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INTRODUCTION

We are proud to present to you the Competition Bulletin for the first quarter of 2016, which includes news on developments in competition law, economics and policy.

"Selected Reasoned Decisions" section of this issue contains preliminary inquiries conducted by the Competition Board on lemons, movie theater business, spectrometer metal analyzers and Google as well as the decision concerning the application submitted to the Authority by Trakya Cam, which operates in the plane glass market, requesting exemption for the agreement it wished to sign with its dealers. Among the aforementioned decisions, it may be said that the decision rejecting Trakya Cam's exemption application is more striking than the others.

The "News around the World" section of the Competition Bulletin includes news from Germany, USA, EU and Israel.

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

The last section, "Economic Studies," includes economic studies carried out by the EU Commission and the OECD.

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.

Department of External Relations, Training and Competition Advocacy

- **It was decided that undertakings operating in the lemon market did not engage or attempt to engage in practices aimed at jointly setting lemon prices.**

Decision Date:	Decision No:	Type:
10.11.2015	**15-40/664-232**	**Preliminary Inquiry**

The preliminary inquiry was launched in response to the claims by the Ministry of Food, Agriculture and Livestock stating that the increase in lemon prices during the months of May, June and July of 2015 were suspected to have occurred artificially due to the stockpiling of 1.5 million crates of surplus lemon in warehouses in Nevşehir, and examined the structure of the lemon market.

Mersin is the province with the largest share in lemon production in Turkey, with 57%. The other provinces with significant shares are Adana with 18%, Antalya with 10%, Muğla with 8% and Hatay with 5%. Like Spain, Turkey is active in the foreign market during the months of September-March, which is the harvesting period, while losing availability in the foreign markets during the summer months, following the start of exports from southern hemisphere countries, such as Argentina.

Since there is demand for lemon throughout the year, the market has adopted an approach of stocking lemon and meeting the demand from these stockpiles during the non-productive months. This long-term stockpiling method is possible partly because of the caves in the Ürgüp-Ortahisar region of Turkey, which act as natural cold storage depots. Lemons are stockpiled here from the end of March until August at the latest, and are supplied to the markets during this period. The reason for stocking lemons in the caves is to meet the demand for the product during the summer months, in which there is no production. Lemons stocked in the caves are either exported by some undertakings, depending on foreign prices and demand, and/or supplied to the domestic market between May and August. There is a corresponding increase in prices during this season each year, since demand is met fully from the stocks left in the caves. The increase peaks during the period of July-August as the stocks fall monthly, and the prices decrease again at the end of August/beginning of September with the new harvest.

Within the structure explained above, a stockpiling practice of the type under examination would basically cause the product supplies to occur at a higher level during a period with no harvesting and, provided other factors

affecting the price stay the same, would lead to the price coming to an equilibrium at a lower level than the previous year. Consequently, undertakings colluding to increase prices in the relevant summer period would be expected to adopt a strategy that would involve stockpiling a smaller amount of products at the depots, in contrast to the claims.

Stockpiling a large amount of products could only be used to force prices up during the period in which stockpiling is carried out, in case the output in the market apart from the stocks is not sufficient to meet demand. However, the price increases concerned occurred not while the product was being stocked, but when it would be offered to the market from the stocks.

An examination of the price movements of 2015 shows that the increase rate of lemon prices was below inflation for the first four months of 2015 while it was above inflation for the months of May, June and July, and that later the prices decreased again during the months of August and September.

Examinations carried out in the Mersin province, which is responsible for a significant share of the production, revealed no indications suggesting that the undertakings which operate in the province and handle relatively large amounts of lemon had concluded an agreement to act in collusion in terms of prices, outputs or stock amounts. On-the-spot inspections conducted asked the reason for the increase in the prices, particularly for the May-July period. The officials of the undertakings stated that prices in the sector increased towards August each year since the unit cost for stocked lemon increased and the stocks themselves decreased gradually. However, in 2014 lemon production in Argentina had been low, so the unmet demand in the global markets had shifted to Turkish lemon exports. In addition, the previous winter had been colder than expected, which decreased the storage life of lemon. The officials thought that as a result of a combination of all of the above factors, there was an additional dip in lemon stocks, which consequently lead to an above-avarage increase in lemon prices.

On the other hand, it was concluded that the over inflation increases in prices during the May-August period of 2015 could be explained by the additional demand for exports within the year, as well as the higher than expected spoilage in the warehouses. As a result, in light of the price level and other practices in the market, no indication has been found suggesting that the undertakings in the lemon sector entered into an agreement.

