Turkish Competition Authority

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INTRODUCTION

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

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

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

"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 titled "*Measuring Market Power in Multi-Sided Markets*" and another article published by CESIFO *titled "Cross-ownership, R&D Spillovers and Antitrust Policy".*

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 Auto gas Dealers operating in Adıyaman Province**

Decision Date:	Decision No:	Type:
29.03.2018	**18-09/180-85**	**Investigation**

The decision was related to the investigation initiated in response to the claim that auto gas dealers operating in the center of Adıyaman province agreed to increase prices.

The parties of the investigation were Adıyaman İpek Akaryakıt Otomotiv Gübre İnşaat Nakliye Gıda Sanayi ve Ticaret Ltd. Şti. (İPEK), Alibeyoğulları Akaryakıt Doğalgaz İnşaat Mühendislik Taşımacılık Gübre Sanayi ve Ticaret Ltd. Şti. (ALİBEYOĞULLARI), Atayoğlu Petrol Ürünleri Tekstil Gıda İnşaat Turizm Otomotiv Sanayi ve Ticaret Ltd. Şti. (ATAYOĞLU), Beyazyıldız Madeni Yağlar ve Petrol Ürünleri Turizm Gıda Otomotiv Ticaret ve Sanayi Ltd. Şti. (BEYAZYILDIZ), Celaloğulları Akaryakıt Gıda Otomotiv Nakliyat İnşaat Sanayi ve Ticaret Ltd. Şti. (CELALOĞULLARI), Daşcanlar Akaryakıt Taşımacılık İnşaat Demir Çelik Metal Gıda Sanayi ve Ticaret Ltd. Şti. (DAŞCANLAR), Denyıl Akaryakıt Nakliye Tekstil Gıda Turizm İnşaat Sanayi ve Ticaret Ltd. Şti. (DENYIL), Doğkar Akaryakıt Turizm Gıda Taşımacılık İnşaat Temizlik Sanayi ve Ticaret Ltd. Şti. (DOĞKAR), Dostlar Akaryakıt Nakliyat Gıda ve Yem Sanayii Ticaret A.Ş. (DOST), Gap Akaryakıt Nakliyat Gıda İletişim Madencilik Yedek Parça Sanayi ve Ticaret A.Ş. (GAP), İpek Özel Eğitim Otomotiv Gıda Akaryakıt Tarım Ürünleri Sanayi Ticaret Ltd. Şti. (İPEK OTOMOTİV), Karınca Akaryakıt Enerji İnşaat Orman Ürünleri Nakliye Sanayi ve Ticaret Ltd. Şti. (KARINCA), Mustafa Dağdevran – Devdağlar Petrol (DAĞDEVRAN), Mustafa Yücel Petrol Akaryakıt Turizm Nakliyat Sanayi ve Ticaret Ltd. Şti. (MUSTAFA YÜCEL), Öncebe Petrol İnşaat San. Ve Tic. A.Ş. (ÖNCEBE), Tohumcu Akaryakıt Taşımacılık Oto Lastikleri İnşaat Sanayi ve Ticaret Ltd. Şti. (TOHUMCU) and Ünal Turizm Uluslararası Taşımacılık ve Ticaret Ltd. Şti. (ÜNAL).

Depending on the evidence collected, the investigation showed that the officials of auto gas stations held a meeting at the premises of Adıyaman Chamber of Trade and Industry, where the participants complained about competition and price differences, took a decision to solve this problem and make a maximum 4% discount over the recommended price and create a commission to monitor whether stations comply with the decision.

During the meeting at the Chamber of Trade and Industry, AYEL, BEYAZYILDIZ, DEMİRCİOĞLU, DENYIL, DOST, KARATAŞ, KARINCA,

MUSTAFA YÜCEL, ÖZDEMİREL, ÖZDERECİ, ŞAHİN, TOHUMCU, ÜNAL and YETİŞ made an agreement restricting competition in auto gas retail sale market. The agreement fixed prices as well as minimum discount rates for the relevant parties and fell under article 4(2)(a). On the other hand, ÇINAR, ESENTEPE, SANPET, YAMANPET, EROLGAZ and YÜCEL did not violate article 4 of the Act no. 4054.

Price increases began at the end of 2014 and lasted for about one month; thus, the duration of the infringement was less than one year in any case.

It was concluded that gas stations operating in auto gas retail sale market in Adıyaman violated article 4 of the Act no. 4054 by means of price fixing; therefore, the undertakings in question would be imposed administrative fines according to article 16(3) of the Act no. 4054 and the relevant Regulation. While the agreement was defined as a cartel, it was concluded that the infringement lasted less than one year and the practices that are the subject of the infringement had a very small share in annual gross income, which was regarded as a mitigating factor and the basic fine was reduced by 50%.

As a result, the following administrative fines were imposed: to AYEL, BEYAZYILDIZ, DEMİRCİOĞULLARI, DENYIL, DOSTLAR, KARATAŞ, KARINCA, MUSTAFA YÜCEL, ÖZDEMİREL, ÖZDERECİ, ŞAHİN, TOHUMCU, ÜNAL and YETİŞ.

