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ECONOMIC ANALYSIS AND EVIDENCE IN ABUSE CASES – Contribution from Turkey

- Session II -

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This contribution is submitted by Turkey under Session II of the Global Forum on Competition to be held on 6-8 December 2021.

More documentation related to this discussion can be found at: oe.cd/eac.

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Economic analysis and evidence in abuse cases

- Contribution from Turkey –

1. Economic Analyses and Research Department (EARD) renders opinion, upon request, in inquiries/investigations conducted under the scope of article 6 of the Act no 4054 on the Protection of Competition, which regulates abuse of dominant position, with respect to showing the harm theory examined by the rapporteurs (case handlers) in charge of the file. The opinion consists of economic and/or econometric analysis of the harm theory that is the subject of the investigation. Moreover, in some cases, depending on the findings obtained from the analysis of the file and the relevant data set, the Department also submits opinion about other possible harm factors and assessment methods.
2. The results of the analysis are fundamentally based on statistical and econometrical tests made on the basis of the data set obtained specifically for the matter in hand from the parties to the investigation and the competitors in the sector. The results of the quantitative analysis and their interpretation are submitted as a “report” to the Supervision and Enforcement Department that conducts the investigation. Rapporteurs evaluate those findings together with the other facts and findings in the file.
3. Exclusionary effects of discount systems as well as detection of excessive and predatory pricing are among the current opinions submitted by the EARD. The methods used in two of those opinions are given below.

1. The assessment report submitted in the investigation concerning whether the CCSD’s discounts or conducts concerning refrigerators in sales points created exclusionary effects on its competitors (Case File No: 2019-3-051)

4. In the case file concerning Coca Cola Satış ve Dağıtım A.Ş. (CCSD), whether discount systems applied and increasing the number of cooling cabinets by the CCSD caused de facto exclusivity by foreclosing final sales points was assessed by means of economic analysis.
5. Within this framework, detailed information covering 2015-2019 period concerning the points where the CCSD and its competitors sold their products in the traditional/organized channel such as identity information, sales amounts, sales revenues, discount amounts, the number of refrigerators, the number of refrigerator doors and refrigerator volumes was requested from the CCSD and its competitors. This vast data from several undertakings was matched according to identity information of the sales points. As a result, a comprehensive data set was created. The economic analysis based on the data set evaluated the following issues:
 1. With respect to discounts, whether the CCSD’s discounts were different in the points where CCSD and its competitors made sales and/or had refrigerators compared to those without sales and/or refrigerators.
 2. With respect to refrigerators, whether the situation of competitors’ refrigerator and sales variables suffered changes in points where the CCSD increased the number of its refrigerators.

3. With respect to total effects of the CCSD's sales amount, discount amount and refrigerator variables, to what extent those variables affected competitors' sales, whether they were statistically significant and whether those possible effects changed over time.
6. By means of several statistical (comparing averages, t-tests, etc.) and econometric (panel data regression, difference in differences regression) methods. The analysis revealed findings that were likely to raise competitive concerns and those findings were submitted to the relevant Supervision and Enforcement Department as a report. The investigation process was terminated after the CCSD applied for commitment procedure and the Board approved the comprehensive commitments offered by the CCSD.

2. The Excessive Pricing Decision of the Competition Board dated 05.11.2020 and numbered 20-48/666-291 concerning Ortadoğu Antalya Liman İşletmeleri A.Ş. (PORT AKDENİZ)

7. An investigation was initiated in April 2019 in order to determine whether Ortadoğu Antalya Liman İşletmeleri A.Ş. (PORT AKDENİZ), which operated Antalya Port, violated article 6 of the Act no 4054 by means of excessive pricing in loading and unloading services. The Board decision related to the investigation defined relevant markets as follows: "container handling services market", "solid bulk cargo handling services market", "general cargo load handling services"; whereas the geographic market was "West Mediterranean region" for the first two relevant product markets. In those markets, PORT AKDENİZ was found to be dominant.

8. Basically, the so called "Economic Value Test"¹ was chosen in the economic analysis made about whether excessive pricing was applied in the services in question. The first stage of the analysis is "Price-Cost Difference Test" and the second stage was "Price Comparison Analysis". In addition, PORT AKDENİZ was compared to other ports offering similar services with respect to profitability.

9. In the first stage of the analysis, which method would be applied in determining the costs to be used in "Price-Cost Difference Test" was considered and it was concluded that there were disadvantages of "Ramsey Approach", "Relative Production Output Method" and activity-based costing method (demand forecasting is difficult because the investigation concerned different services and products², different outputs of those products and services were expressed in different units, etc.) for the file in question. As a result, fully allocated cost data based on load (service) types provided both by PORT AKDENİZ, the port under investigation, and ports that were requested information within the scope of the examination was taken into account.

