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Turkish Competition Authority
REKABET KURUMU

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INTRODUCTION

Turkish Competition Authority
REKABET KURUMU

We are proud to present to you the Competition Bulletin for the final 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, and three Board decisions regarding various issues.

The "News around the World" section of the Competition Bulletin includes news from Japan Fair Trade Commission, The British Competition Appeals Trial, European Union Court of Justice and Cosumers and Markets Board.

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

"Economic Studies" section includes a summary of an aricle published by Review of Industrial Organization titled "*Effect of Merger on Market Price and Product Quality: American and US Airways*" and another article published by the RAND Journal of Economics titled "*The Effects of Global Leniency Programs on Margins and Mergers".*

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 about Maysan Mando Otomotiv Parçaları San. ve Tic. A.Ş.**

Decision Date:	Decision No:	Type:
20.06.2019	**19-22/353-159**	**Investigation**

The Competition Board took the decision dated 18.02.2016 and numbered 16-05/107-48 that Maysan Mando Otomotiv Parçaları San. ve Tic. A.Ş. (MAYSAN MANDO) violated article 4 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of refusing to supply goods to the complainant and trying to exclude the complainant from the market together with the complainant's competitors. The decision was overruled. Afterwards the Competition Board reevaluated the file. The Board also considered resale price maintenance claims.

The relevant markets for the purposes of the decision are "damper production and sales market" and "damper distribution and sales market". The geographic market is "Turkey" as MAYSAN MANDO authorized its dealers countrywide with respect to damper product sales.

First, the Board dealt with the Dealership Agreement (the Agreement) signed by MAYSAN MANDO with its dealers within the framework of articles 4 and 5 of the Act no 4054. It was observed that according to the Agreement, the dealers were obliged not to produce and distribute competing products and were subject to annual purchase quotas. Therefore, the Agreement restricted dealers' activities in the damper market and falls under article 4 of the Act no 4054. The decision evaluated the Agreements under the scope of the Block Exemption Communiqué no 2017/3 on the Vertical Agreements in Motor Vehicles Sector (the Communiqué no 2017/3) because the relationship between MAYSAN MANDO and its dealers is vertical and related to purchase, sale and resale of motor vehicles' spare parts.

According to the evaluations, MAYSAN MANDO's Dealership Agreement of indefinite period cannot benefit from exemption as per the Communiqué no 2017/3 since it does not fulfill the conditions concerning notice of termination; besides, non-compete obligations exceed five years. Those are among the general conditions for benefiting from the Communiqué no 2017/3. The Board decided that the Agreement cannot benefit from individual exemption on the grounds that non-compete obligations may hinder multi-branding in the market for damper production or distribution; thus, the Agreement does not fulfill article 5(1)(c) and (d) of the Act. Accordingly, the Board concluded that article 8 "The Term and Renewal of

the Agreement" and article 3.14 "Commercial Rules" of MAYSAN MANDO's Dealership Agreement and article 5.8 "Annual Quota" of the "Commercial Conditions" attached to the Agreement should be brought in compliance with the provisions of the Communiqué no 2017/3.

Concerning resale price maintenance claims, it is understood from the documents obtained during on-site inspection that between 2014 and 2018, the undertaking followed dealers' prices, profit rates and campaigns to prevent price competition among dealers and engaged in activities towards resale price maintenance. Thus, the Board concluded that the activities in question, which are within the scope of article 4, cannot benefit from block exemption under the Communiqué no 2017/3 and individual exemption under article 5 of the Act. Consequently, the undertaking, which is found to have violated article 4 of the Act, was imposed administrative fines.

Lastly, the decision dealt with refusal to supply claims according to article 6 of the Act no 4054. To this end, the Board considered whether MAYSAN MANDO abused its dominant position in line with its case law that provided that it is clearly shown that one of dominant position or abuse factors are not found, others shall not be claimed. The Board analyzed whether the undertaking's dampers are indispensable with respect to spare parts market and with respect to damper distribution market, considering refusal to supply doctrine. The Board concluded that the complainant also sell competing products that are at the same market with MAYSAN MANDO's dampers; in other words, substitutes MAYSAN MANDO's dampers with competing dampers. As a result, indispensability clause in refusal to supply fact is not fulfilled in this file.

