

The Cost of Luxury: The European Commission Fines Gucci, Chloé and Loewe

The European Commission (“**Commission**”) [has announced](#) that it imposed administrative fines totaling EUR 157 million on the Gucci, Chloé and Loewe brands for engaging in resale price maintenance (“**RPM**”) practices across the European Economic Area (“**EEA**”), as well as for Gucci’s **restrictions on online sales** by its resellers. The decision demonstrates that commercial practices justified on the grounds of brand image or luxury positioning are by no means exempt from the application of competition law. In many respects, the case also recalls the investigations recently launched by the Turkish Competition Authority (“**TCA**”), particularly in the cosmetics sector, which largely revolved around allegations of RPM and online sales restrictions, and which were concluded through settlement or commitment decisions.

The cosmetics sector has long been one of the markets where the TCA has identified persistent compliance issues. It is an undeniable fact that in Türkiye, anti-competitive conduct by distributors and dealers in the cosmetics market is often linked to the business models of global suppliers. The narrow profit margins prevailing at the distribution and dealership levels of this sector tend to foster a high level of dependency on the global commercial policies of suppliers. Consequently, the key question frequently raised in Türkiye has been the degree of competition-law compliance of global cosmetics suppliers, both domestically and internationally. It is against this background that the Commission adopted a landmark decision addressing the very same issues, RPM and restrictions on online sales, that have become entrenched global concerns within the cosmetics industry.

Accordingly, this paper first outlines the Commission’s findings, and then briefly discusses the current landscape in Türkiye, with a focus on the sector’s ongoing competition-law challenges and structural issues in practice.

What Does the European Commission’s Decision Tell Us?

According to the Commission’s investigation, the three brands, each self-positioned within the luxury segment, systematically prevented their resellers (including distributors, wholesalers, authorised retailers, and retail outlets) from setting their resale prices independently over a period of four to eight years. These interventions extended well beyond traditional brick-and-mortar stores and covered online resellers as well, encompassing all sales channels and product ranges, from apparel and footwear to leather goods and fashion accessories.

The Commission found that the brands had implemented the following practices vis-à-vis their resellers:

- Rendering recommended resale prices effectively binding;
- Restricting discount levels and determining the timing of promotional campaigns;
- Outright prohibiting resellers from discounting certain products;
- Systematically monitoring resellers’ resale prices and issuing warnings when deviations from the recommended price, maximum discount level, or prescribed sales periods occurred; and
- Additionally, Gucci had completely banned the online sale of certain product groups.

The Commission concluded that these practices constituted RPM within the meaning of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), as they directly eliminated price competition among resellers within the same brand.

Furthermore, while similar findings were not established for the other parties, the Commission determined that Gucci’s total prohibition of online sales for certain product categories amounted to an online sales restriction.

The conduct spanning various countries and distribution channels was treated as a single, continuous infringement forming part of a unified commercial strategy. The Commission found that the brands had distorted market functioning by shielding their own stores and online channels from competitive pricing by resellers, thereby depriving consumers of the benefits of price competition.

The decision also notes that Gucci, Loewe and Chloé entered into settlement proceedings, receiving fine reductions commensurate with the timing and quality of their cooperation during the investigation.

A Tense Phase in the Relationship Between the Turkish Competition Authority and the Cosmetics Sector – The Wave of Settlements and Commitments

The issues addressed by the European Commission in its Gucci, Chloé, and Loewe decision regarding RPM and online sales restrictions are also among the areas that the TCA has intensively examined in recent years. Throughout 2023, the TCA initiated more than ten investigations against undertakings operating particularly in the cosmetics and personal care products sectors. It was observed that most of the investigations initiated in the cosmetics and personal care products sectors were quickly concluded (within approximately four to five months, about one-third of the duration of an average investigation) by means of settlement for RPM and through commitments concerning the revision of resale agreements with almost identical wording for online sales restrictions. This situation has led to the investigations in the cosmetics and personal care products sectors in Türkiye not being sufficiently deepened and the structural problems arising from the business models of the sector not being examined. In fact, except for some exceptional cases, it has been observed that generic contractual arrangements have been used as preliminary solutions to competition-law problems.

