

## **EXCESSIVE PRICING: A RARE CONCEPT IN COMPETITION LAW**

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### **I. Introduction**

The concept of excessive pricing has recently risen from the grave and once again became a hot topic of discussion within the competition law community, due to the various investigations initiated by the European Commission. In a parallel development, this intriguing concept has also been scrutinized by the Turkish Competition Board in a couple of cases within the last few years.

In general, excessive pricing can be a slippery slope for competition enforcement authorities, as some academic commentators and competition authorities consider excessive pricing behavior to be “*self-correcting, because excessive prices will attract new entry.*”<sup>1</sup> In other words, if entry to a particular market is not completely impeded (or made impossible) by structural obstacles, a dominant undertaking that applies excessive prices in that market will eventually be beaten back by the effective competition in the market. Thus, according to this argument, it would be excessive and unwarranted for a competition enforcement authority to interfere directly with the prices charged by the dominant undertaking.

All in all, the primary challenge in excessive pricing cases for competition authorities (as well as the market players) in non-monopolistic markets consists of finding the most effective methods to uncover excessive pricing and implementing the best remedies to be applied to the abusive dominant undertaking.

This article aims to critically examine and reevaluate the legal tests that have been applied in the excessive pricing analyses conducted by the European Commission, various European Courts, and the Turkish Competition Board in several recent cases.

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<sup>1</sup> Ariel Ezrachi & David Gilo, “Are Excessive Prices Really Self-Correcting?”, , *Journal of Competition Law and Economics*, Vol. 5(2) (2009), p. 249–268. Available at <https://ssrn.com/abstract=1237802>, last accessed on 17.09.2017.

## II. What Price is Excessive?

In general, the concept of “excessive pricing” has been evaluated and considered as a breach of competition law rules only in truly exceptional situations. Excessive pricing occurs when a dominant undertaking, which holds dominant market power, charges prices that are above the competitive pricing level.<sup>2</sup>

There are various methods used to determine whether excessive pricing exists in a particular case; however, such methodologies are not foolproof and they seem to change on a case-by-case basis. For example, the assessment and remedies with respect to excessive pricing would differ for a dominant undertaking with low marginal costs in a market with low barriers to entry, as opposed to those imposed on a monopoly undertaking operating in a regulated market with high barriers to entry.

According to the precedents and established doctrines of competition law, the methods that can be used for the determination of excessive pricing are as follows:<sup>3</sup>

- The “Two-Stage Test”, which involves the following:
  - (1) comparison of actual prices (*i.e.*, the selling price of the product) with actual costs (*i.e.*, the production costs of the product),
  - (2) comparison with the prices of competing products or prices across markets,
    - (i) geographic price comparison,
    - (ii) comparison of prices over time.
- The Economic Value Test, primarily encompassed comparing price charged by the company and value of the product. Although it has been suggested that value of a product is related to its costs,<sup>4</sup> s O’Donoghue and Padilla have observed, “*the*

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<sup>2</sup> See Turkish Competition Board’s *Fuar* decision, dated 27.10.2016 and numbered 16-35/604-269; Richard Whish & David Bailey, *Competition Law*, (Oxford University Press,2012), p. 718; Robert O’Donoghue and A. Jorge Padilla, *The Law and Economics of Article 82 EC* (Hart Publishing,2011), p. 603.

<sup>3</sup> See Robert O’Donoghue and A. Jorge Padilla, *The Law and Economics of Article 82 EC*, (Hart Publishing, (2011), p. 608-638.

<sup>4</sup> Case 26/75, *General Motors v. Commission* [1975] ECR 1367, [1976] CMLR 95, Case 226/84 *British Leyland v. Commission* ([1985] ECR 3300-3306.

- *economic value of a product or service is determined jointly by customers' willingness to pay and the costs of supply.*<sup>5</sup> In other words, regardless of the costs of supply, customers might be willing to pay more for a specific product or service; therefore, consumer demand can determine the price of such a product or service, even if it differs greatly from its cost.
- Competitive Benchmark: Excessive pricing might be deemed to exist in a given market if prices are observed to be excessively higher than what could be expected in a competitive market.

All in all, none of these tests are entirely objective or infallible, but they are nevertheless useful for making subjective price comparisons with either a relative benchmark or the cost/value of the product or service. These costs are relative and can be variable depending on many factors, such as geography, demand, the specific type of product or service under scrutiny, among others. Hence, there is undoubtedly a lack of legal certainty at the present about how to assess excessive pricing, let alone determine the remedies and penalties that should be applied in case of an excessive-pricing scenario.

