Turkish Competition Authority
REKABET KURUMU

COMPETITION BULLETIN

April 2017

External Relations, Training and Competition Advocacy Department

No: 64

Turkish Competition Authority
REKABET KURUMU

Contributors to this Volume

Osman Tan ÇATALCALI

Hüseyin COŞGUN

Ebru İNCE

Tuğçe KOYUNCU

Dr. Mehmet ÖZKUL

Ömer Faruk ÇELİK

Bilge TANRISEVEN

Derya ERFİDAN

Contact

bulten@rekabet.gov.tr

Rekabet Kurumu

2017 - Ankara

CONTENTS

Turkish Competition Authority
REKABET KURUMU

INTRODUCTION

Turkish Competition Authority
REKABET KURUMU

We are proud to present to you the Competition Bulletin for the first three months of 2017, which includes news on developments in competition law, industrial organization and competition policy.

In the "Selected Reasoned Decisions" section of this issue, we included three investigations conducted under article 6 of the Act No. 4054 on the Protection of Competition, two investigations conducted under article 4, and one investigation conducted under both article 4 and article 6.

The "News around the World" section of the Competition Bulletin includes news from EU, United Kingdom, Germany and the Russian Federation.

"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 two artciles published in the *Review of Industrial Organization* titled "Endogenous Cartel Organization and Antitrust Fine Discrimination" and "On the Impact of Input Prices on an Entrant's Profit Under Multi-Product Competition".

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

- **Türk Telekomünikasyon A.Ş. Facility Sharing Investigation**

Decision Date:	Decision No:	Type:
09.06.2016	**16-20/326-146**	**Investigation**

The relevant decision was taken as a result of the investigation conducted in order to determine whether Türk Telekomünikasyon A.Ş. (Türk Telekom) violated the Act no 4054 by delaying, obstructing and/or preventing the facility sharing applications submitted by Vodafone Net İletişim Hizmetleri A.Ş. (VodafoneNet) related to the ports it had to establish to be able to use the fiber-optic infrastructure owned by Türkiye Elektrik İletim A.Ş. (TEİAŞ), the usufruct rights of which had been acquired by VodafoneNet after winning the tender opened by TEİAŞ.

Within the framework of the file, as a result of the assessments made regarding the positions of Türk Telekom and other operators in the relevant market, the barriers to entry and growth in the market, and the negotiation power of alternative operators in comparison to Türk Telekom, it was established that Türk Telekom held dominant positions in both the market for "unlit fiber and physical infrastructure elements including pipes, channels, hubs, manholes, poles and towers," as well as in the market for "physical infrastructure," which was a downstream market within the scope of the file.

As a result of the examinations conducted, it was concluded that the following behavior of Türk Telekom in the market for unlit fiber and physical infrastructure elements including pipes, channels, hubs, manholes, poles and towers were not reasonable and served to delay, obstruct or prevent facility sharing: "predicting long periods for ground studies," "demanding high monthly maintenance and operation fees," "forcing those operators who procure facility sharing services from Türk Telekom to also purchase maintenance and operations services from Türk Telekom," "granting Türk Telekom the right to make unilateral amendments to the facility sharing agreement," "considering any request of those operators who procure facility sharing service from Türk Telekom other than capacity increase demands (replacement, disassembly, etc.) a new request," "requiring the conclusion of an agreement to assess facility sharing requests," "the lack of a level of service guarantee in the agreement signed between Superonline and Türk Telekom," "failing to comply with the periods envisaged in the BTK (Information and Communication Technologies Authority) decision concerning the preparation of the facility and including a provision in the

agreement stating that the infrastructure concerned in facility sharing would be prepared according to a work plan to be determined."

Consequently, it was decided that,

- Türk Telekom violated article 6 of the Act no 4054 by refusing to deal due to certain practices in relation to the facility sharing applications it received, and that an administrative fine of 33,983,792.76 TL should be imposed on the undertaking at 0.45% by discretion of the annual gross revenues generated by the end of the FY2015 as determined by the Board;
- The Office of the President should be charged with rendering an opinion to the Ministry of Transport, Maritime Affairs and Communication as well as to the Information and Communication Technologies Authority pointing out the negative effects of notifying partial routes within the scope of the facility sharing services on the process itself and suggesting that it would increase competition in the market if those situations where sharing requests may be met with partial routes were regulated to the advantage of the undertakings requesting facility sharing;
- The request for interim measures in accordance with paragraph four, article 9 of the Act no 4054 should be rejected in relation to the practices comprising the subject matter of the claims included in the applications made by VodafoneNet İletişim Hizmetleri A.Ş. ve Superonline İletişim Hizmetleri A.Ş.

