Turkish Competition Authority

REKABET KURUMU

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INTRODUCTION

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We are proud to present to you the Competition Bulletin for the second three months of 2018, which includes news on developments in competition law, industrial organization and competition policy.

In the "Selected Reasoned Decisions" section of this issue, we included two investigation decisions, one administrative fine decision regarding submitting false or misleading information and two administrative fine decisions regarding obstruction of on-site inspection.

The "News around the World" section of the Competition Bulletin includes news from United Kingdom, European Union, Germany/Austria and United States of America.

"Selected Decisions under Administrative Law" section contains Council of State and Administrative Court of Ankara rulings concerning some decisions of the Competition Board.

"Economic Studies" section includes a summary of an aricle published in the International Journal of Industrial Organization titled "*Mergers and Product Quality: Evidence from the Airline Industry*" and another article published in the Review of Industrial Organization titled "*Product Similarity and Cross-Price Elasticity*".

Last of all, we would like to remind you that you can always forward your opinions and recommendations on the Competition Bulletin to us, through bulten@rekabet.gov.tr

With our best regards.

External Relations, Training and Competition Advocacy Department

- **The Investigation Concerning Freelance Mechanical Engineers Operating in Burdur Province**

Decision Date:	Decision No:	Type:
14.12.2017	**17-41/640-279**	**Investigation**

The investigation was conducted to find whether freelance mechanical engineers operating in Burdur province violated article 4 of the Act no. 4054 by creating a pool and sharing income.

The following mechanical engineers operating in the field of freelance engineering services are parties to the investigation: Aktan Mühendislik Hizm. Mak. Amb. Gıd. İnş. Malz. İmalat San. ve Pet. Ürünleri Nak. İnş. Taah. Tic. Ltd. Şti., ISITAŞ Müh. İnş. Tarım Hayv. Metal San. Turz. İth. İhrc. San. ve Tic. Ltd. Şti., Aktan Mühendislik Hizm. Mak. Amb. Gıd. İnş. Malz. İmalat San. ve Pet. Ürünleri Nak. İnş. Taah. Tic. Ltd. Şti. (AKTAN), Furkan Mühendislik (FURKAN), ISI-TAŞ Müh. İnş. Tarım Hayv. Metal San. Turz. İth. İhrc. San. ve Tic. Ltd. Şti. (ISI-TAŞ), Osman KISAOĞLU, Dolunay İnşaat Telekomünikasyon Mühendislik Hizmetleri ve Gıda Sanayi Ticaret A.Ş. (DOLUNAY), Bems Mühendislik-Fethi KIRLI (BEMS), Samanyolu Isı Enerji Doğalgaz Müh. San ve Tic. Ltd. Şti. (SAMANYOLU), Savran İnş Müh. Müş. Hizm. Turz. Pet. Ürünleri San. ve Tic. Ltd. Şti. (SAVRAN), Osman Deniz Mühendislik Müh. Müş. İnş. Turz. Madencilik Nak. Orm. Ürünleri ve Hayv. San. ve Tic. Ltd. Şti. (OSMAN DENİZ), Öz Dizayn Mühendislik Doğalgaz İnşaat Taahhüt San. Tic. Ltd. Şti. (ÖZ DİZAYN), Şenses Teknik Elektrik Mühendislik Hizmetleri ve İnşaat Oto Turizm Pazarlama İthalat İhracat San. ve Tic. Ltd. Şti. (ŞENSES), Tolacı Mühendislik (Hasan Ali TOLACI), Kocapınar Müh. Hiz. Alım Mlz. Plas. Mob. İnş. Elk. Gıda Or. Hav. Mak. Tur Otom. San. Tic. Ltd. Şti. (KOCAPINAR), Demer Mühendislik Müşavirlik İnş. San. ve Tic. Ltd. Şti. (DEMER), Gürsu Mühendislik Hizm. İnş. Su Taah. İşleri San. ve Tic. Ltd. Şti. (GÜRSU) and UCTEA the Chamber of Mechanical Engineers Burdur Representative Office (TMMOB BURDUR).

It was concluded as a result of the evaluations made within the scope of the file that nine documents related to the claims found during the investigation process showed obviously that freelance mechanical engineers under investigation restricted competition by means of creating a pool.

It was observed that the provisions laid down in articles 1 and 2 of "Professional Solidarity Agreement", which constituted the basis of the investigation, revealed without hesitation that there was an agreement for price fixing among undertakings.