- **The claim that Mars Sinema ve Sportif Tesisler İşletmeciliği A.Ş.'nin abused its dominant position in the screening market to complicate the operations of the undertakings in the distribution market was examined, and the provisions in its franchise agreements concerning the establishment of resale prices for tickets and concession stands were evaluated.**

Decision Date:	Decision No:	Type:
20.11.2015	**15-41/682-243**	**Preliminary Inquiry**

Two separate subjects were examined within the framework of the preliminary inquiry, one concerning the complaints in the application, the other concerning the agreements encountered during the sector examination. The claims in question basically state that, due to its power in the theater market, Mars Sinema ve Sportif Tesisler İşletmeciliği A.Ş. (MARS) was able to offer producers conditions other distributors cannot match for the distribution of their movies, including theater numbers, screening weeks, and waiver of "virtual print fees," which had negative effects on competition in the distribution market.

Analyses on the period of time a movie stays in theaters and the number of theaters make a distinction between movies with a box office of less than 250.000 TL, movies with a box office between 250.000 TL and 1.000.000 TL, and movies with a box office more than 1.000.000 TL, as well as between foreign and domestic movies. In accordance with the application, analyses were conducted in three micro-markets. It was determined that, following the start of its distribution operations, there was not a significant difference between MARS and other distributors operating in the market in terms of the total screen time and number of theaters allocated to movies shown in the movie theaters under the MARS umbrella in the Ankara, İstanbul and İzmir markets for domestic and foreign movies in all three box office ranges.

On-the-spot inspections conducted did not uncover any information or document suggesting that MARS made screening commitments to any producer in order to acquire distribution rights for a movie. In addition, there were no documents supporting the claim that virtual print fees were not charged or more promotion was done for movies distributed by MARS. As a result, within the scope of the information acquired and the assessments made, no information, documents or findings were gathered

suggesting that MARS abused its dominant position with the practices mentioned in the application.

The preliminary inquiry also examined current and out-of-date Franchise agreements (Management Agreements). It was observed that out-of-date agreements were in general similar to the current ones in terms of provisions. Out of the aforementioned agreements, two Management Agreements still in effect had provisions stating that ticket and concession stand prices and promotions at the theater concerned would be determined by MARS: Additionally, out-of-date agreements were found not to include provisions aimed at vertical price fixing. It was concluded that individual exemptions could not be granted to the two agreements signed by MARS which did include vertical price fixing provisions.

MARS representative claimed that MARS did not have any intentions to use the agreements in question to ensure growth, or to adopt those agreements to establish a business field and gain income through them. Competition Authority was notified that the relevant provisions were deleted from the agreement and a protocol was signed to that effect. It was found that the resale price fixing practices were terminated at both of the movie theaters. In addition, MARS representative declared that MARS would make amendments at the relevant theaters to the box office and concession stand price system, allowing the theater investor to make changes. In light of these findings, it was decided that the practices related to the two theaters under examination, which was launched in 2014, had very limited effects in the market and initiating an investigation on MARS was not necessary.

However, it was also concluded that an opinion should be rendered to MARS under article 9.3 of the Act, stating that in order to ensure full compliance with competition legislation, MARS would be granted 90 days following the notification of the reasoned decision to make the necessary amendments to allow the theater investor to change the system in which box office and concession stand price lists are loaded; that MARS should fulfill its obligations within that time period and notify the Competition Board; and that measures would be taken under the Act no 4054 otherwise.

- **Competition Authority rejected the exemption request for the "Authorized Dealership Agreement" which was concluded between Trakya Cam Sanayii A.Ş. and Anadolu Cam San. ve Tic. Ltd. Şti., and which was set to be signed with a total of eighteen further dealers.**

Decision Date:	Decision No:	Type:
02.12.2015	**15-42/704-258**	**Exemption**

The notified "Authorized Dealership Agreement" (Agreement) was signed between Trakya Cam Sanayii A.Ş. (TRAKYA CAM) and Anadolu Cam San. ve Tic. Ltd. Şti. (ANADOLU CAM), and it was explained that the same agreement would be valid for other authorized dealers as well. It was stated that the agreement would enter into force in 2016 and would be valid for a period of one year.

Under the notified agreement, TRAKYA CAM will supply plate glass to authorized dealers, and those authorized dealers will resell these products within their exclusively assigned regions. Under the scope of the exclusive distribution, in a region assigned exclusively to an authorized dealer TRAKYA CAM will supply products only to the authorized dealer of that specific region, while other authorized dealers will be unable to make active sales, open branches or establish glass distribution warehouses in a region assigned to another exclusive dealer. Under the non-compete obligation, authorized dealers will purchase products for resale exclusively from TRAKYA CAM and will only engage in the sales and marketing of these products. In addition, within the scope of the Agreement TRAKYA CAM does not specify any intervention in the sale prices of authorized dealers but sometimes may make recommendations on resale prices. Also, while active sales by an authorized dealer to a region assigned to another authorized dealer is banned, there is no prohibition concerning passive sales. By written agreement of the parties, the Authorized Dealership Agreement may be extended for periods of at most one year.

