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INTRODUCTION

Turkish Competition Authority
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We are proud to present to you the Competition Bulletin for the first quarter of 2020, which includes news on developments in competition law, industrial organization and competition policy.

In the "Selected Reasoned Decisions" section of this issue, we included three preliminary investigation decisions two exemption decisions, one merger and acquisition decision and one Board decision regarding regarding the measures to be implemented by the Google economic entity.

The "News around the World" section of the Competition Bulletin includes decisions from England and Wales High Court, Italian Competition Authority, French Competition Authority and the precautions that competition authorities took for the Covid-19 pandemic.

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

"Economic Studies" section includes a summary of an aricle published by Review of Industrial Organization titled "New Business Formation and Incumbents' Perception of Competitive Pressure" and another article published by the RAND Journal of Economics titled "Vertical Collusion".

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

- **Preliminary Inquiry about Google Shopping Unit**

Decision Date:	Decision No:	Type:
07.11.2019	**19-38/575-243**	**Preliminary Inquiry**

A preliminary inquiry was made in response to the claim that the auction mechanism which e-trade firms that want to give advertisements to Google Shopping Unit have to participate and which is operated by Google algorithms makes discrimination against e-trade firms and may cause exclusivity by one e-trade firm; besides, Google gains excessive profits that might be regarded as exploitative through the said auction mechanism.

The relevant markets within the framework of the file are "general search services", "product advertisement" and "e-trade" services. It is concluded that Google is dominant in general search services and product services markets.

Regarding the claims, concrete information/documents were not obtained showing that Google discriminates in favor of an e-trade firm in Shopping Unit area. On the other hand, not only large scale e-trade firms such as Trendyol and Amazon but also small scale e-trade firms could give advertisements in Shopping Unit area in tenders made on both special days and ordinary days. It is concluded that it is possible that all e-trade firms can participate to Google's generalized second auction model. The model makes advertisement ranking after evaluating various parameters such as quality score beside the offers. In this model, it is possible that many advertisements of a single e-trade firm can be displayed. Considering the dynamic structure of search based advertising, which operates with instant auctions for each query, this situation does not have a nature that will last for a long time enough to affect the players' activities in e-trade market. Thus, it was decided that Google's practices to determine Shopping Unit advertisement area ranking by means of auction does not result in discrimination.

Moreover, in relation with the claims that the auction model results in excessive pricing, it is observed that prices are not set by Google but shaped within the framework of offers by e-trade firms and quality scores, Google's generalized second auction system is a system where the bidder pays a sufficient amount to surpass the offer of the next bidder, even if the amount the bidder offers is very high, the amount paid in reality is close to the

advertisement's real value. Thus, it was decided that excessive price claims do not reflect the truth and it is not necessary to initiate an investigation.

- **LNG Investment and Operation Protocol signed/to be signed by Shell Petrol A.Ş. and Its 15 Dealers was Granted 12-year Exemption Within the Framework of Article 5 of the Act no 4054.**

Decision Date:	Decision No:	Type:
12.11.2019	**19-39/601-255**	**Exemption**

Shell Petrol A.Ş.'s (Shell) investment, which is the subject of the file is related to station infrastructure that will enable the usage of auto-LNG in heavy vehicles such as lorries or trailer trucks as an alternative fuel. The undertaking obtained wholesale license according to Natural Gas License Regulation on 16.11.2016 and made first auto LNG sales in June 2018 as a pilot scheme.

Following that pilot scheme, feasibility studies were made to refuel four LNG-powered towing trucks/lorries. Exemption application was made regarding the return on infrastructure investment. The applicant stated that a period of 12 years is needed for the return on investment.

The Protocol to be signed by the supplier/distributor Shell and its dealer is a vertical agreement. The Protocol includes exclusivity (non-compete) obligations and recommended ceiling price regulations. The Protocol falls under the scope of article 4 of the Act. As a result of the assessment made according to article 5, it was decided that the agreement shall be granted individual exemption for 12 years.

