Turkish Competition Authority

REKABET KURUMU

COMPETITION BULLETIN

January 2019

External Relations, Training and Competition Advocacy Department

No: 71

Turkish Competition Authority
REKABET KURUMU

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2019 - Ankara

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INTRODUCTION

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

In the "Selected Reasoned Decisions" section of this issue, we included two investigation decisions, one Phase II decision, one exemption decision and one administrative fine decision.

The "News around the World" section of the Competition Bulletin includes news from European Union, Germany and France.

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

"Economic Studies" section includes a summary of an aricle published by International Journal of Industrial Organization titled *"How Mergers Affect Innovation? Theory and Evidence"* and another article published by Journal of Economics and Management Strategy titled *"Do Retail Mergers Affect Competition? Evidence from Grocery Retailing".*

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

With our best regards.

External Relations, Training and Competition Advocacy Department

- **Investigation Conducted on Mercedes-Benz Türk A.Ş. Concerning Its Discount System for Truck Sales**

Decision Date:	Decision No:	Type:
27.08.2018	**18-29/498-239**	**Investigation**

The relevant decision concerns the investigation conducted in relation to the claim that Mercedes-Benz Türk A.Ş. (MBT) distorted competition in the market for concrete pumps and concrete pump mounted trucks by abusing its dominant position through the agreements it signed with concrete pump producers and the discount systems it implemented for these producers. In this context, the investigation mainly addressed whether MBT engaged in practices which aimed to use the discounts under investigation in order to directly or indirectly prevent another undertaking from entering its own business field, or which aimed to complicate the operations of its rivals in the market.

In order to clearly present the effect of the discount system MBT implements in truck sales on the market and the conduct a dominant position analysis the relevant investigation defined two relevant product markets: the "market for concrete pump mounted trucks" and the "concrete pump production and sales market, the latter of which was defined with regard to the claim that the discount practices in question had a negative effect on the competition between the undertakings operating in the upstream concrete pumps market. Within the framework of the observations in the decision concerning the determination of dominant position, it was noted that there were significant indications suggesting that MBT held dominant position in the market during the period under investigation, namely the fact that MBT had a stable and relatively high share in the market for concrete pump mounted trucks through the years, that it was not likely for new entries in or growth to put competitive pressure on MBT in the short term, and that there was not sufficient buyer power in the market to change MBT's pricing and sales policies. However, there was no determination of dominant position specific to the file on the grounds that ultimately, there was no abuse found.

The analysis concerning whether the practices under investigation constituted an abuse under Article 6 of the Act no 4054 primarily examined the structure of the discount system implemented by MBT and concluded that discount rates were defined according to the amount purchased and undertakings predicted higher purchases in order to win more discounts. On

the other hand, since concrete pump firms tended to act in line with customer demand, demand for MBT products would not significantly drop even in the absence of the discounts in question, as a result of which MBT's discount system was not particularly loyalty inducing for concrete pump firms.

Following the above observations and assessments, in order to determine whether the discount system impacted the undertakings and customers in the market, the decision focused on whether the system in question aimed at creating either contractual or de facto exclusivity, whether MBT used this system to discriminate in favor of a particular undertaking, and whether MBT gained anti-competitive advantages in the sales of concrete mixer trucks.

In its business relationships with truck customers, MBT did not impose obligations aimed at preventing the sales of competing products. Therefore, the analyses conducted into de facto exclusivity found that MBT trucks were preferred by customers due to the advantages MBT offered in terms of price, capacity, lead time, service, spare parts and second-hand value. It was observed that concrete pump producers, in line with general customer preference, demanded MBT trucks in their truck purchases but that the examination failed to demonstrate that the discount system impelled concrete pump producers to purchase more than 80% of their demand from MBT. Consequently, it was concluded that even if MBT was found to hold dominant position in the relevant market, it did not violate Article 6 of the Act no 4054 by implementing a discount system to directly or indirectly prevent rivals selling trucks suitable for concrete pump installation from entering its business area, or by complicating their operations in the market, or by foreclosing the market to competitors.

In relation to the claim of abuse of dominant position via discrimination, the Board concluded that undertakings who claimed to receive discriminatory treatment from MBT were competitors, however it cannot be said that MBT implemented different pricing for equal transactions since the purchase amounts of the relevant undertakings were different. Also, competition downstream was not distorted, the practice did not disadvantage one of the undertakings purchasing trucks suitable for concrete pump installation in comparison to another, and the practice was based on a justifiable reason in that it was intended to supervise MBT's obligations stemming from the sale of assembled products.

Lastly, in relation to the claim that MBT used the discount system in order to distort competitive conditions in the market by gaining anti-competitive

benefits for itself, it was concluded that an evaluation of the content of the file in its entirety showed that the discount system implemented by MBT for its concrete pump trucks buyers could not be directly linked to mixer truck purchases by customers.

As a result, the decision taken in light of the content of the investigation file ruled that MBT did not violate Article 6 of the Act no 4054, and therefore it was not necessary to impose administrative fines on the undertaking under Article 16 of the same Act.

