
TCA's Second Clearance for the Same Transaction in Fresh Bread Yeast Sector

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In 2014 the Turkish Competition Authority ("TCA") had granted a conditional clearance to acquisition of Dosu Maya by Özmaya¹ which reduced the number of players in the yeast market and this decision was annulled by the decision of Ankara 8th Administrative Court². In order to comply with the court decision, the TCA initiated a new examination³ and this has recently been concluded by TCA⁴. Although the reasoned decision has not been published yet, it is possible to make some inferences by throwing a glance at the result of the TCA's short decision.

This decision is of crucial importance since it is one of few examples that Administrative Court has reversed the decision of TCA regarding the authorization of a concentration transaction. The fact that conditional clearance was given to the concerned concentration was criticized by the Administrative Court on the ground that the remedies presented by the parties were approved by TCA without detailed economic analysis reviewing post-clearance effects of the transaction. The Administrative Court voiced concerns as to whether the approved remedies are sufficient in order to eliminate possible competition problems and if so, to what extent these remedies can be applied efficiently in practice.

To put it more explicitly, it was held by Administrative Court that the merged entity (Dosu Maya + Öz Maya) and Pak Maya (which is one of the most powerful market player in the market for fresh bread yeast in Turkey) would hold a joint dominant position in the market for fresh bread yeast in Turkey and that the transaction would create anti-competitive coordinated effects. It was mentioned that the structure of the relevant market is conducive to the formation of a cartel or other anti-competitive coordination that may increase market prices or impair the quality and services. The Court pointed out that a cartel investigation was also initiated by the TCA while the merger review process was ongoing and that the TCA imposed monetary fines on these fresh yeast producers as a result of this investigation. According to the Administrative Court, this demonstrated that the market structure was conducive to anti-competitive collusion even before the actualization of concerned concentration. In this regard, the proposed remedies (which mainly comprised of behavioural remedies such as keeping the prices at a certain level, regularly reporting the prices and removing the territorial exclusivity of merged entity's dealers) approved by TCA was found to be insufficient by Administrative Court.

Upon the annulment decision of Administrative Court, TCA has decided once again to grant a conditional clearance with new remedies along with the old ones. In this regard, it can be said that the annulment decision of Administrative Court has forced TCA to show a more careful approach towards the authorization of the concerned concentration and to require additional safeguards to

preserve the competitiveness of the relevant market. However, as mentioned above, the reasoned decision has not been published yet and therefore the scope of these new remedies proposed by the parties are not obvious at this stage.

Even so, one issue to be noted is that if new remedies include similar behavioural remedies as in previous ones (which is highly probable since the divestiture of a yeast production facility – which is the most significant asset in the relevant market – by the merged entity could remove the entire rationale of the transaction), it may be difficult to argue that these would be sufficient to remove coordinated effects. This is because, the TCA considers structural remedies to more appropriate tools to eliminate coordinated effects when compared to behavioural remedies. Yet it should be noted that effective behavioural remedies which are easy to implement and supervise may also eliminate all sorts of horizontal concerns and a case-by-case analysis is always needed.

In light of the foregoing it remains unclear whether new commitment packages are well-established or not and it would be difficult to make an accurate evaluation until the reasoned decision is published. This being said, the new clearance may also be tested before the administrative courts and it would be quite interesting to see whether the courts would share TCA's optimism about the effectiveness, applicability and supervisability of the remedies this time.

Footnotes

1. TCA's decision dated 15.12.2014 and numbered 14-52/903-411
2. Ankara 8th Administrative Court's decision dated 19.01.2017 and numbered 2015/2488 E., 2017/172 K.
3. TCA's decision dated 24.05.2017 and numbered 17-17/252-M.
4. TCA's decision dated 31.05.2018 and numbered 18-17/316-156