

SPECIFIC INSTANCE « EDGEWORTH / VAKIFBANK Case»

31 August 2020

Turkish National Contact Point Initial Assessment

After its initial assessment, Turkish NCP decided to inform the parties (*Vakıfbank T.A.O 1 and Edgeworth Investment Group C.V. 2*) that the issues raised do not merit further examination.

Turkey, as an OECD Member and adherent country to the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines), entitled the Ministry of Industry and Technology as the National Contact Point to promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines.

Turkish National Contact Point (hereinafter: Turkish NCP) received a specific instance notification submitted by Edgeworth on October 4th, 2019, alleging that Vakıfbank had violated “Consumer Interests” chapter of Guidelines. As part of the assessment process, Turkish NCP shared the application with Vakıfbank and received its views on the issues raised as well as contacting Dutch and Brazilian NCPs due to their relevancy to the case. The reasoned decision taken by Turkish NCP following thorough examination of the file is described below:

Specific instance notifications received in the context of OECD Guidelines for Multinational Enterprises are subject to initial assessment in terms of six factors elaborated in the Guidelines. Assessing whether consideration of the specific issue would contribute to purposes of the Guidelines is one of these factors.

When purposes of the Guidelines stated in the foreword are taken into account, the fact whether consideration of the specific issue would pave the way for multinational enterprises’ contribution to sustainable development or economic, environmental and social progress (i.e. the chapter of the Guidelines) proves to be a precondition for further examination of any specific instance.³ Applications which do not comply with this precondition are deemed to be outside the scope of the Guidelines and “*Commercial Disputes*” constitutes an example for those applications falling outside the scope.⁴

In legal terms, since the existing dispute relates to commercial enterprises of the merchant parties, it is of “commercial” nature. In this respect, specific instance in hand has been decided to be falling outside the scope of the Guidelines.

Furthermore, the only reasoned reference for alleged violation in the application is given to “*Consumer Interests*” chapter⁵ of the Guidelines. In this sense, acceptance of the applicant

¹ Hereinafter referred to as “Vakıfbank”

² Hereinafter referred to as “Edgeworth”

³ OECD (2019), *Guide for National Contacts Points on the Initial Assessment of Specific Instances*, OECD Guidelines for Multinational Enterprises, p.10, para.5

⁴ OECD (2019), *Guide for National Contacts Points on the Initial Assessment of Specific Instances*, OECD Guidelines for Multinational Enterprises, p.11, para.1

⁵ Although “*XI. Taxation*” chapter is also namely articulated in “*Application Reasons*” section of the application, no any single reason/explanation is given for alleged violation of this particular heading.

company (*who is a subsidiary of a multinational company itself*) as a “consumer” in a transaction which relates to its commercial enterprise is *de facto* impracticable, as well.

Summary of the Procedure followed

Turkish NCP received a specific instance notification submitted by Edgeworth on October 4th, 2019, alleging that Vakıfbank had violated Article 4 of “VIII. Consumer Interests” chapter of the Guidelines.

Having made an initial examination on the application, Turkish NCP realized that it did not involve any contact phone and/or e-mail, the identity of the person who undersigned the document is unknown and the application did not contain the annexes listed on the last page. Under these circumstances, in order to obtain further information on the applicant company, application content and receive the unattached documents, Turkish NCP contacted Dutch and Brazilian NCPs based on their relevancy to the case and the required information was received thanks to these NCPs’ assistance and mediation.

On the other hand, Turkish NCP shared the application with Vakıfbank and received its views on the issues raised.

About Edgeworth

Edgeworth, located in the Netherlands, is one of the subsidiaries of a Brazil-headquartered multinational company named Cristalia Produtos Quimicos Farmaceuticos Ltda. established in 1969. Cristalia is a multinational company operating in pharmaceutical and chemical industries. Shallowbrook Enterprises LLC and Launceston Enterprises LLC, two separate limited liability companies based in Delaware, USA, are shareholders of Edgeworth.

About Vakıfbank

Established in 1954, Vakıfbank is one of the leading banks of Turkey.

The bank provides its services through its over 900 branches countrywide and it has branches and/or shareholdings in certain locations abroad.

Conclusion

Based on the above-mentioned reasons, The Turkish NCP is of the opinion that the issues raised do not merit further consideration.