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CONTENTS

INTRODUCTION

We are proud to present to you the Competition Bulletin for the months of July, August and September of 2016, which includes news on developments in competition law, industrial organization and competition policy.

This edition's "Selected Reasoned Decisions" section contains 1 preliminary inquiry, 1 exemption and 2 negative clearance decisions given by the Competition Board.

The "News around the World" section of the Competition Bulletin includes news from France, Greece, EU Commission and U.S.A. and the summary of the report published by the World Bank titled: "Breaking Down Barriers: Unlocking Africa's Potential through Vigorous Competition Policy".

"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 a summary of an article which was issued by the Journal of Competition Law and Economics titled "Cartel Punishment and the Distortive Effects of Fines" and the summary of another article issued by the Journal of Industrial Economics titled "*Foreclosing Competition through High Access Charges and Price Discrimination*".

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

- **The claims that Meram Elektrik Dağıtım A.Ş. engaged in discriminatory conduct in the assessment of unlicensed electricity production applications and violated article 4054 of the Act no 4054 on the Protection of Competition were examined, and it was decided that the complaint should be rejected and an investigation should not be launched.**

Decision Date:	Decision No:	Type:
02.03.2016	**16-07/134-60**	**Preliminary Inquiry**

The application by GÖKSU ENERJİ claims that the undertaking in question submitted an application for the Aksaray Substation but that Meram Elektrik Dağıtım A.Ş.(MEDAŞ) refused its connection application since connectivity was found to be lower than the value permitted by the Regulation but that the assessment was made through Tümosan Substation, and that applications made for plots adjacent to the one in the GÖKSU ENERJİ application received positive responses. The application by GES Companies claims that the companies in question were established in order to build unlicensed solar power plants, that GES Companies made 19 applications for the Aksaray Substation which is within the region served by MEDAŞ, but that MEDAŞ refused these applications for line capacity reasons while accepting applications made by other firms. The application by SATURN, on the other hand, claims that they received an approval and invitation letter from MEDAŞ for their unlicensed solar power plant project to be built within the region of the Konya Seydişehir Substation, but that after the approval they were told that Seydişehir's capacity was full and SATURN's invitation letter was canceled.

Unlicensed power generation in Turkey is governed by the Regulation on the Generation of Unlicensed Power Generation in the Electricity Market, issued by EMRA in 2013, in accordance with article 14 of the Act no 6446. Accordingly, following an evaluation of the documents, applications which are complete in material and legal terms are taken under a technical examination with regard to the power generation plant which will be connected to the network. In this framework, the connectivity of the plant in question, the substation capacity in the region and the line capacity in the region are among the technical details taken into consideration. Applications with complete documentation which pass technical assessment get to the stage of allocation of existing capacity. During capacity allocation, the criteria considered include whether the plant in the application is based

on renewable energy sources, whether the consumption amount of the applicant in the last year is higher than other applications, whether the generation plant in the application is in the same region as the consumption plant, and whether this is the first application by the applicant which received a positive connectivity response.

According to article 9 of the Regulation, the network operator sends an "Invitation Letter for Connection Agreement" to those applicants whose applications are found suitable or who accept the alternative connection point offered by the relevant network operator. Natural or legal persons who are sent an invitation letter have a deadline of 180 days following the date of notification to implement their unlicensed electricity generation projects. Under the provisions of the Regulation, relevant distribution companies are established as the sole competent authority for unlicensed generation applications. It is also the responsibility of these companies which hold natural monopolies to connect the plants in question into the system and ensure that they are able to utilize the system, which is clearly expressed in the aforementioned Regulation.

In light of these explanations concerning the Regulation, the assessment made under article 6 of the Act no 4054 concluded that MEDAŞ, which is the subject of the complaints, held dominant position in the electricity distribution services market for the relevant geographical market, defined as the provinces of Konya, Aksaray, Niğde, Kırşehir, Nevşehir and Karaman. In addition, it was pointed out that MEDAŞ was the sole competent authority in the region which can receive and evaluate unlicensed power generation applications and physically connect unlicensed generation plants to the network. Following that conclusion, it was examined whether the claims that MEDAŞ had engaged in discriminatory conduct in allocating the limited substation capacity when evaluating unlicensed electricity generation applications constituted an abuse under article 6 of the Act no 4054.

Accordingly, the first application examined was the one submitted by GÖKSU ENERJİ. At this point, an investigation was conducted into the method used in determining which distribution point would receive the connection from the unlicensed generation plant and it was found that the application was evaluated through TÜMOSAN Substation since the plant in the GÖKSU ENERJİ application was further than the optimum distance of 5 km to every feeder from Aksaray Substation. Therefore it was concluded that the refusal of GÖKSU ENERJİ was based on concrete and objective criteria established by MEDAŞ.

Similar to the case of GÖKSU ENERJİ, the evaluation concerning the application submitted by GES Companies also examined the distance between the generation facilities and the distribution lines. Within that framework, it was observed that GES Companies were at a distance of 11.5 km to FEEDER 8/9 (DM), which meant they were beyond the 5 km boundary for that distribution point. However, their distance to the other distribution point, FEEDER 8/9 İncesu Outlet was below 5 km. However, the information in the file explains that the 22 MW capacity of this line was completely full and therefore it was not possible to connect to this line anyway.