As there is a lack of legal certainty on how to assess excessive pricing, along with determining the remedies and penalties that should be applied in case of an excessive-pricing scenario, some commentators have suggested that there should be a limited amount of intervention to cope with excessive pricing. Accordingly excessive pricing interference should only occur in markets with high barriers to entry, where one firm is in a dominant position, as well as in markets where innovation and investment play only a minor role.<sup>6</sup> In markets with low barriers to entry—where, at least in theory, there will be more market entrants, and thus, more product variation—if a dominant firm applies excessive prices, customer demand would shift to cheaper substitutes of that product or service, once market entry by new undertakings occurs. Thus, in theory, an unregulated market with low entry barriers and low entry costs

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<sup>5</sup> *Ibid.*, p. 612.

<sup>6</sup> Robert O'Donoghue and A. Jorge Padilla, *The Law and Economics of Article 82 EC* (Hart Publishing, (2011)), p. 638; Ariel Ezrachi and David Gilo, "Are Excessive Prices Really Self-Correcting?" , *Journal of Competition Law and Economics*, Vol. 5(2) (2009), p. 249-268.

should ultimately reach a competitive balance, even in the face of excessive pricing behavior by a dominant undertaking.

### III. The Concept of Excessive Pricing from the Perspective of the European Commission

The Turkish competition law (“**Law No. 4054 on the Protection of Competition**”) does not make any reference to “*unfair*” prices, contrary to Article 102 of the Treaty on the Functioning of the European Union (“*TFEU*”), which explicitly refers to, “*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,*” even though the Turkish competition law is closely akin to (and explicitly modeled after) the European competition law. This discrepancy between the regulations of these two jurisdictions does not lead to a significant divergence in competition law practice, and, similarly to the EU system, the Turkish Competition Board also considers and treats excessive pricing as an abuse of dominance violation.

It has been observed that in the EU, much like in Turkey, each enforcement decision raises a different concern about the judicial and regulatory interpretation of the concept of excessive pricing.

The first case in which the European Court of Justice examined the excessive pricing element within the framework of competition law was the *United Brands* decision.<sup>7</sup> In *United Brands*, the European Court of Justice reviewed the decision of the European Commission with respect to the pricing behaviors of the United Brands Company (“*UBC*”), and declared that charging an excessive price that did not have a reasonable relationship to the economic value of the product would be considered as an abuse of dominance. While comparing the cost of the product and its selling price (and thus determining the profit margin) could provide an “objective” method of calculating and determining the excessive price, the European Court of Justice stated that the Commission had failed to make this calculation in its decision since it did not consider the cost structure of UBC.<sup>8</sup> However, according to the European Court of Justice, the mere existence of an excessive price would not be sufficient on its own for a

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<sup>7</sup> Case 27/76, *United Brands v. Commission* [1978] ECR 207, [1978] 1 CMLR 429.

<sup>8</sup> *Ibid.*, para. 250-251.

competition law violation, and that the prices would also have to be “unfair” for the investigated undertaking to run afoul of competition law rules: “*the questions therefore to be determined are whether the difference between the costs actually incurred and the price actually charged is excessive, and, if the answer to this question is in the affirmative, whether a price has been imposed which is either unfair in itself or when compared to competing products.*”<sup>9</sup>

By doing so, the European Court of Justice noted that “*(...) In this case charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be such an abuse. This excess could, inter alia, be determined objectively if it were possible for it to be calculated by making a comparison between the selling price of the product in question and its cost of production, which would disclose the amount of the profit margin; however the Commission has not done this since it has not analysed UBC's costs structure. (...)*”<sup>10</sup> The European Court of Justice annulled the Commission’s decision because, although there is a difference between UBC’s prices and its competitors’ prices about 7%, such percentage has not been challenged and thus this cannot be considered automatically as excessive price or unfair. That said, the Commission failed to provide legal proof of its allegations against UBC for directly and indirectly imposing unfair selling prices for bananas.<sup>11</sup>

In its *British Leyland*<sup>12</sup> decision, which is the only excessive pricing decision that has been upheld by the European Court of Justice, the European Commission determined that British Leyland had charged higher prices for bestowing certificates of conformity for left-hand drive cars than for right-hand drive cars. The European Court of Justice, by referring to its *General Motors* decision,<sup>13</sup> stated that an abuse of dominance violation occurs when the fee charged by an administrative monopoly is disproportionate to the economic value of the services rendered.<sup>14</sup> Once again, the European Court of Justice used the economic-value test in order to determine and define the abusive behavior in question. Consequently, the European Court

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<sup>9</sup> *Ibid.*, para. 252.