- **Investigation Conducted on TTNET A.Ş. Concerning Multi-play Bundles**

Decision Date:	Decision No:	Type:
27.08.2018	**18-29/497-238**	**Investigation**

The relevant investigation was conducted in relation to the claim that TTNET A.Ş. (TTNET), which purportedly holds dominant position in the retail fixed broadband internet services market, bundled Tivibu, its product in the pay-per-view television broadcasting services market, with its products in the retail internet market at below-cost prices within the framework of the New Year with Tivibu Campaign, and that this was in violation of Article 6 of the Act no 4054.

The New Year with Tivibu Campaign under investigation, which includes broadband internet access services and the Tivibu service, is simply the New Year Campaign which offers various internet packages, bundled with the Tivibu Everywhere Campaign that offers the Entry package, Cinema Package and Super Package alternatives. The decisions states that the competition law analysis concerning the relevant practice required that two different independent but related markets be evaluated together, which was part of a natural outcome of the convergence process recently observed in the telecommunications sector. Convergence removed the independency of services offered via different networks in the telecommunications sector and, as a result, multi-play bundles began to find widespread use. In terms of competition law, the most important aspect of the converge process is whether the packages offered by the undertaking holding dominant position in one of the multi-play markets are economically repeatable by equally efficient rival players. Any practice which removes the economic repeatability or supply of the multi-play packages offered by equally efficient rivals would introduce the risk of strengthening the dominant

position and/or transferring it to other markets in violation of the competition rules.

In light of this conceptual framework, the decision first observes that TTNET held dominant position in the fixed broadband internet services market. Afterwards, the New Year Campaign implemented by TTNET was examined to see whether it had the nature of a bundled sale under competition law, which was followed by an analysis of the cost and revenue items of the campaign with respect to economic repeatability, in consideration of the market structure in Turkey for the wholesale and retail internet services market in particular. Lastly, an assessment of the competitive effect of the campaign on the relevant markets was included.

The decision states that the New Year with Tivibu Campaign could be addressed under either price squeeze or within the framework of joint pricing practices such as tying or bundling. The campaign in question was an example of the method referred to as a soft bundle in the TTNET correspondence gathered during the on-the-spot inspection. Therefore an analysis was conducted in order to answer the question of whether it was joint pricing/bundling under competition law.

As a result of the analysis, it was concluded that the style of presentation, actual practices related to the campaign and the close relationship between the services offered under the campaign clearly demonstrated that the campaign was built to offer retail internet and pay-per-view television services together. The design of the campaign made it clear that the ultimate goal was to offer discounts related to pay-per-view television services together with retail internet services. The Super Package product, which was sold at a higher price in other campaigns, was offered cheaper for the campaign under examination, which met the condition of discounting the bundled products. Therefore, the campaign in question had the characteristics of bundling under competition law.

The second stage of the assessment was to examine the revenue and cost items for the particularly prominent offers of TTNET's New Year With Tivibu Campaign, i.e. 50 GB ADSL up to 8 mbps with modem and 35 GB Fibernet up to 24 mbps with modem bundles, in order to determine whether they were economically repeatable. Afterwards, an analysis was conducted in line with the case-law of the Board on the subject, to see if the campaign recovered its total costs. An examination of the revenue and cost items of the relevant internet bundles found that, from a perspective based on total costs, the 35 GB Fibernet up to 24 mbps with modem bundle of the New Year with Tivibu Campaign led to below-cost pricing. The finding in question

was assessed in light of the equally efficient firm test as well, and it was determined that the size of the loss in the pay-per-view television field would drop the prices of the internet packages under their cost, which would clearly eliminate economic repeatability for other competitors who purchase retail fixed broadband internet at the wholesale level from Türk Telekomünikasyon A.Ş. (TÜRK TELEKOM), an undertaking that is part of the same group as TTNET itself.

The last stage of the assessment examined whether the New Year with Tivibu Campaign, offered at below-cost prices, caused a de facto foreclosure effect in light of the position of the dominant undertaking in the market in light of the conditions of the relevant market, the positions of the competitors, the positions of the customers or suppliers, the scope and duration of the practice, potential evidence of de facto market foreclosure, and the direct and indirect evidence of the exclusive strategy. After noting the importance of competitors' capacity to develop strategies in response to TTNET's campaign for evaluating the potential market effect of the practice, the decision emphasized that offering pay-per-view television services to the subscriber in addition to broadband internet services had become an essential fact of today's market, and provided examples from campaigns bundling broadband internet and pay-per-view television services together, launched by Türksat Uydu Haberleşme Kablo TV ve İşletme A.Ş., Doğan TV Digital Platform İşletmeciliği A.Ş. and Turkcell İletişim Hizmetleri A.Ş.

The effect-based analysis included in the decision concluded that the New Year with Tivibu Campaign did not result in exclusionary effects during the period it was implemented, and that, consequently, TTNET was not in violation of Article 6 of the Act no 4054. On the other hand, it was decided that an opinion should be submitted to the Information and Communication Technologies Authority, in order to ensure economic and technical repeatability of multi-play services and to present a structural solution for the competitive problems in the sector.