- **Investigation conducted in the Electricity Market in the Mediterranean Region**

Decision Date:	Decision No:	Type:
20.02.2018	**18-06/101-52**	**Investigation**

The decision was about the claim that Akdeniz Elektrik Dağıtım A.Ş. (AKDENİZ EDAŞ), CK Akdeniz Elektrik Perakende Satış A.Ş. (CK AKDENİZ) and AK DEN Enerji Dağıtım ve Perakende Satış Hizmetleri A.Ş. (AKDEN) violated article 6 of the Act no. 4054.

The investigation revealed that AKDENİZ EDAŞ held a dominant position in Akdeniz electricity distribution region and CK AKDENİZ held a dominant position in the relevant markets for "retail electricity sales to consumers under eligible consumer limits", "retail electricity sales to industrial consumers tied to the system at the distribution level", "electricity retail sales to business consumers" and "retail electricity sales to residential consumers" in the distribution regions.

Moreover, AKDENİZ EDAŞ shared competition sensitive information such as consumers' consumption and contact information with only CK AKDENİZ, creating an advantage for CK AKDENİZ to the detriment of other suppliers and thus abused its dominant position by means of restricting competition in the markets for eligible consumers.

Within the framework of distribution activities, AKDENİZ EDAŞ's meter readers signed agreements with eligible consumers on behalf of CK AKDENİZ, personnel working at various positions at CK AKDENİZ served for both firms, AKDENİZ EDAŞ sent SMS's and published agreements on behalf of CK AKDENİZ. As a result, AKDENİZ EDAŞ provided competitive advantages over CK AKDENİZ, restricted competition in the market for electricity retail sales in Akdeniz electricity distribution region and abused its dominant position in the relevant market.

The relations established between CK AKDENİZ, AKDENİZ EDAŞ and AKDEN via an agreement and other protocols created competitive advantages for CK AKDENİZ. Moreover, CK AKDENİZ had access to competitive sensitive information kept by AKDENİZ EDAŞ, which provided anti-competitive advantages to CK AKDENİZ. Consequently, the undertakings concerned abused their dominant positions by means of restricting competition in the market for providing electricity.

By means of practices related to loading at high amounts or not loading at all with respect to consumers which switched their suppliers, AKDENİZ EDAŞ abused its dominant position in Akdeniz electricity distribution region to restrict competition in the downstream market for electricity retail sale for the benefit of CK AKDENİZ, with which it is in a vertically integrated structure.

The gap between CK AKDENİZ's maximum agreement capacity and excessive increase in its eligible consumer portfolio indicates that customers are added to eligible consumer portfolio without an agreement and notice.

CK AKDENİZ foreclosed the market by means of taking PSS and bilateral agreements from consumers consciously and systematically.

CK AKDENİZ abused its dominant position by forcing consumers to sign bilateral agreements through closing payment channels and notifying illegal use.

CK AKDENİZ also abused its dominant position by signing bilateral agreements with consumers under eligible consumer limit, in other words consumers who do not have right to choose their supplier, or recording them directly in its eligible consumer portfolio.

CK AKDENİZ foreclosed relevant markets by means of eliminating eligible consumer mobilization process and breaking down the consumer choice mechanism and thus abused its dominant position in the relevant market, which involves consumers buying electricity on regulated tariffs, to prevent competition in eligible consumer market.

Moreover, CK AKDENİZ intentionally did not fill the date blank in IA-02 forms while making bilateral agreements with customers and complicated switching to other suppliers. Consequently, CK AKDENİZ abused its dominant position in the relevant markets concerning eligible consumers to prevent switching to other suppliers.

With respect to CK AKDENİZ's notification about power cut to indebted customers, AKDENİZ EDAŞ created competitive advantages for CK AKDENİZ's favor. AKDENİZ EDAŞ and CK AKDENİZ abused their dominant positions in relevant markets in a way that provides CK AKDENİZ financial advantages in eligible consumer markets by manipulating competition for the benefit of CK AKDENİZ.

In summer and winter periods, which are defined as chronic crisis for electricity sector, CK AKDENİZ used its powers as an official supply company and abused its dominant position in the market for supplying electricity to eligible consumers and to consumers under eligible consumer limits. Also, CK AKDENİZ restricted competition in the market for electricity retail sales to industrial consumers by shifting some of its customers between K1-K2 portfolios.

There were regulations which extend the commitments in agreements signed by CK AKDENİZ with institutional customers and those regulations created effects preventing eligible consumer from switching suppliers and foreclosing relevant markets.

CK AKDENİZ and AKDENİZ EDAŞ used the other party to the investigation AKDEN as a tool to carry out their practices; thus, it is not necessary to assess AKDEN for violation.

Consequently, AKDENİZ EDAŞ and CK AKDENİZ were imposed administrative fines according to article 6 of the Act no. 4054.

- **The Decision about Bayer Aktiengesellschaft's (BAYER) Acquisition of Monsanto Company (MONSANTO)**

Decision Date:	Decision No:	Type:
08.05.2018	**18-14/261-126**	**Phase II Investigation**

The decision was related to the acquisition by BAYER of MONSANTO.

Parties' activities overlap in the markets for cottonseeds, vegetable seeds and herbicides. Previously, the parties submitted commitments to the EU Commission and the EU Commission cleared the transaction within the framework of the commitments. The commitments in question also covered parties' activities in Turkey therefore they were taken into account for the assessment.