<sup>10</sup> *Ibid.*, para. 250-251.

<sup>11</sup> *Ibid.*, para. 256-258.

<sup>12</sup> Case 226/84 *British Leyland v. Commission* [1985] ECR 3300-3306.

<sup>13</sup> Case 26/75, *General Motors v. Commission* [1975] ECR 1367, [1976] CMLR 95.

<sup>14</sup> Case 226/84 *British Leyland v. Commission* ([1985] ECR 3300-3306, para. 27.

of Justice found that the price differences between the certificates of conformity for left-hand drive cars and for right-hand drive cars were not in line with or justified by the cost differences between these services. In other words, there were no economic justifications as to why British Leyland had chosen to charge different fees for issuing certificates of conformity for right-hand-drive and left-hand-drive vehicles, other than making the re-importation of left-hand-drive vehicles less attractive for consumers.<sup>15</sup> Accordingly, the European Court of Justice ruled that the European Commission's findings on British Leyland's abuse of dominance through excessive pricing were correct and upheld the Commission's decision.

In *Scandlines Sverige AB v. Port of Helsingborg*,<sup>16</sup> the European Commission stated, in relation to the economic-value test, that the cost/price comparison can only serve as a first step when analyzing excessive prices, and that it is not sufficient by itself to determine the existence of abusive behavior.<sup>17</sup> This viewpoint is considered to be in line with the aforementioned economic theory, according to which, "*the economic value of a product or service is determined jointly by consumers' willingness to pay and the costs of supply.*"<sup>18</sup> In this decision, the Commission declared that the price comparison to be made in the second stage of the excessive pricing test should be applied in a dual structure. The Commission further explained that the price of the product or service under examination may be compared with either: (i) the prices that the dominant undertaking applied for the same product/service in other relevant markets, or (ii) the prices that other undertakings charged for similar products in different relevant markets.<sup>19</sup>

In 2017, after several years of silence and inaction on the excessive pricing issue, the European Commission finally initiated a formal investigation against Aspen Pharma regarding the allegations that it had engaged in excessive pricing with respect to five life-saving cancer medicines.<sup>20</sup> In its press release,<sup>21</sup> the Commission stated that it would

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<sup>15</sup> *Ibid.*, para. 28-29.

<sup>16</sup> COMP/36.568, *Scandlines Sverige AB v. Port of Helsingborg* [2006] 4 CMLR 1298.

<sup>17</sup> *Ibid.*, para. 214.

<sup>18</sup> Robert O'Donoghue and A. Jorge Padilla, *The Law and Economics of Article 82 EC* (Hart Publishing, 2011), p. 612.

<sup>19</sup> COMP/36.568, *Scandlines Sverige AB v. Port of Helsingborg* [2006] 4 CMLR 1298, para. 171.

<sup>20</sup> European Commission Press release, "*Antitrust: Commission opens formal investigation into Aspen Pharma's pricing practices for cancer medicines,*" available at [http://europa.eu/rapid/press-release\\_IP-17-1323\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1323_en.htm), last accessed on 17.09.2017.

investigate whether Aspen Pharma had imposed price increases that were significant and unjustified, and had therefore abused its dominant market position. This ongoing investigation and the European Commission's ultimate decision will provide valuable insights with respect to the Commission's approach to the determination of excessive pricing violations.

#### **IV. The Concept of Excessive Pricing from the Perspective of Turkish Competition Law**

Abuse of dominant position under Turkish competition law is regulated under Article 6 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**"). Excessive pricing is considered to be a type of abuse of dominant position under Turkish competition law, similarly to the perspective and practice of European competition law. Much like the European Commission, the Turkish Competition Board is also rather reluctant to regulate the prices in a particular market due to excessive pricing allegations. There are only a small number of decisions by the Board on this issue, which also indicates that the Turkish Competition Board rightfully does not have a tendency toward determining price levels in the market.