- **Game Consoles Investigation**

Decision Date:	Decision No:	Type:
07.11.2016	**16-37/628-279**	**Investigation**

The relevant decision was taken as a result of the investigation on Aral Oyun Konsol ve Aksesuar Ticaret A.Ş. (ARAL), Bimeks Bilgi İşlem ve Dış Tic. A.Ş. (BİMEKS), Doğan Müzik Kitap Mağazacılık Pazarlama A.Ş. (DR), Teknosa İç ve Dış. Tic. A.Ş. (TEKNOSA) and Vatan Bilgisayar San. ve Tic. A.Ş. (VATAN), conducted with regard to the claim that ARAL was in agreement/concerted practice with the undertakings operating in the retail sales of the computer and console games distributed by ARAL, and that it fixed resale prices at final points of sales in order to increase game prices. During the process, the investigation was extended to include Gold Teknoloji Marketleri Sanayi ve Tic. A.Ş. (GOLD) and Kliksa İç ve Dış Tic. A.Ş. (KLİKSA) as well.

After the investigation uncovered indications suggesting that the claimed violations might have occurred in the consumer electronics market as well, it was decided that an investigation should be initiated on BİMEKS, GOLD, LG Electronics Tic. A.Ş. (LG), MS İstanbul İç ve Dış Tic. Ltd. Şti. (MS), Samsung Electronics İstanbul Pazarlama ve Tic. Ltd. Şti. (SAMSUNG), TEKNOSA, Türk Philips Ticaret A.Ş. (PHILIPS), VATAN and Vestel Ticaret A.Ş. (VESTEL) to determine whether suppliers and distributors engaged in price maintenance by making agreements within horizontal or vertical relationships or through concerted practices with regard to various consumer electronics products, including televisions and home theater systems, and that the new investigation should be merged with the aforementioned one.

On-the-spot inspections conducted within the framework of the file acquired some documents related to the communications between ARAL and certain retailers which sold computer and console games, aimed at increasing (or maintaining) the prices of the games in question, written between 2011 and 2015. The documents were analyzed to see whether the relationship of each retailer with ARAL revealed an arrangement aimed at increasing retail prices in the computer and console games market. The investigation concluded that ARAL made agreements with DR, VATAN, TEKNOSA, KLİKSA and GOLD separately to limit price competition in the computer and console games market. However, no violation could be established concerning BİMEKS, which was one of the undertakings investigated. No findings were uncovered suggesting that competing retailers shared competitively sensitive information through the common supplier, such as the prices they planned to implement in the future.

The examination of the documents acquired in relation to the consumer electronics market showed that, with respect to TEKNOSA and MS, which openly demanded intervention in the prices of their competitors, and LG, which responded positively to the demand, the goal of the examined conduct was to ensure that the prices of LG products in the consumer electronics market were determined out of the market conditions and to limit price competition. It was concluded that LG were separately in agreement with TEKNOSA and MS to maintain retail prices.

As a result of the investigation it was decided that,

- In the computer and console games market, ARAL was in agreement with DR, VATAN, TEKNOSA, KLİKSA and GOLD to fix retail prices, that the aforementioned undertakings thereby violated article 4 of the Act no 4054, and that administrative fines should be imposed on the

undertakings concerned under article 16 of the Act no 4054, at 863,538.50 TL for ARAL, at 2,307,544.54 TL for DR, at 10,363,565.71 TL for VATAN, at 7,651,563.82 TL for TEKNOSA, at 1,192,116.00 TL for KLIKSA and at 1,489,549.58 TL for GOLD.

- In the consumer electronics market, article 4 of the Act no 4054 were violated by LG's agreements with MS and TEKNOSA to maintain retail prices, and by VESTEL and PHILIPS maintaining resale prices for those undertakings engaged with the retail sales of their products, and that administrative fines should be imposed on the undertakings concerned under article 16 of the Act at 1,255,290.42 TL for PHILIPS, at 5,776,015.29 TL for MS, at 9,181,876.58 TL for TEKNOSA, at 6,221,201.00 TL for LG and at 8,024,370.30 TL for VESTEL.

- **İzmir Chamber of Jewelers Investigation**

Decision Date:	Decision No:	Type:
27.10.2016	**16-35/603-268**	**Investigation**

The relevant investigation was initiated in order to determine whether the İzmir Chamber of Jewelers (CHAMBER) violated article 4 of the Act no 4054 by various activities, including fixing sale prices for gold and imposing certain sanctions on those tradesmen who did not comply with their prices.

During the preliminary inquiry and investigation phases, documents were found suggesting that the CHAMBER tried to fix both purchase (scrap prices) and sale prices for quarter, half and full gold coins as well as ata gold coins in the İzmir province. In line with the documents and information gathered during the process, it was concluded that the CHAMBER conduct and the practice of recommended pricing displayed at jewelers and displayed on electronic screens went beyond the purpose to result in "price fixing". The information acquired during the examinations clearly showed that the CHAMBER imposed certain limits on the sale prices and discount rates for bracelets as well as quarter, half and ata gold coins, and it was established that the "price fixing" mentioned above was generally accepted and implemented by the jewelers. Information gathered in the interviews conducted with the jewelers during the examination strengthens the conclusion that product prices were set by the CHAMBER within the framework of the price fixing. As a result, it was established that the CHAMBER played a decisive role in gold purchase and sale prices.