The fact that damages actions arising from competition-law infringements have not become widespread and their effectiveness has not been increased in Türkiye has also been observed to increase the appetite of undertakings investigated for unilateral infringements such as RPM to reach a settlement. However, since settlement decisions contain both an acknowledgment of infringement and a definitive finding of infringement by the Turkish Competition Board (“Board”), they are deemed to constitute conclusive evidence for the element of unlawfulness in a possible damages lawsuit.

In parallel with EU practice, RPM in Turkish competition law, although a vertical infringement, is considered a “hardcore restriction” with respect to alternative resolution mechanisms and therefore remains outside the scope of the commitment mechanism. On the other hand, restriction of online sales, although considered a restriction of passive sales and therefore a type of infringement that can very rarely benefit from the exemption regime, is not regarded as a hardcore restriction in terms of the operation of the commitment mechanism and is therefore considered suitable for commitments. For this reason, with respect to allegations of restriction of online sales,

undertakings prefer the commitment mechanism, which does not contain any finding or acknowledgment of infringement and in which various behavioural or structural remedies are proposed, while, regarding RPM allegations, undertakings may prefer settlement by acknowledging the infringement and obtaining a reduction in the fine.

When the commitments submitted by undertakings such as Hunca Life¹, L'Oréal Türkiye², Avon³, Farmasi⁴, Pierre Fabre⁵, NAOS (Bioderma)⁶, Sistem Kozmetik⁷, ELCA⁸, Biota⁹ and Glohe,¹⁰ and accepted by the Board during 2023, are examined, it is seen that the undertakings generally introduced the following regulations within the framework of the provisions of the TCA's Guidelines on Vertical Agreements ("**Vertical Guidelines**") concerning online sales:

- they added provisions to their agreements explicitly allowing resellers to sell through the internet or marketplaces,
- they announced on their websites and in communications within their distribution networks that sales could be freely conducted through all channels in the manner envisaged by the TCA, and
- they introduced arrangements ensuring that online sales are carried out under the same conditions as physical sales.

Under the Vertical Guidelines, sales made through the internet are qualified as "passive sales", and restrictions on passive sales constitute "hardcore restrictions." Such a hardcore restriction removes the agreement from the scope of the Block Exemption Communiqué on Vertical Agreements No. 2002/2 ("**Block Exemption Communiqué**"), resulting in an infringement of the Turkish Competition Act No. 4054 ("**Competition Act**"). At this point, although theoretically it may be possible to speak of individual exemption in terms of restriction of passive sales, in practice it is observed that the Board, due to its "hardcore restriction" approach, either does not make an exemption assessment at all or, after making a general exemption analysis, rejects the requests.

Nevertheless, pursuant to the Vertical Guidelines, undertakings implementing a Selective Distribution System ("**SDS**") may also impose certain quality or technical conditions in relation to online sales. However, such conditions must not be of a nature that effectively prevents or categorically restricts the use of the internet as a sales channel.

To understand under which circumstances online sales may be made subject to certain criteria, it would be useful to briefly touch upon SDSs. Under the Vertical Guidelines, SDS is an exceptional form of distribution and may be structured in two ways:

- Qualitative SDS is based on the principle that authorised distributors are selected within the framework of certain objective criteria (such as store conditions, after-sales services, staff training, or compliance with brand image).