On the other hand, the Agreement specifies the assignment of a dealer manager who would work at the headquarters of the authorized dealers and who would determine or control all sales planning and strategy of the dealer. There are also plans for installing a software on the systems of the authorized dealers to monitor dealer inventories and sales, which would be integrated with TRAKYA CAM systems.

It was found that the Agreement fell under article 4 of the Act no 4054 and did not benefit from the block exemption of the Communiqué no 2002/2, and an individual exemption assessment was conducted. The assessment concluded that the Agreement met the condition of article 5(a), but failed to fulfill the rest of the conditions due to the reasons mentioned below.

Within this framework, it was noted that the agreement restricted active sales and passive sales were already almost non-existent due to the specific characteristics of the product, which led to the elimination of intra-brand competition; that considering inter-brand competition is also very limited, the negative effects of the restrictions would outweigh their positive effects; that where competitive pressure from the rivals of the supplier was insufficient in the market, these restrictions would remove consumers' freedom to choose, decreasing consumer welfare . In addition, introducing exclusive distribution and exclusive supply obligations simultaneously would remove any efficiencies specific to the vertical agreement and cause an increase in prices for final consumers. In light of the above explanations, it was concluded that the notified Agreement would not lead to a positive outcome in consumer welfare, therefore the condition of article 5(b) of the Act no 4054 was not fulfilled.

In order to determine the market effects of the exclusive region/customer allocation introduced by the agreement, and the related active sales restrictions and non-compete obligations, Competition Authority assessed the market power and position of both TRAKYA CAM and its competitors, barriers to entry, the maturity level of the market, level of trade, product characteristics and other factors. It was found that TRAKYA CAM had a considerably strong position in the market in comparison to its rivals, with its market share, capacity, product range and variety, financial power and brand recognition. Rival undertakings held relatively low market power, insufficient to compete with TRAKYA CAM. In light of these and other issues, including high setup costs, the power of TRAKYA CAM's portfolio stemming from its product variety, and the existence of brand dependence due to TRAKYA CAM's first-mover advantage in the sector, the market had significant barriers to entry. However, the plate glass market was also found to be a dynamic market.

The negative effects of the Agreement stemming from the exclusivity and non-compete provisions may be mitigated by the fact that the Agreement only imposes exclusivity and non-compete obligations at the wholesale level, the fact that it does not include any restrictions at the retailer level other than those aimed at resellers/wholesale dealers, and the fact that there are a large number of undertakings operating in the same segment

as the authorized dealers. On the other hand, it is hard for dealers with terminated authorized dealership agreements as well as other undertakings in the same segment to stop using TRAKYA CAM products. In connection, their only option would be the authorized dealer in their region, which would make it hard to trade plate glass for those sub-dealers and retailers who do not wish to work with the authorized dealer in that region for various reasons. The transportation costs of the product would go up as well, since the distance between the regions and the distance between the region's authorized dealer and the buyer would increase. In light of all of these issues, following its entry into force the notified Agreement would complicate trading plate glass products in the downstream, particularly in terms of trade between regions and arbitrage. After taking other factors into consideration, the evaluation of the Authority is that recommended prices included in the Agreement would negatively affect price competition between authorized dealers in the downstream market.

TRAKYA CAM holds a very strong position in the plate glass market, with DÜZCE CAM and importers having limited opportunities to compete with TRAKYA CAM. It can also be said that downstream undertakings have nearly no chance of competing in the market without procuring TRAKYA CAM products. Under these circumstances, authorized dealers would have limited incentives to ignore the price recommended by such an important supplier, which would lead to the dealers uniformly implementing the recommended price as included in the agreement. In this case price competition, hence intra-brand competition would be eliminated in the downstream market. Therefore it has been concluded that the notified Agreement does not meet the criteria listed in article 5 of the Act no 4054. Within this framework, it has been decided that the Agreement fell under the scope of article 4, would not benefit from the block exemption of the Communiqué no 2002/2, and could not be granted an individual exemption since it did not fulfill all of the criteria listed in article 5 of the Act no 4054.

- **It has been decided that it was not necessary to launch an investigation into Google Economic Entity's practices related to the provision of its mobile operating system and mobile applications and services, or into the agreements signed between the aforementioned entity and original equipment manufacturers.**

Decision Date:	Decision No:	Type:
28.12.2015	**15-46/766-281**	**Preliminary Inquiry**

The file concerns the application submitted by Limited Liability Company Yandex (YANDEX). According to the application, Google Economic Entity (GOOGLE) signs agreements with original equipment manufacturers called

(a) Mobile application distribution agreement,

(b) Revenue sharing agreement, and

(c) Android compatibility program and non-fragmentation agreement.

