

Competition Board grants exemption to Tyre Industrialist Association's waste management plan

November 16 2017 | Contributed by [ELIG, Attorneys-at-Law](#)

Worn-out Tyre Control Regulation
Waste management plan
Assessment of waste management system
Assessment of collection activities
Negative clearance and individual exemption analysis

The Competition Board recently published its reasoned decision on the Tyre Industrialist Association's application for an exemption for its Waste Management Strategies and Implementation Plan for Worn-out Tyres 2016 to 2020.

Worn-out Tyre Control Regulation

Pursuant to the Worn-out Tyre Control Regulation (dated November 26 2006 and numbered 26,357) – which is based on the principle of manufacturer liability – tyre importers and manufacturers must collect, recycle and dispose of worn-out tyres within the framework determined by the regulation.

The regulation indicates that manufacturers must inform the Ministry of Environment and Urbanisation on an annual basis of the tyre tonnage that they introduced to the market in the previous year under the scope of the quota application provision. In order to fulfil these obligations, manufacturers must establish their own waste management system or participate in an established waste management system.

In line with the principle of manufacturer liability under the Worn-out Tyres Control Regulation, Brisa Bridgestone Sabancı Lastik Sanayi ve Ticaret AŞ, Otomotiv Lastikleri Tevzii AŞ, Goodyear Lastikleri AŞ, Michelin Lastikleri AŞ, Türk Pirelli Lastikleri AŞ and Petlas Lastik San ve Tic AŞ established the Tyre Industrialists Association to collect, recycle and dispose of worn-out tyres for sellers, service providers, mechanics and similar organisations.

Waste management plan

Article 12 of the association's waste management plan designates certain collection regions within Turkey in which multiple collectors can operate. Under the plan's proposals, the association will arrange tenders to choose the contractor that will conduct the collection, transportation and temporary storage of worn-out tyres in the relevant region.

The financial resources of the proposed waste management system will be provided by:

- a contribution share collected by consumers under the polluter pays principle;
- worn-out tyre collection and supply service sales conducted by users under the prices determined by free market conditions; and
- reimbursements made by association members for organisation, training, publicity and awareness-raising event expenses.

In order to ensure that users contribute to the waste management plan's costs under the polluter

AUTHOR

**Gönenç
Gürkaynak**



pays principle, a recovery contribution share will be collected for each tyre sold to real persons and legal entities. Recovery contribution shares will be determined by the Tyre Industrialist Association according to the annual cost of collecting worn-out tyres and may be subject to quota increases, inflation costs and variations in oil prices.

The Tyre Industrialist Association's waste management plan emphasises that members will determine their own tyre prices and will not exchange information regarding new tyre prices with the association or its members at any stage.

Assessment of waste management system

As regards the Tyre Industrialist Association's structure, the Competition Board's assessment emphasised that:

- the association accepts membership under Article 5 of its Association Regulation; and
- there are no provisions setting out different conditions for undertakings under said regulation.

In addition, the board determined that members are free to revoke their membership at any point.

The board indicated that in order to ensure competition in the waste management market, multiple waste management systems should be established and manufacturers should not be forced to participate in one single system. Therefore, manufacturers should be able to use different waste management systems for the different types of waste product which they are required to collect.

In its assessment of the case file, the board found that Tyre Industrialist Association members can easily revoke their membership and there are no provisions obliging undertakings to provide their waste products solely to the association. In this regard, the board found that tyre manufacturers can collect their waste products through agreements with other waste management systems.

Assessment of collection activities

The board found that the most significant difference between the Tyre Industrialist Association's 2016 waste management plan and its 2010 waste management plan were:

- exclusivity in favour of the collector and restrictions on the collectors' marketing rights (Decision 10-67/1422-538 of October 27 2010); and
- the (now abolished) exclusivity system, under which only one collector operates on behalf of the Tyre Industrialist Association.

The 2016 waste management plan proposes the operation of multiple collectors in each region.