In some of the Turkish Competition Board decisions,<sup>21</sup> the Board has stated that excessive pricing could be considered as an abuse of dominant position, subject to certain specific conditions. One of these conditions is the existence of high barriers to entry or structural entry barriers in the market under examination. In addition, the lack of an alternative undertaking that could provide the same product(s) or service(s) with competitive conditions (*i.e.*, for a lower price or with better terms) could be perceived as an indication of a monopolistic market structure, which would also be considered as one of the conditions suggesting an abuse of dominant position. Furthermore, information asymmetry in the market for potential competitors of the investigated undertaking would also be taken into account as one of the conditions for an excessive pricing assessment. The Board has noted in its decisions that the underlying rationale for considering entry barriers as one of the main conditions for an excessive pricing assessment is that, if there is no (or low) entry barriers in the market, it is

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<sup>21</sup> *Ibid.*

<sup>22</sup> See the Turkish Competition Board's *Tüpraş* decision dated 06.04.2001 and numbered 01-17/150-39; *ASKI* decision dated 26.05.2005 and numbered 05-36/484-115; *Ataköy Marina* decision dated 24.04.2008 and numbered 08-30/373-123; *Ströer* decision dated 15.02.2007 and numbered 07-14/114-34.

assumed that, according to the general economic dynamics of the market, high profit margins would attract new entrants to the market. Therefore, the undertaking applying high prices in such a market would ultimately be punished by the market itself, because it would either have to lower its prices or lose market share to the new market participants.

It can be argued that the Board's perspective (thus far) has been that a market dealing with excessive pricing issues would ultimately self-correct in the medium or long term, and thus, competition enforcement authorities should not attempt to expedite this self-correction process by interfering with the natural dynamics and rhythms of the market. According to this view, particularly in markets where new entry is possible, competition authorities should refrain from interfering directly with excessive prices, but rather focus on lowering the remaining entry barriers in the market.<sup>23</sup>

The *Belko*<sup>24</sup> case was a prime illustration of this principle. In that case, the Board assessed the excessive pricing allegations against Belko, which was an undertaking that was granted the right to exclusively distribute coal in Ankara by a government regulation. In its decision, the Board noted and emphasized that the relevant undertaking enjoyed monopoly power in the market due to the regulation, and that the market was strictly closed to new entrants. Despite this fact, no legislative precautions had been taken that could have prevented Belko's abusive behavior, such as its excessive pricing behavior. In the absence of any such preventive legislative action, Belko was saddled with high costs and inefficient operations, primarily due to overstaffing issues, and such high costs led, in turn, to high prices. In light of the fact that coal has no close substitutes as a product (due to legal regulations as well as customer preferences), the elasticity of demand in the relevant market was low. The Board also noted that it was impossible to determine the cost of a unit of coal (*e.g.*, 1 ton); however, it also observed that the high operational costs of the undertaking were the result of factors other than the production of coal itself, such as financing problems, overstaffing, and currency-rate fluctuations, among others. The Board went on to compare Belko's prices with the prevailing prices of coal of similar quality in other geographic markets that were open to competition, and determined that Belko's prices were 50-60% higher than its substitutes. As a direct result

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<sup>23</sup> OECD Policy Roundtables, Excessive Prices, p. 78 (2011), available at <http://www.oecd.org/competition/abuse/49604207.pdf>, last accessed on 17.09.2017.

<sup>24</sup> See the Turkish Competition Board's decision dated 06.04.2001 and numbered 01-17/150-39.

of this comparison, the Board ruled that Belko had abused its dominant position in the market. In addition to assessing a monetary fine on Belko, the Board also sent a warning letter to the undertaking, in which it indicated that Belko should lower its prices to reasonable levels, in line with the prices in competitive coal markets. In other words, instead of regulating the actual price to be applied in the relevant market, the Board decided to regulate the price **not** to be applied in the relevant market.

Another instructive example was provided by the *Tüpraş* case,<sup>25</sup> where the Board initiated a preliminary investigation in order to assess whether Tüpraş had abused its dominance in the market by charging excessive prices for Jet A-1 fuel. The Board noted that Tüpraş had been deemed a dominant undertaking in a previous decision.<sup>26</sup> Considering the fact that its market share had not decreased since the earlier decision, the Board determined that Tüpraş was still in a dominant position in the relevant market, without conducting any further evaluations on this issue. Accordingly, the Board only made an evaluation as to Tüpraş's pricing behavior and whether it constituted an abuse of dominant position within the scope of Article 6 of the Law No. 4054.