Moreover, undertakings requested bonds to guarantee and maintain the pool system, which corresponds to a classical cartel structure that includes a supervision/punishment structure. Such conduct by the parties substantiated the existence of a violation. It was also found that there were certain calculations related to the amount to be sent to the pool and invoices to be made by undertakings. That means the cartel structure was implemented de facto.

Within this framework, it was concluded that the following undertakings operating in the field of freelance mechanical engineering violated article 4 of the Act no. 4054 by means of price fixing and creating a pool: ISI-TAŞ, Osman KISAOĞLU, DOLUNAY, SAMANYOLU, AKTAN, OSMAN DENİZ, FURKAN, ÖZ DİZAYN, ŞENSES, TOLACI, BEMS, SAVRAN, KOCAPINAR, DEMER and GÜRSU

As a result of the evaluations made within the scope of the Fines Regulation, the violations under investigation were regarded as a cartel. Regarding Osman KISAOĞLU, ISI-TAŞ, DOLUNAY, SAMANYOLU, BEMS, TOLACI, FURKAN, KOCAPINAR, AKTAN, ÖZ DİZAYN, SAVRAN, ŞENSES and OSMAN DENİZ, which participated to the violation for more than one year and less than five years, the base fine amount was increased by half. Regarding DEMER and GÜRSU, it was not necessary to increase the fine as the said undertakings were involved in the violation for less than one year. On the other hand, while calculating the final fine amount, the base fine was reduced by half, taking into account that undertakings' activities that constitute the violation had a very small share in their annual gross income.

Although KOCAPINAR should have been imposed administrative fines according to the Act no. 4054, it was decided that the undertaking shall not be imposed administrative fines as per the first paragraph of article 4 of the Leniency Regulation.

- **The Investigation Concerning Mey Içki in Vodka and Gin Markets**

Decision Date:	Decision No:	Type:
25.10.2017	**17-34/537-228**	**Investigation**

The decision was related to the claim that Mey İçki San. ve Tic. A.Ş. (MEY İÇKİ) abused its dominant position by means of complicating its competitors' activities in vodka and gin markets.

For the investigation, vodka and gin markets are defined as different product markets. Taking into account that MEY İÇKİ's market share and portfolio power, entry barriers, economies of scale and scope, the

importance of position in the raki market, market's tendency to shrink and product availability as well as lack of buyer power in the market, MEY İÇKİ was found to be dominant in both vodka and gin markets.

According to the investigation, MEY İÇKİ applied three types of discounts: Discounts granted within the scope of Agreement Offer Form (AOF), signed with contracted sales points, discounts granted via Point Campaign Offer Form (PCOF) ad seasonal discounts granted through national campaigns (Commercial Marketing Campaigns).

It was found that the discounts for contracted points were not unique; discounts and payments varied from point to point and depended on whether targets were achieved as of the season in a way to encourage points to fulfill the anticipations. MEY İÇKİ's high rate of achieving targets together with its competitors' lower number of sales supported the suggestion that the points mostly bought products from MEY İÇKİ. Although the number of contracted on-premise and off-premise sales points is low among total points, agreements were made with important points with high sales potential, which was regarded as a factor that increased the effect of those agreements. It was observed that MEY İÇKİ determined vodka and gin purchasing targets for contracted on-premise and off-premise sales points and those targets constituted a large amount of total vodka and gin purchases of the sales point in the relevant period. Moreover, targets became binding for sales points and customized targets were defined for sales points. As to discounts applied to non-contracted points, it was observed that they had the potential to create the same results as targeted discounts, customized discounts without a certain system and were restrictive of competition in the market. Together with its position in gin and vodka markets, MEY İÇKİ's practices resulted in exclusionary effects.

According to the decision, MEY İÇKİ held dominant position in vodka and gin markets and MEY İÇKİ's practices that had the effect of complicating its competitors' activities in the markets violated article 6 of the Act no 4054. As a result of the analysis made within the scope of Fines Regulation it was concluded that MEY İÇKİ's discount system and its implementation overlapped with the discount system in the raki market, which was regarded as violation in the Board decision dated 16.02.2017 and numbered 17-07/84-34. In fact, both files cover three main discount categories (discounts applied to contracted points, discounts applied to non-contracted points and commercial marketing campaigns); overlapping categories had the same features and treated under the same scope. Therefore, MEY İÇKİ's conduct in question have the same nature as the behavior analyzed according to the decision of the Competition Board dated 16.02.2017 and numbered 17-

