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INTRODUCTION

Turkish Competition Authority
REKABET KURUMU

We are proud to present to you the Competition Bulletin for the first quarter of 2019, 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 negative clearance decision.

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

"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 OECD Economics Department titled "*Digitalization and Productivity: In Search of the Holy Grail – Firm-Level Empirical Evidence from EU Countries*" and another article published at the Open-Access titled "*Gains from Multinational Competition for Cross-border Firm Acquisition*"

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 Concerning the Economic Entity comprised of Google LLC, Google International LLC and Google Reklamcılık ve Pazarlama Ltd. Şti. (GOOGLE)**

Decision Date:	Decision No:	Type:
19.09.2018	**18-33/555-273**	**Investigation**

The relevant decision concerns the investigation conducted in order to determine whether the Act no 4054 on the Protection of Competition was violated by GOOGLE's practices related to the provision of its mobile operating system, its mobile applications and services, and by the agreements signed between GOOGLE and device manufacturers. The file mainly addressed the claims that the Mobile Application Distribution Agreement (MADA), signed between GOOGLE and device manufacturers for the provision of the mobile operating system required the manufacturer to pre-install Google Search and Google search widget as well as a mandatory application package (Google Mobile System), that it enforced exclusivity in terms of Google search, and that it complicated the operations of competitors through ambiguous provisions preventing the unbundling of Android.

The relevant decision first examined the obligations of the MADA agreements under the tying provisions of the competition law. In order to determine whether this was an instance of tying violation under Article 6 of the Act no 4054, a six-stage test was applied to see if the following factors were present: if there were two separate products, if the two products were bundled together, if the undertaking was dominant in the tying product market, if there was actual or potential foreclosure effects in the tied product market, if there was consumer harm, and if the practice had justifiable grounds. Accordingly, it was concluded that the first factor was present in the file under consideration with the establishment that the TAIS product offered in the licensable mobile operating systems market and the mobile search services and mobile internet browsers were separate products and services. The second factor requiring the bundling of two separate products was also found to be present, due to the obligation placed on those manufacturers who wished to use TAIS forcing them to pre-install the Google search widget and to make Google search the default in the devices for all access points to mobile search services.

The third factor deals with whether GOOGLE held dominant position in the "licensable mobile operating system" market, defined as the tying product

market. It was concluded that GOOGLE held dominant position in the market for licensable mobile operating systems market with TAIS, under the light of the following considerations: a significant portion of mobile devices manufactured in the Turkish market have the Android operating system with nearly all of them using TAIS; mobile operating systems with application stores which might be seen as an alternative to the Google Play store, an essential component of TAIS in Android devices, are nearly never used or their use is very restricted within the market dynamics; it is not commercially viable for device manufacturers to switch their production to a third party application store which is not as advanced as the Google Play store and to an operating system which does not support the Google applications well-known to consumers.

With relation to the fourth tying factor concerning the existence of actual or potential foreclosure effects in the tied product market, the decision examined whether the practice to install Google search as a default complicated the activities of the competitors. As a result, it was found that the relevant practice had two main effects on the competitors, the first of which made it impossible for search services to be assigned to devices on their own as default, and the second of which was that the practice in question decreased the device manufacturers' incentives to install alternative search widgets to the home screen, which is where most of the end user interaction happens.

This situation could lead to foreclosure effects in the device manufacturers' channel, which is an important channel for access to end users for alternative undertakings in the mobile provision of internet search services, through the MADA provisions due to the following factors: The fact that Google used direct manufacturer channels (device manufacturers and browser developers) instead of methods such as advertisement channels in the distribution of mobile search services eliminated the substitutability of other channels. Also, making mobile search services default in pre-installed applications fundamentally directed end user choice to use Google mobile search services, and the MADA agreements' provisions concerning making these services default or exclusive significantly impeded the access of its competitors to these markets. As a result of the assessments above, it was concluded that the tying practices of GOOGLE led to transferring the dominant power of TAIS in the licensable mobile operating systems market, where it has almost no alternative, to the mobile provision of internet search services market, producing an actual and potential foreclosure effect for its rivals.

The following assessments were made in relation to the consumer harm criteria of the tying analysis: Google's tying practices led to Google search services becoming the most widely used search engine in mobile devices just like they are for desktop computers. In such a market where rivals cannot be efficient, end users were forced to use GOOGLE's advertisement algorithms and they have to share all their personal data with GOOGLE, both in terms of general search and in terms of mobile. In return, they are forced to receive as much ads as GOOGLE wants. Due to the walls built in the market for the provision of mobile internet search services, competing players are forced out by the tying provisions of the MADA agreements, without even being valued by the consumers. In addition, those resources of competitors which might be used to offer devices to the consumer at cheaper prices or with better hardware are blocked as a result of GOOGLE's practices. Lastly, the decreasing competition in the market can lead to a fall in investment incentives for GOOGLE and potential rivals. Consequently, it was concluded that GOOGLE' s practices under investigation met the condition of causing consumer harm. In terms of justifiable grounds, it was shown in detail that the practices under investigation were not necessary for the efficiency gains claimed by GOOGLE.

Once it was confirmed that the provisions of the MADAs fulfilled all of the conditions for the tying practice, considered to be an infringement under Article 6 of the Act no 4054, it was concluded that Article 6 of the Act no 4054 were violated by the provisions in the agreements GOOGLE signed with device manufacturers ensuring exclusive installation of Google search in those devices, which also strengthened and maintained the anti-competitive effect caused by the relevant tying practice. Obligations were placed on GOOGLE to eliminate those agreement provisions presented as a prerequisite for licensing, in order to terminate the infringement and establish effective competition in the market. The obligations concerning other Google practices included in the MADAs were found to be non-infringing under the Act no 4054. However, it was decided that a letter of opinion should be sent to ensure that a provision is added to all agreements explicitly allowing the pre-installation of competing applications on the devices together with GOOGLE's in order to provide clarity to all device manufacturers parties to the agreement and to prevent any future competitive concerns.