The EU Commission accepted the commitments that BAYER's assets in vegetable seeds and cottonseeds would be transferred to BASF. The Board decision dated 08.05.2018 and numbered 18-14/262-127 and dated 18.01.2018 and numbered 18-03/28-16 authorized the transfer of those assets. In case the commitments are realized, the vertical overlap between vegetable seeds and cottonseeds will be eliminated. Accordingly, it was decided that there were not any objections to the authorization of the transaction with respect to those markets.

With respect to herbicides, the transaction might raise competition concerns if the market is defined narrowly or broadly.

The vertically integrated entity to be formed after the merger was evaluated specially in terms of its effects to corn seed market. The EU Commission accepted the commitments that BAYER's assets would be transferred to BASF. The Board decision dated 08.05.2018 and numbered 18-14/262-127 authorized the transfer of those assets. In case the commitments are realized the vertical overlap between corn seeds and insecticides used in corn seeds will be eliminated, therefore, the transaction might be authorized.

Consequently, it was decided that the commitments that Bayer submitted to the EU Commission regarding vegetable seeds, cottonseeds, corn seeds and insecticides used for corn seeds eliminate horizontal and vertical overlaps in Turkey; therefore the transaction concerned would not result in creating a dominant position or strengthening an existing dominant position as prohibited by the same article of the Act no 4054 and thus significant

lessening of competition, thus it would be authorized within the framework of the commitments submitted to and accepted by the EU Commission.

- **The decision concerning the Acquisition of Mardaş Marmara Deniz İşletmeciliği A.Ş. (MARDAŞ) by Arkas Holding (ARKAS)**

Decision Date:	Decision No:	Type:
08.05.2018	**18-14/267-129**	**Phase II Investigation**

The decision is related to the acquisition of MARDAŞ, which operates in Ambarlı Port, by Limar Liman ve Gemi İşletmeleri A.Ş., controlled by ARKAS which carries out several activities in maritime business.

Although both economic analysis and information obtained indicated that the geographical market could be defined in a broader sense in which case MARDAŞ's market share would be smaller, there is a risk of coordination taking into account the positions of Marport Liman İşletmeleri Tic. ve San. A.Ş. (MARPORT) and Asyaport Liman A.Ş. (ASYAPORT) in Marmara Region and North West Marmara sub-region and the fact that they are operating container lines. In addition, ASYAPORT has railway connection. Thus, it was concluded that the transaction might result in joint dominant position and coordinating effects.

Arkas Group submitted commitments that MARPORT and MARDAŞ will completely be divested in operational terms and legal terms, their functioning will be differentiated, mechanisms for sharing commercially sensitive information that is closed to competitors will not be created and MARDAŞ will not exchange information with MARPORT. It is not possible to use MARPORT's information because of Turkish Code of Commerce and agreements between MSC Gemi Acenteliği Anonim Şirketi (MSC) and ARKAS.

There are five different undertakings in customs bonded temporary storage services market. LİMAR or ARKAS do not offer that service. KUMPORT has a big share among firms that make transshipment activities to Hursan Lojistik ve Dış Ticaret A.Ş. (HURSAN) and Almo Lojistik Geçici Depolama Hizm. Ltd. Şti.'ye (ALMO). Although it is possible to say that ARKAS operates in this market via MARPORT, MARPORT is a joint venture operating as an independent entity and the other party of the joint venture MSC does not carry out activities in the same geographic market. Considering the abovementioned facts, temporary storage services by ARKAS and the joint

venture do not create risks of coordination and it is not possible to create or strengthen a dominant position with respect to this service.

With respect to guidance, towage and Ambarlı Port peripheral services, competition concerns are not expected.

Within the framework of the notified transaction, competition concerns arise because

- ARTER, which is under the body of Arkas Group and which will operate in the area of container terminal operation and Arkas Group's container shipping line services are vertically related,
- Although market shares of ARKAS and MARDAŞ are below 25% threshold, depending on market structure and competitive concerns revealed at the final investigation stage suggest that input might be restricted especially for undertakings offering container shipping line operation services due to current partnership structures in the market,
- If undertakings such as (…..) and (…..) face with discrimination while buying services from a port operated by their competitors ARKAS LINE, alternative ports will be operated by Arkas Group and its partners (except KUMPORT). On the other hand, Arkas Group suggested remedies against those concerns. In this sense, considering Arkas Group's market share and commitments given, the merged entity will not be able to restrict its current competitors operating in the downstream market for container shipping line operating or new entrants from accessing to container handling services.

In the market for container handling services, it will not be possible to restrict customers taking into account buyer power and the fact that current operators will continue to operate in case of operational mergers. Within this framework, it was concluded that the transaction would not create foreclosure effects with respect to customers taking into account relatively low market share of ARKAS Group in container transport market and intense competition.

With respect to vertical effects, anti-competitive coordination risks are also evaluated. It was concluded that commitments submitted by Arkas Group concerning the realization of relevant organizations would stop information flow within Arkas Group so its competitors will not be able to reach price, technology and other non-price important information. In addition, the principles for implementing commitments were clear.

The transaction concerned would not result in creating a dominant position or strengthening an existing dominant position with respect to article 7 of the Act no 4054 and thus significant lessening of competition, therefore it would be authorized within the framework of the commitments registered dated 14.07.2017 and numbered 5086 and dated 18.12.2017 and numbered 9220.