¹ The Board decision numbered 23-60/1175-421 and dated 21.12.2023

² The Board decision numbered 23-41/808-287 and dated 07.09.2023

³ The Board decision numbered 23-15/252-83 and dated 23.03.2023

⁴ The Board decision numbered 23-09/143-42 and dated 16.02.2023

⁵ The Board decision numbered 23-13/214-70 and dated 09.03.2023

⁶ The Board decision numbered 23-03/29-12 and dated 12.01.2023

⁷ The Board decision numbered 23-49/950-339 and dated 19.10.2023

⁸ The Board decision numbered 23-39/738-253 and dated 17.08.2023

⁹ The Board decision numbered 23-39/738-253 and dated 17.08.2023

¹⁰ The Board decision numbered 23-45/852-301 and dated 21.09.2023

- Quantitative SDS, on the other hand, is formed by directly limiting either the number of distributors or the quantity of products to be supplied to them (quota).

It can be said that, with respect to the criteria to be met for qualitative SDSs to benefit from block exemption, the regulations in EU competition law have been taken as the basis. Within this scope, the Vertical Guidelines set out three cumulative conditions that must be met in order to establish a qualitative SDS benefiting from block exemption:

- **there must be a legitimate need arising from the nature of the product to establish a qualitative SDS,**
- **distributors must be selected according to objective criteria predetermined by the supplier, and such criteria must be applied in a non-discriminatory manner, and**
- **the criteria must not be applied in a way that goes beyond what is necessary for the protection of brand image or the nature of the product.**

In this context, a cosmetics brand implementing an SDS may also impose on online sales the criteria it seeks for the physical stores where its products are to be sold, within the framework of the “equivalence principle.” Such conditions must not aim to restrict online sales, exclude undertakings operating exclusively in the online channel (pure players), or in practice create such a result. Otherwise, the imposed conditions will be considered as restriction of online sales and therefore as a hardcore restriction.

Indeed, in the BSH Decision¹¹, the Board stated that within the framework of requirements such as brand image, technical characteristics of the product, or luxury product nature, an SDS may be established for the resale of products; and within this system, provided that it does not exclude pure player platforms or effectively disable this channel, similar criteria to those sought for physical stores may also be envisaged for online sales. The criteria to be imposed within the SDS must be established within the framework of objective and reasonable necessities, such as improving the quality and nature of distribution, protecting brand image, or achieving certain efficiency gains.

Despite this framework, it can be observed in practice that compliance with these criteria is not sufficiently analysed in distribution agreements. Suppliers may impose certain restrictions on local distributors under the pretext of brand image protection without conducting an SDS analysis under Turkish competition law. On the other hand, since local distributors in Türkiye have very limited ability to negotiate these agreements, in most cases, provisions of agreements prepared under other jurisdictions are accepted by distributors merely as translated versions without any Turkish legal analysis and are directly put into practice. However, weak bargaining power does not remove the liability in cases where the contractual provisions lead to anti-competitive results.

Since the agreement templates implemented in Türkiye are generally derived from the EU region, this situation creates a need to also examine the differences between the EU and Türkiye in the application of SDSs and online sales restrictions.

How Do EU and Turkish Practices Differ?

Although the approach to vertical relations in Türkiye has been largely shaped in parallel with the EU legislation, there are certain differences that have emerged with respect to SDS

¹¹ The Board decision numbered 23-36/684-236 and dated 03.08.2023

implementations and online sales. In particular, the approach of the TCA carries a more cautious and interventionist character concerning the restriction of online sales.

In Türkiye, the restriction of online sales has been defined as a restriction of passive sales, and the restriction of passive sales has been explicitly prohibited. In the EU, although there is no such explicit classification, a parallel approach exists in terms of purpose since it is prohibited to prevent buyers from effectively using the internet. However, the main differences lie in the details of the application.

1. Sales Through Online Marketplaces

One of the sharpest distinctions between Türkiye and the EU is seen in the restriction of resellers' sales through third-party marketplaces (e.g., Trendyol, Amazon, etc.). In the Vertical Guidelines, the restriction of online sales has been addressed as a restriction of passive sales, but no special regulation has been made concerning online marketplaces. In this regard, within the framework of the BSH Decision, the Board considered that preventing resellers from selling through online marketplace channels is equivalent to a complete prohibition of online sales. Therefore, the restriction of sales made through online marketplaces also constitutes a restriction of passive sales. Agreements that categorically prohibit sales through online marketplaces cannot benefit from block exemption.