In its *Tüpraş* decision, the Board stated that a dominant undertaking's abusive conduct can be categorized as either: (i) exploitative, or (ii) exclusionary. According to the Board, excessive pricing is an exploitative behavior, which causes a direct loss of consumer welfare, and thus is one of the main competition law concerns within the scope of the applicable Turkish competition law rules. The decision also observed that the Board's decisional practice is closely akin to (and in line with) the European Commission's practice on excessive pricing.

In the same decision, the Board acknowledged that it is difficult to determine excessive pricing behavior, and that intervention in such cases would be likely to cause downsides in the relevant market, such as having a deterrence effect on new entries, decreasing the incentives for invention and innovation, and the risk of legal error with respect to determining what would be considered as a "fair price." The Board further stated that, although excessive pricing is not considered to fall outside the scope of competition law rules in the EU or in

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<sup>25</sup> See the Turkish Competition Board's decision dated 04.11.2009 and numbered 09-52/1246-315.

<sup>26</sup> See the Turkish Competition Board's decision dated 21.10.2005 and numbered 05-71/981-270, regarding the privatization of Tüpraş.

Turkey, assessing a competition law violation due to excessive pricing is only sanctioned or warranted in exceptional circumstances.

Therefore, the Board declared that, in order to evaluate excessive pricing allegations in terms of competition law, the conditions and dynamics of the relevant market must be assessed explicitly. Accordingly, the Board stated that, in order for a competition law violation to occur due to excessive pricing, not only must the examined undertaking be in a dominant position, but it must also enjoy monopoly powers, or possess excessive market share that puts it close to a monopoly situation in the relevant product market, where its privileged position is protected by high and permanent barriers to entry. In addition, the existence of a regulatory authority with regulatory powers over the relevant product market should also be taken into account, since an intervention from the competition authorities in relation to pricing behaviors may cause uncertainty in the relevant market, especially in cases where specialized bodies already regulate such pricing behaviors in a similar way Ministry of Energy and Natural Sources regulates prices to be charged by energy companies. It was also suggested by the Board that it would be much more efficient and appropriate for intervention to occur through such specialized bodies instead of competition authorities.

Based on the evidence contained in the investigation file, the Board declared that it was possible to assert that Tüpraş had applied higher prices during the first six months of 2009 compared to its previous prices. Nevertheless, the Board emphasized that the market conditions also had to be analyzed in order to determine whether there had been a breach of Article 6 of the Law No. 4054. To that end, the Board noted that the market prices of jet fuel are strongly correlated with raw petroleum prices. Furthermore, the Board observed that, during the period in which Tüpraş had raised its refinery bounties, certain distributor companies had imported products with higher bounties. Even though jet fuel prices had escalated drastically compared to the prices of diesel oil and gasoline, the Board noted that jet fuel prices had nevertheless increased in parallel with raw petroleum prices. Based on these factors and as a result of its analysis, the Board concluded that the pricing behavior of Tüpraş could not be considered as excessive pricing.

In another excessive pricing case, the Turkish Competition Board initiated a preliminary investigation in order to examine whether Soda Sanayi (“SODA”) had abused its dominant position in the market through excessive pricing of basic chromium sulphate and whether it had violated the Law No. 4054 through horizontal or vertical agreements with the object of restricting competition.<sup>27</sup>

In this case, it was alleged that basic chromium sulphate, which is a raw material used in leather manufacturing and which directly affects the quality of the leather produced, is only produced by SODA in Turkey, and that SODA was applying higher prices for basic chromium sulphate to local leather producers, in comparison to the prices it charged to foreign leather producers. Taking into account market share data and information about SODA’s market share in previous years, the Board concluded that SODA was in a dominant position in the basic chromium sulphate market in Turkey, since SODA was a global and European leader in terms of the chromium chemicals industry.

The Board then proceeded to analyze whether there had been an abuse of dominant position, and made a substantive assessment under Article 6 of the Law No. 4054. Within this framework, the Board defined “excessive price” as “*the price determined consistently and significantly above the competitive level as a result of the undertaking's market power,*”<sup>28</sup> and stated that the following factors must be evaluated to deduce abuse of dominant position through excessive pricing: (i) market shares and market concentration rate, (ii) barriers to entry, and (iii) the countervailing buyer power.

Similar to its approach in other excessive pricing cases, the Board conducted a price comparison of SODA’s basic chromium sulphate products. Accordingly, SODA’s prices of basic chromium sulphate products were first compared with the prices of its competitors’ products. In addition, SODA’s prices for domestic sales were then compared with its export prices. Thirdly, domestic prices and profit-margin ratios were compared with export prices and profit-margin ratios. Lastly, the domestic sales prices of SODA and its export profit-margin ratios were compared with each other.