- **Decision Concerning the Purchase of Dosu Maya Mayacılık A.Ş. by Lesaffre et Compagnie**

Decision Date:	Decision No:	Type:
31.05.2018	**18-17/316-156**	**Phase II Investigation**

The Phase II investigation in question is conducted within the framework of the re-evaluation of the file following the annulment of the Board decision dated 15.12.2014 and numbered 14-52/903-411 concerning the acquisition of full control over Dosu Maya Mayacılık A.Ş. (DOSU MAYA), previously under the control of Yıldız Holding A.Ş. (ÜLKER GRUBU) by Lesaffre et Compagnie (LESAFRRE), by the 8th Administrative Court of Ankara with its decision dated 19.01.2017 and numbered 2015/2488 E. 2017/172 K.

The decision concluded that the transaction under examination would have limited effect in the bread additives and dry yeast markets where there was horizontal overlap between the operations of the parties, precluding any competitive concerns in these markets under Article 7 of the Act no 4054. On the other hand, concerning another market affected by the transaction, i.e. the fresh yeast market, a detailed analysis was conducted to see whether a dominant position would arise following the transaction, particularly in light of the rise in concentration the acquisition would cause, the risk of price increases, and the current coordination-facilitating structure of the market.

The analysis first examined the market shares of the four undertakings operating in the fresh yeast market for the year 2013 in order to calculate the concentration. In that context, it was observed that the joint undertaking comprised of LESEFFRE's Turkish subsidiary Öz Maya Sanayi A.Ş. (ÖZ MAYA) and Dosu Maya Mayacılık A.Ş. would reach a market share that is above that of the current market leader Pak Gıda Üretim ve Pazarlama A.Ş. (PAKMAYA) and win the first place. In terms of capacity, the merged undertaking would have around half of the established capacity in the market. The decision also included an HHI index-based measurement of the concentration level, which indicated a highly-concentrated market structure where anti-competitive effects could arise. Thus, the fresh yeast market where four active undertakings including PAK MAYA, DOSU MAYA, ÖZ MAYA and Mauri Maya San. A.Ş. (MAURİ MAYA) were active before the transaction and which had the characteristics of an oligopolistic market would evolve into a much narrower oligopolistic market comprised of three players after the acquisition. On the other hand, neither PAK MAYA, which

was the market leader before the acquisition, nor the merged undertaking comprised of ÖZ MAYA and DOSU MAYA, which would become the market leader following the acquisition, would have the necessary market power to determine economic parameters such as price, supply and production independently of their rivals within the aforementioned oligopolistic market structure. Consequently, it was concluded that, similar to the situation before the transaction, there would be no undertaking in the relevant market holding single dominant position after the acquisition either.

In the decision, the concentration analysis is followed by the assessment concerning whether more than one undertaking in the fresh yeast market could gain dominant position as a result of coordination becoming easier or permanent. In this context, since fresh yeast is a product that is demanded frequently but in low quantities, and since there is significant communication in the market between manufacturers-distributors and distributors-bakeries, the market was found to be highly transparent. In case DOSU MAYA is acquired by ÖZ MAYA, the fresh yeast market where price monitoring through distributors has become customary would witness even easier communication between competitors and would become even more open to coordination. The fact that there have been past investigations in the market in question concerning Article 4 violations support this inference. However, the commitments undertaken by LESAFFERE aimed at ensuring that distributors act independently of manufacturers were found to be in line with the goal of eliminating any competitive concerns stemming from the merger. The commitments in question are expanded versions of the commitments introduced with the Board decision dated 15.12.2014 and numbered 14-52/903-411.

As a result, it was decided that the notified transaction would lead to the creation of a dominant position under Article 7 of the Act no 4054 or in the strengthening of an existing dominant position, thus significantly decreasing competition in the relevant market, and therefore the transaction should be authorized subject to the aforementioned commitments.

- **The decision on the prevention of on-the-spot inspection by Mosaş Akıllı Ulaşım Sistemleri A.Ş.**

Decision Date:	Decision No:	Type:
05.07.2018	**18-22/378-185**	-

The decision aims to determine the duration of the periodic administrative fine imposed on Mosaş Akıllı Ulaşım Sistemleri A.Ş. (MOSAŞ) with the

number 18-20/356-176 for the prevention of the on-the-spot inspection which was to be conducted at MOSAŞ on 05.06.2018 under the scope of the preliminary inquiry launched concerning the undertakings and associations of undertakings operating in the traffic signalization sector, with the Board decision dated 08.03.2018 and numbered 18-07/124-M.

On 05.06.2018, at around 10.30, officials from the Authority arrived at the MOSAŞ site at the address Büyük Kayacık Mah., OSB. 422. Sok., No:13, Selçuklu/KONYA to conduct an on-the-spot inspection, however their efforts was prevented by various methods while the inspection was ongoing.

As a result, in accordance with Article 16/1(d) of the Act no 4054, with the decision numbered 18- 20/356-176, MOSAŞ was imposed an administrative fine of TL 81,500.87 at 0.5% of its gross revenue generated at the end of the financial year of 2017.

