to the restaurant.
- (5) Basically, the practices raising competition problems mentioned in the Investigation Report are related to narrow "most favored consumer (MFC)", obligatory joker, minimum cart amount and the pricing policy of Yemek Sepeti valet model.

#### **H.1.1. Narrow MFC**

- (6) Basically, MFC condition is a condition where the supplier guarantees the customer that it will not offer more advantageous terms to another customer. MFC conditions are divided into two categories in online practices in terms of their scope and impact. Narrow MFC ensures that the prices on the platform (and according to some definitions non-price elements) are not more disadvantageous than those on the supplier's own website whereas wide MFC expands the same protection to a wider scope in any kind of channels including competing platforms and/or offline sales channels such as telephone sales and direct sales.
- (7) It is seen in the examinations made within the scope of the investigation that restaurant chains, individual restaurants or restaurants with few branches have a tendency to offer products to customers via their own channels at more reasonable prices. First of all, narrow MFC may restrict consumers' ability to have products/services at more reasonable prices. In addition, if narrow MFC is applied not only to prices but also to all terms such as menu content, promotions, delivery region, etc., consumer welfare is restricted in terms of both preventing customers from reaching low-priced products but also other issues such as variability.
- (8) It is seen that Yemek Sepeti requested brochures from restaurants in return for the different conditions imposed in their own channels, the terms offered in Yemek Sepeti was equalized with those offered by restaurants in "brochures". Since some of the restaurants' brochures are the same with their menus inside the restaurant, narrow MFC condition affects not only the delivery service but also the prices inside the restaurant.
- (9) This condition may increase the food prices in general because restaurants know that

they will apply the same lower prices in their channel in also Yemek Sepeti. Restaurants are trying to develop their own channels to avoid commission costs arising because of Yemek Sepeti. However, narrow MFC condition creates the risk that consumers may not be able to benefit from more advantageous offers to be made with those efforts.

- (10) Restaurants are dependent on Yemek Sepeti because Yemek Sepeti is a gatekeeper in terms of delivery service for both chains and individual restaurants or restaurants with few branches due to its restaurant and user network, most of those restaurants offer their delivery service through Yemek Sepeti. In addition, there is not an efficient competitor against Yemek Sepeti in the market.
- (11) Narrow MFC may prevent restaurants from developing their own channels, strengthen Yemek Sepeti's user network and increase restaurants' existing dependency to Yemek Sepeti. Competing platforms may be in a disadvantageous position vis-à-vis Yemek Sepeti due to this user and restaurant network because the competing platforms' power to make the restaurants apply the same discount in their sales channels in their platforms is very low compared to Yemek Sepeti. In this regard, narrow MFC is considered as an entry barrier for competing platforms.

#### **H.1.2. Obligatory Joker Practice**

- (12) Joker practice is based on making discounts to users in case certain conditions are fulfilled. It is necessary that the user has not given orders from that restaurant before or since 120 days and the restaurant offering Joker should be delivering food to the user's address.
- (13) It is understood that joker practice is obligatory basically for individual restaurants. Although there are restaurants that voluntarily participate in this practice, it is seen that most of the restaurants that are obliged to joker practice complain thereabout, they cannot take feedback from the user with this practice and users abuse this practice by means of creating new accounts. Not being able to provide similar prices/discounts to competitors because of the said costs put competing platforms at a disadvantage compared to Yemek Sepeti. While Yemek Sepeti can provide intermediary service to more consumers compared to competitors due to this discount obligation, competing platforms that do not have power to impose similar condition to restaurants lose their strength.
- (14) Although the discount in question is obligatory for a limited number of restaurants, the main competitive area for competing new entries is the individual restaurants under the category in question. Therefore, joker practice may seem beneficial for users at first but it may make restaurants dependent on Yemek Sepeti, restaurants may have to use their limited sources for Yemek Sepeti platform and competing platforms may be excluded.

### **H.1.3. Obligatory minimum cart amount**

- (15) It is seen that Yemek Sepeti makes minimum cart amount obligatory basically for individual restaurants for the amounts set and at certain intervals. Most of the restaurants obliged to that practice state that in case they become free, they will set a higher amount and their delivery drivers have to work for orders such as only water, coke, etc. It is understood from the examinations made within the scope of the investigation that Yemek Sepeti warned and imposed sanctions to restaurants that reject the said orders certain times. Moreover, failures in such orders are reflected to restaurants in the form of negative scores and reviews.
- (16) Restaurants may have to respond to orders of lower prices from Yemek Sepeti instead of orders with higher prices from other channels especially in peak times. These effects are reflected to the restaurant as a cost, restaurants do not bear the same losses in competing platforms as they are free and not dependent, which put competing platforms at a disadvantage vis-à-vis Yemek Sepeti.
- (17) Although it is understood that the practice in question is obligatory for a limited group rather than all restaurants, it should be taken into account that it is more likely for competitors to make an agreement with individual restaurants rather than chain restaurants, in this respect, new entries improve competitiveness on the basis of individual restaurants at first. As a result, even if imposing an obligation to set the minimum cart amount lower may enable consumers to order only one drink to their address, in the long term, it will increase delivered food prices and prevent users from benefiting from the competition in platform services by means of hindering the growth of competing platforms. Consequently, although the practice is limited to individual restaurants, its effects restrictive of competition may spread to the whole market.