- **The Decision concerning Obstruction of On-site Inspection by Mosaş Akıllı Ulaşım sistemleri A.Ş. (MOSAŞ)**

Decision Date:	Decision No:	Type:
21.06.2018	**18-20/356-176**	**-**

The decision was taken after MOSAŞ hindered, on 05.06.2018, on-site inspection to be made within the framework of the preliminary inquiry conducted according to the Board decision dated 08.03.2018 and numbered 18-07/124-M.

The rapporteurs went to MOSAŞ at 10.30 a.m. on 05.06.2018 but they could not carry out the inspection.

Within this framework, as per article 16(1)(d), the undertaking was imposed 81.500,87 TL administrative fines, amounting to 0,5% of its gross revenues accrued at the end of the financial year 2017.

On the other hand, based on the provision laid down under article 17(b) on hindering or complicating on-site inspection, it was also decided that periodic fines amounting to 0,005% of its annual gross income accrued at the end of the year 2017, for each day starting from 05.06.2018, when on-sight inspection was hindered until the written invitation by MOSAŞ to terminate the hindrance shall be imposed. Within this framework, MOSAŞ was imposed 8.150,09 TL administrative fines.

- **The Decision about Interbank Card Center's (BKM) Card Data Storage Services**

Decision Date:	Decision No:	Type:
12.06.2018	**18-19/337-167**	**Exemption**

The decision was related to the request of BKM for the grant of individual exemption to card data storage services according to article 5 of the Act no. 4054.

It is possible to offer card data storage services, which are a part of the competition between banks and are closely related to card payment services, by each bank itself or by external service providers to customers. If this service is provided by BKM, an association of undertakings, it may affect competition in the market. Within this framework, the service in question fell under the scope of article 4 of the Act no. 4054 and was subject to exemption analysis as per article 5 of the Act no. 4054.

There are not any efficiency gains which are peculiar to BKM's offering this service and which cannot otherwise be obtained. In this sense, efficiency gains are not provided as per article 5 of the Act no. 4054.

In addition to this observation, it was concluded that there are not any consumer benefits, so the condition listed under subparagraph (b) is not fulfilled.

For offering card data storage services under BKM, banking infrastructure will be used; however, other payment institutions offering the same services cannot create a similar integration. As a result, competition will be distorted in a significant part of the market. If banks offer this service under BKM's body, this will decrease the incentives for offering those services independently, which will negatively affect active competition and variety in the market. Therefore, the notified service did not fulfill the condition under article 5(1)(c) of the Act no. 4054.

BKM would restrict competition more than necessary by offering card data storage services. Card data storage service would affect directly and distort competition between both BKM and payment institutions and banks and payment institutions. Moreover it would affect BKM's and its partner banks' competitive potential. In this sense, banks would complicate payment institutions' activities through BKM. Likewise, regarding that some of BKM partner banks are already offering this service and potentially all banks could offer it; BKM's offering this service created competition concerns. If banks did not offer this service directly and put BKM as a player in the market, it would be risky. Therefore, it means that the condition in article 5(1)(d) would not be met.

Taking into account all of the evaluations above, BKM's card storage service would not meet exemption conditions under the scope of article 5 of the Act no. 4054; thus, it is not possible to grant exemption to the said practice.

- **European Commission issues first RPM fines after 15 years**

The European Commission has fined four electronics manufacturers (Asus, Denon & Marantz, Philips and Pioneer) €111 million for restricting the prices that online retailers could charge for their consumer goods between 2011 and 2015.

The Commission's investigation highlighted the increased use of automated software for monitoring and setting prices. In particular, the Commission found that the manufacturers had intervened with online retailers that offered their products at low prices. Failure to follow the prices set by the manufacturers resulted in threats or sanctions. The intervention had the effect of limiting effective price competition and led to higher prices for consumers. The Commission specifically pointed to the fact that the companies used sophisticated algorithms to monitor the prices set by distributors, thereby allowing them to intervene quickly in case of price decreases.

The Commission has not fined a manufacturer for resale price maintenance since 2003, when it sanctioned Yamaha €2.56 million for fixing the minimum retail price of musical instruments for distributors engaged in parallel imports.

The Commission initiated four individual probes against the electronics manufacturers in 2017 following complaints from retailers. Its investigations revealed that the companies infringed resale price maintenance rules when they contacted online retailers selling electronic products and asked them to increase their prices.

"As a result of the actions taken by these four companies, millions of European consumers faced higher prices for kitchen appliances, hair dryers, notebook computers, headphones and many other products," Vestager said today.

Vestager said one "big advantage" of e-commerce for consumers was the ability to compare prices and "shop around". However, these four companies "denied consumers of the full benefits of e-commerce" by manipulating the price of electronic goods sold online.

The four manufacturers all cooperated with the investigation, after admitting they had engaged in unjustified resale price maintenance before the commission even issued a statement of objections.

The Commission reduced Pioneer's initial fine by 50% because it provided evidence "of a significant value" that helped the enforcer's investigation,

while the fines handed down to Asus, Denon & Marantz and Philips were also cut by 40%.