The findings related to the coercive conduct of the CHAMBER within the framework of the price fixing were assessed and it was concluded that certain sanctions were set out for failing to comply with the "price fixing"

decisions taken at the meetings held under the leadership of the CHAMBER, and neighborhood representatives were established to monitor whether tradesmen complied with the aforementioned decisions. In addition to the documents uncovered, the interviews conducted on site also collected many opinions stating that the CHAMBER coerced the jewelers to comply with the published prices, despite some jewelers denying that the CHAMBER controlled prices. The claims of CHAMBER monitoring were supported by the fact that even jewelers who expressed satisfaction with the single pricing practice mentioned the inspections conducted and the fines imposed. Another support for the claims of some jewelers that the CHAMBER imposed fines of 1500 TL under the guise of donations came from the fact that the inspection conducted at the premises of the CHAMBER uncovered a large number of donation invoices for 1500 TL.

In light of the aforementioned points, it was concluded that the CHAMBER fixed purchase and sale prices for gold, that it imposed certain sanctions on the tradesmen who refused to comply with the prices, and that these practices were covered under sub-paragraph (a) of article 4 of the Act no 4054. Therefore, the matter in question was a decision of an association of undertakings with the characteristics of a violation under article 4 of the Act no 4054.

Within this framework, it was decided that an administrative fines of 4,740.35 TL should be imposed on the CHAMBER in accordance with article 16 of the Act no 4054, at 2.25% by discretion of the gross revenue of the CHAMBER generated by the end of the FY2015, as determined by the Board.

- **Online Food Ordering Platform Investigation about Yemek Sepeti A.Ş.**

Decision Date:	Decision No:	Type:
09.06.2016	**16-20/347-156**	**Investigation**

The relevant investigation was launched in order to determine whether Yemek Sepeti Elektronik İletişim Tanıtım Pazarlama Gıda San. ve Tic. A.Ş. (YEMEK SEPETİ) abused articles 4 and 6 of the Act no 4054 by preventing advertisements of competing platforms, giving promotions to restaurants in return for them refusing to work with competing platforms, carrying out Joker practices, and preventing provision of better/different offers (in terms of price, discounts, promotions, menus, payment options, delivery region, etc.) to competing platforms through the use of "Most Favored Customer" (MFC) provisions.

The main subject of the investigation is comprised of the MFC provisions YEMEK SEPETİ implemented for member businesses. Consequently, it was first assessed whether YEMEK SEPETİ; which was found to hold dominant position in the online food ordering platform services, abused its position under article 6 of the Act no 4054 with its aforementioned practices.

The MFC provision included in YEMEK SEPETİ agreements state that restaurants may not engage in different practices at their own facilities, though other channels (such as their own call centers or call center services procured from third parties) or on competing platforms providing online food ordering services, which may disadvantage YEMEK SEPETİ, and that such practices must be provided with the same conditions as provided through YEMEK SEPETİ, in the worst case.

YEMEK SEPETİ has a rather liberal assessment of the MFC provision which is not limited to prices, and required that menu content, delivery region and limits, payment options, discounts and promotions must be the same for its own platform as well. It was established that YEMEK SEPETİ implemented punishment mechanisms for those restaurants which it believed did not comply with these requirements, which included shutting off services for a period of time and termination of the contract.

As a result of the assessments made, it was concluded that YEMEK SEPETİ's MFC practices completely eliminated any option for rival platforms to implement lower prices or even providing promotions at their own expense, and that MFC practices also made it impossible for competing platforms to offer different menus and serve a different/larger delivery area. As a result, it was found that the MFC practices made it difficult to enter or stay in the market and led to restrictive effects on competition.

The investigation also examined the claims that YEMEK SEPETİ prevented advertisements of competing platforms, that it gave promotions to restaurants in return for them refusing to work with rival platforms, and that the Joker practice of YEMEK SEPETİ which forced restaurants to give 50% discounts to users in a certain profile was in violation of the Act no 4054. However, YEMEK SEPETİ's pleas on these issues were found to be legitimate, and it was decided that YEMEK SEPETİ did not violate the Act no 4054 with regard to these claims.

As a result of the investigation it was decided that the MFC practice of YEMEK SEPETİ was an abuse of dominant position under article 6 of the Act no 4054 and therefore an administrative fine of 427,977.70 TL should be imposed on the undertaking in accordance with article 16 of the Act no 4054, and also that YEMEK SEPETİ should amend its agreements with

restaurants and confirm these amendments before the Competition Authority within 120 days following the notification of the reasoned decision.