07/84-34. Moreover, the violation detected within the scope of the file covers the same period as the violation detected in the raki market. Thus, it was concluded that MEY İÇKİ's discount practices in three markets covered the same time period, were parts of a general strategy and it was not possible to treat the practices separately. Consequently, taking into account the facts that Mey İçki Sanayi ve Ticaret A.Ş.'s behavior in gin and vodka markets that was recognized as violation have the same nature as the behavior, which was regarded as violation in the raki market and imposed administrative fines according to the decision of the Competition Board dated 16.02.2017 and numbered 17-07/84-34, was conducted at the same period and formed an integrity as a part of the general strategy of the undertaking, and regarding that violation related to the period between 2014 and 2016, administrative fines were imposed based on undertaking's turnover in 2016 regardless of the market where the turnover was accrued, the Board decided that it was not necessary to impose new administrative fines within the scope of article 16 of the Act no 4054.

- **The decision that GIC Pte. Ltd. and Blackstone Group L.P. submitted false or misleading information**

Decision Date:	Decision No:	Type:
08.02.2018	**18-04/64-37**	**-**

The decision was related to whether GIC Pte. Ltd. (GIC) and Blackstone Group L.P. (BLACKSTONE) submitted false or misleading information in the merger/acquisition notification to the Competition Authority.

Previous merger/acquisition notifications made by BLACKSTONE and GIC and their subsidiaries were analyzed. As a result, it was found that there was not any false or misleading information in the notifications by BLACKSTONE. However, GIC submitted false or misleading information in its notifications dated 22.12.2015 and numbered 6065 and dated 16.03.2016 and numbered 1815. The analysis made for false or misleading information within the scope of the file was related to the concept of control. It is stated in the decision that the concept of control is a fundamental and determinant factor in mergers and acquisitions and crucial for deciding whether the notification is subject to authorization and identifying the relevant market. In addition, it is emphasized that in most cases it is not possible to certify it by places other than undertakings' notifications.

Within this framework, it was concluded that GIC shall be imposed administrative fines as per Article 16(1)(a) of the Act no. 4054 for each of the violations within the scope of the said two notifications. The turnover of

the undertaking in Turkey in 2016 was taken as a basis in calculating the administrative fine.

- **The Decision Concerning Obstruction of On-site Inspection by Medyacizade Medya Pazarlama A.Ş.**

Decision Date:	Decision No:	Type:
18.01.2018	**18-03/34-21**	**-**

The decision was related to the hindrance by Medyacızade Medya Pazarlama A.Ş. (MEDYACIZADE) of on-site inspection to be conducted according to the Board decision dated 21.12.2017 and numbered 17-42/679-M within the scope of the preliminary inquiry depending on the Board decision dated 23.11.2017 and numbered 17-38/67-M about Mars Sinema Turizm ve Sportif Tesisler İşletmeciliği A.Ş.

According to the abovementioned decisions, rapporteurs performed on-site inspections in certain advertising agencies operating in the field of on screen advertising. Among those advertisement agencies, rapporteurs would conduct on-site inspection in MEDYACIZADE on 28.12.2017; however, they encountered obstructive behavior. Rapporteurs gave information about administrative fines to be imposed in case on-site inspection is hindered and the relevant court decisions and recorded "the Official Report on the Hindrance of On-site Inspection". Afterwards, competent rapporteurs came to MEDYACIZADE's premises on the same day at 4:40 p.m. and presented the decision of Istanbul Anatolia 2nd Criminal Court of Peace dated 28.12.2017 and numbered 2017/7372 to the officials. Rapporteurs performed on-site inspection after submitting the decision to the officials.

MEDYACIZADE hindered on-site inspection arguing that a court decision was necessary to examine the rooms and computers; thus, its behavior falls under hindrance of on-site inspection, taking into account articles 15 and 16 of the Act no. 4054. Therefore, it was concluded that as per article 16(1)(d) of the Act no. 4054, MEDYACIZADE shall be imposed administrative fines, amounting to 0,5% of its gross revenues accrued at the end of the financial year 2016.

- **The Decision Concerning Obstruction of On-Site Inspection by Nuhoğlu İnşaat San. ve Tic. A.Ş**

Decision Date:	Decision No:	Type:
21.12.2017	**17-42/669-297**	**-**

The decision was related to hindrance of on-site inspection, which was conducted according to the Board decision dated 20.04.2017 and numbered 17-13/182-M by Nuhoğlu İnşaat San. ve Tic. A.Ş. on 14.11.2017.