Sources:

https://globalcompetitionreview.com/article/1172239/eu-issues-first-rpm-fines-in-15-years

https://www.whitecase.com/publications/alert/rpm-comes-back-dead-eu-commission-tackles-pricing-e-commerce

- **Peru introduced financial rewards for whistle-blowers**

Peruvian competition authority, within the scope of its existing leniency programme, has has introduced financial rewards to individual whistle-blowers, in return for the information leads to the successful detection and punishment of a cartel.

Peru Competition Authority, which published draft guidelines for its leniency programme, which aimed to make the programme more predictable and attract more applications in 2016, has made a new attempt by this revision to further strengthen its hand in the detection and prosecution of cartels.

It has been observed that over the past three years, Peruvian competition authority has been active in using its existing leniency programme and increased the number of dawn raids each year, however concerns related to lacked incentives for individuals to step forward have been on the stage.

According to leniency programme in Peru, an individual could apply to the leniency programme, but the incentives to do so is low due to potential risk that the individual could face in risk in the workplace or lack of financial return.

On the other hand, there are gaps to be filled, such as, what the financial rewards will be and who would be entitled to them, as well as the extent to which confidentiality is ensured and protected and so forth…

While financial reward schemes for individuals are not very common in leniency programmes, their use as a complementary tool is recently on rise. The UK launched a reward scheme as far back as 2008, for which informants were eligible to rewarded up to £100,000.

In 2017, Poland also announced plans to start paying individual whistle-blowers. Singapore's competition authority also has a reward scheme for individuals with inside information on cartel activities.

Source:

https://globalcompetitionreview.com/article/1174057/peru-will-pay-individual-whistle-blowers

- **Germany to consider competition law fit for antitrust challenges of the digital age**

The government of Germany has set up a new investigatory commission called Competition Commission 4.0 to lead the modernization of the country's competition law. It will evaluate whether the country's competition law should be revised to respond to unique antitrust challenges raised by the digital economy and investigate whether EU antitrust law adequately addresses concerns associated with big tech and big data.

The initiative follows on the heels of a report published by the Federal Ministry for Economic Affairs, which recommended changes to Germany's competition law to address the accumulation of market power in online markets.

The commission will examine whether fundamental changes are required across Europe to protect competition in the digital market. It will examine whether attempts to standardise digital industries should be afforded greater discretion, as these efforts are currently hampered by European laws which view these efforts as anticompetitive collusion.

It will also consider the scaling and cooperation needs of German and European digital companies, to facilitate their growth at a rate that matches counterparts like Google and Facebook.

The commission will further analyse the effects of algorithms and artificial intelligence on competition, and determine if any procedural changes are required to enable agencies to address antitrust concerns in the digital market.

The commission will present its findings to the Federal Ministry of Economics and Energy in the latter half of 2019.

Sources:

https://globalcompetitionreview.com/article/1174053/germany-doubles-down-on-exploration-of-antitrust-reform-in-digital-age

https://www.competitionpolicyinternational.com/germany-sets-up-body-to-lead-modernisation-of-competition-law/

- **Romanian Competition Authority conducted cross-border dawn-raids**

Starting in early 2017, the Romanian Competition Authority (RCC), with the support of national competition authorities and local police, raided companies from Italy, the UK and Belgium in two of their currently ongoing investigations on the insurance and pharmaceuticals markets.

Regulation 1/2003 sets out the legal basis for cross-border cooperation between competition authorities in EU. These may include raids at the offices of foreign-based entities or even private homes of individuals that are suspected of hosting relevant evidence. Inspections are decided by the RCC, although the procedural law governing the collection of evidence will be that of the host state. Accordingly, the potential targets of an inspection are offered safeguards under their own laws. On top, under the "free movement of evidence" system set up by Regulation 1/2003, in order to avoid "forum-shopping" by competition authorities, the raided company should be warranted the same safeguards and due process standards as those enjoyed by companies in Romania.

On the other hand, the raid itself cannot be carried out by the RCC, but by the national competition authority, with the support of enforcement agents, as needed, for the account of the RCC. RCC inspectors might (and often will) be present on the spot, to assist the foreign authority, but would need the admission of the targeted company to participate in the inspection of its premises. Inspections are carried out in accordance with the national law of the Member State where the inspection or fact-finding measure actually takes place.

Documents or emails may be seized, irrespective of the language in which they are written. The inspected entity or individual may be required to have excerpts of relevant documents or correspondence translated into Romanian at a later stage, for the investigation file.

Due to the high convergence of all European competition authorities' powers, the raid should unfold in pretty much the same way across the EU, though there may be slight differences in each state.

This cross-border interaction is likely to increase even more going forward. The ECN+ Directive, which is in the legislative pipeline and seeks to further empower the national competition authorities, aims to further facilitate cross-border investigations, including mutual assistance in dawn raids.

This "free movement of evidence" is not beyond criticism, as it can arguably lead to conflicts between national procedural laws and, accordingly, the fundamental rights of the raided companies may be affected.

Information exchanges between the national competition authority and the RCC follow the rules set out by Regulation 1/2003 and investigated parties benefit from specific procedural rights.