- **Working with a Limited Number of Pharmaceutical Warehouses within the Framework of Sales Agreement in Distribution of the Products, which Roche Müstahzarları Sanayi A.Ş. Imports, to the Channel apart from Tenders (Independent Pharmacies and Private Hospitals) was not Granted Exemption.**

Decision Date:	Decision No:	Type:
12.12.2019	**19-44/732-312**	**Exemption**

The notification is about Roche's conduct, where Roche limits the number of warehouses (currently more than 30) to not less than five but not more than 10 in the distribution of human medicine to channels apart from

tenders (pharmacies and private hospitals) and does not work with warehouses apart from those specified.

Considered as a whole, the draft agreement does not provide for anticompetitive practices such as exclusivity or resale price maintenance. However if Roche limits the number of warehouses (currently more than 30) to not less than five but not more than 10 in the distribution of human medicine to channels apart from tenders (pharmacies and private hospitals), especially small and medium-sized pharmaceutical warehouses' activities will be complicated. In case those warehouses leave the market and/or there are not any new entries, the concentration level in the market will rise. Thus, the practice which might result in a vertical relation that could restrict competition in the market is under the scope of article 4 of the Act no 4053. Thus, limiting the number of warehouses not less than five but no more than ten cannot be granted negative clearance certificate. Moreover, limiting the number of warehouses to work between five and ten cannot be granted individual exemption as it does not fulfill the condition listed in article 5(1) (c) of the Act.

- **Preliminary Inquiry was made Regarding Ready-mixed Concrete Producers in Keşan District of Edirne Province**

Decision Date:	Decision No:	Type:
19.12.2019	**19-45/758-327**	**Preliminary Inquiry**

A preliminary inquiry was made in response to the claim that four ready-mixed concrete producers in Keşan district of Edirne province violated article 4 of the Act no 4054 by means of customer allocation within the scope of gentlemen's agreement they made. As a result of the inquiry made considering undertakings' average sale prices and costs together with annual changes thereof, it was observed that when there were price increases generally, the costs also increased. Moreover, increasing and/or decreasing prices were observed at different times and different ratios. Information or documents related to customer allocation were not found.

Agreement between the parties to the inquiry, Saros Hazır Beton İnşaat Madencilik San. ve Tic. A.Ş. ve Akçansa Çimento San. ve Tic. A.Ş. (AKÇANSA BETON), regarding the supply of ready-mixed concrete was found. The agreement in question is a horizontal subcıntracting agreement as both parties are active in ready-mixed concrete market. However, as the agreement was put into effect on the date when Akçansa Beton ended its activities, it was concluded that it is a "unilateral specialization agreement".

It was stated that the said agreement may enable a competitor that decided to end its activities in the market to continue its activities in the market even if in a limited way, other two concrete firms can create competitive pressure on parties to the agreement, installment of a ready-mixed concrete facility is not economically difficult, as the agreement is a subcontracting agreement, it does not lead to strategic information sharing between competitors and it will not have significant effect on the similarities of parties' costs.

As a result, it was concluded that the agreement is not contrary to article 4 of the Act no 4054 and has the potential to be granted negative clearance certificate and it was decided that the complaint shall be rejected considering the following facts: the agreement does not create an effect that caused competitive concerns with regard to market structure; does not include provisions leading to price fixing or customer allocation; enables an undertaking that ended its activities in the market to continue its activities in the market even if in a limited way and does not create competitive concerns regarding information sharing or cost similarity.

- **Acquisition by Türk Hava Yolları A.O., Total Oil Türkiye A.Ş. and Zirve Holding A.Ş. of İGA Havalimanı Akaryakıt Hizmetleri A.Ş.'s Shares by Means of Capital Increase was Authorized.**

Decision Date:	Decision No:	Type:
19.12.2019	**19-45/769-331**	**Acquisition**

CMLKK Liman İşletmesi A.Ş. (LİMAN A.Ş.) requested that acquisition by Türk Hava Yolları A.O., Total Oil Türkiye A.Ş. and Zirve Holding A.Ş. of İGA Havalimanı Akaryakıt Hizmetleri A.Ş.'s shares by means of capital increase be authorized.