Lastly, in the application made by SATURN, it was found that the official documents related to the location of the generation plant, which served as the basis of SATURN's unlicensed SEP application had become invalid. Therefore it was decided that this action could not be classified an instance of discrimination, since MEDAŞ had an official justification for canceling the invitation letters.

On the other hand, within the 42 substations in MEDAŞ's distribution region, three substations which raised concerns of discrimination by MEDAŞ was subjected to detailed analyses, and technical explanations given by MEDAŞ concerning the Karapınar and Alibeyhüyüğü Substations have removed all suspicions in relation to those substations. In terms of the Karaman Substation, although there were suspicions that MEDAŞ had advance knowledge on capacity transfer between busbars, no information was obtained proving either this point or that MEDAŞ used that information to discriminate against other companies. As well, both on-the-spot inspections and the analyses of the data sent by MEDAŞ uncovered no finding suggesting that MEDAŞ engaged in discriminatory conduct in favor of its own group companies.

- **It was decided that an individual exemption could not be granted to the "Framework Standard Banking Services Agreement Published as a Professional Classification Recommendation by the Banks Association of Turkey (BAT)," Which was Published Based on the BAT Board Decision Prescribing the Standardization of the Services and General Transaction Terms of the Framework Agreements between Banks and Their Customers through the Use of a Uniform and Binding Text Implemented by All Banks**

Decision Date:	Decision No:	Type:
04.08.2016	**16-26/440-198**	**Exemption**

Concerning the application BAT explained that the service type and provisions in Banking Services Agreements (BSA) are those which are required to be present in the framework agreements each bank must sign with its customers in accordance with the relevant legislation. In the interview conducted within the scope of the file, it was stated that the provisions which were excluded from the list of products and services to allegedly simplify the agreements are those which are already included in the relevant legislation and that the provisions of this legislation did not need to be repeated in the standard BSA.

The BAT stated that competitively sensitive parameters included in the BSA such as the scope of the service, charges and interests would be set by the relevant bank itself during the signing of the agreement. It also claimed that the interests, costs, commissions and fees customers would have to undertake would be given to them as a separate attachment. It was also mentioned that products and services not included in the BSAs (such as different account types, credit cards, etc.) would be the subject of different agreements to be prepared by the banks.

The assessment made concluded that the standard BSA did not even include the minimum provisions set out by the legal regulation, that services of different nature were put into the standard BSA forcing all banks to provide them, that this situation would reduce legal predictability for retail customers and would force them to purchase services they don't need regardless of which bank they chose.

It was found that the agreement in question could not be granted negative clearance since it included competition restrictions under article 4 of the Act

no 4054, and the subsequent assessment under article 5 of the same Act primarily examined potential efficiency gains and whether these gains would be passed on to consumers.

In the present case, it was claimed that the standard BSA prepared by the BAT in order to reduce operational costs of the banks and simplify BSA implementations offered many advantages in comparison to the current BSAs used by the banks in terms of the provision of services, introducing certain technical developments related to service provision. A significant portion of the paper documents prepared during banking transactions are comprised of agreements. Different needs that arose in time required expanding the scope of the BSAs, which have become small booklets of 40-50 pages, largely consisting of provisions mandated by various legislations as well as provisions related to products and services not used by customers. Therefore, it was mentioned that BSAs with an excessive number of pages led to waste of paper. BAT stated that, for those products and services which were not included in the framework agreement, each bank would be able to prepare the contents of the agreement they would sign. However, preparing a separate agreement for each product and service offered would instead increase the operational costs of paper, printing and distribution.

The BAT claimed that since BSAs had so many pages, consumers generally did not read them, that they were not very intelligible, and that since BSAs included products which were not used by the consumers but every page had to be signed by the customers, the customers sometimes received products that they did not request in the first place. Therefore, the BAT pointed out that consumers would have an easier time understanding an abridged, uniform BSA. Another efficiency gain claimed by the BAT is that due to standard BSAs consumers would be able to focus on the points other than the provisions of the contract, such as interests, commissions, costs, etc. where actual competition takes place. This would allow easier comparison of and switching between banks.

However, when switching banks, consumers do not only consider interests, costs and other expenditures; instead the level of switching costs and the scope and nature of the relationship with their current bank also play a role in their decision. In addition, consumers are able to get information and make comparisons concerning the fees, commissions and costs they must pay in exchange for the service they obtained from the bank, independent of the contract they signed. Therefore abridging and standardizing BSAs would not create additional efficiencies for consumers wishing to make

comparisons of commissions, interests and costs, and neither would this have a significant effect on the factors considered when switching banks.

On the other hand, restriction of the services provided with the BSA and including independent products in the same framework agreement, abridging the provisions and making them more uniform would restrict consumer choice and limit their expectations related to the quality of the basic services they would get from the bank. Similarly, the aforementioned situation could reduce innovation incentives for banks, leading to negative effects on consumer welfare.