- **Expo Venue Investigation about Ankara Uluslararası Kongre ve Fuar İşletmeciliği Merkezi A.Ş. (Congresium)**

Decision Date:	Decision No:	Type:
27.10.2016	**16-35/604-269**	**Investigation**

The relevant decision was taken as a result of the investigation conducted into the claims that Ankara Uluslararası Kongre ve Fuar İşletmeciliği Merkezi A.Ş. (CONGRESIUM), which is the operator of the ATO International Congress and Exhibition Center, abused its dominant position by refusing A ve A Fuarcılık Organizasyon ve Tic. Ltd. Şti.'s (A&A) application to organize a furniture expo in 2014 and by implementing excessive pricing together with its affiliate GL Events Fuarcılık A.Ş. (GLEX).

The first relevant product market in the investigation was defined as the "international furniture and decoration expo". The second product market for the second product under investigation was generally defined as the "market for the operation of venues suitable for organizing international exhibitions," in light of the market in which CONGRESIUM operates. However, in light of the claims in the file, a separate assessment was made to see whether the CONGRESIUM expo venue was substitutable with other exhibition venues, particularly for furniture expos. The relevant geographical market within the framework of the file was defined as the Ankara province.

The examination concluded that CONGRESIUM did hold dominant position in the market for the operation of venues suitable for organizing international exhibitions in Ankara, in consideration of CONGRESIUM's market share, the barriers to entry and growth, the vertically integrated structure of CONGRESIUM and GLEX, and the negotiating power of the buyers.

As a result of the examination conducted on CONGRESIUM's practices comprising the subject matter of the complaint, it was concluded that CONGRESIUM refused to deal by refusing A&A's requests for revision, that no justification could be found for this refusal, that the CONGRESIUM exhibition venue had no substitutes at the time of the alleged violation and was objectively required in order to be able compete in the downstream, also that the refusal was restrictive of competition in the market for the

organization of international furniture exhibitions, and was likely to cause consumer harm.

As a result of the investigation, it was decided that CONGRESIUM violated article 6 of the Act no 4054 by refusing to supply, and that an administrative fine of 268,042.77 TL should be imposed on the undertaking concerned within the framework of article 16 of the Act no 4054, at 1.5% of the annual gross revenue of the undertaking generated at the end of the financial year of 2015, as determined by the Board.

- **Acrylic Ester market Investigation about DOW Chemicals Turkey**

Decision Date:	Decision No:	Type:
13.10.2016	**16-33/586-257**	**Investigation**

The relevant decision is taken as a result of the investigation conducted in relation to the claim that Dow Türkiye Kimya San. ve Tic. Ltd. Şti. (DOW) held dominant position in the acrylic ester (AE) market and violated article 6 of the Act no 4054.

Within the framework of the file, each of "BA," "EA" and "2-EHA" products, all of which are types of AE, as well as each of (I) "pure acrylic," (ii) "styrene acrylic (STA)," (iii) "vinyl acrylic (VA)" and (iv) "hollow polymer particles (HPP)" products were defined as a separate product market. The relevant geographical market was defined as Turkey.

Due to its vertically integrated structure, DOW operates both in the upstream market of AE products and in the downstream market for synthetic latex polymer emulsions (SLPE). As a matter of fact, the conduct comprising the subject matter of the complaint is mainly related to DOW's abuse of its dominant position in the upstream market to foreclose competitors downstream. In addition, there are also complaints of DOW abusing its dominant position by price squeeze and predatory pricing practices, loyalty discounts and tying agreements.

The examinations conducted showed that AE products were used as an important input in the production of SLPE types of SA, STA and VA, while AE products were not needed in another relevant product market, for the production of HPP. Complainant, DOW's main rival in the downstream SLPE market, procures BA, EA and 2-EHA from the upstream market and uses these inputs to manufacture SLPE, which it then sells in the downstream market.

In the dominant position assessment, it was concluded that, in light of the variability of the market, the positions of DOW and its competitors within the relevant market, the structure of price formation and competition in the market, the effect of the global market on the Turkish market, the fact that there was always the alternative of importing BA, the public policies incentivizing imports, the growth tendency of the BA market, the presence of buyers with high market shares, and the opinions from the undertakings in support of the findings above, DOW did not have dominance in the BA market despite its relatively high market share.

As a result of the examinations conducted in relation to the practice of refusal to supply, it was found that DOW terminated its contractual relationship with complainant despite incurring financial losses, showing that the refusal did take place. When an assessment is made of the requirements for considering an instance of refusal to supply a violation, it was concluded that BA products supplied by DOW upstream could also be procured from alternative sources other than DOW, meaning that the requirement of indispensability was not fulfilled. Secondly, it was concluded that eliminating effective competition downstream was not likely to result from the refusal in question. The examinations conducted did not gather any information or documents suggesting that complainant was prevented from launching a more innovative product or from producing a new and improved product with potential demand, or from contributing to technological developments. Therefore, it was found that the refusal to supply was not likely to result in consumer harm.