The subject of acquisition, İGA AKARYAKIT, was established to carry out services related to oil sale, supply and refueling. In line with this, its fields of activity are: (i) domestic and international sales, import, export, distribution and transport of aircraft petroleum products, mineral oil and grease and petroleum chemistry products, chemical products and dyes and have those activities done (ii) transport by road and marine vehicles, by pipeline, of aircraft petroleum products, mineral oil and grease and petroleum chemistry products, chemical products and dyes and have those activities done (iii) storage, handling, retail sale and wholesale after being stored in storage facilities or vehicles in and/or outside of airports where those will be sold, of aircraft petroleum products, mineral oil and grease

and petroleum chemistry products, chemical products and dyes, within the country or abroad (iv) Establishing and operating oil stations and to this end purchase, sales, retail trade and marketing of all petroleum products (benzine, diesel oil, diesel, biodiesel, LPG, LNG, mineral oil, etc.)

It was concluded that the transaction would result in creating a dominant position or strengthening the existing dominant position within the scope of Article 7 of the Act no 4054; however, the transaction was authorized because the transaction would not restrict competition significantly.

- **A decision was taken regarding the measures to be implemented by Google economic entity according to the Competition Board decision dated 19.09.2018 and numbered 18-33/555-273**

Decision Date:	Decision No:	Type:
09.01.2020	**20-03/30-13**	**-**

The decision was related to whether the obligations imposed within the framework of the decision dated 19.09.2018 and numbered 18-33/555-273 on the economic entity consisted of Google LLC., Google International LLC and Google Reklamcılık Pazarlama Ltd. Şti. were fulfilled. In the decision dated 2018, it was decided that Google economic entity violated article 6 of the Act no 4054 by means of the practices in the Mobile Application Distribution Agreements that Google search is set as the default search in the points specified by the agreement and Google search widget is put on the main screen; Google Webwiew component is set as the only and default component for the relevant function as well as provisions in Income Sharing Agreements that Google search is downloaded in devices exclusively.

The said obligations aim to terminate the violation detected by means of ensuring that competing search service providers compete at equal conditions with Google so that they take place in search points in mobile devices. However, Google did not fulfill the obligations in time; periodic administrative fines were imposed. Finally, it was decided that compliance suggestions submitted by Google meet the obligations. Within the framework of the compliance suggestions, the issues that are imposed as a condition for licensing in the agreements made with device producers who want to get TAIS license and which the Board decision provided for removal, are removed. Also, it was provided that the obligations in all agreements signed with device manufacturers that Google search's competitors cannot be preinstalled and device manufacturers cannot use competing products in any of the search points in devices shall be removed.

- **It was decided that Meram Elektrik Dağıtım A.Ş. did not violate article 6 of the Act no 4054 by means of discriminatory activities in evaluating applications for producing electricity without a license**

Decision Date:	Decision No:	Type:
16.01.2020	**20-04/41-23**	**Preliminary Inquiry**

Preliminary inquiry was made in response to the claims that MEDAŞ, which owns the distribution network that has a natural monopoly nature, discriminates in favor of itself and its affiliates while evaluating the applications for Solar Power Plants and Wind Power Plant.

The claims towards MEDAŞ, which holds a dominant position in the relevant markets, were evaluated by analyzing the applications made to transformation stations where there may be concerns about discrimination as well as approvals and rejections on the basis of each application. As a result of the evaluations, it was observed that MEDAŞ rejected the applications on concrete and objective grounds. Documents or information indicating that MEDAŞ discriminated against applicants were not found.

Moreover, among the applicants to the transformation stations, there were not any firms related to MEDAŞ. In this respect, there were not any observations that MEDAŞ discriminated in favor of its own group companies. In addition, it was observed that the same criteria were applied to each undertaking, rejections at the application points in question depended on objective criteria and relevant legislation. Consequently, it was decided not to initiate an investigation about MEDAŞ.

- **England and Whales High Court Allows the Complainant's Access to Google's Algorithm**

England and Whales High Court took an important decision regarding the method to be followed in protecting commercial secrets and damages actions.

Following Google Shopping decision by the European Commission in 2017, Foundem, which provides vertical online search services, claimed for damages. Foundem also claimed that Google abused its dominant position by means of arranging its algorithm in a way to discriminate against Foundem and its other competitors. Upon Google's answer to these claims based on highly technical evidence, Foundem requested that its independent technical expert reach confidential evidence and documents related to Google's algorithm. Google did not allow Foundem's expert to reach those documents, which were open to lawyers and economists, as Foundem's expert has expertise in the area of search engine optimization (SEO).