The BAT claimed that a large portion of the provisions included in the framework BSAs prepared unilaterally are signed without negotiation, and therefore would be non-operational under the scope of "General Transaction Terms" and /or non-enforceable even if they were negotiated in line with the relevant legislations and regulations. In that context, standardizing the section on general terms in the BSAs for all banks under the current legal regulations would prevent potential disputes and would be beneficial for the consumer. In terms of the standard BSA, the effects of these efficiency claims on the consumer should be assessed by examining the specific position of consumers in relation to the agreements utilized by the banks, and the effects of the uniform contracts on consumers should be addressed from that perspective. In particular, retail consumers do not have the ability to negotiate with banks, which means these customers are in a weak position when dealing with banks. Therefore, in general, retail consumers do not have buyer power in relation to the products and services they wish to purchase from banks. The effect of this situation on the consumers from a competition law perspective is that, no matter which bank they choose, they are forced to sign the same, non-negotiable BSAs and they would be denied all banking services if they refused to sign the agreement.

Due to the reasons explained above, it was concluded that the efficiency gains asserted by the BAT were not established with concrete evidence within the scope of the file, that the efficiency gains in question did not have a positive pass-on effect on the consumers, and that the provisions of article 5(a) and (b) of the Act no 4054 were not fulfilled.

Standard BSA would extend to almost all essential retail banking products. For that reason, standard BSAs were found to involve a large portion of the products and services provided to consumers and thus could raise competitive concerns. Therefore it was concluded that the article 5(c) provision of the Act no 4054, which requires that "competition not be eliminated in a significant part of the relevant market," was not fulfilled.

Since price competition between the banks occurs in relation to expenditures such as interests, costs and commissions and since these are already announced by the banks at the branches and on the websites, making the provisions of the BSA mandatory would have no positive effects on consumers' comparison opportunities. On the other hand, consumers also have many virtual platforms at their service where they can compare expenditure items including interests, costs and commissions, which means consumers are able to make that comparison without abridged mandatory framework agreements. For those reasons, mandating a standard BSA was not found to have a reasonable causality link with efficiency gains and consumer benefits asserted by the BAT. Consequently, it was decided that the necessity requirement set out in article 5(d) of the Act no 4054 was not fulfilled in the present case.

- **Negative Clearance to be granted to the Sharing of the Analyses based on the data provided by the Turkish Statistical Institute (TSI) by EBS Otomotiv Yönetim Danışmanlığı with the interested parties in the sector by means of the agreements concluded.**

Decision Date:	Decision No:	Type:
30.03.2016	**16-12/194-88**	**Negative Clerance**

EBS Otomotiv Yönetim Danışmanlığı (EBS OTOMOTİV) requested negative clearance or exemption for its decision to share the information it obtained from TSI and published on its website, as well as the analyses and reports published on the aforementioned information with the sector and with interested persons and organizations.

In order to determine whether the information exchange in question fell under the Act no 4054, a two-pronged examination was conducted for the data on the sales of new vehicles and for the data on the sales of second hand vehicles.

In the assessment on new vehicle sales data, it was stated that the information on new vehicle sales EBS OTOMOTİV plans to add to its website would be obtained from TSI, compiled, and various graphics and maps would be prepared. The information in question will be accessible by member undertakings, as well as by interested third parties. Thus, providers will have one-stop access to the historical sales data of the models and brands they deem to be rivals for their own models and brands, and they will be able to compare their own vehicle sales with those of rival

models and brands on the basis of districts, provinces and regions. Similarly, consumers will also have one-stop access to detailed information concerning the models and brands they are interested in, and will be able to make comparisons between models and brands. It was pointed out that the study in question would be for informational purposes and would aim to make public information easily digestible.

The first Board decision on the subject to take under consideration is the negative clearance-exemption decision dated 4.07.2011 and numbered 11-43/916-285, concerning the compilation and publication of information related to ADA member companies by the Automotive Distributors' Association . This is because while this decision granted a certificate of negative clearance to the periodic publication of information on the personnel, authorized seller and service numbers in the networks of the brands, it required that province-based data exchanged not include brand and model breakdowns. In addition, the Board decision dated 12.04.2012 and numbered 12-20/520-M extended the scope of the above Board decision to include the publication of monthly sales numbers for each brand as prepared by ADA or as acquired from TSI on the ADA website, database or in other reports prepared by the ADA, after being grouped on a province basis in terms of truck, pick-up, van, motorcycle, bus, automobile, private purpose and tractor vehicle types, provided that the information shared did not include model breakdowns. It was stated that both Board decisions were important for the file under examination, since the transaction in the application also concerned the analyses to be prepared with the data obtained from TSI.

The letter sent by TSI stated that monthly data on the basis of provinces, districts, types, brands, model years, usage, fuel type, and cylinders could be provided for the sales of new vehicles in excel format. It was also mentioned that various data on foreign trade could be accessed free of charge by querying the databases section of the www.tuik.gov.tr website. Under the circumstances, it became clear that "brand sales number on a province basis, market share data, market share rankings, highest selling five vehicle brands in each segment, sales numbers for each model and brand together with province and district information, and various data on the basis of provinces and districts" to be shared in accordance with the file under examination were already open to public through subscriptions and/or at the TSI website. The addition of such data to the EBS OTOMOTİV website would only involve the use of various techniques to render the currently open data more visual and practical, in line with the needs of the

sector. In that sense, the information exchange in question will not have a restrictive effect on competition.