The board also analysed whether collectors' marketing rights are restricted under the waste management plan. It found that collectors are deemed to have marketing rights if they can deliver waste products to the recovery facility of their choice and are deemed not to have marketing rights when they must deliver waste products to recovery facilities determined by a waste management system.

The board found that the marketing rights in question belonged to the Tyre Industrialist Association, as according to the information submitted in the scope of its exemption application, contractors cannot market products collected on the association's behalf. The Tyre Industrialist Association claimed that this practice is essential in terms of its obligations towards the Ministry of Environment and Urbanisation.

Further, the board examined the Tyre Industrialist Association's position in the relevant market and found that it was the only institution authorised by the ministry in this regard; however, other undertakings which are not members of the association are responsible for the collection, transportation, recovery and recycling of tyres.

Negative clearance and individual exemption analysis

Following its assessment of the association's waste management plan, the Competition Board found that:

- the designation of recovery contribution shares by competitor undertakings is one of the factors that constitutes the price of tyres; and
- the revision of recovery contribution shares falls within the scope of Article 4 of Law 4054 on the Protection of Competition.

In addition, the board found that the Tyre Industrialist Association's proposal to retain the marketing rights of worn-out tyres – which prevents collectors from choosing a recycling or recovery institution – would fall under the scope of Article 4 of Law 4054 and did not grant negative clearance in that regard.

Instead, the board determined whether the waste management plan could benefit from an individual exemption under Article 5 of Law 4054.

In order to be eligible for an individual exemption under the law, a restrictive agreement, practice or decision must:

- ensure new developments and improvements – including economic or technical developments – in the production or distribution of goods and the provision of services;
- provide consumers with a fair share of the resulting benefit; and
- not eliminate competition in a significant part of the relevant market.

This is not an alternative test and all conditions must be cumulatively met for an individual exemption to be issued.

The board determined that under the Tyre Industrialist Association's proposal, the first condition had been met, as the collection of worn-out tyres promotes efficiency and reduces costs, which would enable the market to work more efficiently and thus enable new entries.

The board also found that the second condition had been met, as the collection of tyres separately by individual undertakings was not desirable due to the economies of scale and fixed costs. The establishment of independent waste management systems by each manufacturer would result in consecutive investments in the relevant sector, where fixed costs are prominent. In addition, as stated in Article 5 of the Worn-out Tyre Control Regulation, used tyres cause environmental pollution and damage which threatens human health and collecting them in the fastest manner possible is thus of utmost importance.

As regards the third condition, the board stated that tyre producers and exporters which are not Tyre Industrialist Association members must fulfil their obligations under the Worn-out Tyre Control Regulation themselves or through other collectors. In addition, agreements between collectors and the Tyre Industrialist Association do not include exclusivity clauses in the association's favour, which means that collectors may:

- work with undertakings other than the association;
- participate in tenders; and
- operate in different regions.

Having considered the association's indicated aim to fulfil its obligations under the Worn-out Tyre Control Regulation and the fact that its members must determine tyre prices on their own and not exchange this information with the association or its members at any stage, the board determined that the association's proposal would not eliminate competition in a significant part of the relevant market. In this respect, the board found that the agreement further satisfied the third condition of Article 5 of Law 4054.

Finally, the board found that the fourth condition had been met, as when the responses obtained from market undertakings were evaluated, it was found that:

- the practice of assigning used tyres by tender is convenient in terms of establishing a

competitive market structure; and

- undertakings are not obliged to deliver used tyres exclusively to the Tyre Industrialist Association under its Waste Management Plan.

Therefore, the board decided that the association's proposal would not limit competition in a manner which would violate Article 5(i) and (ii) of Law 4054.

In light of the above, the board granted an individual five-year exemption to the Tyre Industrialist Association for its waste management plan.

For further information on this topic please contact [Gönenç Gürkaynak](#) at ELIG, Attorneys at Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@elig.com). The ELIG, Attorneys at Law website can be accessed at www.elig.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).