- **Investigation about the claim that Istanbul Customs Brokers' Association violated Article 4 of the Act No. 4054 by means of its decisions**

Decision Date:	Decision No:	Type:
20.06.2019	**19-22/352-158**	**Investigation**

The analysis for the decision basically looked into whether Istanbul Customs Brokers' Association's (İGMD) decisions concerning its customs broker members, which included bans on giving offers to competitors' customers, advertisement and bans related to using titles while practicing the profession violated the Act no 4054. The practices in question were evaluated within the framework of article 4 of the Act no 4054, as İGMD is

an association of undertakings and it is possible that the alleged practices might create the object or effect of distorting competition.

First, the evaluation looked into the ban on customs brokers from making a connection with, a request for working or an offer for price, without a written request, to persons or institutions of which they are not a legal proxy. The ban was included in İGMD General Assembly decision. The decision emphasized the following points:

- the ban on giving offers to competitors' customers prevent undertakings active in customs brokerage market from competing with each other,
- creates entry barriers for new entries, which do not have customer portfolio,
- customs brokers that will enter the market are significantly prevented from carrying out activities,
- undertakings incumbent in the market will have less incentive to improve conditions such as service quality, price, etc.

Consequently, it was decided that İGMD's decision had the object of restricting competition within the scope of article 4 of the Act no 4054 as it included a ban on making written offers to eliminate competition.

Another point to note was the restriction of association members' advertisement and promotion activities according to the General Assembly decision in question. First, the Board considered how to deal with the advertisement ban on the basis of competition law. The Board reach the conclusion that

- a ban on advertisement might discourage undertakings from offering better quality services at lower prices
- asymmetric information might lessen customers' opportunities to reach better quality services
- the ban on advertising might distort new entries' ability to compete.

As a result, the Board decided that the provision in İGMD's decision had the object of restricting competition.

Last, the article of the decision in question that provides for restrictions related to using titles by İGMD members was evaluated. Prohibition of using in written or oral form, other titles than "customs broker" to cause unfair competition is evaluated in the same manner as the ban on advertisements. The following observations are made:

- the prohibition might go beyond its purpose and lower the expected benefits of competition in the market by causing standardization
- If the aim was to prevent unfair competition, this aim could have been realized by taking steps in line with the principle of proportionality within the framework of Turkish Commercial Code and other relevant legislation rather than an association decision eliminating competition.

The decision also states that prohibition to use titles and ban on advertisements are, as a nature, an extension of or complementary to the ban of not giving offers to each other's customers.

An evaluation for individual exemption was made within the scope of the decision according to article 5 of the Act no 4054. Within the framework of the analysis, it was concluded that

- İGMD's decision in question did not result in innovations or improvements
- Practices based on that decision discourage undertakings from offering better quality services at lower prices and complicate new entries
- The ban on using titles and advertisement creates information asymmetry and lessen customers' opportunities to reach better quality services.

As a result, the said decision of the association of undertakings cannot benefit from individual exemption. Consequently, it was decided that İGMD shall be imposed administrative fines.

- **The request for the withdrawal of the individual exemption granted to agreements of Tuborg Pazarlama A.Ş. (TUBORG) be withdrawn**

Decision Date:	Decision No:	Type:
20.06.2019	**19-22/335-152**	

The decision is related to Efes Pazarlama ve Dağıtım Ticaret A.Ş.'s (EFPA) request that the exemption granted as per the Board Decision to exclusive agreements of Tuborg Pazarlama A.Ş. (TUBORG) in bulk beer market be withdrawn.

