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Ex-Post Assessment of Merger Remedies – Contribution from Türkiye

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

Please contact Ms Lynn Robertson if you have questions about this document
[Lynn.Robertson@oecd.org]

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Ex-Post Assessment of Merger Remedies

- Contribution from Türkiye -

1. Ex-post assessment of merger remedies

1. In this contribution, which summarizes an exemplary practice in Turkish Competition Authority (TCA) regarding the ex-post assessment of merger remedies, the issue of preparing a sector report to examine the possible effects of a transaction in the market after the Board of the TCA gives conditional approval to a transaction in the cinema screening services market is discussed. For the conditional clearance decision, an appeal process was initiated but in the judicial review Court upheld the Board's decision. Afterwards Board decided to conduct a sector review to examine the impact of the remedies in the market.

2. On 17.11.2011, the joint control of MARS cinemas and AFM cinemas by Esas Holding and Actera Partners L.P. was approved by the Board (the MARS/AFM decision)¹, within the framework of the commitments made by the undertakings that are party to the transaction. In the MARS/AFM decision, it was envisaged that nine cinemas had to be divested and three cinemas had to be closed within the scope of the commitment package submitted by the undertakings.

3. In the MARS/AFM decision, the relevant product market was basically defined as movie theater services. The relevant geographical market consists of Türkiye and Istanbul, Ankara, İzmir, Antalya provinces. In addition, it was concluded that Istanbul can be divided into sub-geographic markets on the Anatolian and European sides. Additionally, an ex-ante economic study was conducted to investigate the impact of the transaction on final consumer prices. In this study, a total of 38 separate geographical markets were identified in four provinces where concentration took place. The effects of the transaction on regional competitive conditions in these markets were examined.

4. First of all, the expected total market shares of the parties in the relevant markets were discussed in terms of the number of tickets and ticket revenues. The merged entity became the market leader by far compared to its competitors. It was stated that the HHI increased due to the transaction exceeded the HHI thresholds that were considered to cause competitive concern. However, as there were market entries and the number of new shopping malls was expected to increase, the increase in the total market share/concentration rate would be suppressed.

5. In this regard, it has been emphasized that with the increase in the number of shopping malls, rival enterprises would be able to find a place for themselves in newly opened shopping malls, that cinemas could also be operated by shopping mall managements, and that existing lease agreements should not be long enough to close the market to new entries (2-3 years). It has been concluded that due to this competitive pressure, the increase in market share and concentration due to the transaction would not lead to a significant restriction of competition, except for five microgeographic markets (Ankara-West, Ümraniye, Etiler-Levent, Şişli, Taksim-Beyoğlu).

¹ Board's decision dated 17.11.2011 and numbered 11-57/1473-539

6. In addition, the production, distribution and screening level of the cinema industry were also taken into account in the evaluations. It was noted that distribution market was a concentrated market where the two largest players reach 50% and the four largest players reach 75% market share. It has been stated that it seemed difficult for MARS+AFM to use the relatively high market share it will gain after the transaction to engage in some practices against distributors, considering the general structure of the sector and especially the concentrated structure of the distribution market.

7. Lastly, in the economic analysis, the average market price, HHI and related costs were calculated by using the data on the basis of ticket income, rent expenses, employee expenses and total expenses. The analysis predicted that ticket prices would increase by 7-37 percent in İstanbul and Ankara, there was a positive relationship between HHI values and average prices. It was concluded that both undertakings could create competitive pressure on each other out of a total of 38 relevant geographical markets determined in four provinces, and that the transaction would cause an increase in consumer prices especially in the five micro markets and therefore the transaction in question would significantly restrict competition in these markets.

8. The transaction was approved conditional upon the commitments of the parties which constitutes structural remedies. It was envisaged that nine cinemas would be divested and three would be closed. In addition it was decided that the parties would report the average ticket prices and the changes in average ticket prices to the Authority as of the end of January on a yearly basis for five years. And a Divestiture Trustee has been assigned to control whether the parties comply with the commitments.

9. In the post-decision period, the Board has detected that divestitures were made in accordance with the commitments in five microgeographic markets. The Board decided that all the commitments in question were fulfilled and the divestiture process was completed².

10. Regarding ex-post assessment of merger remedies, a cinema sector inquiry was initiated to closely monitor the post-decision competitive conditions in various markets of the cinema industry, such as production, distribution and film screening services. The final report of sector inquiry evaluated the changes in the competitive conditions in the cinema sector in light of the MARS/AFM decision.

11. First of all, it was determined that the cinema industry in Türkiye consists of the production, distribution and screening levels. The number of both national and foreign films in the production chain has increased steadily. In the distribution market, there is a system in which distributors take very limited financial risk and in this respect our country differs from Europe. In the screening market, the number of spectators, number of halls and revenues have been increasing in recent years. There are no regulations that will directly affect the structure of the sector, such as mandatory price practices and quantity restrictions, at any of the stages that make up the production chain of the cinema industry in Türkiye.

12. As a guiding method in sector review an ex-post impact analysis was carried out. It was mentioned that the main techniques generally accepted in the literature in the application of ex-post impact analysis in concentration transactions are; structural modeling and simulation, difference in differences, event studies and survey study. The survey method has chosen to screen the market. In order to examine the changes that took place after the MARS/AFM decision, a web-based survey was conducted in addition to interviews with industry representatives. The information obtained was also shared with

² Board's decision dated 22.11.2012 and numbered 12-59/1590-M

the economic analysis department (EARD) in the TCA in order to carry out the necessary economic analysis, and in this context, the changes in the structure of the relevant markets and prices after the decision until 2014 were examined.