The Court found Foundem's request appropriate in its decision dated 18 March 2020. The Court based its decision on the principle that a party is entitled to know the case against him and the evidence on which it is based. In this framework, it is stated that not only the attorneys or lawyers of the party but also the party himself can access to the evidence. The decision also emphasized that confidentiality restrictions should apply only in the most exceptional circumstances and be limited to the narrowest extent possible.

The Court gave Google two options. Google either will allow Foundem's expert to review all evidence and documents or Google will not rely on those evidence and documents in its strike out application.

Sources:

https://www.bailii.org/ew/cases/EWHC/Ch/2020/657.html

https://www.hausfeld.com/news-press/high-court-allows-foundems-expert-access-to-google-confidential-information

- **Competition Authorities Take Precautions against COVID-19 Outbreak**

Due to COVID-19 outbreak, competition authorities around the world are taking decisions regarding especially exemption and control of

concentrations. Competition authorities that are also responsible for protecting consumers make announcements and activities in this regard.

Philippines Competition Authority announced on 16 March 2020 that the processes and time periods regarding control of mergers and acquisitions are suspended between 16 March and 14 April. During this period, current applications will not be handled and new applications will not be accepted.

Denmark Competition Authority announced that it suspended the time period for the control of concentrations for 14 days. This is to prevent implicit approval of concentrations.

United Kingdom Competition Authority CMA announced that it has relaxed the competition rules for cooperation to provide food and healthcare equipment. Accordingly, food retailers can cooperate on issues such as the data on stock levels, shops' opening and closing times, sharing distribution depots and pool staff. Such types of cooperation may also be used in other sectors as long as they aim to protect consumers. On the other hand, CMA stated that it will not tolerate using the crisis as a cover for unnecessary collusion such as sharing long term business strategy and pricing information. Having the powers in the area of protection of consumers, CMA created a taskforce regarding price increases and other behavior that could harm consumers.

South Africa has approved a block exemption to exempt hospitals, medical suppliers, pharmacies, laboratories, and healthcare funders from competition law. The block exemption will apply to practices such as deciding where patients can be treated, allocating nurses and doctors between hospitals, ensuring the availability of medical supplies, and sharing data about disease research results regarding COVID-19 outbreak. Within the scope of protecting consumers, upper price limits are set for everyday goods, such as pasta, toilet roll and disinfectants.

On 20 March 2020, Australian Competition and Consumer Commission, ACCC, has provided interim authorization to Australian Banking Association's application on behalf of its current and future members dated 19 March 2020 to apply the relief package for small businesses affected by COVID-19 outbreak. ACCC also provided interim authorization on 25 March and 23 March 2020 to similar applications by Medical Technology Association of Australia dated 24 March 2020 and by market chains and retailers dated 20 March 2020.

Brazilian competition authority CADE launched an investigation upon the claims by Brazilian Association of Dialysis and Transplant Treatment Centers

that the prices of face masks and 70% alcohol hand gel increased by five times, which is an abusive price increase.

Russian Competition Authority FAS started three different cartel inquiries related to medical protective equipment in February and March.

Colombia competition authority, which has a prosecutor status, announced that it will make stricter investigations into withholding and speculative behavior, which is regarded as offence according to Colombia laws. Competition authorities of Canada and Poland, which are also responsible for protecting consumers, have made warning announcements about price levels and misleading information towards consumers.

Sources:

https://phcc.gov.ph/wp-content/uploads/2020/03/PCC_Comm-Reso-No.-007-2020-on-the-Suspension-of-Merger-Process-and-Timeline_16Mar2020.pdf

https://www.accc.gov.au/media-release/australian-banking-association-small-business-relief-package

https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20Decision%20-%2023.03.20%20-%20PR%20-%20AA1000477%20Coles%20%26%20Ors.pdf

https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20Decision%20-%2025.03.20%20-%20PR%20-%20AA1000479%20MTAA_0.pdf

https://globalcompetitionreview.com/article/1216448/coronavirus-round-up-cooperate-to-%E2%80%9Cfeed-the-nation%E2%80%9D-uk-government-tells-retailers

https://globalcompetitionreview.com/article/1222468/coronavirus-roundup-cma-clarifies-approach-to-cooperation