Source:

http://www.mondaq.com/article.asp?articleid=737356

- **Ankara 7th Administrative Court Decision numbered 2017/2315 E. and 2018/1266 K., concerning the lawsuit filed by the Turkish Pharmacists' Association (TEB) to annul the Competition Board decision of 06.12.2016, numbered 16-42/699-313.**

- The suit was filed to annul the administrative fine of 18 million Turkish Liras imposed on TEB for violating article 6 of the Act no 4054 by signing exclusive agreements with foreign drug providers despite holding dominant position in the market for supplying pharmaceuticals from abroad.
- The examination conducted by the 9th Administrative Court found that
  - the protocol signed between TEB and the Ministry of Health in 1996 under the provisions of the Act no 1262 granted the exclusive rights to supply drugs from abroad for personal treatment to TEB,
  - court decisions stayed the execution of legislative amendments which tried to terminate the exclusivity rights of TEB throughout the years,
  - therefore the exclusivity rights held by TEB did not legally change.
- Consequently, the Court found that TEB could not have violated the Act no 4054 by executing the power granted by law, and annulled the Competition Board decision.

Source:

http://www.rekabet.gov.tr/Safahat?safahatId=3b78b28b-362a-41f3-bf48-e95d9e37cadc

- **Plenary Session of the Administrative Law Chambers (PSALC) of the Council of State decision numbered 2015/4236 E. and 2018/763 K., taken concerning the request of appeal by TEB to reverse the unfavorable portions of the 13th Chamber of the Council of State, dated 14.4.2015.**

- The lawsuit was filed to request the annulment of the administrative fine imposed with the Competition Board decision dated 26.8.2010 on TEB for violating the Act no 4054 by decisions of associations of undertakings, as listed in Article 4 of the Act no 4054, due to the

decisions taken in TEB's Presidents' Advisory Board in 1998 and the related practices with a view to:

- decrease drug inventories,
- avoid participation in firm campaigns,
- purchase new drugs on demand,
- prefer purchases on credit,
- prefer pharmacists' cooperatives as much as possible in purchases,

as well as due to the fine imposed on Pharmacist Zübeyde Yiğitalp for refusing to comply with the above decisions.

- In its decision, the first instance court of the 13th Chamber of the Council of State
  - Concerning the decision of the Competition Board, rejected TEB's objection, finding that the decisions taken at the Presidency Council of the TEB were in violation of the Act no 4054 and that therefore this portion of the Board decision was lawful,
  - However, annulled the portion of the Board decision stating the fine imposed on pharmacist Zübeyde Yiğitalp by TEB violated the Act no 4054, ruling that the subject was an internal matter of the TEB and the Board did not have the power to conduct an examination thereon.
- Afterwards, the ruling of the first instance court was appealed by both the Competition Board and TEB.
- Following its examination of the file, PSALC of the Council of State made the following observations:
  - Under the Act no 4054, Competition Board may have the power to conduct investigations, to take measures concerning any violations or to impose sanctions concerning the decisions taken by the TEB Presidents' Board.
    - However, the decisions taken by the TEB Presidents' Board are a result of the duties and powers listed in its Law of Establishment, no 6643, and the decisions in question were taken in accordance with the TEB legislation and administrative procedure,
    - An examination under Article 4 of the Act no 4054 may not disregard the duties and powers listed in Law no 6643 Establishing TEB,
- Therefore, the Competition Board did not have the power to conduct a competition investigation or impose a sanction concerning the aforementioned decisions of the Presidents' Board. Consequently,

PSALC accepted the appeal of TEB and annulled those portions of the Competition Board decision previously approved by the local court.

- PSALC also rejected the appeal of the Competition Board stating that the fine imposed by TEB on pharmacist Zübeyde Yiğitalp violated the Act no 4054.

Source:

http://www.rekabet.gov.tr/Safahat?safahatId=1e9fe2de-018d-4b42-b4d8-d944f930549d

- **13th Chamber of the Council of State Decision numbered 2015/5824 E. and 2018/1536 K. concerning the annulment of the Competition Board decision dated 5.1.2006 and numbered 06-02/47-8 and the administrative fines imposed on Turk Telekom**

- The suit was filed after the decision Competition Board took in 2002 concerning Türk Telekom was annulled within the framework of "investigating member" decisions and the Board took the same decision in 2006 without starting new proceedings but this time without an investigating member.
- 13th Chamber of the Council of State, the first instance court concerned, made the following assessments in relation to the claims of Türk Telekom:
  - Concerning the claim that the Board took the new decision without allowing Türk Telekom to exercise its constitutional right to defend itself, the Court stated that the former Board decision was annulled due to a formal illegality and it was lawful for the administration to retake the decision after mending the issue;
  - Concerning the claim that the decision in question had lapsed, the Court stated that the period of limitations prescribed by the Misdemeanor Law was valid for the 2005 decision in question, also that PSALC decisions established that a new decision of the administration concerning the same subject would not activate the period of limitations,
  - In the relevant decision, Türk Telekom implemented tariff increases in the competitors' satellite and ground station leasing business despite a lack of cost increases, which would complicate the operations of its competitors and push them out of the market, thereby abusing its dominant position by engaging in price squeezing practices.

- On the abovementioned grounds, the Court found the Board decision concerned lawful and rejected the request of Türk Telecom.

