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Joint Group on Trade and Competition

ANTICOMPETITIVE PRACTICES IN THE MARITIME TRANSPORT SECTOR IN TURKEY

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For discussion under Agenda Item 6 ii).

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ANTICOMPETITIVE PRACTICES IN THE MARITIME TRANSPORT SECTOR IN TURKEY

I. General description of the practice or policy concerned

Type of practice:	Price-fixing, abuse of dominance
Sector:	Maritime transport
Relevant market(s):	Roll-On/Roll-Off (RO-RO) in the Black Sea and Mediterranean lines
Actors:	Ulusoy Transport (UT), UN Ro-Ro (UN), Cenk Maritime (Cenk) Rekabet Kurumu (Turkish Competition Authority)

Effects of the practice on the competitiveness and economic welfare

1. Because of the inadequate rail system and the high costs, uncertainty and risks of inland trucking, Turkish importers and exporters depend heavily on maritime transport services and especially on the Roll-On/Roll-Off (RO-RO) modality to distribute their goods into foreign markets. In particular, RO-RO transport across the Black Sea represents a cheaper and safer alternative to the high costs and risks of driving around the Black Sea for distributing goods into Russia and the former Soviet Republics.

2. However, anticompetitive practices in this sector can raise maritime transport costs, increasing the overall price of the final goods and thus, Turkish manufacturers become less competitive than foreign firms who pay lower prices for, and have alternative and more efficient, transport services.

II. The factual and legal context

(a) Legal framework

Turkish Competition Act

3. The Turkish Competition Act is largely based on the EU model. Article 3 of the Act defines dominance as the power to act independently of competitors and consumers in determining parameters such as price, output and distribution. Specific types of practices that can be considered abuse of dominance are also taken from the EU law, e.g. imposing unfair purchase or selling prices or conditions, or discrimination that places parties at a competitive disadvantage, among others.

4. With respect to horizontal agreements, the Turkish Competition Act forbids explicit and tacit collusion. Article 4 prohibits agreements and concerted actions that prevent, distort, or restrict competition or that have the potential to do so. In dealing with tacit collusion, the law provides that if conduct or conditions are similar to what would be expected in a market where competition is restricted, an agreement

can be inferred. Therefore, this provision shifts the burden of proof on the alleged cartel members, meaning they have to prove that they act independently or based on economic and rational grounds.[1]

5. The law allows certain types of agreements as long as they are pro-competitive. For example, individual and block exemptions may be granted up to a period of five years, provided that specific criteria are met. These criteria state that the agreement has to lead to improvements in production, distribution or technology, or that consumers benefit from such agreements. Also, the agreement must not significantly eliminate competition in the market and it cannot be more restrictive than necessary to achieve its objective.

Turkish Maritime Law

6. Anticompetitive provisions of Turkish Maritime Law prevent foreign competition within domestic ports, i.e. only domestic firms operate on domestic lines; but do not affect international lines, i.e. foreigners are granted national treatment for RO-RO operations on international lines. For international lines, the legal requirements for domestic or foreign firms to operate in the relevant service market are transparent and not burdensome. The main entry barrier (i.e. an excess capacity problem described below) is an economic question, rather than legal or procedural.

(b) Facts of the case.

7. Currently, RO-RO ship transportation in Turkey is carried by four lines: two Black Sea lines (the Western Black Sea line to Ukraine and the Eastern Black Sea line to Russia) and two Mediterranean lines (the Izmir-Trieste line and the Istanbul-Trieste line). Only one firm currently operates in the Izmir-Trieste line and another firm operates in the Istanbul-Trieste line. Two firms compete on the Western Black Sea line, and a monopolistic situation exists at the Eastern Black Sea line (see map in Annex). The market structure has changed little over the last ten years and although some firms have attempted to enter the Mediterranean market, the incumbents have responded with different strategies (like the “pool” agreements described below) to reduce or eliminate competition.[2]

8. On the Black Sea, the average per-mile shipping prices are significantly higher that those of the Mediterranean lines. From a cost perspective, in order for manufacturers and distributors to use RO-RO transport across the Black Sea, the costs of this mode of transportation should be cheaper than driving around it. This would create a natural price ceiling for RO-RO transport services. Interestingly, Ulusoy Transport (UT), who has a monopoly over the Eastern Black Sea line to Russia, charges prices which are slightly below this natural ceiling.

