

e-Competitions

Antitrust Case Laws e-Bulletin

Preview

The Turkish Competition Authority rejects the information exchange scheme proposed by an online platform for failing to fulfill the individual exemption requirements (*IMDER*)

ANTICOMPETITIVE PRACTICES, EXCHANGE OF INFORMATION, UNDERTAKING (NOTION), MANUFACTURING, CONSTRUCTION, TURKEY, COORDINATED EFFECTS, EXEMPTION (INDIVIDUAL), EFFECT ON COMPETITION, ONLINE PLATFORMS

Turkish Competition Authority, *IMDER*, Case 20-50/688-302, 19 November 2020 (Turkish)
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On January 24, 2020, Türkiye İş Makinaları Distribütörleri ve İmalatçıları Birliği (“*IMDER*”), an association of undertakings active in distribution and production of construction equipment, applied to the Turkish Competition Authority (“*Authority*”) for a negative clearance or an individual exemption with respect to an information exchange scheme between the members of the association. The scheme concerns the exchange of reports related to their business activities through an online platform, namely *Imderonline*.

The scope of the information to be exchanged includes (i) sales amounts of new construction machines (ii) sales amounts of used construction machines and (iii) rental data of used construction machines of the *IMDER* members, altogether corresponding to 95% of undertakings active in the market. Data collected from *IMDER* members will be consolidated on the basis of undertakings, cities and regions depending on the features of the information. To mitigate the competitive risks, a third party firm will manage *Imderonline*, such firm will also announce the reports to be prepared.

The Board did not grant a negative clearance to the information exchange scheme proposed by *IMDER*, as the nature of data to be circulated between the *IMDER* members might potentially restrict the competition in the market. Therefore, the Board carried out a detailed individual exemption assessment on the proposed information exchange scheme and concluded that:

- (i) Being informed of the supply and demand levels in the market, the undertakings would be able to improve their planning of production, sales and distribution through this scheme. Moreover, data broken down on a regional basis would allow them to adopt regional marketing strategies and engage in price competition in the areas where demand is high. Further, this scheme would generate cost advantages for the *IMDER* members. Therefore, the scheme would contribute to improving the production or distribution of goods or to promoting

technical or economic progress.

- (ii) A high competition level in the market as a result of the improvements above, the consumers would enjoy price cuts, higher-quality services, and a wide range of products. Moreover, better positioning of the undertakings in the market and correction of information failures would provide a more competitive market for consumers.
- (iii) Certain information categories such as sales amounts and market shares are not deemed sensitive compared to information on price, cost and future strategies by the Board, therefore, exchange of such information would unlikely restrict competition in the market. On the other hand, a large number of firms including half of the IMDER members would not take part in the information exchange scheme; thereby they would be able to disrupt any coordination in the market. In addition, lack of entry barriers and import restrictions in the market would allow new entries or imports from third countries to the Turkish market. The non-homogenous nature of the products in the market was considered to be another factor which would impede the competitors' ability to sustain a collusive outcome.
- (iv) On the other hand, the information exchange scheme was considered to restrict the competition in the market more than necessary, in other words impose restrictions which are not indispensable to the attainment of these objectives, due to the level of details in the reports, frequency of exchange, uncertainties regarding its limits, objectives and methods. More specifically, the Board raised competitive concerns in relation to the business scheme's following features:
 - In monthly reports, information on the sales amounts of new construction machines would be shared on the basis of each undertaking, without being consolidated. In principle, the Board requires that data is shared on an aggregate basis without being broken down for each undertaking. Under certain decisions, information exchange without being aggregated has been approved, provided that such information is shared publicly. However, the scheme at hand only allows an information exchange between the IMDER members.
 - As opposed to the existing information exchange scheme which has been consolidating the sales amounts on a national basis in quarterly reports, the new scheme was aiming to break down the data on the basis of each city, in quarterly reports, resulting in a more transparent exchange of information.
 - Consolidation of certain categories of data on the basis of regions consisting of 3 cities would be transparent enough for the market players to deduce the data on the basis of cities, since such machines are generally employed in publicly known big projects.
 - The reports complementing each other would allow the market players to coordinate their commercial strategies and monitor adherence to the coordinated behavior.

All in all, the information exchange scheme proposed by IMDER has been rejected by the Turkish Competition Board for restricting the competition more than necessary to the attainment of the objectives pursued due to its dynamics propounding an exchange of information making the market more transparent.