Investigation Conducted on Türk Henkel Kimya Sanayi ve Ticaret A.Ş. (HENKEL) Concerning the Claim of Resale Price Maintenance

Decision Date:	Decision No:	Type:
19.09.2018	**18-33/556-274**	**Investigation**

The claims concerning the subject matter of the investigation are based on whether HENKEL violated Article 4.2(a) of the Act no 4054 by maintaining the resale prices of its products. Therefore, the sales and pricing strategy of HENKEL, active in the relevant product markets of "beauty and personal care products" and "laundry and homecare products," were examined in general to assess HENKEL's practices within the framework of the concrete information and documents acquired during the investigation.

The decision states that the sale and distribution of HENKEL products were realized through "large volume retailers with direct sales" (LVR) and distributors, with LVRs known as key accounts, who purchased goods in exchange for an invoice made out by HENKEL and delivered from HENKEL's warehouse to their own and/or to their stores. Following this observation, the sales and pricing strategies used in the aforementioned channels were described. In the LVR channel, the agreements HENKEL signed with LVRs were not standard but instead were prepared and signed specific to each consumer. The agreement set up order and deliveries over the prices mutually agreed upon to any point specified in accordance with the choices of the customer . The agreements in question did not include any provisions on resale price maintenance, but HENKEL recommended certain conditions to all of its consumers including shelf price, shelf location, and which products should be listed at which stores, for what periods and on which days.

The information acquired during the investigation process revealed that the agreed purchase price was updated at the beginning of the year and under special circumstances (e.g. in case of special consumption tax increases for the antiperspirant category or when petrol based price increases in raw materials led to increases in costs). An update of the product's price by HENKEL by price hikes in the sales prices to the LVRs were called "price transition". It was mentioned that in case of such price transitions, LVRs needed time to implement the new sales prices and that meetings were held to determine a schedule for price transitions.

In the distributor channel where HENKEL products are sold and distributed, it is observed that HENKEL worked with different distributors for the "beauty and personal care" and "laundry and homecare" product groups. The

agreements between HENKEL and its distributors did not include any provisions on resale price maintenance and the agreements were not exclusive distribution contracts. Distributors helped with stock accounts and logistical support, while the undertaking's own sales personnel followed up with the stores which purchased HENKEL products. On the other hand, HENKEL planned marketing activities (periodic activities) with both LVRs and distributors, including discounts, promotions, lotteries, gift sets and inserts. Such activities were generally funded by HENKEL itself. Periodic activities were carried out in accordance with the budget plans drawn out on a customer-by-customer basis and the budgets concerned were offered within the framework of the activities so that HENKEL's customers would be incentivized to pass-on to their own customers as discounts. In addition, HENKEL prepared an internal report for all products it offered for sale, called Star Store. These monthly reports provided information on each product sold by HENKEL at the relevant point of sale, conducting an analysis based on various criteria such as whether the product was present on the shelves, whether its price was at or over the action price, whether it was placed beside a particular product on the shelf, whether the product had a separate stand. The relevant report specified a specific action price for each product and reported on whether the product was sold at or over this price.

The information and the documents in the file show that, in practice, HENKEL closely followed the prices of the products it sold, taking various steps to ensure an increase in prices where it determined that the sales prices of a particular buyer was below HENKEL's action price. Accordingly, a HENKEL employee used a computer program to compare the prices included in the SS report with the actual sales prices of the buyer, and if the prices were different, sent an e-mail to the fieldworker responsible for the buyer concerned asking what actions should be taken to correct the situation. In light of all of the examinations and evaluations conducted, it was concluded that beyond monitoring market prices of their products and recommending resale prices, HENKEL directly intervened with the retail sales prices which should have been determined by the buyers in line with their own commercial considerations, thereby preventing the setting of resale prices within the framework of free competition conditions. Therefore, HENKEL violated Article 4.1(a) of the act no 4054.

The decision also states that setting one of the most important factors in competition, namely the price, via resale price maintenance, generally constitutes a restriction of competition by object, which makes it impossible for HENKEL's practices in question to be granted exemption under Article 5 of the Act no 4054. This is because resale price maintenance would not lead

to improvements in the distribution of HENKEL products or in the goods and services offered by the buyers, with consumers wishing to purchase HENKEL brand products facing much higher prices due to the restriction of intra-brand competition as a result. Eliminating intra-brand competition could have significant negative effects on consumer welfare. Consequently, the conditions of Article 5.1(a) and (b) were not met in the case in question. In the final analysis, an administrative fine was imposed on the undertaking concerned, in accordance with Article 4 of the Act no 4054.

- **Decision concerning the Merger of Luxottica Group S.p.A. (LUXOTTICA) with Essilor International S.A. (ESSILOR)**

Decision Date:	Decision No:	Type:
01.10.2018	**18-36/585-286**	**Phase II Investigation**

The Phase II investigation in question addresses the request for authorization of the merger between Luxottica Group S.p.A. (LUXOTTICA) and Essilor International S.A. (ESSILOR).

