

"Non Bis In Idem" Accepted In Turkey - Abuse of Dominance Investigation in Vodka and Gin Markets Closed with No Administrative Fine Against Diageo Turkey

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In April 2016, the Turkish Competition Board (the "**Board**") launched an investigation against Mey İçki, a subsidiary of Diageo plc. The investigation aimed at exploring the validity of allegations of abuse of dominance in the Turkish markets for vodka and gin.

After eighteen months of investigation, the Board found that (i) Mey İçki holds dominant position in vodka and gin markets with unanimous vote, (ii) Mey İçki has violated Article 6 of Law No. 4054 in the vodka and gin markets with unanimous vote, and (iii) Mey İçki has been subjected to an administrative monetary fine for the consequences of the same strategy in the raki (traditional Turkish spirit) market and that there is no room for further administrative monetary fine imposition with majority vote, through its decision of October 25, 2017.

The case handlers alleged that Mey İçki enjoyed dominance in the Turkish markets for vodka and gin. Mey İçki allegedly engaged in exclusionary practices against competitors through rebate schemes, cash payment supports and visual arrangements at sales points.

All these alleged practices of Mey İçki had already been examined and fined by the Competition Board in its raki decision of earlier this year (February 16, 2017, 17-07/84-34). The alleged practices belong to the exact same period of time in both decisions and the only significant difference between the two investigations is the products concerned.

The defendant, Mey İçki, demonstrated the lack of both procedural and substantial grounds, emphasizing the "*non bis in idem*" principle in particular, and utilized economic arguments to fortify its oral and written defenses. Mey İçki argued that the investigation was crippled for double-jeopardy as (i) the Turkish Competition Authority carried out a second investigation on the same allegations which belong to the same period of time and (ii) it created the risk of repetitive fine. Eventually, the Board found a violation through abuse of dominance but accepted "*non bis in idem*" Mey İçki's defense, and concluded that Mey İçki should not be subject to an administrative monetary fine under Article 16 of Law No. 4054.

While the reasoned decision is not yet available, the Board acknowledged that "*non bis in idem*" principle should be taken into account while rendering a second decision on the same allegations against the same firm about the same time period, though the relevant product market concerning the second decision is different than the product market examined in the first one. Therefore, the decision is candidate to set a landmark precedent in terms of the interpretation of the "*non bis in idem*" principle under Turkish competition law regime. The reasoned decision, which is expected to be published in the following months, is likely to provide insight on the direction the Turkish competition enforcement will be heading to in the coming years concerning the approach on the "*non bis in idem*" principle.

Gönenç Gürkaynak, managing partner of ELIG, Attorneys-at-Law, who commented on the decision, praised the approach adopted by the Board and commented that "*We are proud to see the objectivity with which the Turkish Competition Authority has looked into this investigation in light of the explanations and defenses of the client, and the thorough compliance program followed internally. Depending on the reasoned decision to be issued in the future, this case might well be a monument of the 'non bis in idem' principle in Turkish competition law.*"

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