13. Within the scope of commitments, in markets where divestitures took place, there were other cinemas that were closed, newly opened, and changed hands through transfer. It was understood that some of the cinemas transferred in this way changed hands again in the post-decision period, and one of them was closed. According to the survey conducted, after the divestitures, screeners mostly agreed that the competitive structure could not be maintained throughout Türkiye, while distributors mostly agreed that the competitive structure could not be maintained throughout Türkiye and in the Ümraniye market.

14. It is noteworthy that new cinemas, mostly within new shopping mall projects, were opened both throughout Türkiye and in the markets where divestitures were made. In the survey, distributors' and exhibitors' opinions about the barriers to entry into the screening market were asked. The majority of the participants were of the opinion that shopping mall operators may prefer certain screeners for reasons such as their brand image. Since new cinemas located in shopping malls operate mostly by mall owners, their growth was naturally limited compared to enterprises that only operate in screening market. There are screeners that have achieved some growth. However, there has been no enterprise that could approach the size of MARS. It was seen that MARS acquired 33 of the 61 cinemas in new shopping malls throughout Türkiye.

15. Distributors predicted that growth will continue, provided that the growth in the economy continues and new shopping mall investments indicated that the sector would continue this growth momentum for another 2-3 years. Screeners expected local and foreign actors to enter the industry in the coming period and neighborhood cinemas not located in shopping malls to close. Most of the screeners who participated in the survey stated that they planned to continue their operations in the next 5 years but few of them had growth plans.

16. Considering the exits from the market after the decision, it can be said that there were no relatively large-scale enterprises exiting the market. On the other hand, one of the screeners, which took over some cinemas that were divested exited the market by transferring couple of these cinemas and closing one of them. It stated that the reason for leaving the market was that the cinemas taken over were with no business potential. Other exits consisted of cinemas handed over by shopping mall managements and cinemas that are not located in shopping malls.

17. The effect of digital transformation was emphasized in the exit from the market, especially from on-street cinemas and cinemas with small halls. Digitalization in film production means that the final product prepared for the purpose of showing films in movie theaters has a digital copy and is displayed digitally, instead of being printed on negative film strips in the traditional sense. Cinema operators needed to make a significant investment for movie theaters to screen digital copies. In this regard, cinemas that do not have a certain financial power had difficulty in completing this transformation and therefore face the danger of leaving the market.

18. It is stated that some of the acquisitions carried out by MARS in certain microgeographic markets have created competitive concerns. Due to factors such as the cost of investment for digital transformation, the lack of financing alternatives and state aid, screeners with a single cinema have tended to exit the market. It was determined that MARS took over a few cinemas, but these takeovers were not notified to the TCA because they were below the turnover thresholds requirements.

19. As part of the sector review, EARD conducted an economic analysis using data on the total number of tickets and total ticket revenue for each cinema across Turkey. It is observed that after the transaction, there was no increase in the market share of MARS+AFM beyond the level estimated in the MARS/AFM decision. In addition market share analysis based on the number of tickets was conducted in micro geographic markets where divestiture took place. There was a real decrease in prices between 2011 and 2014. On the other hand advertising revenues were one of the most important sources of income for viewers. It was seen that MARS with its newly opened media company generated advertising revenue proportionally much higher than its competitors in Istanbul and Ankara.

20. The change rates in average nominal movie ticket prices and real prices were also examined. However, a definitive evaluation has not been made considering the existence of other factors that could effect prices. In addition, prices did not increase significantly in the microgeographic markets. However, it is stated that this would be due to the fact that the legal process regarding the transaction was ongoing and the decision imposed an obligation on MARS to report average ticket prices and changes in ticket prices to the Authority for five years.

21. MARS's buyer power was significant compared to its competitors. According to the survey, it is seen that MARS's cinemas constituted the majority of the top 20 cinemas preferred by distributors. It could be said that MARS had buyer power especially against medium-small scale distributors and for foreign films. In addition, since some of MARS's cinemas were located where the target audience is highly preferred, it is understood that some of the distributors were of the opinion that the market power of MARS in some microgeographical markets can be effective in strengthening its position against distributors.

22. As for investments, MARS has had investments considerably higher than its competitors. After the transaction, MARS became fully vertically integrated, operating in the screen advertising, production and distribution markets. The report recommended to be cautious about MARS's potential for exclusionary practices after vertical integration since it had market power in the screening market. A vertical integration covering the exhibition market had its concerns that the enterprise may engage in discriminatory practices in favor of the films released by it, thus reducing the options offered to the consumer and making it difficult for independent enterprises to access the exhibition market. However, in a recent Board decision, no information or documentation could be found indicating its actions in this direction.

23. As a result, the MARS/AFM merger was allowed by the Board within the framework of structural remedies. The parties fulfilled the commitments they submitted to the Board to allow the transaction by the end of 2012. A cinema sector review was conducted within the TCA in order to address the impact of the solutions envisaged for the merger permit on the cinema sector and the competitive structure of the cinema sector after the decision. Survey method was adopted in the sector review. An economic analysis was carried out within the TCA with the information obtained. It was calculated that there was a real decrease in prices between 2011 and 2014. Although the market has been growing due to the increasing number of shopping malls in recent years, especially the investment costs created by the digital transformation in the display market led to exits from the market. MARS had also protected its buyer power especially against medium-small scale distributors. Taking into account MARS's ongoing investments, high advertisement revenue and market power, the report warned that Mars had the potential to use its market power to exclude competitors.