Another subject within the scope of the notification is the sharing of second hand automobile sales data, including "brand sales numbers, market share data, market share rankings, and information on monthly sales numbers of the brands based on provinces and districts," with the public and other interested parties from the sector, through EBS OTOMOTİV's website. The letter sent by TSI also confirms that the province, district, type, brand and model year data on the sales of second hand vehicles are open to public. The notification form states that these data provided by the TSI would be prepared in a style that would be able to meet the needs of the sector through the use of various analyses and graphics.

Consequently, it was found that the information comprising the subject matter of the application had become public since it was published by the TSI, and that the subsequent sharing of that information through EBS OTOMOTİV would not have a restrictive effect on competition.

- **Negative clearance granted to the establishment of a company by Enerya Gaz Dağıtım A.Ş. in order to handle the installation of interior piping and infrastructure for carrying natural gas into buildings and domiciles.**

Decision Date:	Decision No:	Type:
25.08.2016	**16-29/483-217**	**Negative Clerance**

The company to be established will operate in the business of safely carrying natural gas into buildings and domiciles for use by final consumers.

In accordance with the relevant provisions of the Natural Gas Market Law no 4646, interior installation and maintenance certificates are issued by the relevant distribution company or by companies authorized by EMRA. Additionally, the relevant natural gas distribution company has control over project approval, conformance checks and commissioning of the domestic natural gas installation, which is an essential facility for procuring natural gas. It is also the competent authority in case natural gas cannot be provided to the relevant locality due to potential malfunctions in the infrastructure mentioned above. In other words, the natural gas distribution company has legal inspection powers over domestic natural gas installations. As a result, natural gas distribution companies are authorized to issue certificates to the firms which install natural gas into houses and inspect these firms.

Since ENERYA, as the undertaking wishing to establish a natural gas installation company, has the power to issue certificates to domestic installation firms and as well as the power to conduct legal inspections of these firms in 10 provinces; these 10 provinces, namely Antalya, Aksaray, Aydın, Denizli, Ereğli, Erzincan, Karaman, Konya, Niğde and Nevşehir have been defined as one geographical market, with all regions other than these provinces being defined as a separate geographical market.

Activities related to domestic natural gas installations, which comprise the subject matter of the notification, constitute an essential facility for providing natural gas to the locality concerned. On the other hand, natural gas distribution companies also have the power to issue certificates to domestic installation firms, inspect the works of these firms and give final approvals. If, in the 10 provinces it is engaged in natural gas distribution, ENERYA used the powers it was granted by the relevant legislation in a discriminative and exclusionary manner against competing firms operating in the domestic natural gas installation market, it is possible for the company to cause competitive problems in these markets.

As Competition Board decisions on unlicensed electricity generation show, if a company which has legal supervision powers over an activity has an affiliate active in that field, discriminatory conduct may occur in the relevant market, leading to competitive concerns. In the Dicle Elektrik Dağıtım A.Ş. decision dated 12.02.2015, numbered 15-07/89-34, and the Meram Elektrik Dağıtım A.Ş. decision dated 02.03.2016, numbered 16-07/134-60, certain claims of discrimination were examined and even no violation was found, it was concluded that if an undertaking was the highest authority of supervision and inspection in a certain field of activity, that undertaking could cause competitive concerns of foreclosing the market to its competitors if it entered into the relevant field of activity via an affiliate.

As a result of the examination conducted, it was decided that there was no violation of the relevant articles of the Act no 4054, and therefore the transaction in question could be issued a certificate of negative clearance under article 8 of the same Act. However, it was also emphasized that if, in the provinces and districts where it exclusively conducts natural gas distribution activities, ENERYA were to use its certification and inspection powers granted by the relevant legislation in a discriminatory and exclusionary way against the rivals of the domestic natural gas installation company it established, this could be seen as a violation of article 6 of the Act no 4054.

- **The French Competition Authority Takes A Decision Ordering Engie, former Monopoly Holder in Natural Gas Sales in France, to Increase Natural Gas Sales Prices for Industrial Consumers**

Within the framework of the investigation launched by the French Competition Authority (Autorité De La Concurrence - AC) in response to the claim that Engie, which held a monopoly in the French natural gas market in the past, engaged in predatory pricing practices against its competitors selling natural gas to industrial consumers by offering natural gas at very low prices to industrial consumers, AC had taken a decision in May 2016 ordering Engie to increase its natural gas prices for industrial consumers.

The complainant company appealed the decision before the court and asked that Engie be ordered to increase its natural gas prices for domestic users as well, which request was dismissed by the Paris court with a decision taken on July 28, 2016. The decision stated that while the interim decision of AC was justified, there was not sufficient competitive risk to justify implementing AC's decision for natural gas prices sold to domestic consumers.