First, the decision explains the general evaluation principles by referring to the Board's case law on requests for withdrawal of TUBORG's exemption in

bulk beer market. Accordingly, EFPA and TUBORG cannot sign exclusivity agreements with points of sale in packaged beer market. In draft beer market, EFPA cannot work with on premise points of sale with agreements containing exclusivity provisions however TUBORG's exclusivity agreements benefit from exemption with respect to on premise points of sale according to a Board decision dated 2010.

The said decision rejected a request for withdrawal of exemption from TUBORG. The reason was that TUBORG's market share until the period relevant to that decision was not proven to be stable and permanent. However, TUBORG's market share continued to inrease. The question whether the current level resulted in a significant change in the market has arisen. Thus an in depth analysis is needed in the packaged beer market.

In line with this, the analysis dealt with the change in TUBORG's market power/share. Finally, it was observed that TUBORG's current market share is significantly different than 2010; thus the findings in 2010 are not valid any more. TUBORG improved its ability to compete with EFPA with respect to market share, sales volume, availability as well as financial power compared to 2010.

In addition to market share data, availability data at on premise and off premise points of sale provided by the undertakings concerned. The sales volume of points with which TUBORG works is not low. The decision considered the investments to points, which is also an important competition parameter. The analysis made about the total investment amount made by EFPA and TUBORG between 2015-2018, the number of on premise points of sale and average investment amount per points showed that TUBORG's increasing investments and market share in years indicated a financial power that could support those investments.

Interpreting the abovementioned facts in a holistic approach, the decision showed that

- TUBORG consistently increased its market share in the market that was static despite the increase in the number of on premise points of sale
- EFPA lost its market share
- TUBORG relatively kept the number of off-premise points of sale, increased its investments and reached a financial structure to support the investments.

In this framework, TUBORG's exclusive agreements will significantly restrict competition in a part of the market, thus their effect on undertakings

carrying out activities by means of production and/or import is different from the exemption decision in 2010. The rate of the sales volume of points of sale with which TUBORG works exclusively in the whole draft beer market is an indicator of foreclosure effects occurring by means of exclusivity. The rate of foreclosure is not low.

It was decided that the individual exemption granted with 2010 decision with respect to draft beer market should be withdrawn according to article 13(a) of the Act no 4054 because the condition in article 5(c) of the same Act that competition should not be restricted in the significant part of the market is not fulfilled. It was decided that the exclusivity provisions and obligations producing such effect should be eliminated until the termination of the contracts, with respect to contracts expiring in less than one year and within one year with respect to contracts expiring in more than one year as of the notification of the short decision.

- **Evaluation of Hindering/Complicating On-Site Inspection by Umat Gümrük ve Turizm İşletmeleri A.Ş.**

Decision Date:	Decision No:	Type:
07.11.2019	**19-38/570-238**	**-**

The decision was related to the hindrance/complication by Umat Gümrük ve Turizm İşletmeleri A.Ş. (UMAT) of on-site inspection to be conducted within the scope of the preliminary inquiry depending on the Board decision dated 27.06.2019 and numbered 19-23/361-M.

Competition Experts went to UMAT's premises to conduct on-site inspection on the said date. However, UMAT official impeded the inspection and caused one-hour delay. The official's conduct was regarded as hindrance/complication of on-site inspection because it was possible that correspondence which might constitute evidence for the preliminary inquiry could have been deleted and according to the case law of Council of State, being able to conduct the on-site inspection after 40-minute delay is "impediment".

Within this framework, as per article 16(1)(d) of the Act no 4054, the undertaking was imposed administrative fines because of hindering on-site inspection.

- **Evaluation regarding the failure to send the requested information and documents**

Decision Date:	Decision No:	Type:
07.11.2019	**19-38/582-248**	**-**

The decision was about Turkish Pharmacists' Association's (TEB) failure to send the requested information and documents within the scope of the preliminary inquiry initiated as per the decision dated 17.10.2018 and numbered 18-39/629-M in time. The preliminary inquiry process started on 17.06.2019 on the basis of the Board decision.

