
Highlights on the Turkish Competition Authority's Recent Investigations

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1. Introduction

The Turkish Competition Authority ("**TCA**") has been very active in the last three months. The TCA concluded ongoing investigations against companies active in iron- steel, alcoholic beverages and banking industries as well the pending merger review into the ro-ro transportation. In the meantime, the TCA launched investigations against; **(i)** Sahibinden.com into its alleged abuse of dominance, **(ii)** Sony Turkey into its alleged resale price maintenance practices, **(iii)** the Association of Turkish Travel Agencies into its alleged tying and discriminatory practices, and **(iv)** Radontek Medical into its alleged abusive practices. The purpose of this article is to draw attention to recent activities and approaches of the TCA and to show the recent decisions as a whole. As the reasoned decisions in relation to the concluded investigations have not been released on the TCA's website yet, an overview of the competition law developments in Turkey is provided below.

2. Newly Launched Investigations

2.1. One More Investigation Launched into Sahibinden.com

The TCA concluded the preliminary inquiry into the claim that, Turkey's leading second hand online platform, Sahibinden.com has abused its dominant position in the online automotive listing market by excessive pricing.

The TCA resolved to launch an investigation (decision No 17-30/488-M dated October 13, 2017) to examine whether Sahibinden.com has abused its dominant position in the relevant market by implementing excessive prices. The Competition Board ("**the Board**") also decided to combine this investigation with the one initiated earlier, to observe whether the company has abused its dominant position in the online real estate sale/leasing services for corporate client market by excessive pricing (according to the Board's decision No 17-15/175-M dated May 4, 2017).

Under this investigation, the TCA will first evaluate whether Sahibinden.com is in dominant position in these markets and whether the company's pricing strategy (implementation of significantly higher commission rates) could be evaluated as "excessive" within the scope of Article 6 (abuse of dominant position) of the Law numbered 4054 ("**Turkish Competition Law**").

2.2. Investigation into Sony Eurasia Initiated

The TCA conducted a preliminary investigation into Sony Eurasia, upon complainants' allegations

that the company has violated Turkish Competition Law by determining the resale price of products sold by its dealers.

After evaluating the information and documents collected during the preliminary investigation, the TCA decided on 07 September 2017 to conduct a full-fledged investigation into Sony Eurasia in order to evaluate whether Sony Eurasia violated the Turkish Competition Law by determining the resale price of the products sold by its dealers.

Under Article 4 of Turkish Competition Law, resale price maintenance is prohibited and thus, any practice of either directly or indirectly imposing a fixed or minimum resale price in the downstream market within the scope of the vertical relation constitutes a serious breach of the Turkish Competition Law. Within this framework, the TCA has adopted a strict approach against the resale price maintenance practices, although the recommended resale prices or determination of a maximum resale price are generally considered as non-violating practices. A case-by-case assessment of such practices is required.

2.3. Investigation Launched into the Association of Turkish Travel Agencies (TÜRSAB), TÜRSAB Seyahat Acentaları Hizmetleri and Gulf Sigorta

The TCA launched an investigation against four undertakings active in the tourism sector, namely TÜRSAB, TÜRSAB Seyahat Acentaları Hizmetleri Tic. Ltd. Şti., Turser-Tursav Sigorta Acenteliği Ltd. Şti. and Gulf Sigorta A.Ş., which are suspected of having infringed Turkish Competition Law.

TÜRSAB has allegedly violated the Turkish Competition Law by (i) forcing the agencies organizing pilgrimages to Hajj and Umrah to buy package tour insurance policies from its own subsidiary, (ii) discriminating among agencies by allowing some of them not to pay the so-called service charge and (iii) demanding that agencies buy transportation and catering services from specific Saudi undertakings.

Following the evaluations of the information and documents collected during the preliminary investigation, the TCA resolved on August 22, 2017, to conduct a full-fledged investigation into the above-mentioned undertakings in order to evaluate whether these practices constitute a violation of the Turkish Competition Law.

2.4. Investigation Launched into Radontek Medikal

The TCA conducted a preliminary investigation into Radontek Medikal, a distributor of cancer diagnosis and treatment devices, upon complainants' allegations that the company has abused its dominant position in the aftermarket and spare parts by implementing excessive and discriminatory pricing on the tenders organized by hospitals.

Following the evaluation of the information and documents collected during the preliminary investigation, the TCA resolved on August 9, 2017, to conduct a full-fledged investigation into

Radontek Medikal, in order to evaluate whether the company has abused its dominant position in the market.

3. Concluded Investigations

3.1. Investigation of 13 Banks Operating in the Field of Corporate Loans

The TCA completed the investigation conducted in order to determine whether 13 banks (Bank of Tokyo-Mitsubishi UFJ Turkey A.Ş., Citibank A.Ş., Deutsche Bank A.Ş., HSBC Bank A.Ş., ING Bank A.Ş., Istanbul Turkey Branch of JPMorgan Chase Bank N.A. incorporated in Columbia Ohio, Merrill Lynch Yatırım Bank A.Ş., Istanbul Main Branch of Société Générale (S.A.) incorporated in Paris France, Standard Chartered Yatırım Bankası Türk A.Ş., Sumitomo Mitsui Banking Corporation, Istanbul Main Branch of The Royal Bank of Scotland Plc. incorporated in Edinburgh, Türk Ekonomi Bankası A.Ş. and UBS AG) providing loans to corporate customers in Turkey violated Turkish Competition Law through (i) exchange of information on the loan conditions of the current loan agreements such as interest, term (due date) and (ii) exchange of commercially sensitive information on other financial transactions.