Within the framework of the decision, it was first determined that the activities of LUXOTTICA and EXILOR horizontally overlapped in Turkey for the markets of wholesale of brand sunglasses and wholesale of brand prescription optical frames, while only ESSLIOR was active in the other relevant market, namely the wholesale market for ophthalmic lenses, with LUXOTTICA simultaneously operating in the upstream and downstream markets of the production and sale of ophthalmic machines, equipment and consumables as well as the retail sales market of brand sunglasses. The examination of the transaction within the framework of the Act no 4054 and the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board, no 2010/4 (Communiqué no 2010/4) first addressed the potential effects of the aforementioned horizontal overlap in the relevant product markets, and then focused on the potential conglomerate effects of the transaction, in light of the fact that the parties’ range of products were complementary as well as wide enough to meet nearly all of the needs of opticians.

Within the limits of the method explained above, the market shares of the top ten undertakings in the wholesale market for prescription optical frames between 2014 and 2017 were examined in terms of quantity and value. It was found that LUXOTTUCA was the market leader in terms of value with the highest market share, with ESSILOR holding the second position. Even

though, for the current market, competitive concerns were not expected in terms of quantity, the change in the HHI index was above the 250 threshold in terms of value, which led to a wider analysis on the grounds that competitive concerns might arise therein. Accordingly, market shares of the brands for 2014-2017 were analyzed once more, this time for the top fifteen brands. It was concluded that the market shares were different in the market concerned from the sunglasses market, which could be explained by the fact that brand awareness was limited in optical spectacle frames. Following the transaction, the merged entity would own seven of the fifteen brands in the top fifteen.

On the other hand, in order to calculate the concentration in the wholesale market for branded sunglasses, market shares of the top nine undertakings in this market for 2014-2017 were examined. It was found that ESSILOR held the second place behind LUXXOTTICA, and the largest player in the market after ESSILOR was SAFILO, which entered this market in 2016. There were a large number of players active in the market but the remaining rivals had very low market shares, with their aggregate market shares not even reaching half of the market. These competitors would be quite far from putting competitive pressure on the merged undertaking. The decision also included a measurement of the concentration level based on the HHI index. The values calculated showed that anti-competitive effects could emerge and the market suggested a highly concentrated structure. As a result, it was concluded that the examination should look for other factors in the relevant market where the horizontal overlaps occurred to see if these could balance/limit the power and the concentration level that would arise after the transaction to the advantage of the consumers.

In order to determine one of the aforementioned factors, namely countervailing buyer power, the examination looked at the market shares of chain stores in the relevant markets, since they are among the opticians active in the retail level of the optics sector. In terms of the structural features of the markets concerned; both of the markets are largely comprised of independent opticians. The generally scattered retail level had no countervailing power against the merged undertaking in those markets with horizontal overlap, which would allow the merged undertaking to have very high shares. Brand power was significant and the wholesale market for brand sunglasses displayed this observation even more strongly.

Another factor to consider is the potential entries into the market. On this subject, the previous data show that potential market entries would not put meaningful competitive pressure on the merged undertaking, especially in the wholesale market of brand sunglasses.

In addition to the potential horizontal effects of the merger, the final examination also included an analysis concerning the conglomerate effects stemming from the integrated product portfolio of the merged entity. The following assessments were made within this framework: the merged entity would have a product range that could meet all of the needs of the opticians and would display a vertically integrated structure due to its presence in the markets for ophthalmic machinery and equipment and in the retail sales market for brand sunglasses. The merged undertaking would be dominant in the wholesale market for brand sunglasses and would have some very strong brands in its product portfolio. The merged undertaking could also potentially use its market power in the sunglasses field, in particular, as a leverage in other relevant markets.

In light of the aforementioned observations the Board came to the following conclusions: following the transaction, the merged entity would hold a stronger position in the relevant markets with horizontal overlap than the position LUXOTTICA previously held on its own. In the prescription brand optical frames market, the market share of the merged undertaking would remain below the dominant position threshold recognized in practice. In addition, brand power is not as decisive in this market as it is in the sunglasses market. In the wholesale market for brand sunglasses, the merged undertaking would incorporate the current dominant position holder LUXOTTICA, which would allow it to hold that position even more strongly. In contrast, there was no countervailing buyer power or any remarkable threat of new entry. Therefore, the undertaking’s existing dominant position in the wholesale market for brand sunglasses would be strengthened and competition would be significantly decreased as a result of the transaction. Consequently, the transaction could not be authorized.

On the other hand, it was found that the structural commitments undertaken by the parties completely removed any horizontal overlap that might have arisen following the transaction. In addition, behavioral commitments, including the divestiture of Merve Optik Sanayi ve Ticaret A.Ş. (MERVE OPTİK), eliminated all concerns of conglomerate effects . As a result, the transaction was authorized subject to conditions and the divestiture of MERVE OPTİK was accepted as a required condition while the other behavioral factors in the commitment are accepted as obligations, with the decision stating that any violation of the requirement would automatically invalidate the authorization granted.

Decision Concerning the Posting of the "Performance Evaluation Table for Certified Firms" on the Website

Decision Date:	Decision No:	Type:
27.12.2018	**18-49/759-366**	**Negative Clearance**

The relevant decision concerns the request of Eskişehir Şehir İçi Doğalgaz Dağıtım Ticaret ve Taahhüt A.Ş. (ESGAZ) for the grant of a negative clearance or exemption for posting the "Performance Evaluation Table for Certified Firms" on its website. The table in question essentially grades the companies certified by ESGAZ based on applying a grading system to the information currently kept by ESGAZ.

ESGAZ is a legal monopoly in the natural gas distribution market and, according to the relevant legislation, exercises a type of regulation and supervision power granted to it by the aforementioned legislation in the preparation and construction of interior installation projects market. Taking into account the case-law of the Competition Board, the decision determined the relevant market as "natural gas interior installation project design and construction market," based on the fact that the practice in question concerned the interior installation and service pipe construction, maintenance and repair activities of other firms certified by ESGAZ. Based on the fact that the practice concerned the undertakings certified by ESGAZ in the province of Eskişehir and that project executors were all based within Eskişehir, the relevant geographic market was determined to be the province of Eskişehir.