According to the decision, the course of events is as follows: The letter dated 28.06.2019 requested from TEB information and documents about the claims. The deadline to meet the request was 05.07.2019, until the end of working hours. TEB sent a letter on 05.07.2019, stating that the request was on the agenda of central committee meeting to be held on 11.07.2019. TEB did not send the information and documents requested in time, which caused incomplete inquiry about the claims. The preliminary inquiry could only be completed in light of other information and finding obtained. TEB's answer was saved in the registry of the Authority on 26.07.2019. However, it was not possible to use that information during preliminary inquiry process.

The decision emphasized that the purpose of power to request information for inquiries aimed at detecting competition infringements, included in article 14 of the Act no 4054 is to evaluate the claims and findings completely and correctly. Information/documents requested from undertakings make it possible to support/refute the claims therefore it is important that requested information and documents be sent in time.

As a result, it was decided that TEB shall be imposed administrative fines amounting to one per thousand of its annual gross income accrued at the end of the financial year 2018 according to article 16(1)(c) of the Act no 4054. Moreover, administrative fines were imposed, amounting to 5 per ten thousand of the annual gross income accrued at the end of the financial year 2018 for 20 days starting from 06.07.2019 until 26.07.2019, when the requested information and documents are submitted to the Competition Authority.

- **Japan Dair Trade Commission (JFTC) reviews condensation guidelines for the digital sectors**

JFTC has been updating its guidelines on the various mergers and acquisitions in order to examine undertaking acquisitions in the digital economy. İn this context, JCA presented guideline drafts to the public opinion on 4 October 2019.

According to the guideline drafts, condensation transactions which effect Japan consumers and exceed value of 40 million new Japan transactions should be notified. In order to ascertain there are some conditions effecting the Japanese consumers or not, it is envisaged (i) R&D or business centre locates in Japan, (ii) target company has sales activity for Japan consumers and (iii) the criteria that target company's sales in Japan exceed 100 Japan Yen is used. Notice that transactions exceeding the aforementioned threshold are not mandatory as a change of law is required to change mandatory notification threshold.

There are also issues regarding how to analyse platform services and digital companies' concentration transactions in draft changes. İn this scope, draft guidelines focus on multilateral structures of the markets, network impact, economies scale, cost of switching suppliers and the big role of data.

Sources:

https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191004.html

https://globalcompetitionreview.com/article/1209332/japan-revises-merger-notification-guidance-for-digital-economy

https://www.mlex.com/GlobalAdvisory/DetailView.aspx?cid=1133271&siteid=244&rdir=1

- **The British Competition Appeals Trial (CAT) has not accepted Royal Mail's defence that discriminatory prices have never been implemented, just announced**

CAT Unanimously approved the sentence of Ofcom which is the regulatory agency on telecommunications and communications, to the Royal Mail which is a liable undertaking for a postal sector on 12 October 2019. In an investigation launched in 2014, It examined the strategy increasing prices of the services offered by Royal Mail to the its competitors in some regions,

which the postal operators who provide end-to-end service had to receive service to provide this service. The investigation has been launched upon the complaint of Whistl which is the biggest competitor of Royal Mail. The complainant affirmed that each customer would have to pay 1.2% more for a letter post as a result of the price rise Royal Mail would make. After Ofcom's decision to initiate an investigation, the price increase subject to the investigation has been suspended by Royal Mail. But it has affected neither Ofcom's decision, nor Royal Mail's. the investigation completed in 2018 was resulted in Ofcom's the highest penalty (GBP 50 million). Ofcom has determined that Royal Mail's network is mandatory for postal service, the undertaking is using its dominant position approaching monopoly to pannish its wholesale customers, its customers such as Whistl in direct competition compelled it higher vages than its other customers.

