
Turkish Competition Authority Fines Turkey's Dominant Alcoholic Drink Producer for Abuse

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Introduction

The Turkish Competition Authority ("TCA") has recently adopted a landmark decision in relation to Turkish traditional alcoholic beverages market (rakı). This decision is important from several perspectives;

- the fine calculation percentage is higher than it usually is for the relevant type of infringement,
- it ranks the fourth largest fine imposed to a company under one single investigation, and
- it lists in detail, a number of actions that the dominant company needs to undertake and refrain from.

The decision additionally demonstrates an increased scrutiny from the TCA's side to the competition issues in relation to abuse of dominance cases in the retail markets.

Background Info

The TCA has initiated on July 28, 2015, an investigation against Turkey's dominant traditional alcoholic drink (rakı) producer Mey İçki San. ve Tic. A.Ş. ("**Mey İçki**"), in order to evaluate whether it has abused its position through practices foreclosing the market to its competitors. The investigation also concerned evaluation from the point of Article 4 of the Law on the Protection of the Competition Law ("**Turkish Competition Law**") which corresponds to Article 101 of the Law on the Functioning of the European Union.

TCA's Findings

Following the investigation, which approximately took one and a half years, the TCA concluded that Mey İçki;

- was in dominant position in the rakı market (the firm's dominance had been previously certified in several cases dating as far back as 2007) and
- abused its dominant position through practices which foreclosed competitor activities.

As a result, TCA resolved to fine the company TRY 155,782,969 (approx. EUR 40.4 million), an

amount corresponding to 4.2% of its turnover achieved during the preceding financial year. While setting this (unprecedented percentage for an abuse of dominance case), the TCA also took into account recurring abusive practices of the company (the company was fined on the same basis in 2014) as well as mitigating factors (which are currently undescribed in the short public version of the decision).

As a brief side note, pursuant to the Turkish Regulation on Fines, in relation to the abuse of dominance, the TCA is entitled to impose a base fine ranging from 0.5 to 3% of the abusing company's turnover. While determining the specific percentage, power of the relevant company and the damage caused/potential damage is taken into consideration. The TCA later considers aggravating (for recurring infringements, the fine is increased from half to one hold) and mitigating factors, and ultimately has the power to impose a fine up to 10% of the company's turnover.

In its Mey İçki decision, in addition to the fine, the TCA, in order to create a more competitive market, specified a set of rules that the company needs to undertake, including;

- termination of cash discount practices to the sales points (within the scope of the product purchase agreements) at the beginning of the discount term,
- providing discounts to the sales points on transaction-basis (reflecting to the invoices), therefore ending the lump sum retrospective discount payments,
- in case of making cash payment to the sales points within the scope of investment support agreement, specifying the nature and purpose of such investment, and ensuring that those agreements are separately drafted/contracted from the product purchase agreements,
- termination of financial benefits in relation to the shelf positioning and product layout of rakı category within the traditional channel,
- (in relation to the traditional channel sales points) being entitled to recommend layout only for 70% of the shelf that is dedicated to rakı, being able to recommend shelf positioning only for Mey İçki products and refraining from any recommendations for shelf positioning of competitors' products, and
- removal from product purchase agreement, the provision forcing the sales point to display Mey İçki's promotion material and products in line with Mey İçki's aims and instructions.

Further details of the evaluations and findings will be available upon publication of the reasoned decision within upcoming months.

Concluding Remarks

By imposing a fine greater than it usually does for the relevant type of infringement (the figure being the fourth biggest fine TCA has imposed to a company under one single investigation), the TCA signalled its increased interest in pursuing and fining abusive behaviours. Secondly, the exceptional list of behaviours on how to properly manage dominance, is also worth examining, as it will undoubtedly interfere with the business decisions. Finally, these instructions for the establishment of a competitive market, may have far-reaching consequences for dominant retail

companies in terms of their shelf positioning and incentive practices.