Two applications were made to the Authority concerning the practice of publicly posting the table assessing the companies certified by ESGAZ in accordance with certain conditions. The response to the first application stated that the table concerned could restrict competition between the certified companies, since in addition to concrete data such as the number of projects and fault-free projects, it included a section classifying companies and grading them according to certain quotients. The application was updated accordingly and, after the criteria which caused competitive concerns were eliminated, it was submitted for a second time. Instead of the above, a column measuring "Overall Company Performance" was included, displaying the weighted average of project approvals and installation control ratios of the companies (with project approvals corresponding to 30% and installation approval success corresponding to 70% of the total). ESGAZ explained the utilization of a success score in the table comprised of the weighted averages of project approval and

installation control ratios by stating that consumers did not know the meaning of the relevant ratios and that presenting the ratios this way would serve consumer interests by directing them better.

Nonetheless, the decision stated that the table in question could lead to discrimination between the companies since it included a column displaying "Overall Company Performance". Certified companies related to the practice were interviewed on the subject. The interviews showed that posting the table served some useful goals such as increasing the work quality of the companies and eliminating information asymmetry for the consumers related to project creation and installation, which is a one-time service. On the other hand, the practice caused some concerns about preventing new entries into the market. Unlike the first table, the table in the updated application did not present a grading between the companies but it included a weighted average which could lead to discrimination between companies. The decision stated that the "Overall Company Performance" column with the aforementioned weighted averages included an additional subjective assessment, and including that column in the table could lead to competition distorting effects for the companies.

Finally, the decision concluded that publishing the "Performance Evaluation Table for Certified Firms" would present more condensed and clearer information to the consumers if the "Overall Company Performance" was excluded and would be better at eliminating information asymmetry. In addition, the practice in question would decrease transaction costs in the long term and would create a platform where new entrants and/or relatively small internal installation firms could make their presence felt. As a result, a certificate of negative clearance was granted to the practice in question under Article 8 of the Act no 4054, excluding the "Overall Company Performance" criteria. In addition, it was decided that an opinion should be submitted to the Energy Market Regulatory Authority on the subject, in light of the fact that similar practices of distribution companies could affect competition in the relevant market.

- **Decision Concerning Switching from a Qualitative to a Quantitative Distribution System in After-Sales Services**

Decision Date:	Decision No:	Type:
01.11.2018	**18-41/658-322**	**Exemption**

The relevant decision is about the request of Tofaş Türk Otomobil Fabrikası A.Ş. (TOFAŞ) for an exemption to its terminating the qualitative distribution

system it used in after-sales services for Fiat and LARJ Group brand (Alfa Romeo, Jeep and Lancia) vehicles and switching to a quantitative distribution system. Within the framework of the file, relevant product markets were defined as the "maintenance and repair services market" for the vehicles of the brands concerned, separately for each brand.

"Dealership Agreement for the Sale of Fiat Brand Motor Vehicles and/or Service Provision and/or Distribution of Spare Parts" and "Dealership Agreement for the Sale of Alfa Romeo and Jeep Brand Motor Vehicles and/or Service Provision and/or Distribution of Spare Parts" (henceforth together referred to as "Agreement") aim to implement a quantitative selective distribution system in the sales, maintenance and repair services and spare parts markets for motor vehicles. In the decision, the Board determined that the Agreement fell under Article 4 of the Act no 4054 since it included certain criteria which limit the potential number of sellers, such as minimum or maximum sales requirements or which directly specify the number of sellers. Accordingly, the Board first examined whether the Agreement could benefit from the block exemption under the provisions of the of the Block Exemption Communiqué On Vertical Agreements in the Motor Vehicles Sector, no 2017/3, which regulates vertical agreements in the motor vehicles sector concerning the provision of maintenance and repair services.

First of all, TOFAŞ's market shares in the relevant product markets were examined for the 2014-2017 period, in accordance with Article 5 of the Communiqué no 2017/3, which prescribes that in order to benefit from the block exemption, an agreement falling under the scope of this Communiqué must adopt the appropriate distribution system depending on the market share thresholds. In 2017, the undertaking held a market share below the 30% threshold specified by the Communiqué in the after-sales maintenance/repair and spare parts markets for Fiat and Alfa Romeo brand vehicles. In addition, the Agreement did not include the severe competition restrictions listed in Article 6 of the Communiqué, nor any non-compete obligations in violation of the Communiqué. Consequently, it was decided that the Agreement could benefit from the block exemption for the aforementioned brands.

In the markets for the repair/maintenance services and spare parts distribution for LARJ Group vehicles, the market share for the Alfa Romeo brand was below the 30% threshold in both markets in 2017, while for the Jeep and Lancia brands, it was above the 30% threshold in both markets. Consequently, the Agreement was unable to benefit from the block exemption for the Lancia and Jeep brand vehicles due to the fact that the thresholds specified by the Communiqué were exceeded. An individual

exemption analysis had to be conducted under Article 5 of the Act no 4054 concerning the relevant brands.

Granting exemption to the provision of maintenance/repair services and distribution of spare parts under the quantitative selective distribution system for the Jeep and Lancia brand vehicles under the Agreement could lead to efficiency gains in terms of return of investments, increasing service quality and decreasing costs, and therefore it was determined that the first condition for exemption was fulfilled.