The same decision also ruled that, under the provision concerning the hindrance or prevention of on-the-spot inspections included in sub-paragraph (b) of Article 17 of the Act no 4054 titled "Proportional Administrative Fines," MOSAŞ should be imposed a periodic fine at 0.05 of its gross revenue generated at the end of the financial year of 2017, for each day starting with the day after 05.06.2018 and ending with the day MOSAŞ's written invitation terminating the aforementioned prevention is entered into the Authority records. Within this framework, MOSAŞ was imposed an administrative fine of TL 8,150.09.

Following the Board decision in question, the written invitation sent by MOSAŞ was received by the Authority on 22.06.2018. As a result, the assigned professional staff conducted an on-the-spot inspection at the undertaking concerned on 28.06.2018.

As such, the duration of the administrative fine in question should start on 06.06.2018, which is the day after 05.06.2018 when the on-the-spot inspection was prevented, and should end on 22.06.2018, when the written invitation of MOSAŞ was received by the Authority. Consequently, the duration of administrative fine was determined to be 17 days including 22.06.2018, and the undertaking was imposed an administrative fine at 17 days x 8,150.09= TL138,551.53.

- **Decision Concerning The Wholesale Fiber Bitstream Access Service and Support Services**

Decision Date:	Decision No:	Type:
08.08.2018	**18-27/438-208**	**Exemption**

The decision addresses the request for the grant of an exemption to the agreement (AGREEMENT) between Vodafone Net İletişim Hizmetleri A.Ş. (VODAFONE) and Superonline İletişim Hizmetleri A.Ş. concerning the provision of wholesale fiber bitstream access services and support services by each undertaking to the other over its own network.

The decision states that each of the parties to the agreement had its own fiber infrastructure and both parties provided fixed broadband internet services to final consumers, so VODAFONE and SUPERONLINE were each other's competitors both in wholesale fixed broadband services and in retail fixed broadband services. Consequently, the AGREEMENT under examination had some horizontal effects in terms of competition law. On the other hand the AGREEMENT was about sharing infrastructure with the nature of essential facility in terms of the parties' operation in the retail market, which meant it also harbored certain vertical effects. Based on the observations above, the analysis of the AGREEMENT, ruled to fall under the scope of Article 4 of the Act no 4054, addressed the horizontal and vertical effects concerned in unison, and examined whether the AGREEMENT related to the wholesale services would have an anti-competitive effect on the provision and prices of retail services, as well as whether the activities of the parties in the infrastructure business would pose a risk of coordination.

Within the framework of the analysis conducted, the suitability of the Agreement for block exemption under the Block Exemption Communiqué on Vertical Agreements, no 2002/2 (Communiqué no 2002/2) was examined, however it was concluded that the current agreement on fiber infrastructure sharing could not benefit from the protection of the Communiqué in question, since the parties were both each other's competitors and buyers. Afterwards, an assessment was conducted concerning the AGREEMENT to determine whether it met the individual exemption criteria listed in Article 5 of the Act no 4054.

It was found that within the framework of the agreement concerned, the proposed cooperation between VODAFONE and SUPERONLINE could allow the undertakings to achieve a level of network penetration which would be difficult to ensure by individual investment, thereby decreasing investment costs for establishing more than one infrastructure in the same region and

providing savings. Based on these observations, it was determined that the AGREEMENT examined led to efficiency gains, which is the first condition of exemption.

In additions, since the parties would use each other's infrastructure where they do not have a fiber infrastructure themselves, the notified cooperation could extend the reach of broadband internet services provided over fiber infrastructure, allowing consumers to access faster and higher quality internet service. Consequently, the AGREEMENT also fulfilled the second condition of the exemption, which specifies that consumers must benefit from the efficiency gains brought about by the agreement.

The AGREEMENT, which was found to have horizontal and vertical effects on infrastructure competition in the wholesale fixed (fiber) broadband access market, was also examined in terms of the third exemption condition requiring that competition not be eliminated in a significant portion of the relevant market. It was determined that the agreement between SUPERONLINE and VODAFONE fulfilled the condition of Article 5/1(c) of the Act no 4054, in light of the position of the parties and their rivals in the market, the market structure, and the AGREEMENT's potential contribution to the improvement of infrastructure alternatives in the field of infrastructure operation, where the market is not sufficiently developed.

Lastly, the decision examined the necessity of the competition restrictions included in the agreement within the context of market allocation and coordination concerns between the competing parties to the agreement, in order to determine whether the last exemption condition was fulfilled. The assessment of the AGREEMENT provisions in this context showed that the cooperation between the parties would be limited to the wholesale market and would not extend to the retail market. Therefore the proposed cooperation did not have the characteristics of an anti-competitive cooperation or market allocation, and the agreement did not restrict the parties from procuring the services of other infrastructure operators. On the other hand, it was found that the provision of the Article Appendix 8/1.8-II included in the AGREEMENT which provides for the establishment of a joint infrastructure company by VODAFONE and SUPERONLINE could not yet be evaluated under the Act no 4054. As a result, it was concluded that, with the exception of the aforementioned article, the AGREEMENT comprising the subject matter of the file also fulfilled the fourth criteria of exemption.