- **Italian Competition Authority, Telecommunications Authority and Protection of Personal Data Authority Issues a Common Report on Big Data**

Italian Competition Authority, Telecommunications Authority and Protection of Personal Data Authority issued a common report on big data on 10 February 2020. The highlights from the report are as follows:

- It is suggested that the control regime for concentrations be amended to allow for examining transactions that are below the current notification thresholds but create competition concerns,
- A suggestion has been made to make an EU-wide regulation to allow interoperability between certain platform technologies to ensure full portability of data,
- It is suggested that investigative powers of competition and telecommunication authorities be strengthened so that administrative sanctions could be imposed to undertakings that fail to provide information on time or at all during investigations,
- The report emphasized the importance of developing cooperation between the three authorities. In this framework, the value of the interaction between competition and regulation as well as the necessity of ex-ante and ex-post intervention tools together are highlighted.

Sources:

https://en.agcm.it/en/media/press-releases/2020/3/Big-Data-Agcom-Agcm-and-Data-Protection-Authority-survey-published

https://www.agcm.it/dotcmsdoc/allegati-news/IC_Big%20data_imp.pdf

https://globalcompetitionreview.com/article/1214423/italy-calls-for-merger-control-reform-to-tackle-big-data

- **French Competition Authority Decides Non-Notifiable Deals Cannot Be Abusive**

Towercast, a digital terrestrial broadcast company, alleged in 2017 that the acquisition by TDF, which was dominant, of its competitor Itas Tim, was abuse of dominant position. By means of this concentration in 2016, the number of players in digital terrestrial broadcast market was reduced from three to two. At the same time the market share of TDF, a previous public company, increased. However, the transaction was not notified because it did not exceed EU and French thresholds.

Towercast based this claim on ECJ's decision dated 1973 (Continental Can)[1]. In this decision the Court stated that if an undertaking's strengthening dominant position restricts competition significantly, it can be regarded as

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61972CJ0006&from=EN

abuse and can be prohibited under the scope of EU law regardless of its means or process.

French competition authority stated in its decision dated 16 January 2020 that Continental Can decision is irrelevant because it was taken before the concentration control regime in 1989. The decision noted that the concentration control regime aims to ensure legal certainty. Moreover, the decision attributed to Prosecutor Kokott's observation that while control regime is an obligatory and precautionary ex-ante supervisory regime, abuse of dominant position is subject to ex-post supervision, there is a strict line between the two areas[2]. French competition authority rejected Towercast's abuse of dominant position claims as Towercast based its claims only on the concentration and did not complain about TDF's other behavior.

Source:

https://globalcompetitionreview.com/article/1213220/france-non-notifiable-deals-cannot-be-abusive

[2] http://curia.europa.eu/juris/document/document.jsf?text=&docid=190185&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=516800

- **6th Administrative Court of Ankara Decision numbered 2019/946 E., 2019/2625 K.**

  Even though Competition Authorities may intervene in exorbitant pricing, meeting the standard of proof requires that the act of exorbitant pricing be exposed with data and facts beyond any reasonable doubt.

The lawsuit filed by Sahibinden Bilgi Teknolojileri Paz. ve Tic. A.Ş. requesting the annulment of the transaction which imposed administrative fines on the aforementioned undertaking based on the grounds that it held dominant position in the online platform services market for the sale of vehicles and the sale/lease of real estate, and that it violated Article 6 of the Act no 4054 through exorbitant pricing in those markets was accepted and the transaction was annulled.

In the annulment decision the court made the following assessment: "*In Competition Law, the approach and practice of 'abuse of dominant position through exorbitant pricing' is adopted on very limited and exceptional basis. Intervention on those instances of price increases which are exceptional but which cannot be proven to have a clear effect on the competitive environment, and thereby consumer welfare is not generally accepted under Competition Law. Since intervention in price increases are 'accepted only as an exception,' any findings and assessments to that effect needs to be clear and precise beyond any doubt. On the other hand, as a requirement of the standard of proof, they need to be 'almost completely proven'. It would be legally insufficient to come to a decision based on suspicion, and there need to be concrete evidence and grounds to prove that the suspicion was justified. However, in the present case the facts, claims and observations did not carry the aforementioned characteristics and that the Board Decision, which came to a conclusion based on observation and not on certain and indisputable concrete evidence, did not comply with the requirements of the law*".