The second condition for exemption requires that the efficiency gains intended by the switchover in question benefit the consumer. In that respect, brands under the LARJ Group currently had a quite small motor pool and a correspondingly limited number of service points. In that sense, switching to a quantitative selective distribution system for the LARJ Group vehicles and decreasing the number of service points would risk giving fewer choices to the consumers, who already have a limited number of alternatives. Therefore, it was decided that the relevant condition of exemption was not fulfilled.

On the other hand, within the framework of the third condition of exemption, which concerns whether competition is eliminated in a portion of the relevant market, the Board examined TOFAŞ's share in the maintenance/repair services for Jeep and Lancia brand vehicles and found that the market shares in question were not high enough to eliminate competition in a significant portion of the market. The notification form and the reply letters emphasized that the authorized service points for LARJ brand vehicles would continue to be multi-brand. Moreover, the relevant articles of the Agreement did not prevent authorized services from selling the products they procured from TOFAŞ or from the distribution system to independent repairers, consumers and other authorized services within TOFAŞ's quantitative selective distribution system. In light of these facts, it was decided that the use of a quantitative selective distribution system for LARJ Group vehicles would not result in the elimination of competition in a significant portion of the market.

Lastly, within the framework of the last condition of exemption, which states that competition should not be restricted more than necessary, the Board examined whether the benefits expected from the system in question could be acquired with a less restrictive method. Accordingly, the argument TOFAŞ proposed which stated that no applications were made to TOFAŞ previously for appointment as a service for LARJ Group vehicles and that, in this context, the quantitative selective distribution would not be different

from the status quo was found to establish that the quantitative selective distribution was not strictly necessary for LARJ brand vehicles. In addition, the undertaking mentioned the need to limit the number of service points in order to ensure the return of service investments in comparison with other premium brand vehicles on the one hand, while on the other stating that no candidates applied to TOFAŞ to be assigned as a LARJ Group service point since the publication of the Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector, no 2005/4 so the quantitative selective distribution system would not be different from the status quo and new service points could be opened where necessary. The decision found these two claims to be in conflict. Another argument put forth by TOFAŞ was that an exemption for a single brand (Alfa Rome) without covering the others (Jeep and Lancia) would prevent switchover since the repair/maintenance and spare parts distribution for LARJ Group vehicles were done under the framework of a single agreement and dealership organization. The Board decided that that argument would not fulfill this condition of exemption, either.

Consequently, the Board came to the following conclusions: the Agreement comprising the subject matter of the case, signed between TOFAŞ and its dealers, benefited from the block exemption under the Communiqué no 2017/3 with respect to the Agreement's provisions on conducting the spare parts and maintenance/repair services on the basis of quantitative distribution system principles for Fiat and Alfa Romeo brand vehicles, but that the Agreement's provisions concerning the Jeep and Lancia brands could not benefit from the protection of the Communiqué since the relevant market share thresholds were exceeded by the brands in question, as a result of which the LARJ Group brands concerned could not be granted individual exemptions either, due to the reasons listed above

- **Danish Competition Authority rules that Falck abused its dominant position to exclude its competitor from ambulance services by conveying negative stories about BIOS and preventing paramedics from applying for jobs at BIOS**

Danish Competition Authority took a decision on January 30, 2019 that leads to think about the relationship between unfair competition and competition infringements. The relevant decision states that Falck, the biggest ambulance service provider of Denmark, abused its dominant position by implementing a strategy to exclude BIOS from the market.

According to the statements about the decision, BIOS became Falck's biggest competitor after winning a public tender in the Region of Southern Denmark in August 2014 and had to transfer paramedics from Falck. Paramedics are a very important and limited resource; thus Falck intentionally implemented an exclusionary strategy, which includes conveying negative stories about BIOS to the press and Falck's employees secretly and influencing paramedics not to apply to BIOS intentionally. Danish Competition Authority decided that the object of the strategy was to create uncertainty and concerns about BIOS and prevent BIOS from recruiting paramedics to provide services in the region of Southern Denmark. As a consequence, BIOS went bankrupt in July 2016 and exited from the market.

Source:

https://www.en.kfst.dk/nyheder/kfst/english/decisions/20190130-falck-has-abused-its-dominant-position-by-excluding-bios-from-the-danish-market-for-ambulance-services/

- **Commission Prohibits Siemens/Alstom Merger**

EU Commission announced on February 6, 2019 that it blocked Siemens-Alstom merger as the merger would harm competition in railway signaling systems and very high-speed trains markets.

The proposed merger would have brought together the two biggest suppliers of Europe with respect to railway and metro signaling systems and rolling stock (wagons, locomotives, etc.). The Commission stated that the shareholders (competitors, customers, industry associations, trade unions and national competition authorities) noted that the transaction would significantly harm competition, reduce innovation, limit the choices for small

competitors and consumers. The Commission also explained its competitive concerns mainly about two relevant product markets:

- Signalization systems: According to the Commission, the merged entity would have become the undisputed market leader in mainline signaling markets especially in automatic train protection system in European Train Control System (ETCS). The Commission emphasized that signaling systems that are compatible with ETCS standards are vital for operating trains between member states since it is the single system connecting member states' systems.

  Moreover, the merged entity would have become the market leader in the latest Communication-Based Train Control signaling system, an essential element of metro system.

- Very high-speed trains: According to the proposed transaction, the two largest producers of rolling stock for very high-speed trains would have merged. The Commission stated that the merged entity would have very high market shares not only within Europe but also worldwide except South Korea, Japan and China.

German and French government members supported the proposed transaction emphasizing that it is important that a powerful European firm be present against powerful Chinese undertakings in the relevant market. The Commission explained that it carefully considered competition environment (especially possible global competition from Chinese suppliers), Chinese suppliers are not present in EEA today with respect to signalization systems, and they have not participated in tenders; therefore, it will take a long time for them to become credible suppliers. With respect to very high-speed trains, it is not likely that new entries from China will present competitive pressure to offset the merged entity in a foreseeable future.