The agreements in question specifies that equipment manufacturers who choose the Android operating system must pre-load Google Play Store, Google Play Services and Google Mobile Services pack onto their devices, must allow privileged (priority) placement for Google Mobile Services Pack applications, must make Google Search the default search provider for all search access points. As a result, equipment manufacturers can get a share of GOOGLE's revenue from search engine advertisements or in-application searches. Also, within the scope of the Android compatibility program and non-fragmentation agreement, original equipment manufacturers must submit their smart devices on which they wish to use the Android operating system to GOOGLE's test process, during which GOOGLE checks the device's compatibility with the rules related to the pre-loading and placement Google applications.

GOOGLE's operations involve a large number of areas that interact with each other through various channels, from mobile operating systems to application development to operating an application store, to marketing advertisement space on the internet. Within this framework, GOOGLE's market power was evaluated in the first place. The information and documents gathered suggest that GOOGLE holds significant market power, both amongst application stores and in the area of internet browsers, which have the characteristics of a mobile service.

When assessing the provisions of the agreements GOOGLE signed with original equipment manufacturers within the framework of the Act no 4054, exclusive pre-loading provisions and the tying practice was particularly taken into consideration, and it was decided that launching an investigation under article 41 of the Act no 5054 on the subject matter of the file was not necessary at this stage, since consumers were not prevented from later downloading other applications to the devices they purchased. However, it was also concluded that an Authority opinion should be rendered to GOOGLE under article 9.3 of the Act no 4054, stating that exclusive pre-loading provisions should be removed from the agreements GOOGLE signs with original equipment manufacturers in order to allow consumer choice to determine the best mobile applications and services, thereby ensuring competition in the markets for mobile operating systems and for mobile applications and services, where GOOGLE holds significant market power.

- **A preliminary inquiry has been conducted concerning the claim that Döküm Makina Mühendislik ve Pazarlama Ltd. Şti. prevented other servicing firms from entering the market by password protecting the technical service section of the analysis device it markets as the authorized seller, and used the market power it acquired as a result to demand excessive prices in post-warranty services related to the device.**

Decision Date:	Decision No:	Type:
10.02.2016	**16-04/67-25**	**Preliminary Inquiry**

First of all, the preliminary inquiry conducted established that Döküm Makina Mühendislik ve Pazarlama Ltd. Şti. (DOKUM) was able to achieve sufficient power to determine economic parameters in the aftermarket for the devices with its own brand and held dominant position in the "technical services for Bruker brand spectrometer metal analyzers" market in Turkey It is claimed that DÖKÜM, which operates in the spectrometer analyzers market, has violated competition with its practice of password protecting the technical service section of the analyzer it offers. One of the users, İmpro Metal Metalurji Döküm Makina San. ve Tic. Ltd. Şti. (IMPRO), claims that it requested the password required to access the settings menu of the analyzer in order to repair a failure, but DOKUM refused to supply the password in question. On the other hand, the officials of the company under inquiry state that the password protection is a sector wide practice intended

to minimize user errors, to eliminate any chance of the device suffering damages due to changes made by unauthorized persons in its optical and analytical settings, and to prevent others acquiring confidential software and hardware information owned by the manufacturer.

While password protection may be reasonable during the warranty period, after the expiration of the warranty they restrict the use of these devices by the buyers, which own the device and are responsible for it, forcing these undertakings to depend on the manufacturers for service and maintenance during the life cycle of the device. The negative effect of this situation on competition reveals itself in the fact that independent service providers are unable to enter the market, or if they do, they are unable to remain there. Currently the number of independent service providers operating in the spectrometer services market is quite low. Those in operation can only offer their services for a limited number of devices for which they are technically competent, i.e. for which they have the required training, certificates and documents.

The low number of independent service providers may be because of two reasons. First, the devices in question are products of complex technology and the accuracy of the analyses they conduct directly affect all undertakings in the casting industry. Therefore, engineers to provide maintenance services for these devices must receive special training. These trainings are only provided by device manufacturers operating abroad. Turkish firms only offer this training to their own engineers. Therefore independent service firms that will compete with the manufacturers can only exist if these engineers launch their own companies or are employed at companies established for that purpose. The second reason is that, as mentioned above, access to the technical services section of the devices is password protected. Other potential barriers before acquiring these passwords may cause entrepreneurs to hesitate to enter a market. Therefore, acquisition of the password required to provide technical services is a must for establishing competition in the market.

By preventing provision of technical services to the devices by means of refusing to allow the use of passwords, DOKUM can maintain absolute dominance over the device post-warranty, avoiding competitive pressure in spare parts and maintenance market and acquiring a significant advantage in those markets. DOKUM can eliminate the negative effects of this practice by providing the password to IMPRO and all other customers that request it within a reasonable period of time. In addition, providing a password comprised of a certain number of alphanumeric characters for entry into the

customer's device does not require any additional costs, so the passwords in question must be provided to the customer free of charge.