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=bc9f149c-bbcc-4fd8-ad33-d6145908954e

- **8th Administrative Court of Ankara Decision numbered 2019/2238 E., 2015/2881 K.**

The lack of commitments in the conclusion section of the Board decision may not be interpreted to mean that the transaction was cleared without commitments The text of the decision as a whole must be taken into consideration

The lawsuit filed by Türk Tuborg Bira ve Malt Sanayi A.Ş. requesting the annulment of the Competition Board decision dated 01.06.2016 and numbered 2016-3-1 authorizing the acquisition of control over SABMiller Plc by Anheuser-Busch InBev (ABI) was accepted by the 6th Administrative Court of Ankara, and the transaction concerned was annulled. After the Authority appealed the court decision, the court of appeal revoked the nullity decision, examined the merits of the case and dismissed the lawsuit.

In its dismissal, the court made the following assessment: "*Even though it is claimed that the decision constituting the subject matter of the present case authorized the transaction without any commitments, the decision is comprised of the sections included in the text of the Board Decision. The decision is not only composed of the conclusion section, but it is a whole together with its grounds. The grounds of the 14 page decision does include the commitment presented by ABI, and the decision was presented by listing the grounds on which the conclusion was based. Under these circumstances, it is not possible to accept that the decision was taken without taking the commitments presented by ABI into consideration. When the Board decision comprising the subject matter of the present case was taken as a whole text together with its date and number, the transaction in question was not found to be in violation of the law.*

Even though the administrative court concluded that market conditions and market assessments were not supported by sufficient and efficient analyses when authorizing Anheuser-Busch InBev's acquisition of control over SAB Miller Plc, that the defendant Authority could not justify finalizing the acquisition process without any conditions by legal and technical arguments, that the subject matter was not scrutinized in a holistic manner taking into account the effect of the status of the plaintiff company, intervening company and the other relevant market actors, and that the transaction in question therefore did not comply with the requirements of the law, the nullity decision was not found to be legally accurate, since it did not concretely present what sufficient and efficient analyses should have

been conducted and which technical and legal arguments should have been examined."

This decision is notable in that it emphasizes that court decisions must be reasoned.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=70807f94-9ba8-4bf0-a938-37baeb3aa681

- **13th Chamber of the Council of State Decision numbered 2017/2433 E., 2019/4096 K.**

  The encryption of the school software must be decoded after the end of the contract

The lawsuit was filed requesting the annulment of the administrative fine imposed on the plaintiff company for violating article 6 of the Act no 4054 on the Protection of Competition.

In its dismissal, the court made the following assessment: "…*the plaintiff company was required to deliver all of the data belonging to the school in a way that would not prevent access to that data by the school and the firm who signed a new contract with the school, but it complicated the activities of firms operating in the same field by encrypting that data in a way that would prevent access, which comprises an infringement of competition under Article 6 of the Act no 4054."*

The Board decision comprising the subject matter of this file was previously annulled by the 13th Chamber of the Council of State, upon which the defendant company appealed the decision, and the Plenary Session of the Administrative Law Chambers reversed the nullity decision. Thereafter, the court of first instance, abiding by the reversal, dismissed the lawsuit.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=4d75a83b-c726-4a32-9de9-322a1b3e091b

- **16th Administrative Court of Ankara Decision numbered 2019/622 E., 2019/2482 K.**

  Disappearance of the previously established e-mail evidence after a blackout cannot be attributed to the blackout.

The court dismissed the lawsuit filed by the plaintiff company requesting the annulment of the Competition Board decision dated 13.3.2019 and numbered 19-12/146-64 imposing administrative fines on the undertaking for preventing on-site inspection by deleting the e-mail correspondence in the company's e-mail account during the inspection.