9. The only real competition in the Black Sea can be seen in the Western line to Ukraine, where Pakoil (a foreign operator) competes with Cenk Maritime (Cenk).[3] This competition may explain the fact that the average per-mile prices of the Western Black Sea line are more than 30% cheaper than those charged by UT in the Eastern Black Sea line. Indeed, whereas UT charges $ 3.38 per mile in the Eastern

1. See the Review of Regulatory Reform in Turkey, The Role of Competition Policy in Regulatory Reform, OECD, 2002. p 10.

2. Owning a huge transport fleet, Mr. Ulusoy (owner of Ulusoy Transport) started Ro-Ro transportation in Turkey in the early 1990's as a result of the civil war in former Yugoslavia. The market structure has not changed significantly since then and Ulusoy has remained the dominant operator.

3. Cenk was previously a joint venture between UT and another firm. However, a year ago UT sold its shares. Thus, the shareholder composition of Cenk changed and it is now independent from UT.

Black Sea line, Pakoil charges $ 1.45 and Cenk charges $ 2.85 per mile in the Western Black Sea line. However, given that the capacity of Pakoil is limited, some customers have used Cenk despite its relatively higher prices.

10. The per-mile prices in the Mediterranean, although significantly lower than the per-mile prices in the Black Sea, are higher than other European lines (e.g. per-mile prices between Greece and Italy). In this market, UT operates ships on the Izmir-Trieste line and UN Ro-Ro (UN) operates the Istanbul-Trieste line. However, the fact that Mr. Ulusoy (owner of UT), also owns 30% of UN and is the company's general director has caused some competition concerns.

11. Furthermore, some ship operators have entered into "pool" agreements whereby the aggregate revenue of their operations is collected into a pool and then distributed among them. Additionally, as mentioned above, new entrants who attempt to enter the market (like Ege Ro-Ro) are often encouraged by UT to join the pool.[4] Evidently these agreements may provide incentives for high pricing and anti-competitive behaviour. Conversely, the dissolution of this type of agreement may lead to a price decrease, which is indeed what happened at the Western Black Sea line.

12. Unfortunately, there have not been successful attempts to access the relevant market. It is argued that UT and UN apparently have excess capacities which enable them to shift their ferries to the lines where there are new entries. Thus, whenever a new competitor like Ege Ro-Ro attempts to enter the market, UT and UN shift their respective ships to the relevant line in order to increase capacity (in Ege Ro-Ro's case, the Izmir-Trieste and Istanbul-Trieste lines where it commenced its commercial activities) and then convince the new entrant to join the pool.

13. After certain complaints were received in April 2004, the Turkish Competition Authority initiated an investigation in July 2004 and, following the Investigation Report, commenced prosecution in mid August against UT and UN who have allegedly entered into a price-fixing agreement. This was largely based on the fact that last year, both companies increased their prices three times, at the same time and in the same proportion (each time 5 per cent). Thus, pursuant to the Competition Act, these parties have to prove that they act independently or that their conduct is based on economic and commercial grounds.

14. Other than price-fixing, the parties were also accused of other actions such as the "pool agreements". However, the other complaints were rejected by the Competition Board (the Decision-making body of the Competition authority) for procedural reasons: the complaints other than price-fixing had already been brought before the Competition authority two years previously and had been rejected because of inadequate evidence. In a recent decision, the Supreme Administrative Court established that "[t]he Competition Board does not possess the authority to modify its decision, even if the conditions driving the Competition Board to conclude the former decision did change, the Supreme Administrative Court shall decide to modify the decision, if necessary". Consequently, the claims other than price-fixing had to be rejected. Nevertheless, the complainant has the right to bring these claims before the Supreme Administrative Court. If the Supreme Administrative Court overturns the former (2002) decision of the Competition Board with respect to these claims, then they can be assessed in the light of the new evidence.

