

e-Competitions

Antitrust Case Laws e-Bulletin

Preview

The Turkish Competition Authority closes an investigation against an alcohol manufacturer for an alleged abuse of dominance in respect of the *non bis in idem* principle (*Mey İçki*)

UNILATERAL PRACTICES, DOMINANCE (ABUSE), JUDICIAL REVIEW, TURKEY, NE BIS IN IDEM, TOBACCO AND ALCOHOL, LOCAL MARKET

Turkish Competition Authority, *Mey İçki*, Case E-13183850-110.01.04-22233, 12 March 2021

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In September 2011, the Turkish Competition Authority (the “**Authority**”) initiated a preliminary investigation against Mey İçki, a subsidiary of Diageo plc. in order to decide whether it violated Article 6 of Law No. 4054 on Protection of Competition (“**Law No.4054**”) in the Turkish market for rakı (traditional Turkish spirit). In November 2011, the Turkish Competition Board (the “**Board**”) found that there is no need for a full-fledged investigation. At this point, however, one competitor active in the same relevant product market initiated appeal process against the Board’s no-go decision. In November 2018, the High State Court decided to annul the Board’s no-go decision with majority of votes.

In May 2019, the Board initiated an investigation against Mey İçki in order to comply with High State Court’s relevant decision. The investigation aimed at exploring the validity of allegations of abuse of dominance in the Turkish rakı market.

After ten months of investigation, the Board found with unanimous vote that (i) Mey İçki holds dominant position in rakı market, (ii) Mey İçki has violated Article 6 of Law No. 4054, and (iii) Mey İçki has been subjected to an administrative monetary fine for the consequences of the same strategy in the rakı market for the same period (2008-2011) and that there is no room for further administrative monetary fine imposition, through its decision of March 12, 2021.

The case handlers alleged that Mey İçki enjoyed dominance in the Turkish rakı market. Mey İçki allegedly engaged in exclusionary practices against competitors through (i) its discount systems and (ii) its practices allegedly preventing the visibility of the competitors at the sales points.

All these alleged practices of Mey İki had already been examined and fined by the Board in 2014 (14-21/410-178). The alleged practices belong to the exact same period of time and the same market in both decisions.

The defendant, Mey İki, demonstrated the lack of both procedural and substantial grounds, emphasizing the “*non bis in idem*” principle in particular in both its oral and written defenses. Mey İki argued that the investigation was crippled for double-jeopardy as (i) the Board carried out a second investigation on the same allegations in the same market which belong to the same period of time and (ii) it created the risk of duplicative fine. Eventually, the Board found a violation through abuse of dominance but accepted Mey İki’s “*non bis in idem*” defense, and concluded that Mey İki should not be subject to a further 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 applied. Therefore, the decision is a 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.