After the rapporteurs informed that NUHOĞLU CEO's room and PC where business e-mails were stored would be inspected, the internal lawyer argued that a court decision was necessary to carry out on-site inspection; thus, on-site inspection was hindered.

Afterwards, competent rapporteurs came to NUHOĞLU's premises on 15.11.2017 at 1:30 p.m. and presented the decision of Istanbul Anatolia 3rd Criminal Court of Peace numbered 2017/5682 to the officials.

Within this framework, as per article 16(1)(d) of the Act no. 4054, the undertaking was imposed administrative fines, amounting to 0,5% of its gross revenues accrued at the end of the financial year 2016 due to hindrance of on-site inspection.

- **The UK Competition Authority Disqualifies Two Company Directors for Their Roles in Price Fixing Cartel**

UK Competition and Markets Authority (CMA) has secured the disqualification of two directors following an investigation into a cartel agreement by six estate agencies to fix the minimum level of commission fees for the provision of traditional residential estate agency services.

During the investigation, the CMA identified that a number of directors were actively involved in the cartel or were aware of it and failed to take any steps to stop it.

The estate agents were fined more than £370,000 at the end of the investigation. Alongside the monetary fine, the CMA secured legally binding undertakings from the directors of Abbott and Frost Estate Agents (Mr Baker and Mr Frost)–which have the effect of disqualifying them as directors and preventing them from being involved from being a director of any UK company. Mr Baker has been disqualified for 3.5 years, and Mr Frost has been disqualified for 3 years.

This is the second time the CMA has secured disqualification undertakings from directors in connection with a company's breach of competition law. The first case was in December 2016 in relation to a cartel in the online sales of posters and frames by two competing online sellers on Amazon's UK website.

The CMA has the power to seek the disqualification of an individual from holding company directorships, under the Company Directors Disqualification Act 1986, where they have been director of a company which has breached competition law and their conduct makes them unfit to be a director.

Sources:

https://www.gov.uk/government/news/estate-agent-cartel-directors-disqualified

http://www.concurrences.com/en/bulletin/news-issues/april-2018/the-uk-competition-and-markets-authority-disqualifies-two-company-directors-for

https://www.thetimes.co.uk/article/two-estate-agents-banned-for-taking-part-in-price-fixing-cartel-g0zt8b9kq

- **European Commission initiates Phase II investigation into Apple's proposed acquisition of Shazam**

The European Commission initiates in-depth investigation into the proposed acquisition of music recognition service Shazam by Apple upon the concern that the takeover could reduce choice for users of music streaming services.

The US-based Apple announced its intention to purchase the UK-based Shazam in December 2017 for an undisclosed amount, reportedly £300 million. Because of Shazam's relatively low revenue numbers, the proposed transaction did not contain an "EU dimension" which is based on certain turnover thresholds set by the EU Merger Regulation, and therefore Apple was not required to notify the European Commission of the deal. Nevertheless, the Commission decided in February that it would review the merger after competition authorities of Austria, France, Iceland, Italy, Norway, Spain and Sweden asked it to do so.

The Commission's Phase I investigation raised several issues relating to the combination of Shazam's strong market position in the music recognition apps market (as the leading app for mobile devices in Europe and worldwide) and Apple's market position in the music streaming services market (as the second largest provider in Europe).

The Commission expressed two main preliminary competition concerns. First, the Commission is concerned that, following the takeover, Apple would obtain access to commercially sensitive data about customers of its competitors for the provision of music streaming services in the EEA. Access to such data could possibly allow Apple to directly target its competitors' customers and encourage them to switch to Apple Music. As a result, Apple's competitiors could be put at a competitive disadvantage. Second, following the recognition of the song, Shazam currently refers users to various music providers, where the user can purchase or stream that song. The Commission is concerned that following the transaction, Shazam may no longer refer users to Apple's competitors.

Apple notified the Commission of the transaction on 14 March 2018. The Commission has 90 working days, until 4 September 2018, to take a decision.

Sources:

http://europa.eu/rapid/press-release_IP-18-3505_en.htm

https://globalcompetitionreview.com/article/1168224/dg-comp-takes-apple-shazam-to-phase-ii

https://www.lexology.com/library/detail.aspx?g=1e45d208-db95-400d-bd2b-b39890e0814f

- **Germany and Austria introduced Draft Guidelines on New Transaction Value Merger Notification Thresholds**

In second half of 2017 Germany and Austria adopted transaction value merger notification thresholds as alternatives to purely turnover based thresholds that trigger the obligation to obtain merger control approval. Based on these new thresholds, transactions involving a transaction valuation exceeding € 400 million (Germany) or € 200 million (Austria) will be notifiable under Germany's and Austria's merger control rules, provided that certain revenue thresholds are met and the target has "significant" activities in Germany or Austria.