### **H.1.4. Yemek Sepeti Valet Practice**

- (18) With its valet practice, Yemek Sepeti provides two different service being online food order services and carrier services to deliver the order. In this model, the user and the restaurant that gets platform service from Yemek Sepeti should also get the carrier service from Yemek Sepeti. The sale of platform services together with carrier services is regarded as bundling in competition law.
- (19) It is stated in the Guidelines On The Assessment Of Exclusionary Abusive Conduct By Dominant Undertakings (the Guidelines) restrictive effects on competition are likely to emerge where competitors cannot compete by offering a reasonable alternative package with the package offered by the dominant undertaking and those effects would be similar to predatory pricing. Thus, whether the total increasing revenue generated by the package offered by the dominant undertaking cover the increasing costs is important.
- (20) It is concluded that with its valet practice, Yemek Sepeti may distort competition in the platform services market by means of below-cost pricing in the market for platform and carrier services for online food order, which may be exclusionary in the short and in the long term for its competitors.

## H.2. Commitments Offered by Yemek Sepeti

- (21) The commitment text submitted by Yemek Sepeti entered the records of the Authority on 22.01.2022 with the number 14610. In the commitment text, it is stated that
- The narrow MFC condition in the online food order-delivery platform services market will be abolished in respect of individual restaurants/restaurants with few branches within the first three month-period and in respect of chain restaurants within the second three-month period as of the notification of the reasoned decision to the undertaking.
  - Obligatory joker practice in online food order-delivery platform services market will be abolished within the third three-month period as of the notification of the reasoned decision to the undertaking and be made voluntary.
  - Minimum cart amount in online food order-delivery platform services will be built in a way decided by restaurants within a week as of the notification of the reasoned decision to the undertaking.
  - With regard to valet business model, Yemek Sepeti switched to a pricing manner in a way to cover wage and meal expenses of the delivery drivers as well as communication and fuel expenses used in valet service in June 2020 before the Investigation Report was sent to the parties and the pricing policy will continue in the same method.
  - The actions to be taken concerning the commitments will be notified to the Authority following each three-month period.
- (22) According to article 43, paragraph three of the Act,
- “Relevant undertakings or associations of undertakings may offer commitments in order to eliminate the competition problems under Article 4 or 6 which may arise during an ongoing preliminary inquiry or investigation process.” If the Board decides that the proposed commitments can resolve the competition problems, it may render these commitments binding for the relevant undertakings or associations of undertakings, and decide not to initiate an investigation or to terminate an ongoing investigation. Commitments shall not be accepted for naked and hard-core infringements such as price fixing between competitors, region and customer allocation, or supply restriction...”*
- ...After a decision under paragraph 3 is taken, the Board may re-launch an investigation in case:*
- a) There is a substantial alteration in any of the factors on which the decision was based*
  - b) The relevant undertakings or associations of undertakings act in violation of the commitments given*
  - c) The decision was based on missing, false or misleading information presented by the parties.*
- (23) According to the commitment text, the commitments will be realized completely in nine months as of the notification of the reasoned decision to the undertaking and the Authority will be notified following the completion of each three-month stage. The undertaking states that the nine-month time period is necessary to protect employment, carry out restructuring periods in human resources, complete the legal processes

regarding contracts and arranging systematical and technical development stages. The undertaking explains the processes as training the field sales and user relations departments again, updating and renewing contracts by cargo/mail due to the pandemic, separation of integrated systems and completing new systematic requirements.

- (24) Briefly, Yemek Sepeti offers the commitments that narrow MFC, obligatory minimum cart amount, obligatory joker practice will be ended, valet pricing policy will continue to cover the relevant cost items and the commitments will be completely realized in a nine-month period as of the notification of the reasoned decision to the undertaking. It is concluded that the commitment package will resolve the competition problems detected in the Investigation Report. It is thought that the periods stated in the commitment text are reasonable to realize the commitments taking into account the explanations therein.

### **I.CONCLUSION**

- (25) It has been decided UNANIMOUSLY that the commitment offered by Yemek Sepeti Elektronik İletişim Perakende Gıda Lojistik A.Ş. with the letter dated 22.01.2021 and numbered 14610 within the scope of the investigation conducted pursuant to the Competition Board decision dated 04.06.2020 and numbered 20-27/336-M shall be accepted as the commitment is able to solve the competition problems and be rendered binding, the investigation initiated pursuant to the Board decision dated 04.06.2020 and numbered 20-27/336-M shall be terminated, with the decision subject to appeal before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.