As a result of the assessment of the Board in the light of the information and documentation obtained in the course of the investigation, it was resolved that BTMU Turkey, ING and RBS have violated the Turkish Competition Law by exchanging commercially sensitive information. On this basis, ING was fined TRY 21,112,960.50 (app. EURO 4,638,376.13 based on the Central Bank of Turkey's exchange rates on December 7, 2017) and RBS was fined TRY 66,429.75 (app. EURO 14,594.17 based on the Central Bank of Turkey's exchange rates on December 7, 2017). The fines were calculated on the basis of the banks' respective gross revenues generated in 2016. Under the same decision, the TCA resolved that CITI, DB, HSBC, JP, BOFA, SG, SC, SMBC, TEB and UBS did not violate Turkish Competition Law and that there were no grounds to apply fines. On the other hand, BTMU Turkey was not fined based on Article 16/6 of the Competition Law, which sets out that the companies cooperating with the TCA may be immune from applicable fines, based on the qualification, efficiency and timing of such cooperation.

3.2. Phase II Review Concluded into the Ro-Ro Transportation Merger

The TCA concluded its Phase II review conducted according to the Board's decision No 17-11/133-M dated 23 March 2017 regarding the acquisition by UN Ro-Ro İşletmeleri A.Ş. ("**U.N. Ro-Ro**") of all of the shares in Ulusoy Deniz Taşımacılığı A.Ş., Ulusoy Gemi İşletmeleri A.Ş., Ulusoy Ro-Ro İşletmeleri A.Ş., Ulusoy Ro-Ro Yatırımları A.Ş., Ulusoy Gemi Acenteliği A.Ş., Ulusoy Lojistik Taşımacılık ve Konteyner Hizmetleri A.Ş. and Ulusoy Çeşme Liman İşletmesi A.Ş. ("**Ulusoy**").

As a result of the Phase II review, the Board resolved on November 9, 2017, that; (i) the acquisition by U.N. Ro-Ro of all of the shares of Ulusoy was subject to authorization pursuant to the Communiqué no. 2010/4 Concerning the Mergers and Acquisitions Subject to the authorization of

the Board, (ii) the notified transaction would not result in creating or strengthening a dominant position in the market for shipping agency services, (iii) the transaction would strengthen U.N. Ro-Ro's dominant position in the market for ro-ro transportation between Turkey and Europe (including the ro-ro lines departing from Istanbul, Izmir and Mersin) and thus significantly restrict the competition in this market, (iv) as a result of the transaction, U.N. Ro-Ro would be in a dominant position in the market for ro-ro port management and therefore the competition in this market would significantly lessen, and therefore (v) the notified acquisition shall not be cleared.

3.3. Investigation Conducted about Mey İki is Concluded

The TCA has initiated on May 2, 2016, an investigation into the activities of Turkey's leading alcoholic beverages producer, Mey İki to determine whether the company has abused its dominant position by foreclosing its competitors in vodka and gin markets through rebate schemes. After an investigation of nearly 1.5 years, the TCA has adopted its final decision, marking the TCA's first implementation of *non bis in idem* / no double punishment for the same action principle.

As a result of the discussion by the Board on October 25, 2017, the TCA decided that Mey İki abused its dominant position in the gin and vodka markets by foreclosing its competitors in the vodka and gin markets through its rebate schemes. However, taking into consideration the fact that Mey İki's practices in question (i) have the same nature as its past practices in the raki market, which had been regarded as a violation, with administrative fines imposed according to the decision of the Board No 17-07/84-34 dated February 16, 2017, (ii) were conducted at the same period, and (iii) formed a unity as a part of the general strategy of the undertaking, the Board decided that it was not necessary to impose administrative fines. The decision is noteworthy since it is the first instance where the TCA applied the *non bis in idem* / no double punishment for the same action principle.

3.4. Investigation Conducted into Steel Companies is Concluded

Following its review of the TCA's decision dated January 27, 2011 and numbered 11-06/101-34, the 13th Chamber of the Council of State (2011/2373 E.; 2016/777 K.) resolved on March 22, 2016, to overturn the mentioned decision, on the basis that the TCA should have conducted a full-fledged investigation to thoroughly analyze the allegations, instead of closing the file through a preliminary investigation. The TCA thereafter initiated on August 18, 2016, an investigation into the practices of Turkish iron and steel market players, Kardemir Karabük, ağ elik, elsantaş elik, Yolbulan Demir and Yolbulanlar in order to determine whether these undertakings have violated Article 4 (anti-competitive agreements), Article 6 (abuse of dominance) and Article 7 (notification of mergers) of the Competition Law.

As a result of the investigation which approximately lasted one year, the TCA resolved on September 7, 2017, that the practices of the investigated companies did not constitute a violation of the Articles 4 and 6 of the Competition Law. The TCA further concluded that the statute of limitations in relation to the establishment of joint control by Yolbulan, Güle and Yücel groups

over Kardemir has expired and therefore, there was no necessity to establish a procedure.

Conclusion

Both concluded and ongoing investigations play a significant role in the promotion of competition law culture in the Turkish business environment, as they render it possible for the businesses to further analyze the relevant markets and understand the TCA's approach to allegedly anticompetitive practices. In addition, the Board's acknowledgment of "*non bis in idem*" principle stands out as an example that the TCA follows its global counterparts' path.