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<sup>27</sup> See the Turkish Competition Board’s decision dated 20.04.2016 and numbered 16-14/205-89.

<sup>28</sup> See the Turkish Competition Board’s decision dated 20.04.2016 and numbered 16-14/205-89, para 47.

In its analysis, the Board observed that SODA had been working with high profit margins on both domestic sales and exports for the previous five years. The Board also determined that SODA's prices and profits in domestic sales had been higher than its export sales prices and profits. According to the Board, this may have been caused by the fact that: (i) SODA's strategy had been focused on exports, and (ii) the purchase cost for foreign customers had actually been higher than local customers' costs, given that this included transportation and other costs. In evaluating the market conditions, the Board noted that there were no entry barriers for the import of basic chromium sulphate in Turkey.

The Board also evaluated excessive pricing allegations through conceptual and practical aspects. The Board suggested that, from a conceptual perspective, prohibiting excessive pricing may restrict the ability of undertakings to determine and optimize their prices for the purposes of profit maximization. From a practical perspective, the Board further suggested that competition authorities may be unable to efficiently analyze whether the relevant undertakings' prices are determined consistently and significantly above the competitive level. This decision clearly indicates that the Board interferes with excessive pricing only under exceptional circumstances, because interference with prices may damage the operations of the market and competition experts run the risk of being mistaken in their analysis of the situation. In light of the risk of erroneous decisions with respect to excessive pricing, the benefits of such interference are rarely worth the risk of harming the dynamics of the market.

Finally, in its *Fuar* decision,<sup>29</sup> the Board assessed whether Congressium had applied excessive prices in its lease agreements in the market for the "management of international exhibition and fairgrounds." In this decision, the Board first determined that Congressium held a dominant position in the relevant market.

The Board then evaluated whether Congressium had applied excessive pricing in the lease agreements by assessing whether the difference between Congressium's costs and prices had been reasonable. In its examination of the excessive pricing allegations, the Board used the two-staged test. First, the Board compared the price demanded by Congressium for leasing area service and the costs associated with this service. Second, the prices charged by

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<sup>29</sup> See the Turkish Competition Board's decision dated 27.10.2016 and numbered 16-35/604-269.

Congresium were compared with the prices charged by other undertakings that provided similar services in the relevant market, as well as different geographical markets. Consequently, the Board determined that, in 2014-2015, Congresium had applied higher prices (per square meter) for certain fairgrounds compared to its competitors. However, the Board noted that the higher price policy had not continued, and that, for some fairgrounds, Congresium had applied lower prices as well. The Board then proceeded to compare the costs and the prices associated with the area rental service provided by Congresium. Moreover, Congresium's prices were compared to the prices of other undertakings that were active in the same market. In the end, the Board concluded that Congresium's prices had not been consistently and excessively higher than its competitors. Therefore, the Board determined that Congresium's pricing behavior could not be considered as excessive pricing.

## **V. Conclusion**

According to the established doctrine, decisional practice, and precedents of the competition law authorities discussed above, there are several different approaches regarding the assessment of excessive pricing and regulatory intervention with respect to such excessive pricing behavior.

It would be fair to say that, generally, competition authorities in Turkey and the European Union are not very eager to interfere with market prices. Instead, regulatory authorities have often sought alternative remedies to combat competition law violations stemming from excessive prices. For example, there have been instances where the Turkish Competition Board ordered a particular undertaking not to apply excessive prices, but refrained from specifying the reasonable price level that should be applied by the undertaking. This cautious approach is mainly due to the fact that both the European Commission and the Turkish Competition Board correctly foresee the risks associated with interfering with the pricing strategies of independent undertakings and, therefore, with the ebb and flow of the free market. Competition authorities are not experts at determining the nuances of an undertaking's operations and strategies in the market, and thus may inadvertently cause an imbalance in the market that can neither be foreseen nor provide the ultimate remedy for the damage created by the excessive pricing behavior of the undertaking in question. There is a

thin line between the need for a free, self-regulating market and the need to prevent the harm caused by the excessive pricing behavior of dominant undertakings. Maintaining this delicate balance requires an objective assessment of market conditions by competition law authorities and the application of reasonable and effective remedies on a case-by-case basis.

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