

e-Competitions

Antitrust Case Laws e-Bulletin

Preview

The Turkish Competition Board clears the acquisition for sole control of a porcelain producer by an American private equity firm following divestment commitments (*Ferro / American Securities*)

MERGERS, MANUFACTURING, MERGER NOTIFICATION, REMEDIES (MERGERS), HIGH MARKET SHARES, TURKEY, MERGER (NOTION), CHANGE OF CONTROL, CONTROL (NOTION), MERGER CLEARANCE (PHASE I)

Turkish Competition Board, *Ferro / American Securities*, Case No. 22-10/144-59, Decision, 24 February 2022 (Turkish)

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The Turkish Competition Board (“**Board**”) conditionally approved the acquisition of sole control over Ferro Corporation (“**Ferro**”) by American Securities LLC (“**American Securities**”) through its solely controlled affiliate ASP Prince Holdings Inc. (“**Prince**”). The Board determined that the transaction would result in the significant impediment of effective competition in the market for glass coatings for home appliances in Turkey. That being said, the Board conditionally approved the transaction subject to the commitments submitted by the parties to the European Commission (“**Commission**”) on the grounds that the commitments removed the entire horizontal overlap between the parties in the horizontally affected markets in Turkey.

Background

The Turkey-related activities of Ferro concerned the manufacture and sale of porcelain enamel coatings, glass enamel coatings and container glass coatings. On the other hand, American Securities was active in Turkey through its controlled portfolio companies in various fields such as specialty chemicals for consumer and industrial markets; spare parts, equipment and accessories for forestry and agriculture; roofing and building envelope systems; colorants, chemical and pigment dispersions; precision components for medical and industrial sectors; processing equipment for animal feed, oilseed processing, extraction and heat treatment; damage recovery and restoration services; kitchen utensils, personal care, health and beauty products. Prince was also a global manufacturer of mineral-based chemicals, minerals and industrial additives; and it was active in the development and marketing of specialty products for applications in various industries including construction, electronics, consumer products, agriculture, automotive, oil, gas and heavy machinery.

The Board identified that the activities of Ferro and American Securities (via Prince) horizontally overlapped in the markets for porcelain enamel coatings and glass enamel coatings, specifically in the glass coatings for home appliances sub-segment of the latter. The Board defined the geographic scope of the relevant markets for porcelain enamel coatings and glass coatings for home appliances as Turkey. There were no vertical relations between the Turkey-related activities of the parties.

The Board's Competitive Assessment in terms of the Horizontally Affected Markets:

The Board indicated that the transaction would not give rise to any competitive concerns in the porcelain enamel coating market given that the transaction parties' combined market share was below 20% and due to strong competitors, low entry barriers, low switching costs and spare capacities of competitors.

That being said, in terms of glass coatings for home appliances, the combined entity was to have significantly high market share as Prince and Ferro were two of the three largest undertakings that were active in this market, reaching a post-transaction combined market share above 50%. The Board conducted an HHI analysis and a CR4 test in order to assess the concentration level the transaction brought to the market. Accordingly, the Board determined that the transaction would increase the concentration level of the relevant product market, which was already concentrated prior to the transaction. In this respect, the Board underlined that the transaction would eliminate the market power of an important competitor and lead to an even more concentrated market where mainly four players would operate. Furthermore, assessment of the market shares in the market has shown that Prince and Ferro were increasing their market shares against other players, effectively reducing other three largest players' ability to exert competitive pressure on the combined entity. The Board also remarked that Ferro was the largest player worldwide based on market shares both by value and volume.

Following its analysis based on the market shares, the Board indicated that competitors could utilize their spare capacities or increase their capacities in order to respond to a possible price increase; new players such as paint producers could easily enter the market in the absence of any tariffs or legal entry barriers; and production and shipment costs in the market were relatively low. However, the Board could not identify a presence of countervailing buyer power given that there would be only four large players in the market post-transaction. In this respect, the Board indicated that the transaction might result in the significant impediment of the effective competition.

The Board also took into consideration the global horizontal overlaps and vertical relationships between the parties to the transaction. To that end, the Board found that Prince would be gaining significant market shares post-transaction in the markets for porcelain enamel coatings and glass coatings. On the other hand, the Board did not identify any competitive concerns regarding the remaining global horizontal overlaps and vertical relationships.

The Board's Evaluation of the Commitments Submitted before the Commission:

In order to eliminate the potential competition law concerns arising from the proposed transaction, the parties to the transaction submitted extensive commitments to the Commission and the Commission conditionally approved the transaction on January 25, 2022. [1] The Parties also informed the Authority regarding these commitments along with their explanations in terms of the effects of these commitments in Turkey. The commitments included the divestment of Prince's entire glass coating business and porcelain enamel coating business in Europe, effectively removing the entire horizontal overlap between Ferro and Prince in the EEA and in Turkey in the markets for porcelain enamel coating and glass coatings for home appliances. To that end, the

commitments submitted before the Commission also eliminated potential competition law concerns in Turkey as well. As a result, the Board unanimously decided to conditionally approve the transaction as a result of its Phase I review on the basis of the commitments submitted before the Commission.

Conclusion

There are numerous decisions where the Board took into account the Turkey-specific effects of the commitments submitted before the Commission and approved the transactions in question either unconditionally [2] or conditional upon compliance with such remedies. [3] However, significant majority of the Board's most recent decisions concerning transactions which involved commitments submitted before the Commission clearly demonstrates that the Board has been more inclined to conditionally approve such transactions subject to the relevant commitments submitted to the Commission. [4] American Securities/Ferro decision reinforces the Board's recent approach to grant conditional approval to transactions subject to the remedies submitted to the Commission and it hints that the Board would continue to consider the local effects of such commitments in terms of its substantive assessment. American Securities/Ferro decision also underlines that the Board can conditionally approve transactions subject to commitments during its Phase I review without further prolonging its review and initiating a Phase II review regarding the transactions.

[1] The Commission's reasoned decision is available at:
https://ec.europa.eu/competition/mergers/cases1/202235/M_10341_8468325_1420_3.pdf
(M.10341 – Prince/Ferro).

[2] E.g., the Board's Maersk Line-HSDG decision dated 04.05.2017 and numbered 17-15/210-89; Agilent- Varian decision dated 18.02.2010 and numbered 10-18/212-82.

[3] E.g., the Board's Bayer/Monsanto decision dated 08.05.2018 and numbered 18-14/261-126; Valeo/FTE Group decision dated 26.10.2017 and numbered 17-35/560-244; GlaxoSmithKline-Novartis decision dated 29.01.2015 and numbered 15-05/59-26.

[4] E.g., the Board's Aon/WTW decision dated 14.07.2021 and numbered 21-35/503-246, Danfoss/Eaton decision dated 4.5.2021 and numbered 21-25/313-144, Synthomer/Omnova decision dated 06.02.2020 and numbered 20-08/90-55; Nidec/Embraco decision dated 18.04.2019 and numbered 19-16/231-103; Harris/L3 Technologies decision dated 20.06.2019 and numbered 19-22/327-145.