When Facebook acquired WhatsApp in 2014 for about $19 billion, the transaction did not require merger control notification in Germany or Austria because the undertakings concerned did not meet the national turnover thresholds. To address a perceived enforcement gap in digital and other evolving markets—in which high transaction values may not correlate with high turnover, but may signal that the parties nonetheless have strong positions in current market(s) or substantial innovation potential—the German Act against Restraints of Competition and the Austrian Cartel Act were amended with effect as of June and November 2017, respectively.

On May 14, 2018, the German and Austrian competition authorities published joint draft guidance on the new thresholds for public consultation. For the first time, the Draft Guidelines give insight into the authorities' likely interpretation of the new statute and provide clarification on aspects of the size-of-transaction threshold.

The main aspects of the Draft Guidelines are as follows:

Determination of the transaction value: The Guidelines clarifies what types of payments and contributions are relevant for the computation of the transaction value. These include (fixed or variable) cash payments, the transfer of assets, securities and voting rights as well as interest-based liabilities (both liabilities which the acquirer assumes from the seller, as well as liabilities existing in the target company). Conditional considerations (e.g. earn-out clauses) have to be factored in as well.

Under the Draft Guidelines, several transactions that are closely connected in material terms and timing will be regarded as a single transaction for the purpose of calculating consideration value. This applies, notably, where the buyer acquires target shares from multiple shareholders, aiming to acquire control over the company.

Relevant date: The relevant date for determining the consideration value is the date of the completion of the transaction. If parts of the consideration are to be paid at a later time, such as payments resulting from an earn-out, the value of such payments are determined at the time of the completion of the transaction, based on assumptions and discounting methods commonly used in the financial sector.

Significant domestic activity test ("SDAT"): In order for the new threshold to apply, the target must have significant domestic activities, already at the time when the transaction is closed. In this regard, the Guidance Paper establishes a three-pronged test, 1. local nexus, 2. marketability and 3. significance of the activities.

The Draft Guidelines clarifies that the SDAT requires the target to have current activities at the time of closing, i.e. the target needs to be present on the market already before the transaction is consumed. Thus, future or anticipated activities do not suffice. However, activities preparing market entry are considered to be current ones.

Sources:

https://www.wilmerhale.com/en/insights/client-alerts/20180618-german-and-austrian-competition-authorities-publish-draft-guidelines-on-new-transaction-value-merger-control-thresholds

http://www.mondaq.com/article.asp?articleid=719672&email_access=on&chk=2429828&q=1710156

- **US DOJ cleared Bayer/Monsanto takeover conditioned upon landmark divestment**

US Department of Justice (US DOJ) has cleared the $66 billion takeover of Monsanto by Bayer conditioned on similar divestitures already demanded by the European Union, as well as the sales of seed treatment and digital farming assets to its rival German-based BASF.

The value of assets to be spin off is worth of $9 billion, which is the largest-ever merger divestiture in the US. Bayer will sellt businesses including Bayer's cotton, canola, soyabean and vegetable seed and Liberty herbicide

businesses in which it competes directly with Monsanto. US DOJ officials said the targeted divestments are to prevent Bayer and Monsanto from using their combined control over seeds and seed treatments to raise the price of agricultural products to farmers and consumers.

Germany based Bayer agreed to takeover US-based Monsanto in September 2016, by indicating that it expected to close the deal by the end of 2017. However, the proposed takeover has faced drawn-out reviews in multiple jurisdictions, as competition authorities scrutinised the merger of Bayer's seed treatment business (the second-largest in the world) with Monsanto's seed business (the world's biggest).

Concerns about competition have grown thanks to a wave of megamergers in the agricultural industry. Authorities last year cleared mergers between DuPont and Dow Chemical, as well as ChemChina and Syngenta, concentrating global agrochemical research and sales in the hands of five companies.

The Monsanto-Bayer merger will further shrink that number to four, raising questions about the future of agricultural competition and innovation. So far, the deal has received approval from authorities in European Union, Russia and Brazil. Bayer said it expects to close the merger by midsummer.