Source:

http://www.rekabet.gov.tr/Safahat?safahatId=cd59f81c-6a48-4c8f-91de-5a82df570072

- **13th Chamber of the Council of State Decision numbered 2018/1302 E. ve 2018/2332 K. concerning the annullment of the Board decision, authorizing the transfer of Dosu Maya from Yıldız Holding to Lesaffre et Compagnie S.A., owner of Öz Maya**

- The lawsuit was filed to request the annulment of the 2014 Board decision authorizing the transfer of full control owner Dosu Maya, previously owned by Yıldız Holding, to Lesaffre et Compagnie, operating in Turkey under the title Öz Maya.
- Ankara 8th Administrative Court, which was the court of first instance for the matter, annulled the Board decision in question on the following grounds:
  - following the acquisition, especially in the fresh yeast market, Öz Maya would become the market leader with 44% (second place Pak Maya with 97%);
  - undertakings operating in the market would fall from four to three, leading to an anti-competitive market structure;
  - the high cost of entry into the market constituted a barrier for new players;
  - customers' bargaining power was low, and would fall even lower following the acquisition;
  - in the previous years, the Board had established that the market was transparent, imposed administrative fines due to coordination between undertakings, and therefore the risk of coordination between the undertakings in the market should be anticipated to increase following the acquisition, which would reduce the number of players to three;
  - Öz Maya and Pak together would have an 80% market share and these two undertakings would be able to abuse their joint dominant position;
  - Structural and behavioral commitments undertaken by Öz Maya did not eliminate the competitive concerns and were insufficient.

- During the appeal phase, 7th Administrative Trial Chamber of the Ankara Regional Administrative Court approved the decision of the first instance court and the file was appealed before the Council of State.
- The 13th Chamber of the Council of State made the following assessments after its assessment:
    - The grounds of the first instance court for the annulment were valid,
    - Market concentration following the acquisition was significantly higher than the HHI index, leading to competitive concerns;
    - The market had high barriers to entry and never had a maverick undertaking;
    - An assessment of the commitments given by Öz Maya to the Board under the framework of the Guidelines on Remedies That are Acceptable by the Turkish Competition Authority in Merger/Acquisition Transactions showed that
        - the commitments did not remove the competitive concerns,
        - the Guidelines specified that behavioral and structural commitments had to be of equal strength, while the only structural commitment in the file was the divestiture of the 2000 Gıda, which had a 5% distribution effect in Turkey with all the rest comprised of behavioral commitments,

      consequently structural commitments were neither as balanced nor as complete as specified in the Guidelines.
    - With respect to the behavioral commitments,
        - the commitment to distribute the yeast produced under the Dosu Maya brand to a larger region was positive and could raise competitive pressure on the rivals,
        - however, the Board decision did not sufficiently explain how the commitment to maintain the price difference reported by the parties would positively reflect on the existing competitive concerns,
        - similarly, a commitment to maintain the difference between the prices did not necessarily mean that the merged undertaking (Öz Maya and Dosu Maya) would implement competitive pricing,
        - As stated in the Board decision, removal of the exclusivity clause from the agreements would not prevent de facto exclusivity;

- The Board decision did not discuss how the competition compliance program would increase competitive conduct;
- The Board decision also did not discuss the effect of the commitment not to acquire Ak Maya, which had a 1% effect on the market, on competition in the market.

Due to the reasons listed above, the 13th Chamber of the Council of State upheld the annulment of the Board decision concerned, ruling that the commitments package was insufficient to eliminate the competitive concerns that may arise in the market and the approval of the commitments in their current form would be in violation of the Act no 4054.

- On the other hand, it is important to note that the 13th Chamber also emphasized that the Board would be able to authorize the acquisition transaction concerned in response to a more sophisticated and complete commitments package, prepared in light of the grounds of the 13th Chamber's decision.

Source:

http://www.rekabet.gov.tr/Safahat?safahatId=cb5b8899-b0d5-4601-8810-f02917d199a5

○ Ankara 2nd Administrative Court Decision numbered 2017/2049 E. and 2018/1253 K. concerning the request for the annulment of the Booking.com decision of the Board, dated 5.1.2017

- The lawsuit was filed to request the annulment of the Competition Board decision imposing a fine of 2.543.992,85 TL on Booking.com for violating Article 4 of the Act no 4054 by the price and quota parity provisions as well as by the best price guarantee provisions of the agreements it signed with accommodation facilities.
- In its examination the Court made the following observations:
  - The most favored customer provision in the agreements Booking.com signed with hotels prevented the seller from offering better prices and terms to buyers other than the one benefiting from the provision;
  - This barrier,
    - limited sellers' ability to freely determine their prices,
    - caused customers to choose other sellers since they were unable to offer better prices to buyers,
    - made selective discounts costly for sellers

        - led to an increase in prices since sellers could not implement higher discounts and simultaneously removed negotiation margin,
        - sellers avoided aggressive price competition since they knew that other rivals would not be able to implement higher discounts,
        - sellers were less likely to sell products or services to potential future customers at lower prices,
        - On the other hand, buyers who were aware of the situation were unable to negotiate.
    - In addition, buyers who wish to enter the market had difficulty entering the market and maintaining their presence without being able to compete in pricing terms with rival buyers which are parties to the MFC. Such new entries decreased the likelihood of price competition in the market and therefore the MFC requirement can be seen as a barrier to entry.
    - In a similar situation, the German Bundeskartellamt also ruled that the MFC requirement in the agreements was in violation of Article 101 of the Treaty on the Functioning of the European Union as well as the German competition law, and this could be taken into consideration in the assessment of the case in question.
- On the abovementioned grounds, the Court decided that the Competition Board decision which found that Booking.com had violated article 4/d of the Act no 4054 was valid and there was no reason to annull the fine imposed on the complainant.