Within this framework, it was decided that launching an investigation on the subject was not necessary at this stage. However the Presidency was tasked with rendering an opinion to DOKUM under article 9.3 of the Act stating that

a) In case, following the expiration of the warranty periods of analyzers, customers who purchased the devices submit a written request, or in case technical service providers who receive such written requests from customers submit a written application, DOKUM must provide the passwords for the devices or any other similar internal system without charge, barring force majeure conditions;

b) The customers must be informed in writing concerning the above-listed points during the sale of the devices, and that otherwise action would be taken against DOKUM within the framework of the Act no 4054.

- **German Federal Cartel Office Launches Examination on Facebook**

German Federal Cartel Office is examining whether Facebook abused its dominant position in the social media market by implementing unclear and unfair confidentiality policies for users.

The Authority stated that introduction of illegal rules and conditions by the social media giant Facebook could have the effect of abuse of unfair conditions for users, thereby violating competition law in addition to other laws such as those relating to the protection of confidential data. If a link is found between such a violation of the national data protection law and the dominant position of the firm, this violation could also be assessed as a competition law violation.

Facebook collects personal data during the profile creation process and these are used to identify target audiences by firms taking out advertisements on the online platform. The users are required to accept Facebook's service agreement during profile creation but it is left unclear as to exactly which data are shared with the social media. According to the Federal Cartel Office President Mundt, user information is particularly important for internet services such as Facebook which are funded through advertisements. Consequently, it is crucial for the purposes of the dominant position examination that the users be given sufficient information concerning the extent their personal data are collected

Last November German and French competition authorities had launched a joint sector inquiry into the ability of internet companies to acquire market power by collecting and using data[1]. The German Authority noted that this particular examination was not connected to the joint sector inquiry conducted with the French Authority.

Source:

http://globalcompetitionreview.com/news/article/40607/germany-checks-facebook-data-abuse/

- **FTC files a suit against Endo Pharmaceutical**

US Federal Trade Commission (FTC) filed a lawsuit against Endo Pharmaceutical. According to the claims, Endo violated federal antitrust law

[1] For more information, see:
http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/B%C3%BClten/Competition%20Bulletin%20January%202016.pdf

by making certain payments to generic firms in order to delay generic drugs' entry into the market (pay for delay). This is the first time FTC has filed a lawsuit in a pay for delay case.

In lawsuits filed by generic firms with the claim that the brand firms' patents are invalid, it is a common practice for the parties to come to a settlement. Under the settlement, the brand firm agrees to make a certain payment in return for the generic firm recognizing the validity of the patent and delaying the introduction of the generic product to the market for an additional period of time. Such settlements are called reverse settlements. Due to reverse settlements, the brand firm is able to take advantage of patent protection for an additional period and the generic firm can recoup the losses in revenue stemming from a late entry into the market.

FTC has been examining whether reverse settlements were in violation of antitrust rules for a long time. In 2013, in the FTC-Actavis case, US Supreme Court agreed with the opinion that reverse settlements violated antitrust rules. FTC claims that delaying the entry of generic drugs into the market through settlements harmed consumers. According to FTC President Edit Ramirez, brand firms' paying generic firms to delay generic drugs entry into the market, even as part of so-called settlements, acts to increase prices and damage competition.

In the complaint for the lawsuit filed in the Eastern District of Pennsylvania, FTC claims that Endo prevented market entry by low-cost competitors by means of making payments to the generic firms in return for the firms manufacturing the generic versions of the drugs Opana and Lidoderm agreeing to withdraw their applications concerning the validity of Endo's patents.

In the case in question, a settlement was signed between Endo and the generic drug manufacturer Impax in 2010. Under the settlement, Impax would refrain from selling the generic version for Endo's Opana ER until January 2013, and Endo would refrain from releasing its own generic in competition to Impax for the first six months following Impax's launch. According to FTC, if Impax's generic version for Opana ER had been released, the consumers would have the choice between brand Opana ER and generics. Consumers buying generic Opana ER would thereby save hundreds of millions of dollars. This anti-competitive settlement between Endo and Impax thereby allowed them to share additional monopoly profits, to the disadvantage of consumers.

Sources:

http://globalcompetitionreview.com/news/article/40799/us-ftc-files-first-no-authorised-generic-suit/

http://res.cloudinary.com/gcr-usa/image/upload/v1459390330/FTCOpanacomplaint_iekmvg.pdf

- **United Kingdom Competition Authority Fines Reverse Settlement**

In February, United Kingdom Competition Authority decided that the agreement which provided for GlaxoSmithKline (GSK) to make payments to a number of pharmaceutical companies in return for a delay in the release of a generic version of GSK's product was anti-competitive and imposed a fine of £45 million. This is the highest fine imposed by the authority to date.