Sources:

https://www.ft.com/content/ad5bdc0a-6331-11e8-90c2-9563a0613e56

https://globalcompetitionreview.com/article/1170047/us-doj-specifies-vertical-remedy-for-bayer-monsanto

https://www.washingtonpost.com/business/economy/justice-department-approves-bayer-monsanto-merger-in-landmark-settlement/2018/05/29/25d56ec8-6358-11e8-a69c-b944de66d9e7_story.html?noredirect=on&utm_term=.51a92e35764d

- **US Supreme Court sides with American Express on Anti-Steering Provisions in Merchant Contracts**

US Supreme Court ruled in a 5-4 decision in *Ohio v. American Express* that the anti-steering provisions of American Express's (AMEX) merchant agreement do not violate Section 1 of the Sherman Act. The Court stated that the "specialized nature of credit card transactions justified what in other circumstances might have been anti-competitive conduct." According to Court's ruling the credit card networks create "two-sided platforms," in which a company provides goods or services to two distinct but interrelated

groups of customers, which "differ from traditional markets in important ways," therefore AMEX services both merchants and consumers, and any decision regarding anti-competition must factor in the impact to both sides of the market. The Court stated that antitrust enforcers focused only on the fees paid by retailers to AMEX and failed to prove that consumers suffered any harm. The government "did not offer any evidence that the price of credit-card transactions was higher than the price one would expect to find in a competitive market".

The Supreme Court ruling marks the culmination of a legal battle for AMEX, which started in 2010 when AMEX, along with Visa and Mastercard, were sued by the states and the antitrust bureau of the Justice Department for the anti-steering provisions in the merchant agreements. The case alleged that the credit card processors' anti-steering requirements prevented merchants from leveraging competition to negotiate for flatter swipe fees. Visa and Mastercard settled their lawsuits several years ago and agreed to change their merchant rules, while Amex persisted as the sole defendant. The compliant lied on the assumption that there were two separate markets in which AMEX operates which should be assessed separately. Even the District Court accepted this assumption, the Supreme Court rejected it and held that there is only one market in which AMEX operated which was the market for "transactions".

After defining the proper relevant market, the majority found that the anti-steering provision was a vertical restraint of trade, and subject to the rule of reason. The Court's market definition created a fundamental change in the way in which the competitive effects of anti-steering provisions should be assessed. In the presence of two markets, it could be argued that increased merchant fees constitute proof of anti-competitive effects which was no longer possible in case of a single market. Thereof, the Court found that the plaintiffs failed to show that the anti-steering provisions had anticompetitive effects in the market. According to ruling, the evidence of a price increase on one side of a two-sided transaction platform cannot demonstrate an anticompetitive exercise of market power. Rather, the plaintiffs were required to show that the anti-steering provisions increased the cost of credit card transactions above a competitive level, reduced the overall number of credit card transactions or otherwise stifled competition in the credit card market. The Court found no evidence of any of these effects. Although the record showed price increases in AMEX's merchant transaction fees, there was no evidence in the record that these increases arose from AMEX anticompetitively exercising its market power. Thus, the

Supreme Court found the anti-steering provisions did not violate Section 1 of the Sherman Act.

Sources:

https://www.nytimes.com/2018/06/25/us/politics/supreme-court-american-express-fees.html

US Supreme Court's AMEX Decision And Its Implications For The Ongoing Sahibinden.Com Investigation In Turkey

http://www.mondaq.com/article.asp?articleid=719202&email_access=on&chk=2429358&q=1710156

- **The Decision of Ankara 4th Administrative Court numbered 2018/280 E. 2018/823 K related to the case brought by OMV Petrol Ofisi**

- The case was brought by the plaintiff Petrol Ofisi against the authorization by the Board of a merger agreement in 2014.
- In the said decision, the Board cleared the transfer of the operating rights of the fuel facilities, which belonged to the operator of Sabiha Gökçen Airport and located in the Airport, to THY-Opet with the following committments,
  - Facilitate the process for companies that applied for storage license,
  - Accept the requests by competitors for accessing storage services,
  - Apply EMRA tariffs for determining access fees,
  - Apply fair and transparent criteria to third persons for accessing storage and supply services.
- Petrol Ofisi requested the annulment of this decision claiming that THY-Opet, the dominant company in the market, would prevent competition as a result of this decision.
- Fourth Administrative Court found the commitments sufficient and stated that the Board shall impose sanctions in case THY-OPET violates the commitments and dismissed the case.

- **Ankara 11th Administrative Court Decision no. 2015/477 E. and 2018/366 K. to annull the Board decision which rejected the complaint submitted by NETGSM as a result of a preliminary inquiry without initiating an investigation**

In this decision, the Court stated that the Board should reject a complaint as a result of a preliminary inquiry, without initiating an investigation if and only if it can establish, without any reasonable doubt, that there is no indication of a violation.