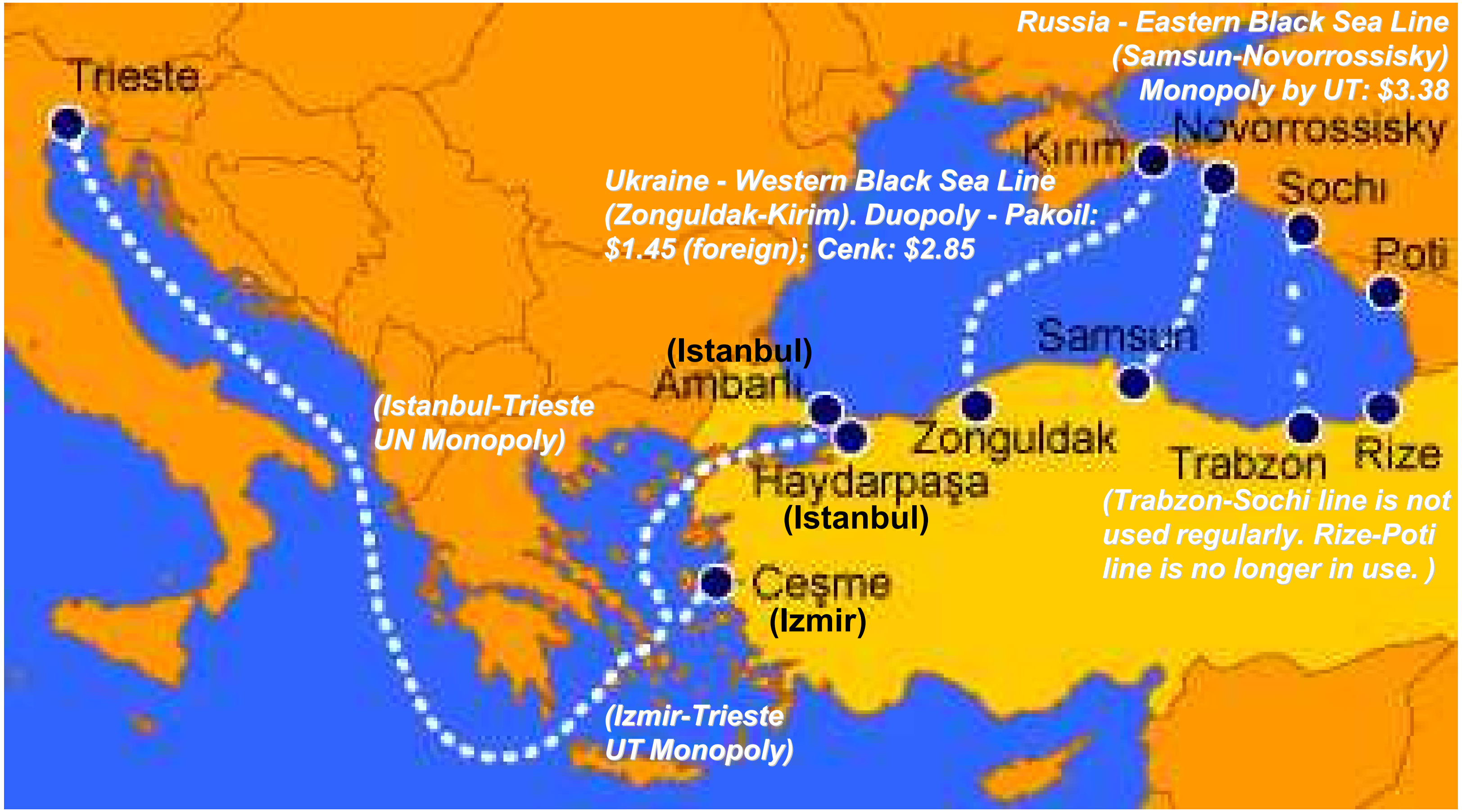
4. For example, Ege Ro-Ro was convinced by UN to join in the pool agreement. It subsequently ceased its activities and sold out the ferry it used to operate at Izmir-Trieste line. Currently, Ege Ro-Ro has only one ferry and it is operated by UN Ro-Ro. Furthermore, this ferry is not operated independently anymore due to the pool agreement.

III. Conclusions

15. The monopoly of UT in the Eastern Back Sea combined with the cartel-like behaviour in the Mediterranean lines is allegedly creating artificially high and abusive prices. This lack of competition increases the transportation and distribution costs of Turkish manufacturers making them less competitive.

16. The Turkish Competition Authority has become aware of this situation and has recently taken steps to address these issues. Investigation and prosecution procedures have not yet been concluded so that the outcome is still unknown, but is expected sometime around August 2005. Thus, whether the parties have infringed the law or their conduct was based on economic and commercial rationale is an issue that will be judged at the end of the prosecution.

ANNEX



Notes:
Mediterranean:

- **UT** owns 30% of **UN**.
- **Ege Ro-Ro** is operated by **UN** (see footnote 3).

Black Sea:

- There is some competition by trucking, but it is unstable (e.g. the Turkey-Armenia border is currently closed due to political reasons).