Source:

http://www.rekabet.gov.tr/Safahat?safahatId=99a167a2-0afd-45dc-a6d7-9ad0fbbbdd59

○ Measuring Market Power in Multi-Sided Markets

Published By: OECD Competition Committee

Author: Kurt Brekke

The importance of multi-sided markets in the economy has increased tremendously, mainly due to digitalization and the rapid growth of online markets. While many of these markets are offering entirely new products to consumers, traditional single-sided markets are also transformed into one-sided multi-sided markets due to new business models based on advertising becoming a key source of income.

The existence of network externalities among the different consumer groups in the multi-sided markets may effects consumer demands and change strategical behavior of the firms, including pricing decisions. Together with the growing importance of multi-sided markets in the economy, this poses a key challenge for competition authorities. A main reason for this is the lack of appropriate tools for assessing the likely anticompetitive effects of firm behavior in such markets. This has been clearly demonstrated in recent antitrust cases, including the EU cases against Google and Facebook. In these cases, there has been no consensus on the quantitative methods used to determine whether there is a violation of competition. While there have been major developments in methods such as the upward price pressure1 tests used in antitrust analysis for traditional one-sided markets, these tools cannot directly be applied to multi-sided markets without any adjustments. Indeed, due to the nature and strength of the network externalities in multi-sided markets, the application of tools developed for single-sided markets to multi-sided markets may lead to a negative perception for pro-competitive mergers in a and a positive perception for anti-competitive ones.

The study prepared in light of these problems reviews the current literature about the market power measurements in multi-sided markets and shows how competition authorities utilize various tools when evaluating mergers in such markets. The study has focused on the latest developments in the price pressure indices and emphasizes that competition authorities do not in general prefer simulations in merger cases due to time restrictions. For

[1] The method proposed by Farrell and Shapiro is set up as follows: Following the acquisition, the sales pressure put on the firms by the new management increases the marginal costs of the firms; this increase in costs lead puts pressure on the firms to increase prices. The methods calculates the potential price increases caused by the upward price pressure on the basis of the relevant geographical market.

price pressure indices in double-sided markets, competition authorities need:

- To analyze each sides of the market (since upward price pressure on one side could mean a downward price pressure on the other),
- To estimate the deviation ratio between the merging firms and the parties thereof.

The study which has constituted a hypothetical model in the journalism sector as an example of the multi-sided markets has obtained the following results:

- Upward price pressure on one side of the market could result in downward price pressure on the other sides of the market due to network externalities.
- Upward price pressure may strengthen or weaken depending on the nature of the network externality, i.e., whether the externality is positive or negative.
- In case of unilateral network externalities, (only from readers to advertisers), standard upward price index measurements are used for the side benefiting from externalities (advertiser), not for the side that causes the network externality (reader).

Source:

https://one.oecd.org/document/DAF/COMP/WD(2017)31/FINAL/en/pdf

- **Cross-ownership, R&D Spillovers and Antitrust Policy**

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Authors: Ángel L. López and Xavier Vives

As is known, cross ownership is where a firm owns or controls two or more companies operating in related fields. Minority shareholding is found in many sectors in the form of cross partnership agreements between companies or joint ownership in investment funds. Related studies focus on how such regulations reduce price competition in the airline and banking sectors. Cross ownership agreements, however, may also have a beneficial effect on investment, provided that technology is spread across firms. Indeed, in this study, addresses competitive and welfare effects of cross ownership, which is a common situation in the media and news sectors. In this context, the paper analyzes the effects of cost-decreasing R&D investments and the spread of such investments in the case of minority shareholding and Cournot Oligopoly. In the study, the effects of the share

purchases made by investors and other company owners are discussed separately in the simultaneous model used to reveal the economic effects of cross ownership. The comparative model assumes that R&D and production decisions are taken simultaneously in order to reveal the erroneous observations of the firms concerning R&D investment. The model includes the previous contributions by Jacquemin (1988) and Kamien (1992) to the fixed elasticity of demand and the innovation function, and the reliability of the results is tested with another two-stage model.

The paper also lays out the conditions required for cross-ownership to increase welfare in case of Cournot Oligopoly, with respect to demand structure, market density and the dispersion period of R&D activities. In addition, it has been shown that the degree of socially optimal cross-ownership is positively related to the demand elasticity of innovation function and the number of firms. However, according to the author, if the aim is to maximize consumer surplus: (i) the extent of the partial ownership interests must be greatly reduced; (ii) the firm entries must not result in a higher cross ownership for welfare optimum. Hence, the competitive mitigation effect of cross ownership may legitimize policy intervention, but to some extent ownership rights can actually increase welfare. Social gains can be realized even more in the case of more cross ownership which encourages firms to invest and bring them closer to socially optimum production levels. Especially, consumer surplus can be increased in an industry that displays a large R&D spread.

Source:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2805398

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