Within the framework of the examination into whether DOW had a legitimate justification for terminating its commercial relationship with complainant, DOW stated that there were various ongoing intellectual property rights (patent) violation lawsuits with complainant and stated that these lawsuits were the reason for DOW's refusal to supply products. Consequently, although it is possible to claim that DOW tried to protect its legitimate interests through the aforementioned practices, it was concluded that complete termination of the commercial relationship was not indispensable for protecting the relevant interest and was more restrictive than required, especially in consideration of the fact that DOW filing a lawsuit on the grounds of IPR violations to protect its rights could be an alternative method to the termination of the commercial relationship between the parties.

The examination conducted into the claims of price squeezing found that such a practice did not occur and the relevant claims should be dismissed due to the following facts: complainant did not procure BA from DOW in

2014 and 2015, complainant was operating with positive gross margins in downstream products since 2010, complainant could supply the product from alternative sources, and DOW supplied the BA product to its own affiliate at a higher rate than it charged to the rest of the market. It was also concluded that DOW did not engage in predatory pricing practices or utilized a systematic tying mechanism. Within this framework, it was decided that DOW did not violate article 6 of the Act no 4054.

- **European Commission conditionally clears Dow/DuPont merger**

The European Commission has approved the $140 billion (€128 billion) merger between US agrichemical groups Dow Chemicals and DuPont. DG Comp's analysis has revealed that Dow and DuPont are two of only five companies that have the resources to get new and innovative pesticide products to the market. The Commission had three main categories of competition concerns: "*significantly reducing competition in a number of markets for existing pesticides*", "*significantly reducing innovation competition for pesticides*" and "*significantly reducing competition for certain petrochemical products*". The merger to reduce these competitive concerns is cleared subject to commitments concerning the divestment of a substantial part of DuPont's pesticides business for which DuPont will sell parts of its pesticides arm that include the manufacturing of herbicides for cereals, oilseed and rice, and insecticides for chewing insect and sucking insect control for fruits and vegetables. The divestment also includes the facilities where these products are manufactured. DuPont will also sell its global research and development organisation and its two manufacturing facilities for acid co-polymers in Spain and in the US.

EU competition commissioner Margrethe Vestager emphasized in her statements that the commitments ensure that the merger between Dow and DuPont does not reduce price competition for existing pesticides or innovation for safer and better products in the future. She said that the sale of the pesticides includes all the assets needed to make and sell the products, meaning that whoever buys the assets will immediately be able to take DuPont's previous position on the market. On the other hand she also acknowledged that it will be "not easy" to find buyers that fit the enforcer's criteria by not creating further competition concerns, being independent from the merging companies, and have the necessary resources to make the sold assets a viable business.

Vestager stressed that the commitments reached in this case are not indicative for the other proposed mergers in the agrochemical industry. Two other large-scale chemical mergers (ChemChina's purchase of Syngenta and Bayer's purchase of Monsanto) in agrichemicals are under review in EU and many other jurisdictions, implying further consolidation in the industry.

Sources:

http://europa.eu/rapid/press-release_IP-17-772_en.htm

http://globalcompetitionreview.com/article/1138618/dg-comp-conditionally-clears-dow-dupont

- **UK CMA's Cartel Policy: Up to £100,000 to Cartel Whistleblowers**

UK's the new central competition regulator, the Competition and Markets Authority (CMA), will continue the Office of Fair Trading's (OFT) policy of cash rewards for cartel whistleblowers. Though the programme has been in place since 2008, public awareness has been low. The programme aims to reward individuals who come forward with inside information on cartel activity such as price fixing or allocating customers between competitors.

The maximum amount of reward to individuals is £100,000. The CMA, like the OFT, has discretion on the exact amount and bases its calculation of reward on the value of the information with regard to prosecution, the amount of harm the activity is causing the economy and the risk and effort the whistleblower has taken in providing the information.

While whistleblowers can initially come forward anonymously, in order to verify the information and if they should want a reward, they will have to identify themselves to the CMA. The CMA can than protect them if necessary from civil and criminal prosecution by applying for an order under the Regulation of Investigatory Powers Act 2000. Whistleblowers are also protected under other laws from losing their job as a result of whistleblowing.

Crucially, and perhaps most controversially, those who have decisive effect and are therefore directly responsible for the cartel activity cannot claim this cash reward. But still, they can apply for leniency and obtain immunity both for themselves and their company.