In its dismissal, the court made the following assessment: "…*Even though the plaintiff company claims that there was a spontaneous data loss following the blackout, and that the e-mail account was examined by the officials once the malfunction was repaired, spontaneous disappearance of a stored piece of data (for instance, e-mail correspondence) due to a blackout is not congruent with the nature of things. Moreover, in light of the fact that the officials recorded that the first login password given to the Competition Board staff became invalid following the blackout, it has to be assumed that the relevant e-mail correspondence was deleted and the aforementioned claim of the plaintiff company was found to be unreliable.*

Under the circumstances, since it is clear thatt, during the inspections conducted by the defendant Authority, the on-site inspection was prevented by deleting the e-mail correspondence under examination after the blackout, it was concluded that the transaction comprising the subject matter of the case which imposed administrative fines on the undertaking was in compliance with the law."

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=436e663b-de0d-4e26-830a-3d7a6d6b7ea7

- **New Business Formation and Incumbents' Perception of Competitive Pressure**

Published By: Review of Industrial Organization, (2020) 56

Authors: Javier Changoluisa and Michael Fritsch

The competitive pressure faced by incumbents because of new entries are dealt within the scope of Schumpeterian approach, which is called creative destruction in economics literature. In response to competitive pressure created by new entries, while some incumbents increase their innovation capacities, others lessen their current capacities. Thus, it is not possible to detect the exact direction of new entries' effects on incumbents' behavior.

The article discusses empirically the relation between the competitive pressure perceived by incumbents and new business formations in the relevant sector. The analysis in the article contributes to literature regarding especially three issues: first the analysis does not limit the competitive entry threat to only innovative or large scale participants but explains it together with new business formations. Second, this study analyzes whether the perception of competitive pressure is more intense in densely populated regions and how this is shaped by incumbents' features such as scale and efficiency. Last, the question of whether the potential effect of new business formation will be regional or national is answered empirically.

The author tests the effects of new business formations on incumbents under 5 separate titles. These titles are: final product markets, geographical markets, firm size, efficiency level and population density. The data related to the dependent variable in the regression analysis (the perceived competitive pressure by incumbents) and the independent variables are taken from annual surveys by German Institute for Employment Research and Social Security Institution. The survey is consisted of the questions German Institute for Employment Research asks annually to incumbent firm managers to measure the effect of new business formations on competition.

When the results of regression analysis are evaluated, it is observed that contrary to conventional wisdom, the competitive pressure created by new business formations on incumbents is not limited to the geographical region where new entry takes place but its effect is national. Second, it is inferred from the article that there is a high significance relation between competitive pressure experienced by small-scale firms and new entries. Third, the study explains that incumbents with low efficiency level feels the

competitive pressure by new entries more. Last, while incumbents in densely populated areas feel competitive pressure by new business formations more intensely, a significant relation is not found between those incumbents and startups in the same region. It is thought that the results stem from the fact that the effects of local startups are not perceivable because the general competitive pressure in the market is perceived more in densely populated areas.

Source:

https://doi.org/10.1007/s11151-019-096991

- **Vertical Collusion**

Published By: RAND Journal of Economics, (2020) 51
Authors: Yaron Yehezkel and David Gilo

Some of the analyses regarding potential effects of vertical collusion and their permanency are made within the framework of game theory in economics literature. The economic analyses in this area are categorized under three groups. First group analyses examine repetitive relations between vertical collusion parties with different scenarios in a dynamic approach. Second group analyses examine relations in a static framework, where vertical agreements are used as a tool to decrease price competition between retailers. The third approach analyzes static relations where suppliers offer different price concessions to some retailers through secret agreements.

This article analyzes anticompetitive effects of different possible vertical collusion scenarios between suppliers and retailers and tries to answer whether a possible collaboration agreement between retailers or a vertical collusion between retailers and suppliers is more profitable and sustainable. Different from the second and third approaches, while analyzing the repetitive relations between vertical collusion parties, the article assumes that retailers cannot observe vertical collusions and the role of the retailer is prominent.

The article analyzes different vertical collusion models in the framework of game theory. The article looks at a situation where two retailers and a supplier agree at the first stage. At the second stage, the analysis is expanded with more than one supplier selling homogeneous products to retailers. The analysis tries to reveal the factors that makes the collusion profitable and sustainable for retailers and suppliers at two stages. The article shows as a result of the analysis that vertical collusion is more

profitable and sustainable for retailers. Accordingly, important political deductions are made regarding vertical collusion.

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