However, Royal Mail defenced that the price increase mentioned has not occured, it has just been announced to the customers, this announcement would not be anti-competitive. This defense is not validated by CAT. In its decision, CAT stated that no abuse has been detected on prices that have been announced but not yet implemented, but that this is due to the fact that it has yet not been subject to files rather than its impossibility. It has specified that Royal Mail's contract change announcements are written "suspiciously" have not eliminated distractive effect, the behaviours of the competitors who received the announcement has been affected by this, by changing the pricing scheme of Royal Mail attempt to keep all or almost all of the market to it has not increase the competition, but rather has decreased it.

Source:

https://www.catribunal.org.uk/sites/default/files/2019-11/1299_RoyalMail_Judgment_Non_Confidential_Version_%5BCAT_27%5D_121119.pdf

- **European Union Court of Justice decided that those who are not affected directly by cartel can also claim conpansation**

The EU comission pannished four elevator manufacturers (Otis, KONE, Schindler and ThyssenKrupp) in 2007 in German, Belgium, the Netherlands and Luxembourg as they agreed on the issue of elevator assembly and maintenance and violated competition. Regarding the case, ThyssenKrup benefited from liniency possibilities in the process of the case carried out in Australia. After the cases, in 2010, 14 sides, including in Upper Austrelia claimed conpansation in Austria.

The demand of Upper Austria differentiated from others in that it did not make direct purchases from undertakings that were found to violate competition. Upper Austria specified that it allocated a budget to support construction projects in the region where total of five elevator manufacturers, four of whom were pannished by this decision, if the cartel was not in the question, the budget allocated to the projects would be less and more projects could be financed by the state at the time the cartel was active. The Vienna Higher Regional Court found the demand justified by stating that with banning of cartels, it amed to protect rights of those who bare additional financial burdens due to the market deterioration and that public institutions such as the state administration also entered this group.

The decision was brought to the Austria Supreme Court by the cartel members. The Austrian Supreme Court applied to the EU Court of Justice on those who do not have a role actively as providers or consumers in the market whether have the right to compansation or not.

EU Court of Justice announced its opinion about this issue on 12 September 2019. İt ruled that all sides suffering from the contract or behaviour can claime conpansation as long as a causal link between loss and competition violation can be demonstrated. İt was also said that the ability of everyone who make claims for conpansation under the condition overlap with the aim of the article 101 of EU Court of Justice which also acts as a deterrent to the violation of the relevant article.

Source:

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9EC8B86051E84E1CFAD211D11DC05BC9?text=&docid=221518&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2303081

- **British Competition Authority (CMA) published the first findings of industry research on digital platforms and online advertisement**

CMA published its report on December 2019 which includes its first findings in the industry research on platforms and online ads, which started in the summer of 2019.

The report has focused on Google and Facebook where internet users in the UK spend a third of their time. İt is stated that Google's share in search advertising market of 6 billion GBP is 90, Facebook reached almost 50 % of market share in the 5 billion GBP display advertising market, both platforms

reached this point by ofering better services and products than their competitors, but are concerned about whether their potential competitors could compete on equal terms in view of their size and Access to data.

CMA's report has emphasized that these concerns could affect the consumers in two ways. First of all, it is stated that failure of competition in social media and search arrias may cause consumers to give up more data than they want decreased options and innovation. İt has been said that weak competition in digital advertising may lead to an increase in the price of products and services in general and decrease the ability of newspapers and others to produce valuable content.

As a form of potential intervention to strengthen conpetition in these markets, developing codes of conduct for platforms with market power, introducing rules that give the consumer more control and control over the data and intervention to the resources of Google and Facebook market forces (data Access solutions, interoperability measures and structural interventions) have been discussed.

Source:

https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf

- **3rd Administrative Court of Ankara decision dated 20.09.2019 and numbered E: 2019/706 K: 2019/1640**

An investigation must be launched to determine beyond any reasonable doubt whether the undertaking concerned held dominant position, whether the supply of any essential goods was refused, whether the undertaking with dominant position acted on malicious intent, and whether there has been consumer harm.