Source:

https://www.competitionpolicyinternational.com/uk-up-to-100000-cash-rewards-for-cartel-whistleblowers/

- **The Bundeskartellamt has imposed fines on furniture manufacturers for Resale Price Maintenance**

Germany's Federal Cartel Office, the Bundeskartellamt, has concluded its cartel proceedings against furniture manufacturers for enforcing resale price maintenance on retailers. A total of 4.43 million euro were imposed on the five manufacturers Aeris GmbH, Hülsta-werke Hüls GmbH & Co. KG, Kettler GmbH, Rolf Benz AG & Co. KG and Zebra Nord GmbH as well as on four managers involved. The manufacturers fined are traditional German brands in the upper midmarket segment.

The proceedings were initiated by retailer complaints alleged furniture makers creating pressure on lower-price retailers to influence shop prices, in particular by threatening to refuse to supply to them and in some cases by carrying out those threats. In June 2014 and July 2015 the authority carried out dawn raids at the premises of the manufacturers. All undertakings cooperated fully with the Bundeskartellamt's investigations and the proceedings were concluded by way of settlement.

Even as some retailers were actively engaged in and helped manufacturers to monitor compliance with the resale price maintenance by reporting to the manufacturers those retailers that had deviated from the set price and asking the manufacturers to ensure that the price level was maintained. The Bundeskartellamt decided not to impose fines on these retailers for discretionary reasons.

Source:

http://globalcompetitionreview.com/article/1080005/germany-fines-furniture-makers-for-rpm

http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2017/12_01_2017_Vertikalfall_Moebel.html

- **Russia's leniency programme revision: fine reduction to second and third leniency applicants**

Russia's competition authority, Federal Antimonopoly Service (FAS) asked the government for improvements to its leniency program by introducing fine discounts for companies involved in anticompetitive conduct that are the second or third to report it to the Authority. On 23 January, a working group within Russia's Council of Legislators approved a proposed bill that would enable it.

Currently, FAS is only able to grant immunity to or reduce fines for the first leniency applicant, and can generally impose fines against other alleged companies of up to 15% of the company's turnover from the product to which the anticompetitive conduct is related.

FAS spokesperson told that the enforcer drafted the bill to encourage individuals and companies involved in anticompetitive agreements to come forward, and to improve the legislative framework through enabling imposition of different level of fines to companies that voluntarily provide information and that do not cooperate.

The bill will likely be referred to the Federal Assembly of Russia in June after public consultation.

Source:

http://globalcompetitionreview.com/article/1081364/russia-proposes-fairer-leniency-programme

- **Ankara 8th Administrative Court's Decision dated 28.10.2016 and numbered E. 2014/1384 K. 2016/3266:**

Administrative certainty is sufficient for the competition authority to apply the repetition provisions

As a result of an investigation into the claim that Turkcell İletişim Hizmetleri A.Ş. abused its dominant position in the vehicle tracking market, administrative fines were imposed on the aforementioned undertaking and the previous infringements were taken into account as aggravating circumstances for the fine.

The following statement, included in the court decision makes it clear that administrative certainty is sufficient for the application of the repetition provisions, and that judicial certainty is not required:

> *"On the other hand, even though the plaintiff company claimed that the application of the repetition provisions did not have a legal basis and the plaintiff company did not have dominant position, these claims were not taken into consideration due to the fact that the plaintiff company had a market share of 63% as of 2012 and was imposed administrative fines with the decisions dated 29.12.2005 and numbered 05-88/1221-353, dated 23.12.2009 and numbered 09-06/1490-379, and dated 06.06.2011 and numbered 11-34/742-230, all as a result of abuses of dominant position".*

- **Ankara 2nd Administrative Court's Decision dated 17.11.2016 and numbered E. 2015/3030 K.2016/2955:**

Initial act practice committed before Misdemeanor Law was not in effect may not be the basis for repetition

As a result of the investigation into the claims that yeast producers prevented competition by establishing a cartel via concerted practices, it was found that the relevant undertakings did establish a cartel via concerted practices and they were imposed administrative fines. When calculating the administrative fines, a 2003 practice by one of the undertakings was considered a basis for the application of the repetition provisions, aggravating the fine imposed.

The court, while deciding that the Board's establishment of concerted practice was legal, made the following assessment, stating that an initial act committed when the Misdemeanor Law was not in effect could not serve as a basis for repetition and therefore should not be an aggravating factor for the fine:

> *"...As for the section of the decision on repetition; the plaintiff company committed its initial act taken as the basis for repetition in 2003 when the Misdemeanor Law, which is indicated as the grounds for the application of the repetition provisions, was not in effect; as a result the section of the decision concerning the aggravation of the fine due to repetition was found not to be in compliance with the law".*

- **Ankara 15th Administrative Court's Decision dated 19.01.2017 and numbered E. 2016/1671 K.2017/132:**

Exclusive rights of the Turkish Football Federation do not supersede the examination power of the Competition Authority

A lawsuit was filed against the Board Decision stating that the transfer of broadcast rights agreement signed between the Turkish Football Federation (TFF) and the relevant broadcaster fell under the scope of the Act no 4054, and that the examination conducted found that an individual exemption could be granted to the aforementioned agreement, claiming that TFF held exclusive rights and Competition Board was not authorized to conduct examinations.