The Commission also stated in the announcement that the parties did not offer long term remedies to address Commission's concerns completely. In order to address the concerns resulting from loss of direct competition, structural remedies are preferred. However, the remedy proposed for signalization in this file did not consist of a stand-alone and future proof business. Regarding very high-speed trains, the remedy was related to only very high speed trains and due to certain restraints, the licenses would not give the buyer the incentive to establish an undertaking that would compete with the merged entity.

The Commission also stated that the parties failed to show merger specific efficiencies and high-speed trains are important for comfortable and environmentally sustainable transportation.

Source:

http://europa.eu/rapid/press-release_IP-19-881_en.pdf

- **Bundeskartellamt prohibits Facebook from combining user data from different sources**

In its decision dated February 6, 2019, Bundeskartellamt prohibited Facebook from making the use of Facebook.com social network by private users residing in Germany who also use its commercial products (WhatsApp, Oculus, Masquerade, Instagram) conditional on the collection of user and device data and combining that data with Facebook.com user accounts without the consent of the users. The decision also prohibited making the private use of Facebook.com conditional on combining the information saved on Facebook account with the data collected through websites visited or third party applications that use Facebook Business Tools without users' consent.

According to the press release about the decision, users can use Facebook on condition that Facebook collects user data from websites or applications outside Facebook.com and assign those data to users' Facebook account. The decision can be seen as an internal divestiture of Facebook's data.

The decision defines the product market as private social networks market. Facebook's market shares are 95% and 80% with respect to daily and monthly active users respectively. Networks such as Snapchat, Youtube, LinkedIn and Twitter only provides some parts of social network services. Facebook's competitor Google+ will discontinue its services in April 2019. Considering those facts, Facebook is considered to hold a dominant position.

According to the decision, Facebook's collection and processing data from its own website is an essential component of social network and its data based business. However, users are not aware of the fact that Facebook collects almost unlimited user data from third party sources (shareholdings such as WhatsApp and Instagram and third party websites which include Facebook buttons such as "like" and "share") in private use and allocate these to the users' Facebook account. Visiting a website is sufficient to start the data flow from third party sources. It is not necessary to click a button or scroll down the page. In this way, Facebook can obtain very detailed profiles of users and know what they are doing online.

The decision considers Facebook's behavior as exploitative abuse by means of imposing inappropriate contractual terms and also points out the relationship between protection of personal data rules and competition law. According to the decision, data protection rules do not prejudice the supervision of abusive practices, it is indispensable to examine data processing procedures while examining the conduct of dominant undertakings under competition law, this perspective especially for online businesses is highly relevant for competition law, considering the case law, data processing terms can or must be assessed under competition law.

Facebook's terms related to collecting and processing data violated the rules on the protection of personal data, which is a reflection of market power. Users cannot protect their data from being processed from various sources. The provider is dominant; thus, when consumers cannot provide competitive control, the interests of both sides of the market should be sufficiently protected. It is inappropriate that consumers' data are collected whenever they use the internet. Therefore, the conduct in question is considered violation.

Sources:

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html

https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=4

- **The Court of Appeals upholds Competition and Markets Authority's fine on a steel water tank producer for exchanging competitively sensitive information with two competitors**

In December 2016, the Competition and Markets Authority (CMA) fined Balmoral, a supplier of steel water tanks, for exchanging competitively-sensitive information such as prices and pricing intentions. The exchange took place in a meeting in 2012, where Balmoral was invitied to a long-term cartel. Balmoral refused to join market allocation and price fixing cartel but shared competitively sensitive information. CMA secretly recorded the meeting.

Balmoral requested the dismissal of the decision depending on three claims. The first claim was that the meeting in question should be assessed as a part of the cartel under single and continuous infringement theory, another decision concluded that Balmoral was not a party to the cartel and it was

not possible to claim an infringement within this framework. The Court found it weird that Balmoral suggested that they should have been considered within a more serious infringement (cartel) than its conduct (information exchange) instead of innocence claim and it would have been absurd if Competition Appeal Tribunal (CAT) had made such evaluation.

Secondly, Balmoral argued that CAT adopted a strict test for object infringement and the test in question might consider any information exchange as infringement. The Court stated that CAT explained why the information exchange during the meeting was harmful; thus, Balmoral's claim was baseless.

Lastly, Balmoral suggested that it was impossible to determine whether the information exchange in question reduced uncertainty, CAT did not compare participants' state of knowledge before and after the meeting and a single meeting was not sufficient to claim an infringement. The Court stated that according to the case law[1] a single meeting was sufficient to give rise to a concerted practice and upheld CMA's decision.

Sources:

https://www.gov.uk/government/news/cma-welcomes-court-ruling-to-uphold-fine-in-steel-tanks-case?utm_source=634bc982-1bfa-407d-a7c8-115a8f01eaf5&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

http://www.bailii.org/ew/cases/EWCA/Civ/2019/162.html

[1] Case C-8/08 *T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2010]

- **The Decision of The Court Of Appeals AnnullingThe Decision of The Court of First Instance, Which Revoked the Decision of the Competition Board Regarding Lawyer-Client Correspondence Obtained Within the Scope of Enerjisa Investigation**