In the EU, however, the Court of Justice of the European Union (“CJEU”), in its Coty Decision¹², pointed out that the sales made by resellers “through their own websites” and those made “through online marketplaces” are distinct and ruled that prohibiting sales through online marketplaces does not constitute a hardcore restriction.

In summary, unlike the practice in Türkiye, the EU has introduced separate regulations regarding sales through online marketplaces and those made through resellers' own websites. Within this framework, while in the EU sales through online marketplaces may be prohibited in some cases, in Türkiye such a practice is not permitted.

2. The Equivalence Principle

The equivalence principle expresses that the quality standards sought by a brand for its physical stores within the framework of an SDS must be equivalent to the standards sought for online sales channels. In Türkiye, the equivalence principle is applied in relation to the criteria that will be imposed on sales to be made through online channels, whereas in the EU, certain conditions specific to online sales can be foreseen without applying the equivalence principle. In other words, in the EU, the criteria to be imposed for online channel sales do not have to be parallel to the criteria stipulated for sales in physical channels.

3. Dual Pricing

Dual pricing refers to a supplier applying different wholesale prices to the same distributor depending on whether the products will be sold in physical stores or through the online channel. In the EU, dual pricing agreements, which foresee that suppliers may apply different prices depending on whether their products will be sold online or offline, can benefit from block exemption under the Vertical Block Exemption Regulation (“VBER”). In other words, suppliers

¹² C-230/16 Coty Germany

Hergüner

are allowed to charge a higher price for products intended for online sales compared to those intended for traditional channel sales.

In Turkish competition law legislation, however, there is no such regulation. Indeed, in the Arçelik Decision¹³ published by the Board, the Board took a negative stance on Arçelik's proposal to implement a dual pricing practice included in its commitment package, highlighting the criticisms raised by certain national competition authorities within the EU regarding the VBER Guidelines, and stated that dual pricing could have a deterrent effect on marketplace sales.

As a result, although the competition-law regimes of the European Union and Türkiye are largely based on similar principles, the practice in Türkiye follows a much more restrictive line, particularly in relation to online sales channels, marketplaces, and dual pricing practices.

Within this framework, the most important point for EU-based brands is the fact that arrangements deemed legitimate or benefiting from block exemption in their own markets may not be applicable in the same way in Türkiye. Especially practices such as restricting online sales, prohibiting marketplace sales, or foreseeing different pricing systems may constitute RPM and restrictions of passive sales in Türkiye and therefore may be considered as hardcore restrictions, giving rise to infringement risks before the Board.

Therefore, regarding the contractual structures imposed by brands on local distributors in the Turkish market, it is important to note that the flexibility in EU practice does not automatically provide a safe harbour in Türkiye, and that each arrangement must be assessed separately in light of local precedents and, if necessary, restructured. This approach will ensure both that the agreements remain within the scope of exemption and that the risks related to a possible future investigation or commitment process are minimised.

Conclusion

As a result, it may be indicated that the Commission's Gucci decision, together with its more liberal approach, largely parallels the Turkish Competition Authority's close and meticulous supervision regarding resale price maintenance and online sales restrictions and, in some respects, may even point to a tightening of this line. Indeed, the Competition Authority is of the view that under certain conditions, for example, within the scope of a selective distribution system, objective conditions concerning online sales may be permitted, provided that they are based on objective criteria such as brand image or the technical characteristics of the product.

However, the Commission, in its decision, although it did not make an explicit assessment as to whether such a legal basis existed, considered even the prevention of the online sale of a particular product by Gucci, despite its being a "luxury brand," as an infringement, thereby sending a strong message to the sector.

¹³ The Board Decision numbered 22-41/580-240 and dated 08.09.2022