The relevant agreements between GSK and competing generic firms were signed between 2001 and 2004, and they concerned delaying the release of paroxetine and an antidepressant. CMA noted that many firms attempted to market a generic for the drug called paroxetine but were sued by GSK on the basis of patent violations. In response the parties chose to settle the matter and the sales of the generic drug were delayed. According to the Authority, these agreements prevented the competition benefits expected from the generic entry into the paroxetine market. Had there been generic entry into the market in 2003, the prices could have dropped by 70 per cent within the next two years.

Of the total amount of the fine in question, £37,6 million must be paid by GSK, £5,8 million by Merck (Generics Limited's parent company at the time of the violation) and £1,5 million jointly by Alpharma's successor Actavis UK, Xellia Pharmaceuticals and Alpharma LLC.

GSK, which will pay the majority of the fine, stated that it would appeal the decision

Source:

http://globalcompetitionreview.com/news/article/40506/cma-imposes-record-high-fine-first-pay-for-delay-case/

- **BT's Appeal of OFCOM's Price Control Dismissed**

The court of appeal for competition cases in United Kingdom, Competition Appeal Tribunal (CAT) dismissed an appeal by BT, submitted against a decision taken by the British telecommunications authority (OFCOM). The

decision of the telecommunications authority concerned the implementation of price controls in the market, in response to the potential of margin squeeze by the company in the superfast broadband internet market.

BT is the company which owns the most widely used broadband network in the UK. The network owned by its closest rival Virgin Media, by contrast, serves an area smaller than half of the country. In addition, OFCOMS's analysis shows that other telecommunication companies are not required to establish their own networks. According to CAT's decision, OFCOMS's price control will allow competitors to have easier access to the company's broadband infrastructure. Within the framework of the price controls planned, BT will be able to set its own wholesale prices, but will have to adjust the difference between its wholesale and retail prices in accordance with the prices of its competitors.

On the other hand, BT claims that the existing OFCOM regulations are able to sufficiently protect competition at the retail level, that there was no evidence to show BT engaged in price squeeze practices, which were already very difficult to implement in the first place.

Source:

http://globalcompetitionreview.com/news/article/40783/cat-backs-ofcom-bt-super-fast-broadband-appeal/

- **Supreme Court Blocks Investment in Israel's Leviathan Gas Field**

Israel's Supreme Court blocked the $52 billion investment planned for the Leviathan Gas Field, which holds the natural gas reserves of the country. The joint venture agreement signed by Delek Drilling and Nobel Energy companies in order to develop Israel's largest gas field was prevented on the grounds that the stability clause of the agreement was unconstitutional. This clause granted price and regulatory partner guarantees to the parties for a period of 10 years. Delek and Nobel claim that the clause is required for the protection of their investment. Following the decision, the parties will have a period of one year to come up with a solution; otherwise the agreement will become invalid.

This decision of the Supreme Court came three months after Israeli Prime Minister Netenyahu granted exemption from competition rules to the joint venture established by the parties, despite concerns of monopolization in the market resulting from the joint venture. It can be recalled that Israeli Minister of Economy and Competition Authority President David Gilo had stepped down from his office last May, after the government approved the

transaction which would significantly decrease competition in the natural gas market, in spite of his objections. Netenyahu, on the other hand, stated that the decision granting exemption to the joint venture from antitrust rules was taken because national interests of Israel were more important than competition rules[2].

The fact that the Supreme Court decision concerned the stability clause and not the provisions exempting it from competition law was evaluated to mean that the Court found these provisions legal, despite the concerns they raised under competition law.

Source:

http://globalcompetitionreview.com/news/article/40782/israeli-court-rejects-leviathan-deal/

- **European Commission approves Couche-Tard's acquisition of Shell's Dansk Fuels business, subject to conditions**

European Commission approved the acquisition of Shell's Dansk Fuels business by Couche-Tard's Statoil Fuel & Retail business, on the condition that assets of €30 million were transferred to a company titled DCC Energy, based in Ireland. The Commission stated that it would eliminate potential anti-competitive concerns in the Danish wholesale and retail petroleum and refined petroleum products markets in which both firms are active.

Statoil Fuel & Retail, owned by Canadian Alimentation Couche-Tard, is a well-known petroleum distribution company operating in Scandinavia, East Europe and Russia. Dansk Fuels, on the other hand, has fuel stations in Denmark under the Shell brand. Dansk Fuels is also in the aviation fuel business at 7 airports in the country.

Following the acquisition, Dansk Fuels will divest 205 fuel stations in the country, as well as the aviation fuel business. It will also terminate Dansk Shell refinery's supply contract, which currently has one more year until it expires. Statoil has also accepted to sell two thirds of its agreements with corporate customers and license the Shell brand to the divested businesses.