In the following assessment, the court concluded that within the context of the transfer of broadcast rights TFF had the characteristics of an undertaking falling under the scope of the Act no 4054, and that the Competition Board did have the power to conduct examinations.

> *"Even though in the subject matter of the dispute, Turkish Football Federation does have the rights originating from the Act no 5894 concerning the transfer of broadcast rights, it is clear that it should be considered an undertaking as defined under article 3 of the Competition Act due to its activities with economic characteristics; therefore, it must abide by the provisions of the Act no 4054 on the Protection of Competition when acting within the framework of the powers and duties granted by article 13 of the Act no 5894.*

In this case, the court assessed the information and documents included in the file together with the legislation referred above and made the following observations: even though TFF does not operate in the markets for goods and services, it does have the characteristics of an undertaking which affects those markets. Taking this into account, 2015-2016 and 2016-2017 Football Season Broadcast Rights Agreement signed on 21.05.2012 between Turkish Football Federation (TFF) and Krea İçerik Hizmetleri ve Prodüksiyon A.Ş. (Digiturk) includes the transfer of certain rights which grants exclusivity in the market in terms of competition law under article 2 of the Act no 4054, since holding football broadcast rights provides a significant advantage to the broadcaster while not holding them makes it rather difficult to operate in or enter the market, particularly in the pay-per-view television broadcasting and digital platform operation markets. Due to the fact that the aforementioned rights are very important for the pay-per-view television broadcasting and digital platform operation markets, they may have restrictive effects on competition. Turkish Football Federation falls under the scope of the provisions of Act no 4054 in terms of its actions during its central marketing activities and the aforementioned agreement may be examined under article 4 of the Act no 4054, therefore the Board decision comprising the subject matter of the lawsuit was found to be in compliance of the law".

- **13th Chamber of the Council of State Decision dated 20.01.2017 and numbered E. 2016/3948 K. 2017/250:**

Annulment of the administrative act by the judicial authority interrupts the limitation period, the date of the first fine is the basis for the renewed decision after the annulment

After a Competition Board decision imposing an administrative fine was annulled by the Council of State on procedural grounds, the mistake was rectified and another decision was taken on the same subject matter which also imposed an administrative fine. 13th Chamber of the Council of State examined the claim that the second fine should not have been imposed due to the period of limitations, and made the following assessment in its decision:

"On the other hand, it has been observed that the previous decision was taken within the limitation period and, following the annulment of the Board decision by the court, the fine was re-imposed, with a decision that observed the annulment reasons specified in the court decision, which interrupted the limitation period and the action taken,

in that sense, was not illegal. Therefore, the suit was dismissed, which was appealed by the plaintiff.

Since the appealed decision of the Ankara 5th Administrative Court, dated 29.03.2016 and numbered E:2015/641, K:2016/1077 dismissing the suit on the aforementioned grounds does not include any of the reasons for reversal as listed in paragraph 1, article 49 of the code of administrative procedure, no 2577, the appeal was rejected and the aforementioned Court decision was APPROVED...

- **Ankara 11th Administrative Court Decision dated 16.12.2016 and numbered E. 2015/2776 K. 2016/4487:**

Before taking a decision, Competition Board must request a final opinion from the Information and Communication Technologies Authority (BTK) where required by the legislation.

In the examination launched in response to the plaintiff undertaking's claim that some broadcasters prevented access to set-top boxes, an opinion was requested from the BTK in accordance with article 6 of the Act no 5809, and a response was received asking for more information and documents on the subject and informing the Competition Authority that examinations were ongoing for the section related to consumer rights. Then the Competition Board proceeded with the examination and the process was concluded with a decision stating that initiating an investigation was not necessary.

In the action for nullity filed, after examining the decision, the court found that the conclusion of the examination before receiving the opinion of the BTK on the substance of the file was not compliant with the law on the following grounds:

"Article 6 of the Act no 5809 cited above grants the Information and Communication Technologies Authority the power to supervise and sanction competition infringements in the electronic communications sector, and article 7 of the same Act invests the BTK with the power to examine and investigate anti-competitive conduct and practices in the electronic communications sector on its own initiative or in response to a complaint, as well as to take the necessary measures and impose sanctions to establish competition. The same article also states that the Competition Board must take the opinion of the BTK and the regulatory transactions executed by the BTK into account before taking any decision related to the electronic communications sector.