The decision was taken in the lawsuit filed for the annulment of the Board Decision[1] dated 06.11.2013 and numbered 13-62/861-368, which refused to launch an investigation concerning the claim by A ve A Fuarcılık Organizasyon ve Ticaret Ltd. Şti. (A ve A Fuarcılık) stating that Ankara Uluslararası Kongre ve Fuar İşletmeciliği Merkezi A.Ş., the operator of the Congresium ATO International Convention and Exhibition Center, refused A ve A Fuarcılık's application to hold a furniture expo in 2014. The relevant section of the decision is as follows:

"*As a result, it has been determined that the decision was taken before eliminating certain doubts within the framework of the file in light of several decisions taken by the Thirteenth Chamber of the Council of State which rule that an investigation must not be launched if the information and documents collected during the preliminary inquiry period required, beyond any reasonable doubt, the Authority not to launch an investigation; that, on the other hand, an investigation must be launched if that conclusion cannot be reached beyond a reasonable doubt.*

Under these circumstances, an investigation should have been initiated in order to establish whether Ankara Fuar A.Ş. held dominant position, whether the Congresium exposition center was an essential facility for expo services in Ankara, whether the operator of Congresium acted with malicious intent in refusing to allocate an exposition area despite the

[1] The Board Decision comprising the subject matter of the lawsuit was retaken by the 3rd Administrative Court of Ankara, based on the realization that Ankara Uluslararası Kongre ve Fuar İşletmeciliği Merkezi A.Ş., having been notified of the lawsuit after the 13th Chamber of the Council of State reversed the former Court's decision dated 02.02.2015 and numbered E:2014/334, K:2015/155 with a decision dated 27.12.2018 and numbered E:2015/4150, K:2018/4502, requested to intervene in the proceedings on the side of the defendant authority, following the acceptance of the demand to intervene in accordance with Articles 67 and 68 of the Code of Civil Procedure no 6100, referenced in Article 31 of the Administrative Jurisdiction Procedures Law no 2577. Following the 3rd Administrative Court of Ankara decision dated 02.02.2015 and numbered E:2014/334, K:2015/155, the Board launched an investigation on the matter without waiting for the conclusion of the appeal process and as a result of that investigation, imposed administrative fines on Ankara Uluslararası Kongre ve Fuar İşletmeciliği Merkezi A.Ş. with its decision dated 27.10.2016 and numbered 16-35/604-269.

plaintiff accepting all of the conditions, and whether the consumers suffered any harm due to the fact that the expo in question could not be held in Ankara. Therefore, it was concluded that the decision to refuse the application and not to launch an investigation was in violation of the law."

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=3db05061-bdad-4eda-9a16-51e4bc8b916f

- **16th Administrative Court of Ankara decision dated 15.11.2019 and numbered E: 2018/2130 K: 2019/2150**

  For Board decisions retaken following an annulment by the courts, the calculation must be based on the most advantageous turnover, i.e. the lowest among the following: turnover for the year before the date of the retaken decision, before the date of the stay of execution decision, or before the annulment date of the decision by the court.

The decision was taken in the lawsuit filed requesting the annulment of the Board decision dated 05.04.2018 and numbered 18-10/185-88, imposing administrative fines on the Turkish Pharmacists' Association (TEB) for violating Article 4 of the Act no 4054 by setting terms of purchase outside the market. The relevant section of the decision is as follows:

"*Accordingly, the Board decision comprising the subject matter of the case made an assessment under the relevant articles of the Regulation on Fines referenced in the court decision without applying aggravating or mitigating factors and based on the gross revenues of the year 2014, which was the lowest among the revenues of 2011, 2014 and 2016 as determined with reference to the date the conduct was implemented and the implementation dates of the court decisions finding the amount of the fines illegal. While making this assessment, objective criteria concerning the plaintiff were observed. Moreover, the authority has discretionary power in calculating the base fine, provided it remains within the legal limits. In light of all of the above, the court did not find any violation of the law in the act of the Authority comprising the subject matter of the present case, imposing 129.916,00 TL administrative fines on the plaintiff based on 2% of the revenue that is more advantageous than the amount imposed with the first act.*"

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=3e3bc345-b2cb-4a35-884d-6c3c35179e58

- **9th Administrative Court of Ankara decision dated 15.10.2019 and numbered E: 2018/1189 K: 2019/2054**

In access to file requests, economic analysis reports must be opened to access with trade secrets blacked out, even if they are prepared by Third Parties.