The primary competitive concern in the acquisition was the risk pf price increases in fuel stations and sales to wholesale customers. The potential outcome of the transaction was the newly-established firm holding a larger

[2] http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/B%C3%BClten/Competition%20Bulletin%20January%202016.pdf

share in both the upstream and the downstream markets. The Commission stated that the agreed-upon measure allowed the creation of a national player which would compensate for the competition lost in the national and local levels.

Sources:

http://globalcompetitionreview.com/news/article/40757/dg-comp-clears-petrol-tie-up-extensive-divestments/

http://europa.eu/rapid/press-release_IP-16-1061_en.htm

- **13th Chamber of the Council of State Decision dated 4.6.2015 and numbered 2013/2138 E., 2015/2465 K.:**

Total turnover instead of the relevant market turnover is taken into account by the law-maker.

13th Chamber of the Council of State dismissed the suit filed by the undertakings operating in the baker's yeast sector, requesting the annulment of the Competition Board decision dated 12.11.2008 and numbered 08-63/1050-409, citing violation of article 4 of the Act no 4054. The dismissal was upheld by the Plenary Session of the Administrative Law Chambers (PSALC), which reviewed the appeal.

In its upholding decision, PSALC made the following assessment:

"Article 16 of the act no 4054 states that administrative fines would be imposed over the gross revenue and does not make a distinction between domestic-foreign revenues or in terms of relevant product market. Therefore, the plaintiff's claim that the fines imposed should be solely based on its fresh yeast business and the remaining claims of the plaintiff were found to be groundless..."

This decision is remarkable because it includes PSALC noting that the turnover mentioned in article 16 of the Act is the total turnover instead of the relevant market turnover.

- **13th Chamber of the Council of State Decision dated 10.04.2015 and numbered 2014/91 E., 2015/596 K.:**

Two e-mails are found to be sufficient to establish violation.

7th Administrative Court of Ankara dismissed the lawsuit requesting the annulment of the Competition Board decision dated 08.07.2013 and numbered 538-238, which found a violation of article 4 of the Act no 4054 on the Protection of Competition, stating that anti-competitive conduct was identified in the form of collusive practices concerning the issuance of the required certificate to those companies wishing to export waste paper.

In its dismissal, the Court quoted from the e-mails demonstrating communication between the undertakings, and made the following assessment:

"...these statements indicate that the parties shared information on waste paper purchase prices, and it is indicated that competitors Modern Karton

and Marmara Kağıt were also communicating in relation to the purchase prices of primary inputs. It has been concluded that the plaintiff violated article 4 of the Act no 4054 on the Protection of Competition by engaging in anti-competitive conduct in the form of collusive practices concerning the issuance of the required certificate to those companies wishing to export waste paper."

- **1st Administrative Court of Ankara's Suspension of Execution Order dated 25.11.2015 and numbered 2015/1261 E.**

All Individual Exemption Conditions Must Be Examined and Justified.

1st Administrative Court of Ankara gave a suspension of execution order in the lawsuit filed by the plaintiff, requesting the annulment of the Competition Board decision dated 04.11.2014 and numbered 14-43/804-361, concerning the grant of an individual exemption under article 5 of the Act no 4054 to the Broadcasting Rights Agreement signed between the Turkish Football Federation (TFF) and Digiturk.

In its suspension of execution order, the court made the following assessment:

"The Board decision in question failed to assess and analyze whether all of the conditions required by article 5.1 of the Act no 4054 for exemption from the application of article 4 were fulfilled in the time extension agreement signed between TFF and Digiturk. Instead, the decision granted individual exemption under article 5 of the Act no 4054, deeming it sufficient to fulfill the condition of partly or fully (with the preferences of the buyer reserved) transferring the Package A broadcast rights, especially those for live match broadcasts, held solely by Digiturk to competing undertaking(s) or to undertakings broadcasting via alternative technologies through sub-licensing at reasonable market terms. Therefore, the aforementioned Board decision is found to be in violation of the law."

- **13th Administrative Court of Ankara Decision dated 3.7.2015 and numbered 2014/1326 E., 2015/1103 K.:**

Abuse analysis may be conducted before establishing dominant position.

13th Administrative Court of Ankara dismissed the lawsuit requesting the annulment of the Competition Board decision dated 19.12.2013 and numbered 410, which was taken in response to the application submitted to the Competition Authority by the plaintiff claiming that the other GSM

companies violated competition law and which found that initiating an investigation was not necessary.