On the other hand, in consideration of the high barriers to entry in the retail broadband markets, the fact that the parties to the AGREEMENT hold the second and third positions in the market following the market leader TÜRK

TELEKOM, the fact that the fiber infrastructure is currently in the process of improvement and the argument that a review of the future developments in the market could be beneficial, the AGREEMENT was granted individual exemption for a period of three years.

As a result of the evaluation of all of the above-listed points in their entirety, it was decided that the notified AGREEMENT fulfilled all of the conditions listed in Article 5 of the Act no 4054, and could be granted individual exemption for three years, with the exception of Article Appendix 8/1.8-II.

- **The Federal Court of Germany ruled that determination of the Cartel alone was not sufficient to be entitled to indemnity**

The Federal Court of Germany firstly ruled on the determination of the violation of the competition could not be evaluated as an evidence that the person who filed a claim for compansation were damaged due to the cartel enforcement after the violation decision of the Competition Authority with the KZR decision, no 26/17 that it took on 11th December, 2018.

İt was determined by the Bundeskartellamt that railway manufacturer Schreck-Mieves'in situated in a cartel created throughout customer sharing and quota setting in this case, Schreck-Mieves'in had demanded compansation by alleging that he was damaged due to the bidding in the comercial transactions in the VBK vbiolation term that he was customer. VCK demand was acknowledged to be right in Mannheim regional Court in 2015 and, İt was decided that Schreck-Mieves'in paid 900.000 €compansation. The decision was taken to the Federal Court of Germany by Voestalpine who was intervener to Schreck-Mieves and member of the cartel after the decision was approved by Karlsruhe regional High Court.

The Federal of Germany noted in its decision as the cartel decision could be considered as an event that the cartel was damaged, typical sequence of events were pre-condition (what the members of cartel agreed with each other and incresed the prices) and in this case, such a sequence of events were not seen in the cartel created throughout the customer sharing and quota setting. The Court expressed it was not assumed that they adhered to the cartel agreement and the agreement was enforced successfully although the cartel agreements were carried out by supposing to be enormous influence, it was not accepted that the undertakers who behaved according to their own interests always complied to the cartel discipline, therefore, the cartels' various features, market conditions, behaviours of cartel members should be analysed specific to that case. The Court stressed the orders which entered to the scope of the cartel agreement regarding to the location, time and issue and that was effected by the cartel agreement, presumption of fact that was able to be used but, this did not mean absolute presumption and all kinds of evidence should be considered while being analysed the case.

In the result of the decision, while the plaintiff had evidence load on indicating the effect of the cartel and damages derived from it in the claims for the compansation which were filed after the violation of the competition decisions, it was obvious that the courts would evaluate the presumption of

fact as an element in the countenance of complainent in the analysis to be performed but they did not decide based on only this presumption.

Sources:

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&az=KZR%2026/17&nr=90845

https://globalcompetitionreview.com/article/1178587/top-german-court-rejects-cartel-damages-test

https://www.lexology.com/library/detail.aspx?g=3b301070-8adf-42fb-a9c8-5593f8b72b87

- **EU Comission has permited the third big undertaking acquisition of the fourth big undertaking in Holand mobil telecommunication retailor market**

EU Comission conditionally cleared acquisition of T-Mobile NL for Tele 2 NL which was active in Holland mobile telecommunication retailor market. The third big undertaking in the relevant market has taken over the fourth undertaking with the decision.

EU Comission analysed a few issues in the following with in the investigation that it conducted. These are: (i) decreasing the number of the players in the market impacted on the competitive insentive negatively, (ii) reduction of competitive pressure and leading to the coordination between the competitors throughout the acquisition transaction and (ii) Whether the transaction created challenges to exess to the networks of all mobile telecommunication services like (SMSİ) of vertual mobile operators or not. As a result of the analysis of EU Comission, at first, it concluded it was not expected that the transaction led to price increase since T-Mobile NL achieved only 25 % market share and the competitive press created by Teşe2 NL was limited after the addition of Tele2 NL's 5 % market share. Secondly, it considered that the effect of the coordination was not possible particularly, since the other mobile operators VodafoneZiggo and KNT pursued different competitive strategy based on the cross-sales. And thirdly, it concluded that SMSİ's did not bring about any crutial change because of the transaction in the competition conditions.

İn the statement for the investigation, it was noted that Holland mobile telecommunication retailor market was mostly competitive and high

qualified services were presented at the lowest prices in The European Union.

Source:

http://europa.eu/rapid/press-release_IP-18-6588_en.htm

- **Franch Competition Authority has fined the manufacturer of outdoor power, Sthil for restricting online sales**

Franch Competition Authority fined the manufacturer of the outdor power, Sthil € 7 million for restricting its dealers' online sales of some products such as power saw, root trimmer, strimmer as de facto between 2006 and 2017 within its decision on 24 October 2018. İt did not find Sthil inconvinient to use the selective distributor systems for this kind of products and to be sold them by third part online platforms in the same investigation.