In the present case, even though the defendant authority requested the opinion of the Information and Communication Technologies Authority on the matter in dispute as per paragraph two of article 7 of the Electronic Communications Law no 5890 with a letter dated 21.11.2014 and numbered 12683, the opinion issued by the BTK asked for information, documents and explanations on certain points from the relevant operators and also stated that the BTK currently continued to work on the consumer rights aspect. Under the circumstances, the defendant authority should have acted after requesting another opinion from the BTK once the aforementioned studies were complete, but instead it took a decision stating that there was no infringement of competition and an investigation should not be initiated, despite the fact that Information and Communication Technologies Authority had not yet rendered an opinion on the substance of the dispute. As such, the transaction comprising the subject matter of the present case is found not to be in compliance with the law".

- **Ankara 15th Administrative Court Decision dated 14.11.2016 and numbered E. 2016/10 K. 2016/4782**

The conduct under examination in the airline transport sector is an international negotiation instead of the activity of an undertaking

As a result of the examination conducted in response to the claim that Turkish Airlines (THY) excluded third parties from Turkish-Azerbaijan flights directly or through the General Directorate of Civil Aviation and abused its dominant position with the code sharing agreement it signed with the Azerbaijan Airlines, the complaint was dismissed on the grounds that the transaction in question was an international transaction instead of a relationship between the parties.

The court, examining the matter in dispute for the action filed, requesting the transaction to be annulled, found that the Board Decision was in compliance with the law, on the following grounds:

"As a result of the examination of the information and documents presented in the case file, it was found that complainee Türk Hava Yolları A.O. must have dominant position in the aviation sector to be able to talk about an abuse of dominant position under the Act no 4054. When we consider the fact that the negotiations between Türk Hava Yolları A.O. and AZAL had the nature of a negotiation between two state authorities instead of two undertakings, it was found that the behavior in question could not be characterized as an abuse of dominant position; therefore, the Competition Board decision

comprising the subject matter of the present case was found to be in compliance with the law."

- **Endogenous Cartel Organization and Antitrust Fine Discrimination**

Published By: Review of Industrial Organization

Author: Tim REUTER

The stability of cartels depend on identifying misconduct as well as on supervision and effective punishment of those members which stray away from the terms of the agreement. However, this is not always easy to ensure where communication channels are insufficient. For this reason, cartels try to implement mechanisms to help identify defections. One of these mechanisms is to make use of a third party to monitor the behavior of the cartel members and notify other members of defections from the cartel agreement. Third parties such as trade associations often assist cartels to distinguish defecting from complying behavior and thus increase cartel persistence.

The model examined in the study shows that the level of welfare may be increased by the law-giver setting lower fines, under certain circumstances, for those cartels which operate without the assistance of third parties. Fine reduction for those cartels operating without the cooperation of third parties would cause some cartels not to choose third-party collaborators, disregarding persistence concerns. The disadvantages of such a reduction in fines is that new cartels may arise and those cartels organized without an agreement mechanism with third parties may become more persistent.

The study, which presents the different effects of cartel fines and relevant discrimination practices, shows that it would be optimal for the antitrust authority to implement a certain level of discrimination where it is unable to charge cartels.

Source:

https://www.springerprofessional.de/endogenous-cartel-organization-and-antitrust-fine-discrimination/12168546

- **On the Impact of Input Prices on an Entrant's Profit Under Multi-Product Competition**

Published By: Review of Industrial Organization

Authors: Duarte Brito & Markos Tselekounis

The study examines the effect of input prices on the profit of the entrant firm when firms are engaged in multi-product competition.

The analysis is conducted in a setting with both horizontal and vertical differentiation, in which a vertically integrated firm controls the input that is required for the supply of the high-quality product. The article emphasizes that in multi-product competition, the wholesale price of the critical input have an unclear effect on the profit of the entrant. So long as the price of this input is sufficiently high compared to the level of vertical differentiation, high wholesale prices benefit the entrant. This finding is in contrast with the result derived from linear demand models that describe downstream interactions by single-product firms.

The "four-spoke" model employed in the study to describe multi-product competition does not limit the generality of the results. In particular, any linear demand model, in which the demand for each product does not change if all prices increase by the same amount, results in a similar condition under which the entrant's profit can be positively correlated with the input price. The main condition for this is that the low-quality product profit margin should be higher than the profit margin in the high-quality product. When this condition holds, a deregulatory policy makes it more likely for the entrant to buy the inputs at higher wholesale prices, rather than to make its own inputs. However, in this situation multi-product competition may distort the efficiency implications of changes in the input prices that were drawn under a single-product setting.

Source:

http://link.springer.com/article/10.1007/s11151-016-9531-2

Turkish Competition Authority
REKABET KURUMU

www.rekabet.gov.tr

Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 / ANKARA
Tel: (0312) 291 44 44
Faks: (0312) 266 79 20