
White Appliances Sector is Under Turkish Competition Authority's Spotlight

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Article by Ayberk Kurt and Mehmet Salan

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Upon the application made by an anonymous party to the Turkish Competition Authority ("**TCA**") on October 21, 2017, the TCA has initiated a preliminary investigation in order to determine whether Article 4 of the Law on the Protection of the Competition ("**Competition Law**") is violated by Arçelik Pazarlama A.?. ("**ARÇELİK**"), Vestel Ticaret A.?. ("**VESTEL**") and BSH Ev Aletleri Sanayi ve Ticaret A.?.¹ ("**BSH**") through exchanges of competition-sensitive information. As a result of the preliminary investigation, the TCA resolved to initiate a full-fledged investigation² against ARÇELİK and VESTEL. In the meantime, the TCA decided not to include BSH into the investigation, since the preliminary investigation conducted straighten out that BSH did not violate the Competition Law through exchanges of competition-sensitive information³.

Lately, the white appliances sector is under TCA's spotlight. As would be recalled, the TCA, recently conducted a preliminary investigation against BSH and examined whether BSH violated the Competition Law by imposing restrictions on its distributors' online sales. After its preliminary investigation, the TCA concluded that **(i)** initiation of a full-fledged investigation is not yet necessary, **(ii)** the block exemption previously granted to BSH's Exclusive Distribution Agreement that made with its distributors should be revoked and **(iii)** the Exclusive Distribution Agreement should be amended in order to comply with the competition rules⁴.

In its current examination, the TCA focused on white appliances, air conditioner, television and small house appliances. Yet, the TCA has not made a definite market definition within the present case with the view that it will not have a decisive effect on the result, in line with the TCA's previous decisions regarding competition sensitive information exchanges.

With regard to the evaluations made regarding the durable consumer goods market, it has been stated that, Turkey is the second largest white appliances producer following China, which produces the half of worlds total white appliances production. Additionally, Turkey

exports 75% of its total white appliances production of 25 million units to over 150 countries. It is also determined by the TCA that the reduction made in the Special Consumption Tax (SCT) applied in the durable consumer goods market between February – September 2017 caused a significant increase in demand for white appliances and electrical home appliances.

It is stated in the decision that the case handlers found internal correspondences showing that BSH collected information concerning its competitors' future practices/campaigns through the regional representations and distributors. Pursuant to the Guidelines on Horizontal Cooperation Agreements, exchange of competition-sensitive information among competitors such as future strategies, future prices, outputs or sale amounts are considered as violation of Competition Law since they generally aim to fix prices or supplies⁵. Nevertheless, as there is no finding indicating that BSH had exchanged competition sensitive information directly with its competitors, and in light of the evidence showing that BSH had reached information regarding its competitors through its regional representations and distributors, the TCA concluded that there is no need to initiate a full-fledged investigation against BSH.

The decision is of significant importance as the TCA once again confirmed that collecting information concerning the competitors directly from the market could not be deemed as anti-competitive. Furthermore, the decision also provides that it is essential for the undertakings to have strong awareness in terms of Competition Law and that the source of competitor related information collected from the market should always be indicated in internal correspondences.

Footnotes

1. BSH is currently operating in the durable consumer goods market via its brands Bosch, Siemens, Gaggenau and Profilo.

2. TCA's decision dated 08.02.2018 and numbered 18-04/49-M

3. TCA's decision dated 08.02.2018 and numbered 18-04/49-26.

4. TCA's decision dated 22.08.2017 and numbered 17-27/454-195.

5. Guidelines on Horizontal Cooperation Agreements para 57.