The decision was taken in the lawsuit filed by Google LLC requesting the annulment of the Competition Board Decision dated 15.03.2018 and numbered 18-08/139-69. The relevant Competition Board decision concerned Google LLC's request for access to file under the Act no 4054 and the Communiqué no 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets, submitted after the notification of investigation report prepared within the scope of the investigation launched in accordance with the Competition Board decision dated 09.02.2017 and numbered 17-06/54-M to the undertaking on 09.02.2018. In the decision, The Board refused a portion of the request while granting access for the remainder, provided the file is accessed at the Headquarters of the Competition Authority, with any trade secrets blacked-out and note-taking allowed but making electronic or mechanical copies disallowed. The relevant section of the decision is as follows:

"*Under the circumstances, not all information and documents in the economic analysis report fall under the concept of trade secret as defined under Article 12.1 of the Communiqué no 2010/3 since the divulgence of the information in question to competitors, third parties or the public would not cause significant harm for the relevant undertaking. Moreover, Article 13.6 of the Communiqué no 2010/3 states that undertakings may only demand confidentiality for trade secrets acquired from them related to their own business. In addition, Figures 7, 12 and 13 in the economic analysis report are also included in the investigation report and a version of these Figures purged of trade secrets are seen by the plaintiff company in the investigation report. Therefore, since a version of the economic analysis report submitted by Yandex should have been open to access by the plaintiff company with the trade secrets blacked out, the act of the Authority comprising the subject matter of the case which refused the request of access on the grounds that the whole economic analysis report in question was a trade secret was found to be in violation of the law*."

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=63759a65-4cf1-4489-a96f-294de23ed9f5

- **Ankara District Administrative Court 8th Chamber of Administrative Proceedings decision dated 20.11.2019 and numbered E: 2019/1829 K: 2019/2624**

Where actions aimed at maintaining resale prices affect the interests of the customers consuming the products concerned, a decision not to launch an investigation following a preliminary inquiry may be taken to judicial review by those consumers whose interests were harmed.

The decision was taken as a result of the appeal proceedings against the decision dated 20.12.2018 and numbered E. 2018/1875 K. 2018/2595 of the 13th Administrative Court of Ankara, which refused the nullity suit filed by Aydın ÇELEN against the Competition Board decision dated 08.03.2018 and numbered 18-07/112-59 on disability grounds. The Board decision concerned was taken as a result of the preliminary inquiry conducted to determine whether Duru Bulgur Gıda San. ve Tic. A.Ş. maintained resale prices for the products it sold and found that it was not necessary to launch an investigation under Article 41 of the Act no 4054. The relevant section of the court decision is as follows:

"*The dispute stems from the undertaking's determining prices or discount rates for retailers in order to maintain resale prices in a manner that would prevent the formation of retail prices of the products sold directly to consumers under the market's own conditions. The preliminary inquiry conducted to determine whether resale price maintenance had took place made an assessment based on the correspondence found, meetings held and the documents gathered, as a result of which the Board decided to render an opinion stating that the practices indicating resale price maintenance must be terminated. Despite deeming it unnecessary to launch an investigation based on the results, this decision clearly shows that practices which could mean resale price maintenance had taken place.*

Under these circumstances, in light of the identification of the effects of Duru Bulgur Gıda San.ve Tic. A.Ş.'s practices on the prices of the dry food products it sells which violate competition rules to maintain resale prices, it is clear that this would affect the interests of the customers who consume these products, the geographical market of which was defined as Turkey.