Sources:

http://globalcompetitionreview.com/news/article/41608/french-court-orders-former-gas-monopoly-raise-prices/

http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=630&id_article=2765

http://www.autoritedelaconcurrence.fr/doc/ca_16mc01.pdf

- **A Report Published by the World Bank on Africa States that Decisions to Increase Competition Taken by African Countries Could Help Reduce Poverty**

A report published by the World Bank (WB) titled "Breaking Down Barriers - Unlocking Africa's Potential through Vigorous Competition Policy" claims that if Africa made its markets more competitive, it could reduce poverty by encouraging sustainable development.

In summary, the first chapter of the report touches upon the importance of competition policy for Africa and discusses the contributions to reduction of poverty and high economic growth that may be expected from encouraging competition. The second chapter presents the status

quo for competition law and policy in 22 African countries, identifying the issues facing the implementation of competition law in these countries. The third chapter evaluates the competitive structure in the three most important sectors in these countries, namely cement, fertilizer and telecommunications sectors, and exposes the anti-competitive practices and regulations distorting competition in these sectors. The last chapter includes suggestions for a more efficient implementation of competition law and policy.

The suggestions of the report to African countries for reaching their economic potentials may be summarized as follows:

- Governments can play an important role in encouraging competition in markets to get the most out of private sector participation.
- Given that sources allocated to competition authorities are finite, strategic prioritization is key for effectiveness and efficiency
- Regional initiatives can support regulatory changes to help strengthen competition authorities and increase the effectiveness of competition policy
- Given the challenges present in African markets, authorities will benefit from prioritizing the allocation of resources with a view to preventing the most harmful anticompetitive practices and using available powers and tools more effectively
- As shown by the analysis of the three core sectors, governments can take action to mitigate the risks of potential anticompetitive behavior in sectors.
- Support to advocate for the adjustment of policies and regulations that unnecessarily limit competition and facilitate anticompetitive practices in member economies can deliver important benefits.
- Finally, competition authorities and partners could play a useful role in knowledge creation and exchange.

Sources:

http://www.worldbank.org/en/news/feature/2016/07/27/africa-competition

http://documents.worldbank.org/curated/en/243171467232051787/Breaking-down-barriers-unlocking-Africas-potential-through-vigorous-competition-policy

http://globalcompetitionreview.com/news/article/41607/effective-antitrust-alleviate-poverty-africa-says-world-bank/

- **Hellenic Competition Commission Changes Settlement Procedures**

The Hellenic Competition Commission (HCC) changed the procedure for settlements with cartels on July 21, 2016. The announcement made on the subject on July 25, 2016 states that the new procedures are intended to shorten administrative processes, allocate more resources to ongoing cases, reduce the number of cases filed for infringements of competition, and ease the burden on administrative courts. The rest of the announcement states that undertakings and associations of undertakings wishing to benefit from settlements must include the following in their settlement offer to the HCC:

- Acknowledgement of the parties' participation and liability for the infringement;
- Acceptance of the maximum amount of the fine that may be imposed by the HCC;
- Confirmation that they have been informed of the HCC's finding of an infringement and that they have been given the opportunity to make their views known to the authority;
- The parties' confirmation that, in view of the above, they waive their right to obtain full access to the HCC's file or to be heard in an oral hearing;
- Waiver of the right to challenge HCC's jurisdiction and the validity of the procedure followed.

The next section of the announcement states that HCC had jurisdiction on which cases it would settle, and in exercising this right it will take into account

- the number of companies under investigation and the number of companies genuinely interested in settlement;
- the number and nature of the alleged infringement(s);
- whether there is scope for achieving any procedural efficiencies or resource savings through settlement; and
- any aggravating circumstances

The last section specifies that if the settlement conditions are fulfilled, the fines could be discounted by 15%, and that the new settlement procedures could be used in conjunction with leniency, in which case discounts would be cumulative.

Sources:

http://www.mondaq.com/x/515994/Cartels+Monopolies/Greek+Competition+Authority+Introduces+New+Cartel+Settlement+Procedure+Rules

http://globalcompetitionreview.com/news/article/41584/greece-introduces-new-settlement-procedure/

- **European Commission Launched an Investigation on the International Skating Union**

European Commission sent a Statement of Objections on 27.09.2016 to the International Skating Union (ISU), which is the sole organization recognized by the International Olympic Committee in the field of ice skating, and on 5.10.2016, EC announced that an investigation was launched on ISU.

The announcement by the Commission states that the investigation was launched in response to an application by two Dutch skaters, that it would examine whether the rules introduced by ISU unfairly prevented the organization of skating tournaments unconnected to ISU, that the lifelong bans from competitions imposed on athletes in accordance with the ISU rules on such cases could prevent alternative tournament organizers from entering the market or maintaining their operations, and that such a situation could be evaluated as an anti-competitive agreement or abuse of dominant position.