After considering the complaint submitted by NETGSM as well as the evidence collected at Turkcell and Vodafone, the Court annulled the Board decision in question, finding that doubts on whether the Act was violated could not be removed and therefore an investigation should be initiated in order to examine the subject in more detail.

- **Council of State, Plenary Session of the Administrative Law Chambers (PSALC) decision no. 2016/4477 E. and 2018/660 K. concerning the Board decision on the complaint submitted by Kaptan Demir Çelik**

The summary of the decision is as follows;

- In its 2011 decision, Competition Board rejected, as a result of the preliminary inquiry conducted, the complaint submitted by Kaptan Demir Çelik that Kardemir, Çağ Çelik, Çelsentaş and Yolbulan had violated the Act.
- Council of State 13th Chamber had annulled the Board decision taken in 2011.
- The grounds offered by the 13th Chamber are as follows:
  - The Board defined the relevant geographical market as Turkey without sufficiently investigating the matter in accordance with the relevant Communiqué and Guidelines, and therefore the relevant geographical market definition of the Board was found to be illegal due to incomplete examination,
  - It was also found that, when deciding that Kardemir did not have dominant position in the ingot steel market and therefore did not violate Article 6 of the Act, the Board, illegally took only production numbers into account and ignored sales numbers, which was in violation of the Guidelines on abuse of dominant position,
  - In its assessment under Article 4, the Board failed to examine the sales policies and sales amounts of Kardemir related to steel ingot raw material and since the amount of ingot supplied to Kardemir by the other family companies listed in the complaint could not be determined, the Board failed to fulfill the condition that the evidence for not initiating an investigation be without any reasonable doubt, rendering the relevant assessment illegal.
- PSALC upheld the decision of the 13th Chamber.
- Therefore, following the upholding PSALC ruling, the relevant Board decision has been completely removed.

- **Council of State, Plenary Session of the Administrative Law Chambers (PSALC) decision no. 2015/3253 E. and 2017/3542 K. concerning the Board decision on Lukoil and Akpet**

- PSALC partially reversed the judgment of the 13th Chamber and remitted the subject to the Chamber for re-evaluation.
- In the grounds for the decision, PSALC found that the Board considered the first agreement establishing a legal relationship between the parties as the first day of the period for which the vertical agreements between the parties would benefit from exemption,
    - Under the circumstances, it becomes important for a petrol station whether the real estate property on which the station is located was previously used as a petrol dealer,
    - In case of a property which requires investment and which was not previously used as a dealer, the dealership agreement instead of the rental agreement should be adopted as the start of the relevant period.
    - The grounds of the relevant finding of the Board stated that the parties could first sign a rental agreement and conclude the dealership agreement later, thereby blocking competing distribution companies for years and foreclosing these stations to competitors, however, PSALC found this analysis clashed with the realities of commercial life.
- In the current case, of the 74 vertical agreements comprising the subject matter, in 14 cases dealership agreements were signed after the rental/usufruct agreements, in cases 2 they were signed simultaneously, and in 58 cases the dealership agreements were signed before the rental/usufruct agreements.
- Under the circumstances, PSALC decided that it was illegal to start the individual exemption period for the 14 vertical relationships from the rental/usufruct agreements comprising the first legal relationship between the parties when it needed to start with the dealership agreement, and reversed the judgment of the 13th Chamber solely for the 14 relationships in question, ruling that the 13th Chamber should reconsider.
- The validity of the annulled Board decision comprising the subject matter of the case was not changed.

- **Ankara 11th Administrative Court Decision no 2017/2933 E. and 2018/794 K. concerning the annulment of the Board decision taken and fines imposed on V Turizm**

In the Board decision comprising the subject matter of the lawsuit, it was decided that V Turizm made agreements to ensure that customers arriving from Russia through the non-joinder party İati are not accepted in the hotels located in Ankara in order to pressure İati, that this was proven by the e-mails acquired at the other undertakings parties to the Board decision, and that this constituted a violation under Article 4 of the Act. As a result, undertakings under investigation, including the plaintiff, were imposed administrative fines.