- The documents related to the communication between Enerjisa and its lawyers were obtained during on-site inspections under the scope of Enerjisa Investigation. Enerjisa applied to the Board claiming that the communication between the lawyer and the client should be kept confidential and documents in question should be given back. The Board rejected that claim; consequently, Enerjisa brought a lawsuit.
- The court of first instance, Ankara 15th Administrative Court, annulled the relevant Board decision justifying Enerjisa's request. The Competition Authority lawyers brought the case to the Court of Appeals.
- The Board rejected Enerjisa's request on the grounds that the documents obtained were not directly related to the use of right of defense in the investigation.
- Ankara 15th Administrative Court revoked the Board decision on the grounds that the documents in question were under the scope of right of defense and should have benefited from lawyer-client privilege.
- The court of appeals, 8th Chamber of Administrative Cases, annulled the decision of the court of first instance and validated the Board decision on the following grounds:
    - First, the court explained its theoretical approach. Accordingly, in case
        1. the documents are related to a relationship between the undertaking and a lawyer who does not work as a permanent employee for the undertaking; in other words, who works independently,
        2. the documents subject to lawyer-client privilege is related to the use of right of defense,

      the lawyer client privilege could be considered.
    - Then, the court stated that the said documents were prepared by an independent lawyer; thus, Enerjisa fulfilled the first condition.
        1. With respect to the second condition, the Court decided that the claim for right of defense was irrelevant because the said documents were prepared before the investigation, they could be related to legal consultancy, therefore, might include expressions or evaluations that

would result in the violation of law, consequently they could be examined by rapporteurs.

8th Chamber of Administrative Cases concluded that the decision of the court of first instance was contrary to law and annulled the decision. Thus, the Board decision became legally valid.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=3ef5a0b5-f925-4eb3-8deb-850d75ea41b2

- **The Decision of Ankara Regional Administrative Court revoking the decision of the court of first instance, which annulled Competition Board's Aegean Region Cement Decision**

- The Competition Board decision dated 14.1.2016 and numbered 16-02/44-14 imposed administrative fines on cement firms active in the Aegean Region on the grounds that they violated article 4 of the Act no. 4054 by means of allocating territories and increasing cement fines. Ankara 10th Administrative Court annulled the Board decision. As the appeal authority, Ankara 8th Chamber of Administrative Cases revoked the Court decision.
- The court of first instance, Ankara 10th Administrative Court stated in the grounds of the decision that
    - The Board's evaluation about Göltaş, As Çimento, Denizli Çimento, Batıçim and Çimentaş that they allocated territories were rational behavior in accordance with the natural flow of life and economic facts,
    - That behavior was not sufficient to conclude that undertakings allocated territories,
    - Analyses about allocating territories should be more detailed.

  Consequently, the Court annulled the Board decision in question.
- 8th Chamber of Administrative Cases, the appeal organ, stated in the grounds of its decision that
    - The Board defined three periods in its analysis related to the allocation of territories as January/March 2013 to October/December 2014 and before and after that period,
    - In the said period, cement prices increased significantly before that period and after; there were not any reasonable and rational explanations such as cost or demand increase,

- During the violation period, the sales of firms in cities where their factories are located increased, other undertakings that previously had significant market shares in those regions exited or their market shares fell down seriously,

Thus, the market performances and behavior of the undertakings concerned were similar to the conditions in markets where competition is prevented, distorted or restricted and this fact is sufficient to show that undertakings concerned violated article 4 of the Act by means of concerted practices. As a result, the Court revoked the decision of the court of first instance and found the Board decision in compliance with law.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=e5d7a3a2-ae75-47f8-a543-2f9fba022038

- **Ankara 6th Administrative Court's Decision Upholding Competition Board Decision Imposing Fines on Media Markt, LG and Teknosa (Substance No: 2017/2848, Decision No: 2018/2071)**

- The case was related to the annulment request for the fines imposed on Media Markt, LG and Teknosa according to the Board decision dated 7.11.2016 and numbered 16-37/628-279 on the grounds that they were engaged in price fixing in consumer electronics market.
- The Court stated in its decision that
  - During on-site inspections made within the scope of the investigation about computer and game console market, evidence of competition infringements in consumer electronics market was found and an investigation was initiated regarding the litigant undertakings,
  - The defendants claimed that the evidence used in the decision was baseless and did not have a content that violated competition obviously, the Board did not fulfill its burden of proof and took its decision as a result of insufficient inquiry, Board's conclusions were not concrete but based on comments and assumptions.

However, as those claims did not change the fact that they were engaged in price fixing, the Court found the Board decision in compliance with the law.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=be3c859d-a64f-4af8-b301-a4c244cc8ba5

- **Ankara 13th Administrative Court's Decision Annulling the Competition Board Decision to Reject the Complaints That Turkish Underwater Sports Federation (TSSF) Violated Article 6 of the Act no. 4054**

- Ankara 13th Administrative Court annulled the Board decision dated 2012; after 13th Chamber of the Council of State revoked the decision of the Court on the grounds that it was contrary to the law because the decision was taken without notifying to TSSF. The Court heard the case again.
- The Board decision in question was related to the claims that TSSF complicated the practices regarding SSI diving systems (the plaintiff was SSI diving systems' representative in Turkey), imposed additional obligations to schools other than CMAS, TSSF, which gives CMAS school training, abused its dominant position.
- The Board decided that TSSF could not be an undertaking; thus, violation of article 6 was not possible in this respect and rejected the decision.
- The court of first instance, Ankara 13th Administrative Court, built its decision on whether TSSF is an undertaking within the meaning of the Act no. 4054 and if it is an undertaking whether it violated article 6 of the Act. The Court made the following observations:
    - There are various schools related to diving systems in Turkey and abroad. Some of them are CMAS, SSI and PADI. When divers complete the courses, the schools grant diving competence certificate.
    - While TSSF gives equivalence certificate to professional divers who take certificates from schools other than CMAS so that they could dive in Turkey, it does not give such certificate to amateurs.
    - Those athletes are required to take CMAS training as an upper training.
    - Those who do not want to take CMAS training were given "diver authorization id" in return for a certain payment and afterwards TSSF allows them to dive,

- TSSF is a regulator in trainer/diver certificate markets and competes with other schools such as SSI, PADI.
- Due to the legislation, TSSF and CMAS can define the conditions that their competitors should comply with, with this legal advantage, CMAS school has 95% market share and it is obvious that it is dominant in the relevant product market.
- Competing schools has small market shares because of legal disadvantage and market entries are restricted, and additional requirements have complicated competitors' activities in the market. It is obvious that TSSF has restricted competition through those practices.