The announcement included a statement by Margrethe Vestager, European Commissioner for Competition, on the subject:

"For many, sport is a passion – but it can also be a business. We recognise and respect the role of international sports federations to set the rules of the game and to ensure proper governance of sport, notably in terms of the health and safety of the athletes and the integrity of competitions. However, in the case of the International Skating Union we will investigate if such rules are being abused to enforce a monopoly over the organisation of sporting events or otherwise restrict competition. Athletes can only compete at the highest level for a limited number of years, so there must be good reasons for preventing them to take part in events.

The Commission has decided to pursue this investigation because it raises specific allegations of breaches of competition law at the international level rather than wider issues of internal governance or rule-making in a sport federation"

The announcement made by ISU on the subject emphasized that independent organizers were free to hold international tournaments, that ISU believed the issue stemmed from the fact that the European Commission did not know the structure of the sport very well, and that the rules established by ISU were beneficial for all parties (organizers, athletes and spectators).

Sources:

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40208

http://europa.eu/rapid/press-release_IP-15-5771_en.htm,

http://globalcompetitionreview.com/news/article/41908/dg-comp-turns-heat-ice-skating-union/

http://www.isu.org/en/news-and-events/news/2016/09/ec-antitrust-allegations-are-unfounded

- **US New York Federal Court Dismissed the Competition Suit concerning Vitamin Producers Operating in China under the Principles of International Comity**

US District Court for the Eastern District of New York's decision forcing Hebei Welcome Pharmaceutical Co. Ltd and North China Pharmaceutical Group Corporation, parties Vitamin C cartel, to pay around $147 million to the undertakings titled Animal Science Products, Inc. and The Ranis Company, Inc. was dismissed with a decision taken by the US Court of Appeals Second Circuit on 20.09.2016.

The grounds for the US Court of Appeals Second Circuit decision remark that

- the defendant undertakings sentenced to pay fines by the lower court were operating within the borders of China;
- these undertakings were required to comply with Chinese laws;
- the real question that had to be answered in this case was determining what should be done when undertakings operating outside of the US breach US antitrust laws because of a directive or order of the government of another country;
- (Yabancı bir hükümet resmi organları aracılığıyla mahkeme huzuruna çıkarak ABD antitröst hukukunun ihlal edilmesiyle sonuçlanan bir

eylemde bulunulmasını talep ettiği yönünde ifade vermesi durumunda federal mahkemenin nasıl davranması gerektiğini ele alıyoruz)

- within the above framework, the official letter communicated to the US District Court for the Eastern District of New York by the Chinese government explained that the defendant undertakings were ordered by Chinese laws to increase their export prices and decrease the amount of the goods they exported;
- Therefore, the defendant undertakings could not be expected to comply with the Chinese and US laws simultaneously.

As a result, it was concluded that the principles of international comity required the US District Court for the Eastern District of New York to take the letter of the Chinese government into consideration.

Sources:

http://res.cloudinary.com/gcr-usa/image/upload/v1474387508/13-4791_opn_pigkfs.pdf

http://globalcompetitionreview.com/news/article/41870/international-comity-kills-us-vitamin-follow-on-case/

- **15th Administrative Court of Ankara's Decision dated 17.12.2015 and numbered 2014/1947 E., 2015/2403 K.:**

How to carry out court decisions.

In the suit filed with a request to annul the Competition Board decision dated 04.07.2007 and numbered 07-56/669-232, following the annulment decision of the 13th Chamber of the Council of State dated 30.11.2011 and numbered 2008/3117 E. and 2011/5424 K., an investigation was launched on 3M Sanayi ve Ticaret A.Ş. in order to determine whether it engaged in the activities prohibited in article 4 of the Act no 4054 by fixing sales prices of dealers, introducing customer limitations on its dealers, discriminating between dealers and implementing target discounts for dealers. As a result, it was decided that administrative fines should not be imposed on 3M Sanayi ve Ticaret A.Ş. under article 16 of the Act no 4054 on the Protection of Competition since article 4 of the Act was not violated. However, this decision of the Competition Board dated 25.06.2014 and numbered 14-22/46-203 was annulled by the first instance court.

In its annulment decision, the court made the following assessment and found that the previous court decision was not carried out:

"*… it is established that, in case prohibited conduct is identified, natural or legal persons with the characteristics of an undertaking as well as associations of undertakings and/or their members will be fined at up to ten per cent of their gross revenues generated by the end of the previous financial year as determined by the Board. When setting fines, the Board will take into account factors such as the existence of intent, the severity of the offense, the power of the undertaking or undertakings concerned within the market and the severity of the potential damages. However, since article 4 of the Act no 4054 was clearly violated by the 3M company, which is the subject of the complaint, the Competition Board decision dated 25.06.2014 and numbered 14-22/46-203 ruling it unnecessary to impose administrative fines on the aforementioned company was not found compliant with the law.*"

- **18th Administrative Court of Ankara's Decision dated 25.3.2016 and numbered 2015/229 E., 2016/757 K.**

When an administration takes a new action in accordance with the directions in an annulment decision, judicial review of the second action cannot re-examine the court decision which annulled the first action.