However, the Board made the following observations in the grounds for its decision:

- Evidences no. 2 and 5 actually proved that the plaintiff V Turizm did not act in collusion with the other three undertakings,
- Nearly all of the evidence included in the relevant investigation file concerning the pressure put on İati were unilateral declarations of intent, while the plaintiff V Turizm did not engage in any conduct in violation of the Act or there was no concrete evidence suggesting such conduct on the part of the plaintiff,
- On the contrary, İati increased its market share and revenues each year, which is in contradiction with the conduct ascribed to V Turizm by the Board, proving that the plaintiff V Turizm did not engage in anti-competitive activities against İati.

Due to the above-listed reasons, the Court found that V Turizm did not act in collusion with the other three undertakings or engage in conduct aimed to distort competition against İati. Therefore, it annulled the Board decision taken on V Turizm, and decided that the administrative fine imposed be reimbursed.

- **Mergers and Product Quality: Evidence from the Airline Industry**

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Authors: Yongmin Chen and Philip G. Gayle

The studies conducted in the past on horizontal mergers focused on price effects and ignored the answer to the crucial question of how mergers affect product quality given. In the article prepared to eliminate this failure, the merger of new two airline companies, Delta / Northwest (DL/NW) and Continental / United (CO/UA) was analyzed empirically. In line with the view that mergers facilitate coordination between companies and decrease competitive pressure for quality improvements, the study showed that mergers led to decreasing quality in the markets where there was competition before, but to increasing quality in the markets where there was no competition before. The change in the product quality can be in the form of a "U" in relation to the competition density before the merger. That is to say, if there is no competition among the firms before the merger, decreasing product quality begins to increase after the merger. The article also includes consumers' gains or losses related to the changes in the product quality, expressed in monetary terms.

The study refers to the private air travel product quality measure as steering quality. Steering quality is the ratio of the air route, defined as the length of the journey from the point of departure to the point of arrival, to the length of non-stop flight. The analysis first estimates the discrete choice model for the airline travel request. This is important in two aspects. The first verifies that selection behavior of the passengers is consistent with the hypothesis that a travel program preferred by more passengers is related to a higher steering quality measure. Secondly, pre-merger cross price elasticities can be estimated between the firms merging in the markets where they are in direct competition, and the results obtained can be used as an indicator of competition density. The study uses a regression equation where the steering quality is reduced to evaluate the effects of the merger on the product quality of merging companies.

Consistent with the theory, regression estimates prove that the DL/NW merger was related to an increase of 0.45%, and the CO/UA merger to an increase of 5.28% in steering quality in the markets where the merging companies were not in competition with each other. However, where the merging companies were in competition before the merger, the DL/NW merger decreased steering quality by 1.35%, and the CO/UA merger by

1.05%. Besides, in the case of the CO/UA merger, the change in the product quality shows that the two companies displayed a "U-shaped" relation with competition density before the merger. Regression analysis also indicates the welfare effect of the merger. In those markets with a lack of competition before the merger, the increase in benefits passed-on to the consumer is USD 1 in the first merger, while it reaches USD 11.77 in the second one.

Source:

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- **Product Similarity and Cross-Price Elasticity**

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Authors: Sreya Kolay and Rajeev Tyagi

The purpose of this study is to conduct a theoretical analysis of the similarity of the tow products and the relation between the cross price elasticities. The study uses a spatial competition model to show how increasing similarity between the products gradually rises, falls or has an unstable effect on cross-price elasticity. The two products differing in two aspects are considered. All consumers agree on which product is better with relation to the first aspect (for example, quality). The second aspect is the horizontal product features such as color, style, etc. which differ in terms of consumers choice. Then, the study examines how cross-price elasticities of the two products change when horizontal product features of the products become more similar to each other. These results are compared with previous studies, which relate the cross-price elasticities to product similarity, market structure, merger analysis, and price discrimination. The study uses a model built within the standard Hotelling framework. The model examines how a balanced and stable location can emerge by focusing on the location strategies of the companies. Accordingly, the firms sell the same goods in a market with freedom of movement and a certain level of demand. Perfect competition conditions prevail in the market where the firms sell their goods, and there are no collusion or cartel agreements between the companies.

The study shows that making the products more similar in terms of horizontal product features increases the cross-price elasticity for the weaker product, but that it could lead to increasing-decreasing, or inverse "U" shaped effects on the cross price elasticity of the stronger products. If the two products hold the same position in relation to the horizontal feature, then all consumers prefer the stronger product to a weaker one for the same

price. But since the products have different positions in terms of the horizontal feature and since the consumers have different preferences for the horizontal features of the products, many consumers can prefer the weaker product. The article also shows how these results are affected by differences in structural features such as quality, and how the marginal costs of the companies change in case costs are varied according to structural features.

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