10. For obtaining the prices and price series used in the analysis, with respect to each of the services related to container, bulk load (separately for solid and liquid) and general cargo load provided by PORT AKDENİZ and other ports that were requested information, all of the revenues obtained from those services were taken into account. This was to show real unit prices that the customers faced for transportation of their loads from the relevant

¹ See judgment of the Court of Justice in *United Brands Company and United Brands Continental v Commission*, 27/76, ECLI: EU:C:1978:22.

² It was understood that the port under investigation was providing project cargo and ship and passenger services in addition to container handling, bulk handling and general cargo handling services, which were the subject of the excessive pricing services.

ports stemming from port operators and to minimize the differences between ports that might result from their respective accounting and/or registry systems, so that a sound comparison could be made.

11. Later, the analysis aimed to obtain first the series of the unit prices applied and unit costs incurred. The tariffs for port services submitted by both PORT AKDENİZ and most of the players in the sector were in USD mostly. Considering this, data pertaining to revenues and expenditure items were included in the data set by being calculated also in USD in order to adjust the effects stemming from the changes in the exchange rates over the years, on unit prices and costs. So, unit price and cost series were obtained in both TL and USD.

12. As a result of the analysis, in container load:

- According to the analysis of undertaking's own prices and costs,
 - It was seen that price-cost difference of the undertaking increased gradually after 2015. Although unit costs decreased after 2015, unit prices continued to increase and especially in 2018, the costs were at the minimum level but prices did not fall.
 - It was also seen that markup³ applied by PORT AKDENİZ on container services increased as of 2016 in a stable way and reached a high amount in 2018⁴.
 - A similar trend was seen in profit margins. It was concluded that the said rate⁵ was significantly high. Likewise, the proportion of operating profits to net sales (turnover) in 2018 of the undertakings operating in the main activity branch "H-Transportation and Storage", covering port operation services in the NACE categorization, was 2.35%. This was also taken into account.
- According to the price-cost analysis with respect to the same service provided by the undertaking and other ports
 - In order to show whether the prices charged by the undertaking for those services were excessive/unfair, in the second stage, the prices of the undertaking concerned were compared with the prices of its competitors and the port operation sector in general. As a result of that comparison, according to the descriptive statistics calculated with respect to unit prices applied for container services by PORT AKDENİZ and several ports in different geographical regions, unit prices applied by PORT AKDENİZ for container services were higher during the entire 2014-2019/6 period, compared to other ports.
 - In the comparison of profitability, the differences between the profitability indicators gained by PORT AKDENİZ from container services⁶ and the average of the profitability calculated for the same services for all five ports included in the analysis⁷ and for each year, the profit of the port which had the closest level of profitability to PORT AKDENİZ were taken into account. It is

³ The markup and profitability of the undertaking were calculated on the basis of its revenues and fully allocated costs related to the services in question.

⁴ This rate was not published in the reasoned decision for confidentiality grounds.

⁵ Regarded as a trade secret.

⁶ Profitability was calculated on the basis of the revenues and fully allocated costs related to the services in question.

⁷ During the investigation, data qualified to be included in the analyses were obtained from five ports.

seen that PORT AKDENİZ was above similar ports in general with respect to not only unit prices but also profitability.

- In the comparisons made according to accounting profitability criteria, which were identified as EBITDA, net profit rate and revenue to expenditure margin which covered all services of the ports, whose data were obtained, including PORT AKDENİZ, it was seen that PORT AKDENİZ's EBITDA and income-expenditure margin increased until 2018 and profitability was above the average in the sector on the basis of the three criteria.

13. The results of the analysis are as follows: The prices applied by PORT AKDENİZ especially between 2016 and 2018 for container services could be regarded as excessive pricing. It is difficult to make an assessment of whether the prices applied for solid bulk cargoes were excessive. The prices applied for general cargo load services did not seem to be supporting the excessive price argument.

14. The conclusions in the Board decision are as follows: PORT AKDENİZ was dominant in the “container handling services market”, “solid bulk cargo handling services market”, “general cargo load handling market” and in the geographic market defined for the first two relevant product markets, the “West Mediterranean region”. PORT AKDENİZ applied excessive prices especially between 2016 and 2018 in container handling services market. When considered together with the qualitative issues such as the dynamics of the relevant market, reasons stated by the party to the investigation and the opinions of the relevant parties, the result of the economic analysis showed that the prices applied by PORT AKDENİZ was unreasonably and continuously high. Thus, PORT AKDENİZ violated article 6 of the Act no 4054 by means of excessive pricing in container handling market between 2016 and 2018.