The suit was filed by the plaintiff in order to annul the Competition Board decision dated 07.08.2014 and numbered 14-26/530-235. The decision in question imposed a fine of 13.686,03 TL on the plaintiff for violating article 6 of the Act no 4054 by forcing those divers with training certificates other than TSSF/CMAS to obtain additional documents called diver's identity cards and make additional payments, obstructing the activities of other training systems, with the fine being set at a rate of five per thousand of its gross annual revenue generated at the end of the year 2013 as determined by the competition Board, in accordance with articles 16.3 and 16.5 of the same Act, as well as with the provisions of the articles 5.1(b), 5.2, 5.3(a) and 7.1 of Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position.

The aforementioned decision was the second action carried out in accordance with AJPL 28 following the administrative court's annulment of the previous decision deeming it unnecessary to impose fines. The annulment decision emphasized that the plaintiff should be imposed penalties for abusing its dominant position.

In the second suit, the court agreed with the Authority's views on what should be the scope of the judicial review and dismissed the action, with the following assessment:

"… *in the present case, the court decision stated that the plaintiff violated article 6 of the Act no 4054 with its conduct concerned and therefore should be fined under article 16 of the same Act. Court decisions are binding for all persons and institutions and, in light of the fact that there is a court decision which requires that the plaintiff be fined, the present Court cannot make an assessment concerning the compliance of the aforementioned court decision with law. The defendant administration has carried out the requirements of the court decision, and under the circumstances the present Court can only assess whether the amount of the fine imposed was appropriate. Accordingly, the fine in question was imposed in accordance with article 16 of the Act no 4054 as well as with the relevant articles of the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, with*

consideration of mitigating circumstances. In that sense, the action in question was found to be justified ..."

- **1st Administrative Court of Ankara's Decision dated 27.1.2016 and numbered 2015/548 E., 2016/140 K.**

Refusal of an access to file request must be justifiable and legitimate.

In the case filed by the plaintiff asking the court to annul the Competition Board Decision dated 12.06.2014 and numbered 14-21/417-M concerning the rejection of the request for examining the investigation report, which was prepared within the framework of the investigation conducted on Turkcell İletişim Hizmetleri A.Ş., 1st Administrative Court of Ankara ruled in favor of the plaintiff.

In its annulment decision, the court made the following assessment:

"*… when taking action, the administration is charged with acting in a way that is conducive to review and cannot take actions which could result in arbitrariness or lack of supervision. Neither can it act in a way that would render the right to information act nonfunctional. The constitutional right to legal remedies cannot be restricted without legal grounds. In accordance with the principles of transparency, openness and accountability, there are no legal barriers to allowing the examination of the investigation file after trade secrets are purged from the file. Therefore, in terms of the principles concerned or the legal legislation explained above, there are no barriers before giving the investigation report to the plaintiff after striking out trade secrets. Under these circumstances, the relevant Competition Board decision rejecting the request for the examination of the investigation report in question is not found to be in compliance with the law, since there are legitimate and actual benefits to the plaintiff. …*"

- **13th Chamber of the Council of State Decision dated 24.3.2016 and numbered 2011/2700 E., 2016/825 K.**

It is appropriate to impose fines on other undertakings within the economic integration if their existence and participation in the violation is recognized after the conclusion of the investigation

The suit filed for the annulment of the Competition Board decision dated 06.08.2010 and numbered 10-53/1057-391 was dismissed by the 13th Chamber of the Council of State.

In its dismissal, the Court made the following assessment:

"*… after the conclusion of the investigation, it was determined that 5 dealers including İriyıl-Aktif Otomotiv Servis Hizmetleri San. ve Tic. Ltd. Şti. a provided sales and after-sales services under different legal entities. Within that framework, İriyıl-Aktif Otomotiv Servis Hizmetleri San. ve Tic. Ltd. Şti. provided after-sales repair and maintenance services and sold spare parts. On the other hand, Aktif-İriyil Otomotiv İnşaat Turizm Tic. ve San. Ltd. Şti., which was within the same economic integration, sold new Peugeot vehicles. Following these findings, an investigation was launched on 5 legal entities including Aktif-İriyıl Otomotiv İnşaat Turizm Tic. ve San. Ltd. Şti. and administrative fines were imposed. The first investigation included the after-sales repair and maintenance as well as the sales of spare part and new vehicles. As a result of the investigation, undertakings with the characteristics of 2S dealers which provide all of their services under a single legal entity were imposed administrative fines at 1%. Within this framework, it is appropriate to also imposefines at 1% to undertakings which provide sales and after-sales services through different legal entities under the same economic integrity. In other words, even though Iriyıl-Aktif Otomotiv Servis Hizmetleri San. ve Tic. Ltd. Şti. Was a 2S dealer providing after sales services, since it fell under the same economic integration with Aktif-İriyıl Otomotiv İnşaat Turizm Tic. ve San. Ltd. Şti., which provided vehicle sales services, both legal entities should be imposed an administrative fine at 1%.*"

- **12th Administrative Court of Ankara's Decision dated 30.3.2016 and numbered 2015/939 E., 2016/1101 K.**

12th Administrative Court of Ankara dismissed the suit requesting the annulment of the Competition Board decision dated 04.11.2014 and numbered 14-43/804-361, claiming that the Competition Authority did not have the power to review the contract signed on 21.05.2012 between TFF and Digiturk under the Act no 4054.

