
TCA's Final Decision on the Investigation Regarding Poultry Sector

The Turkish Competition Authority's Final Decision on the Investigation Regarding Poultry Sector

Article by Bahadır Balkı, Barış Yüksel, and Mustafa Ayna

The Turkish Competition Authority (“TCA”) has concluded its full-fledged investigation regarding a total of 20 undertakings operating in the poultry sector. In its decision dated 13.03.2019 and numbered 19-12/155-70[1], the TCA held that the following 9 undertakings violated Article 4 of the Law No. 4054 on the Protection of Competition (“**Competition Law**”) by way of information exchange regarding future pricing and/or supply restrictions:

- Abaloğlu Yem-Soya ve Tekstil Sanayi A.Ş.
- Banvit Bandırma Vitaminli Yem Sanayi A.Ş.
- Beypi Beypazarı Tarımsal Üretim Paz. San. ve Tic. A.Ş.
- CP Standard Gıda San. ve Tic. A.Ş.
- Ege-Tav Ege Tarım Hayvancılık Yat. Tic. ve San. A.Ş.
- Er Piliç Entegre Tavukçuluk Üretim Pazarlama ve Tic. A.Ş.
- Gedik Tavukçuluk ve Tarım Ürünleri Tic. San. A.Ş.
- Keskinöğlu Tavukçuluk ve Damızlık İşl. San. Tic. A.Ş.
- Şenpiliç Gıda San. A.Ş.

The TCA has further stipulated that Turkish Poultry Meat Producers and Breeders Association (BESD-BİR in Turkish) also violated Article 4 of the Competition Law through its practices facilitating anti-competitive behaviours of the undertakings.

Accordingly, the TCA unanimously resolved to impose a total fine of approx. TRY 156 Million (**EUR 26 Million**) on the concerned undertakings and association of undertakings corresponding to 0,75% and 1,125% of their turnovers generated during the previous year (i.e. 2018). The reason why some of the undertakings were imposed higher fines was due to that some of the foregoing undertakings had previously violated the Competition Law in 2009 as well and the TCA also considered the recidivism as an aggravating factor in determining the amount of the fine.

During the course of the investigation, the TCA relied on three main categories of evidence:

- Internal notes of one undertaking concerning the contents of certain BESD-BİR meetings, indicating that sensitive information regarding future pricing and production plans may have been discussed between competitors.
- Internal notes concerning the contents of health and safety related meetings held between certain undertakings in the Aegean Region, indicating that sensitive information regarding

production may have been discussed between competitors.

- Price lists and other production related potentially sensitive information of competitors found in the premises of certain undertakings.

In the investigation report, administrative fines were requested for all the undertakings subject to the investigation. After the submission of the second written defences, the investigation committee changed its opinion with regard to certain undertakings. In the additional written opinion, the charges regarding the undertakings that did not attend to any meetings (BESD-BİR or Aegean Region meetings) were dropped. Hence, in the end, price lists and other production related information of competitors found in the premises of certain undertakings was not deemed sufficient for proving the existence of an anti-competitive conduct on their own, in the absence of supporting evidence that show contact among competitors.

It is important to note that the TCA referred to Article 5/1(b) of the Regulation on Fines when characterizing the violation. This means that the relevant violation was not deemed as a “cartel” and was classified under “other infringements”. This is noteworthy since the minimum amount of administrative fine to be imposed is considerably different for cartels and other violations. Whereas the amount of base fine to be imposed in case of cartels shall be between 2% and 4% of the undertakings’ turnovers, the relevant amounts are 0,5% and 3% for other infringements.

This decision seems to be yet another example where the TCA refrained from characterizing information exchanges regarding future pricing and production strategies as a cartel. However, it should also be noted that up until now, the border between such information exchanges and cartels had never been very clear and there seems to be a considerable amount of legal uncertainty in that respect.

The TCA further resolved that the following undertakings have not infringed the Competition Law and thus no administrative fine has been imposed:

- Ak Piliç Tic. Ltd. Şti.
- As Tavukçuluk Tarım İşl. San. ve Tic. Ltd. Şti.
- Bakpiliç Entegre Tavukçuluk A.Ş. (“**Bakpiliç**”)
- Bupiliç Entegre Gıda San. Tic. A.Ş. (“**Bupiliç**”)
- Garip Tavukçuluk Gıda ve Yem San. Tic. A.Ş.
- Hastavuk Gıda Tarım Hayvancılık San. ve Tic. A.Ş.
- Pilyem Gıda Tarım Sanayi ve Ticaret A.Ş.
- Şahin Tavukçuluk Yem Gıda İnşaat San. ve Tic. A.Ş.
- Tad Piliç Fenni Yem San. ve Tic. Ltd. Şti. (“**Tad Piliç**”)
- Yemsel Tavukçuluk Hayvancılık Yem Hammaddeleri San. ve Tic. A.Ş.

Aside from these, although they did not violate the Competition Law in essence, the TCA has unanimously resolved that

- Bakpiliç should be given a fine corresponding to 1‰ of its turnover generated during the

previous year, as it did not provide the requested information/document as part of the investigation and

- Tad Piliç should be given a fine corresponding to 1‰ of its turnover generated during the previous year due to providing false or misleading information.

It is important to remind that these two undertakings did not violate Article 4 of the Competition Law. The decision is of importance as it constitutes a concrete example regarding the potential outcomes of submitting false or misleading information/document or not providing any information within the determined duration or at all.

Disclaimer: Bupilic, one of the undertakings that did not violate the Competition Law according to the TCA decision concerned, was represented by ACTECON during the full-fledged investigation.

[1] <https://www.rekabet.gov.tr/Dosya/geneldosya/pilic-eti-nihai-karar-pdf>