On the basis of the above mentioned reasons, the Court decided that TSSF is a player in the market, it should be considered an undertaking according to the Act no. 4054 and with the said anticompetitive practices it has violated article 6 of the Act. Consequently, the Court annulled the Board decision in question.

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=2ca6824a-8f0e-46df-800f-9c6e2d861a02

○ Digitalization and Productivity: In Search of the Holy Grail – Firm-Level Empirical Evidence from EU Countries

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Authors: Peter Gal, Giuseppe Nicoletti, Theodore Renault and Stéphane Sorbe,

This article combines productivity data at firm level and data on digital technology use at industry level and assesses how the adoption of digital technologies affects firm productivity. In addition to this, the article questions the reasons for the differentiation of the effects of digitalization on productivity on the basis of firms and industries operating in a digitalized environment. The article shows that some firms increase their competitive capacity by means of this differentiation to a great extent and changes the market structure negatively in the related industry.

The empirical model in the article is based on the growth approach related neo-Schumpeterian technological spread and innovation models developed by Aghion&Howitt. The multivariate model constituted in the framework of these approaches is estimated with the least square method. The Empirical study benefits from the following data sources: Eurostat Digital Economy and Society Database[2], Orbis Database and productivity data at firm level. The study covers, five large digital technologies (high-speed broadband internet, simple and complex cloud computing services, institutional resource planning and customer relationship management software) in 19 European Union countries and Turkey.

The results provide solid evidence that digital use in a sector leads to increasing productivity at firm level. The effects of digitalization appear more clearly in manufacturing especially, in automation. Moreover, digitalization results tend to be stronger for the companies with sufficient infrastructure to use digital technologies and weaker for the companies that do not have enough capacity to use digital technologies. For this reason, similar digital technologies cause differentiation between the productivity performance among the companies. In this respect, the added value from digitalization today is significantly different from the past technology waves. Unlike the past technology attacks, low-tech companies with limited infrastructure today are less likely to benefit from advantages of technologies. In order for the firms to benefit from technologies, the personnel they employ should have adequate cognitive and personal skills,

[2] Data received from the database of Eurostat include digitalization rates for the term 2010-2015.

which constitute the human capital[3]. Therefore, the policies which support digital technologies should be implemented especially with the policies to facilitate accessing to these skills. Otherwise, the increase in the market share of the firms benefiting from digitalization will result in the disruption of the market structure in the relevant industries and monopolization tendencies.

Source:

https://www.oecd-ilibrary.org/economics/digitalisation-and-productivity-in-search-of-the-holy-grail-firm-level-empirical-evidence-from-eu-countries_5080f4b6-en

- **Gains from Multinational Competition for Cross-border Firm Acquisition**

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Author: Koska, Onur A.

Nowadays, multinational firms play a crucial role in economic integration. Thus, it is observed that transaction costs related to acquisitions have enhanced with increasing acquisition wave and these figures even exceed the export figures.

This study, in the framework of Cournot Model, focuses on the behaviors of potential multinational two foreign firms, which compete for purchasing a local firm and examines the impacts of imposition of a production condition for cross-border company acquisitions on welfare. First, the model lists the ways in which multinational companies enter to foreign markets. It is possible to classify direct foreign investments according to the ownership status, whether the investment creates new employment opportunities, the purpose of the investment and other different factors. Greenfield Investments[4], Brownfield Investments, acquisitions and mergers. Acquisitions are used as greenfield investments and as an alternative of foreign trade to enter foreign markets.

[3] Cognitive skills measure the ability to transfer the information from different sources (perception, experience, belief, etc.) to knowledge and process them whereas the skills which are not cognitive are known as social or individual characteristics and they include using intelligence more directly and less conscious than cognitive skills.

[4] Green field investment is realized when foregn investor increases the physical capital in the country he or she invests by producting, distributing or researching in that country. This type of investment creats long-term new employment opportunaties.

In the model, it is assumed that the firms have fixed marginal production costs, are faced with the linear inverse demand function and make output decisions in a similar way for the homogeneous product within the Cournot oligopoly market. Maximum sale price of the domestic firm and foreign firm's profits are calculated within the framework of the model. The results indicate that the countries which bring minimum production amount condition in the regulation of mergers and acquisitions and entry by multinational firms into the market can achieve significant gains in terms of welfare when they also ensure competitive environment. The host countries that encourage multinational companies to compete using the production condition and consumer welfare argument strategically in the regulation of entry to the market, also achieve high sales revenues as well as the welfare increase. In addition, it is pointed out statistically in this study that intense competition environment also leads to taking non-optimal decisions by foreign firms. The fact that decisions taken by regulatory agencies are objective regarding minimum production quantity plays an important role in achieving these benefits. Finally, in the study, it is stated that multinational firms make their investment decisions by comparing the effects of distance and concentration criteria when alternative trade forms and investment costs are included to the model. Distance from the market invested increases the operational costs of multinational firms and permission of high market shares by the host country enhances these firms' profitability.

Source:

http://hdl.handle.net/10419/193914

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