İn the statement of Franch Competition Authority, it noted that Stihl permited dealers for online sales of these products on the condition to deliver the products to the customers only by hand or it permited the customers on the condition to buy the products dealers' shops by hand, this condition prevented dealers' online sales in practice, there was no hand delivery requirement for the related products marketing in the national and European regulations, it required providing only user manual and it expressed hand delivery requirement eliminated atraction of online sales and prevented the consumers to benefit from low prices derived from competition among the dealers. Franch Competition Authority showed Sthil did not consistently implement hand delivery requirement in other sales channels and that Sthil's competitors were not in a similar way to demonstrate the distroportion of the delivery hand requirement.

With the decision, Franch Competition Authority made a decision on the possibilities of the selective distribution system for the first time and implemented the approach of European Court of Justice on Coty decision dated 6 December 2017 to non-luxury products.

Sources:

https://www.concurrences.com/en/bulletin/news-issues/october-2018/the-french-competition-authority-fines-a-manufacturer-for-preventing-its

https://www.concurrences.com/en/bulletin/news-issues/october-2018/the-french-competition-authority-imposes-fine-of-eur-7-million-on-outdoor-power

- **The regulation which prohibited the application of geo-blocking, was entered into force in European Union**

EU Regulation 2018/302, which prohibited application of geo-blocking, which caused discrimination about online sales according to the custommers' location was implemented on 3 December 2018. This regulation is an important part of the digital single market strategy and aims at ensuring that all consumers in the EU have access to goods and services of the suppliers under the same rights and conditions regardless of their positions. within the framework by means of this Regulation;

In the EU, situated operations will not be able to restrict or prevent consumers to Access to the websites, it will not automatically redirect them to the other interfaces without their consent,

  - Operators have to ensure the consumers to benefit from the possibilities of the services, products and Access in some cases. Operators will be able to apply different prices to different regions, but consumers will not be compelled to shop on their website;
  - In addition, when Operators are fre to use payment methods they wish, they will not be able to discriminate according to consumers' positions among different payment methods.

Source:

https://eur-lex.europa.eu/content/news/geo-blocking-regulation-enters-into-force.html

- **The Decision of Ankara 6th Administrative Court numbered 2017/1226 E. and 2018/2066 K. in the case brought by Doğan Müzik Kitap Mağazacılık for the annulment of the Board decision dated 7.11.2016 and numbered 16-37/628-279**

- Deciding that the provider company in PC and game console market and each retailer were in an agreement, the provider aimed to restrict price competition in PC and game console games for which it was the sole distributor in Turkey via bilateral agreements, Doğan Müzik requested for arrangements and intervention from the provider on the grounds that its competitors' prices were low, there was an agreement between the provider and the retailer, they were involved in an agreement and concerted practice that had object or effect preventing, distorting or restricting competition, It is not necessary for those agreements to create detrimental results for being regarded illegal, it is sufficient that their aim is to prevent, distort or restrict competition, the Board imposed 2.3 million TL administrative fines on Doğan Müzik Kitap Mağazacılık for the violation of article 4 of the Act no. 4054. The case was related to the annulment request for the fines in question.
- As a result of its evaluation, in relation with the following claims by the plaintiff,
    - A new infringement type was created, the nature of the conduct, which was deemed as an infringement was not explained, price increases were not observed actually, unilateral declaration of intent could not be seen as an agreement and the infringement could not be proven with its all elements,
- The 6th Administrative Court stated that
    - Anticompetitive agreements, actions and decisions laid down in article 4 are identified are infringement types and there was not a restriction for such actions, any action to this end may result in an infringement; thus, the Board did not create a new infringement type
    - It was not necessary for anticompetitive agreements to create detrimental results for being regarded illegal, it was sufficient that their aim is to prevent, distort or restrict competition
- In relation with the claim that the infringement, which was accepted as a vertical restriction towards increasing competitors' prices, should benefit from exemption, the Court stated that
    - The agreement could not be qualified as a vertical agreement, more than one bilateral agreements intervened to market

prices, it was not possible for the agreement or concerted practice to benefit from exemption due to its objective,

- In relation to the claim that applying different discounts to different undertakings was against the equality principle, the Court stated that
    - The Board had discretionary power in determining the rates laid down in the Act while deciding the relative fine rate, different rates might be applied to different markets, undertakings in computer and play console markets might not be applied the same reduction amounts.
- Consequently, the Court found the Board decision consistent with the law depending on the reasons stated above.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=a08f844e-a1e4-4dd1-93bd-7d266cc73e9b

- **The Decision of Ankara 7th Administrative Court numbered 2017/251 E. and 2018/2104 K. in the case brought by Eltesan Mobil Teknoloji for the annulment of the Board decision dated 11.5.2016 and numbered 16-16/278-122**

- The case is related to the refusal of an application regarding the claim that two firms, together prevented Eltesan from selling Mastervolt brand products to Turkey via parallel trade.
- In its assessment, the Court
    - Stated that the existence of agreements, concerted practices and decisions listed in the Act were sufficient for determining an infringement of article 4 of the Act no. 4054, it was not necessary that those activities were successfully fulfilled.
    - The Court also stated that there were e-mails sent between Mastervolt and Artı Marin, its authorized seller in Turkey, that could be regarded as agreements, concerted practices or decisions preventing, distorting or restricting competition in the relevant market. It was obvious that undertakings were involved in anticompetitive practices, taking into account the content of those e-mails.
- Consequently, the Court annulled the Board decision in question.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=6a0279c2-e8c3-45d9-a8e6-b97946bea6bc