Therefore, it should be accepted that the consumers whose interests are harmed would submit the subject matter of the present case, i.e. the decision not to launch an investigation following the preliminary inquiry, for judicial review."

Source:

https://www.rekabet.gov.tr/Safahat?safahatId=b6b20a25-d772-41c0-89fa-725c3b69859b

- **Effect of Merger on Market Price and Product Quality: American and US Airways**

Published By: Review of Industrial Organization, (2019) 55

Author: Somnath Das

In the American airlines sector, following the consolidation process that started with the acquisition of American West by US Airways, the world's largest airlines company was created with the merger between AA (American Airlines) and US (US Airways). More than two years passed between the merger application and the approval of the merger. During this period, there has been an increase in the ongoing debate concerning the effect of the mergers in the airlines sector on efficiency gains and market power effects.

This article, published four years after the implementation of the merger, analyzes the effects of the AA/US merger on market prices and product quality. Utilizing the difference in differences analysis, the study examines the flight data of 48 contiguous US states. The necessary data for the study was acquired from the database of the Department of Transportation. The database is comprised of quarterly samples of airline origins and destinations. The analysis calculates the pre- and post-merger price differences in the routes operated by American Airlines and US Airways, as well as the price differences between these routes and the routes in which the aforementioned airlines are not active. Afterwards, the difference between these two, i.e. the difference in differences is established. Thus, the effects of the variances in costs and other general economic changes pre- and post-merger are eliminated, and the effect of the merger itself on prices can be calculated.

The results of the analysis show that the merger pushed down prices especially in larger city-pair[2] markets, whereas the prices went up due to the merger in smaller city-pair markets. The slot divestiture caused by the merger pushed prices down in both large and small markets, though the effect is more emphasized in smaller markets. In addition, the difference in differences analysis shows that the merger did not significantly affect flight frequency or the number of seats. Following the merger, the number of cancellations went down, while there was an increase in delays both for arrivals and departures.

[2] In commercial aviation, a city pair is defined as a pair of departure (origin) and arrival (destination) airport codes on a flight itinerary.

Source:

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- **The Effects of Global Leniency Programs on Margins and Mergers**

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Authors: Ailin Dong, Massimo Massa and Alminas Zaldokas

Sanctions imposed and leniency practices implemented by competition authorities both serve as a deterrent for cartels and facilitate the identification of them. However, discussions about their efficiency has been raised, with rival companies starting to turn to concentrations in order to maintain or increase their market power instead of attempting to form cartels in response to the deterrent power of the sanctions.

Based on those discussions, the article tries to shed light on the subject by focusing on the implementations and outcomes of leniency programs utilized in the fight with cartels in different countries. Within this framework, companies in 63 countries and regions were examined based on the data from Compustat Global and North America databases for the years 1990-2012. The study utilizes a difference in differences method with a sample of 54189 companies.

To begin with, the study finds that leniency programs facilitated the identification of cartels, decreasing the profit margins of the companies and increasing consumer welfare. Secondly, it establishes that when faced with new regulatory barriers for cartel formation, companies chose to engage in mergers/acquisitions with other companies instead of forming cartels, and that these mergers had a negative effect of share prices. As a result, it is concluded that sanctions against agreements with a restrictive effect on competition must be paired with a serious supervision process for concentration transactions. Lastly, the article examines the reactions of the suppliers of the downstream firms to cartel regulations and analyzes their merger/acquisition decisions in terms of their positive effects on productivity as well as their negative effects on market power. This analysis utilized the input-output tables by the Organisation for Economic Co-operation and Development (OECD) and compared the reactions to the post-merger shares of the possible downstream firms of the merging suppliers, in order to reveal the effects of the merger. The results showed that the shares of the downstream firms were negatively affected from the merger decision of their suppliers. In other words, if the merger is implemented, a decrease should be expected in the value of the shares of

the potential customers of the suppliers which are affected by leniency legislations and attempt a merger.

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