In its dismissal, the Court made the following assessment:

"*… While TFF does not operate in the markets for goods and services, it has the characteristics of an undertakings which affects these markets. Under these circumstances, in accordance with article 2 of the Act no 4054, the 2015-2016 and 2016-2017 Football Season Broadcast Rights Agreement signed between TFF and Krea içerik Hizmetleri ve Prodüksiyon A.Ş. (Digitürk) provided a very important advantage to the broadcaster which held the football broadcasting rights, especially in terms of pay-per-view television broadcasting and digital platform operating markets. On the other*

hand, lacking these rights made it significantly harder to operate in the market or enter into it. From a competition law perspective, when taken together, these mean that the agreement concerns the transfer of a right which gives exclusive powers in a market. Since the right in question holds great economic value and import in the pay-per-view television broadcasting and digital platform services markets, it may present a competition-restricting nature. Considering Turkish Football Federation is subject to the provision of the Act no 4054 in relation to its actions during its centralized marketing activities, the aforementioned agreement may be examined within the framework of article 4 of the Act no 4054. Therefore, the Competition Board decision taken is in compliance with the law…"

- **1st Administrative Court of Ankara's Decision 03.06.2016 and numbered 2015/1261 E., 2016/2035 K.**

All of the exemption requirements must be examined and justified.

The Court decided in favor of the plaintiff in the suit filed for the annulment of the Competition Board decision dated 04.11.2014 and numbered 14-43/804-361.

In its annulment decision, the Court made the assessment that:

"*Article 5.1 of the Act no 4054 sets out conditions for exemption from the application of article 4 of the same Act, all of which must be fulfilled for the exemption to be granted. The present Board decision failed to assess and analyze whether all of these conditions were fulfilled in terms of the period extension agreement signed between TFF and Digiturk and instead considered the fulfillment of the condition related to the partial or complete sublicensing of the Package A broadcast rights held by Digiturk, which include in particular the rights for broadcasting live football matches, to competing undertaking(s) and to undertakings which broadcast by alternative technologies at reasonable market terms sufficient. This decision was found not to be in compliance with the law...*"

○ Cartel Punishment and the Distortive Effects of Fines

Published By: Journal of Competition Law and Economics

Authors: Emilie Dargaud, Andrea Mantovani and Carlo Reggiani

Even though the fight with cartels is among the fundamental priorities of competition authorities, there may be significant differences between the methods used in that fight, particularly in terms of deterrence. Even in an economic union such as the EU, fines may differ between countries and may be calculated based on the profits of the firms of on the damages caused by the cartel. The analysis calculates damage-based fines by drawing a comparison between the decrease in production resulting from a cartel-forming collusion and the level of production in the competitive environment.

The article focuses on the economic effects of the fines aimed at distorting collusions and cooperation. To that end, fines based on cartel profits are compared with distortive fines. The effects of fines based on profits and damages are closely related to the percentage of the fine. Profit based fines are more effective as an instrument at low levels of fines. However, if the firms are sufficiently patient, the deterrence of the fines calculated over the profits of the firms at the start of the conduct may be eliminated. In this case damage-based fines will be more effective in terms of distorting the cartel agreement, which has a negative effect on consumer surplus and social welfare.

The article also touches upon the economic effects of the two types of fines, as well as on the trade-off between potential deterrence at the start of the conduct and the consumer surplus that may result at the end of the conduct. As a matter of fact, it has been shown that when antitrust authorities are faced with exogenous caps on fines, as is frequent in practice, such a trade-off would be particularly important.

Source:

http://jcle.oxfordjournals.org/content/12/2/375

- **Foreclosing Competition through High Access Charges and Price Discrimination**

Published By: The Journal of Industrial Economics

Authors: Angel L. LOPEZ and Patrick REY

The article examines the competition between the two asymmetrical networks in the telecommunications sector, formed by incumbent firms (operators) and newly entrants. In non-linear tariffs, competing operators can ask different prices for on-net and off-net calls. For the asymmetrical network to be active, both incumbents and new operators must be able to take a share of the market. However, high access charges increase the dominance of the incumbent operator in the market while also increasing the profitability of the operator in question. The incumbent's using its monopoly power to prevent entry into the market also plays a role in increasing profitability. Maximum profit can be obtained, depending on the degree of product differentiation, magnitude of switching costs and network effects. It is profitable to have dominant position particularly where switching costs are very low, products are not very differentiated and networks effects are sufficiently high.

Foreclosure strategies are profitable only when entry into the market is completely prevented. The key factor in ensuring foreclosure is determined as price discrimination between on-net and off-net calls. Without price discrimination, it is not profitable for incumbents to restrict competition via high access charges. Another subject discussed in the article is the effects. Increasing access charges decrease the value of off-net calls. The dominant operator can recoup the damage caused by the negative effect in question by increasing its market share.

Source:

http://onlinelibrary.wiley.com/doi/10.1111/joie.12115/epdf

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