- **The Decision of The Council of State Plenary Session of Administrative Law Chambers numbered E:2016/3235 and K:2018/1656, which overruled the decision of 13th Chamber of the Council of the State against the administrative fines given to Metro Turizm according to the Board Decision dated 28.10.2010 and numbered 10-68/1445-545**

- 13th Chamber of the Council of State annulled the Board decision and listed the following grounds in its decision:
  - Metro Turizm established a system in passenger transport by coach,
  - According to that system, Metro made cooperation with local firms only by means of franchising,
  - Such type of cooperation is different from standard type agencies,
  - Local firms such as Volkan Metro and Berk Metro gained the right to use Metro title and sell tickets on behalf of Metro Turizm after they made agreements,
  - According to the Board decision, the cooperation between Metro Turizm and local firms is beyond agency relationship stated in the Road Transport Act,
  - However, the Board imposed fines without presenting sufficient information and documents showing that Metro Turizm carried out cooperation or concerted practices in a way to decrease the number of players or competition.
- 13th Chamber of the Council of State decided that the fine was contrary to the law and the Board decision in question shall be annulled.
- The Board of Administrative Cases stated in the reason of its decision that
  - In the agency agreement between Metro Turizm, apart from the power to sell tickets, Metro Turizm imposed restrictions which were related to
    - Carrying out necessary studies about tickets and determining the price
    - Transport services
    - Selling Metro tickets with transporter authorization

        - Restricting the power to make agreements with a firm other than Metro and working only with Metro
    - The Court concluded that the said restrictions were different from and beyond ordinary agency relationship, contract provisions that went beyond agency relationship violated competition; thus, the Board decision complied with the law. Consequently the Court overruled the decision of 13th Chamber of the Council of State

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=1a1dda21-0532-48e3-80bb-5d9a67ceecf9

- **The Decision of Ankara Regional Administrative Court 8th Administrative Law Chamber numbered E:2018/1845 and K:2018/1182 against the decision of Ankara 14th Administrative Court numbered E:2017/2929 and K:2017/3485, which approved the Board Decision dated 15.5.2017 and numbered 17-16/224-M**

- The plaintiff Multinet previously made a complaint application related to food coupon market and the Competition Board took a decision not to initiate an investigation. 13th Chamber of Council of State annulled that Board decision. Afterwards, the Competition Board initiated an investigation and added the complainant and plaintiff Multinet to the investigation. Multinet made an application to terminate the transaction in question and the said application was implicitly rejected by the Board according to article 42(2) of the Act. Thereupon, Multinet brought a case to Ankara 14th Administrative Court for the annulment of that decision.
- The court of first instance Ankara 14th Administrative court rejected the case without evaluating because the administrative transaction which was the basis of the case was an interim decision that could not be the subject of a case.
- However, Regional Administrative Court concluded that
    - Competition Board Decision to refuse the application implicitly was an executable transaction,
    - The facts that Multinet might face with economic losses due to sanctions and be under legal suspicion as a result of the investigation showed that the transaction in question was executable,

- Moreover according to article 43(3) of the Act no. 4054 Board decisions related to initiating investigations are definite.

- Therefore, the transaction, which was definite and obligatory to be executed and which affected Multinet's legal position, could be a subject of an administrative case. The Court accepted Multinet's request of appeal, overruled local court decision and sent the file back to be reevaluated.

Source:

The decision has not been uploaded to the website as of the publication date.

- **The Decision of Ankara 6th Administrative Court numbered E:2017/2733 and K:2018/2067 related to action for nullity against the Board decision dated 7.11.2016 to impose administrative fines against Vatan Bilgisayar due to the violation of article 4 of the Act no. 4054.**

- The case was related to the request for the annulment of 10 million fines imposed by the Competition Board to Vatan Bilgisayar due to violation of article 4 of the Act no. 4054.
- In its assessment, in response to the claims by Vatan Bilgisayar
  - that the reduction of 50% applied instead of 60% was contrary to the law and the fact that fines were applied according to Fines Regulation was contrary to the principle that fines should be determined by law,

    the Court stated that

    - The Board imposed fines within the limits determined by the act, had discretionary power with respect to the rate of fines thus the rate was not contrary to the law, Regulations do not determine any administrative sanctions and regulations are made within the limits drawn by the Act, consequently the Board did not violate the principle,
  - With respect to the claim that Vatan Bilgisayar's representative was prevented from accessing to the file, the Court stated that
    - The plaintiff Vatan Bilgisayar was sent all relevant files and the Board granted three written and one oral defense right, the documents that it claimed to be in favor of it

might include trade secrets and documents related to other undertakings did not concern Vatan Bilgisayar, so the claims of the plaintiff did not comply with the law.