In its dismissal, the Court made the following assessment:

"In order for a particular conduct examined under article 6 of the Act to constitute an infringement, the undertaking engaged in the conduct must hold dominant position in the market and the conduct itself must be of an abusive nature. In other words, the Act looks for both of these two conditions to exist simultaneously. Where the absence of one of these fundamental factors may be demonstrated, the Board may choose not to perform analysis concerning the remaining factor in its assessment on the subject. Since abusive conduct by an undertaking without dominant position would not constitute a violation of article 6 of the Act, it is not necessary to assess whether the conduct itself is actually an abuse. Similarly, especially because dominant position analyses often require a comprehensive assessment, procedural economy would suggest performing an examination to see whether the conduct in question is an abuse before doing a dominant position analysis. Since a separate dominant position analysis would not be called for in the absence of an abuse, it is not unlawful to examine whether the conducts in question were abusive on the assumption that Turkcell held dominant position in the national mobile communications market and Vodafone held dominant position in the global mobile communications market."

- **18th Administrative Court of Ankara Decision dated 26.1.2015 and numbered 2014/1911 E., 2015/1485 K.:**

Conditions that must exist to be able to benefit from a leniency application

18th Administrative Court of Ankara dismissed the lawsuit filed requesting the annulment of the Competition Board decision dated 16.12.2013 and numbered 13-70/952-403, which imposed administrative fines on the plaintiff company as a result of the investigation launched by the Competition Authority in response to the claims that Hyundai dealers in İstanbul jointly established vehicle sales prices and tried to introduce a sanctioning mechanism to ensure compliance with the prices established.

In its dismissal, the Court made the following assessment: "it was found that at the date of the leniency application in question the defendant authority already had four documents in its possession concerning the formation in question, therefore... the plaintiff cannot be evaluated under article 5.2 of the aforementioned Regulation either,... and the plaintiff was

allowed to benefit from the discount required under article 7.3 of the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, based on the active cooperation it provided. Under the circumstances, the Board decision which took into account the plaintiff's active cooperation and imposed administrative fines on the plaintiff, which was proven guilty of the charges in question, is found to be incompliance with the law."

- **The Economic Impact of Enforcement of Competition Policies on The Functioning of EU Energy Markets**

Yayımcı: EU Commission

This study examines whether the implementation of the EU competition policy improves the competitive environment of the EU gas and electricity markets, causes a decrease in prices and an increase in investments and productivity. The study particularly examines the effects of competition policy practices both on short-term indications such as profit elasticity and productivity distribution, and on mid- and long-term indications such as investments and productivity. According to the main results of the analysis, EU merger and acquisition policy leads to distinct and lasting positive effects, particularly for those countries where regulations are not sufficient. The study also uses "Difference in Differences" approach to make an empirical assessment of two individual competition policy implementation decisions. The first study analyzes the Commission's decision related to E.O.'s claimed abuse of dominant position in the German wholesale electricity market by using daily data from the European Energy Exchange.

The results show that the Commission Decision affected the prices in the European Energy Exchange, leading to a decrease in the German electricity market prices. By utilizing detailed data purchased from the German price comparison site Verivox, the study also analyzes whether the discounts implemented in wholesale prices by electricity producers were transferred to the retailers.

The second study examines the price effects of the Gaz de France Suez merger, which was approved by the European Commission in November 2006. The results reveal that the merger and the related regulations led to a significant decrease in wholesale gas sale prices at the Zeebugge center of Belgium. This shows that regulations were effective in restricting the potential anti-competitive effects of the merger.

Source:

http://ec.europa.eu/competition/publications/reports/kd0216007enn.pdf

- **Enhancing Competitiveness, Purchasing Power and Employment by Increasing Competition in France**

Yayımcı: OECD Economy Department

Yazar: Antoine Goujard

This article focuses on certain specific sectors of the French economy, evaluating the regulatory framework surrounding competition and competitive environment. Since 1998, France has eliminated anti-competitive practices considerably and managed to implement competition regulations efficiently. The regulations implemented opened many sectors to competition to a larger extent and strengthened the powers of the Competition Authority. However, in the services, retail and network sectors, the business world maintains its strict and obstructive attitude towards the creation of a competitive environment. This situation has led to the French services sector becoming less competitive than most OECD countries, and affects not only foreign firms, but also the manufacturing sector indirectly, through the services sector inputs used in that sector. Increasing competition in the services sector would reduce input prices while contributing to increase employment opportunities and household income levels. Another factor that restricts a competitive environment is the failure to fully consider the potential competitive effects of most of the recent regulations and laws adopted in various areas. Another point of note is the insufficient building of certain institutions and regulations aimed at increasing competition and competitiveness, in spite of the regulations implemented to ensure a competitive environment. According to the OECD, there is a need to enhance the ongoing simplification efforts.

Source:

http://www.oecd-ilibrary.org/economics/enhancing-competitiveness-purchasing-power-and-employment-by-increasing-competition-in-france_5jrqhrrptdg6-en

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