- In response to the claim that Vatan Bilgisayar's violation did not last more than one year, the Court stated that
  - Considering that the first documents showing the violation was dated 2013 and last document was dated 2015, it was obvious that the violation lasted more than one year.

- Consequently, the Court ruled that the Board decision was in compliance with the law.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=bc62f2e3-efc1-4b08-9c28-6da8db9b2540

○ How Mergers Affect Innovation? Theory and Evidence

Published By: International Journal of Industrial Organization, 63 (2019)

Authors: Justus Haucap, Alexander Rasch and Joel Stiebale

With the latest merger wave in high technology industries, competition authorities in EU and US are getting more and more concerned about the effects of the mergers in those markets on innovation. EU Commissioner on Competition Margrethe Vestager stated regarding the subject that they are making evaluations about mergers in high technology markets taking into account not only their effects on prices but also the potential effects on innovation. In fact, in 2017, EU Commission approved the merger between Pfizer and its competitor Hospira on condition that Pfizer should sell the rights in Europe of a medicine for arthritis that it was developing. Although there is divergence in opinion in part between US and EU officials in Pfizer / Hospira case and some other mergers, exceptions are possible according to horizontal merger guidelines in both EU and US with respect to mergers which adversely affect competition but increase productivity. What is meant by productivity is generally the activities that create added value in research and development. In case an undertaking shows persuasively that, a merger will result in significant productivity gains, the merger restricting competition may be allowed due to its contributions to consumer welfare. However, not only the effects of the merger on merging firms' prices, production and incentives to innovate (i.e. Direct effects of the merger) but also its effects on the said indicators of competing firms (indirect effects) should be analyzed.

The article analyzes how horizontal mergers affect the innovation of the merged entity and non-merging competitors. With the model used in the study, an oligopolistic market with three firms is analyzed. Two of those firms have low innovation costs while the other one have high innovation costs. The article compares oligopoly's profit and innovation level in (i) pre-merger conditions (ii) post-merger conditions after one of the firms with high innovation level buys a less innovative competitor. The empirical analysis depends on example pharmaceutical merger cases investigated by the European Commission between 1991 and 2007. The empirical strategy identifies the possible effects of the merger on merged entity and its competitors. To this end, the study uses propensity score matching1

[1]Propensity score matching is a quasi-experimental technique that controls systematic group differences and expands causal deduction related to those designs.

method and combined it with difference in differences estimator to evaluate the effects of the merger.

The basic results drawn from the model shows that a merger in markets with high R&D intensity (i) negatively affects the merged undertaking's innovation efforts (ii) also, non-merging firms' innovation activities decrease in case the target firm makes fewer innovations than other firms compared to pre-merger period. The model also estimates that the merger's negative effects in industries where pre-merger competition is high will be higher and lower in markets with low R&D intensity. The study also shows that competing firms may sometimes increase their innovation activities in response to a merger in markets with low R&D intensity.

Source:

www.elsevier.com/locate/ijio

- **Do Retail Mergers Affect Competition? Evidence from Grocery Retailing**

Published By: Journal of Economics and Management Strategy, Vol.27, No.1

Authors: Daniel S. Hosken, Luke M. Olson and Loren K. Smith

Economists believe that mergers creating high concentration in relevant markets decrease competition, increase consumer prices and decrease consumer welfare. This belief constitutes the basis of many antitrust policies. However, there are mergers that have resulted in reduction of consumer prices instead of an increase. The issue for antitrust enforcers is to identify which mergers will result in decreasing competition. Unfortunately, there are very few reliable and systematic methods for this.

The article estimates price effects of horizontal mergers in US grocery retailing market industry and analyzes how prices change after the changes in market structure as a result of the mergers in grocery market. The study focuses on how the changes in market structure caused by mergers affects consumer prices and claims that endogenous factors determining the market structure before the merger can be controlled implicitly. The study estimates the possible effects of the mergers on grocery prices by using two empirical techniques: Difference in differences method and synthetic control method. First, the study analyzes price effects of the merger by using difference in differences method and compares the prices in markets that experienced a merger with similar markets that did not experience an

important change in market structure. Second, the study estimates the effects of the merger using synthetic control method2.

The importance of the study is that contrary to many studies in the literature, it can estimate simultaneously the price effects of several mergers affecting different geographical markets in the same sector together with concentration levels. The analysis involves eight mergers in highly concentrated markets and six mergers in markets with medium and low concentration rates. The results, which are consistent with the assumptions of antitrust regulators as stated in US Horizontal Merger Guidelines, shows that mergers in highly concentrated markets are related to frequent price increases whereas mergers in less concentrated mergers are related to price reductions. In fact, after five mergers, the estimated price increase is more than 2% and four of them took place in highly concentrated markets. Five mergers resulted in estimated price reductions more than 2% and only one of them took place in a highly concentrated market. Other four mergers' results are associated with relatively smaller price changes. In short, an important part of the mergers in grocery retail sector analyzed in this study led to increase in consumer welfare.

Source:

https://onlinelibrary.wiley.com/doi/full/10.1111/jems.12218

[2] Synthetic control method is a statistical method used for evaluating the effect of an intervention in comparative case studies.

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