



No Fine to the Competitors Having a Common WhatsApp Group: Turkish Competition Board's Decision on the Red Meat Industry

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Introduction

On October 26, 2022, the Turkish Competition Board ("**Board**") published its reasoned decision dated June 23, 2022 and numbered 22-28/443-180, upon its preliminary investigation initiated against six undertakings (i.e. Ahmet Tanrıbuyurdu, Emin Helal Et ve Gıda A.Ş., Göktaşlar Et-Et Ürünleri Yan San. ve Tic. Ltd. Şti, Namet Gıda Sanayi ve Ticaret A.Ş., Pınar Entegre ve Un Sanayi A.Ş. and Sultan Et ve Gıda Üretim Tic. Paz. Ltd. Şti.) that are active in the red meat industry to determine whether the undertakings have violated Article 4 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**").

The preliminary investigation was initiated upon the application of the Ministry of Agriculture and Forestry (the "**Ministry**"). In its application, the Ministry noted that it received numerous complaints that animal breeders controlled the red meat supply through the correspondences in their WhatsApp groups and raised the prices in the sector artificially. The Ministry also noted that the statements made by the non-governmental organizations active in the industry supported such claims and thus requested the matter to be investigated in light of Law No. 4054.

Although the Board found in the on-site inspections made in the premises of the investigated undertakings that there is a WhatsApp group where 256 participants including competitor undertakings that are active in the sector discuss, among others, current slaughter prices (i.e. the price applied by the slaughterhouses for per kilogram of carcass meat) and rising costs, the Board decided that the undertakings did not violate Article 4 of the Law No. 4054 on the

ground that there is no concrete finding indicating the existence of an anticompetitive agreement and/or concerted practice.

The Board's Market Research

First of all, the Board defined the relevant product market as the “red meat market” considering the activities of the investigated undertakings and other undertakings operating in the sector. With respect to the geographical market, the Board considered the market as “Turkey” given that (i) the livestock may be sent to different regions for slaughtering should the prices applied in different regions render such a transfer profitable and (ii) the red meat market has an extensive distribution network throughout the country.

Before delving into its assessment of the communication evidence, the Board made detailed explanations about the red meat industry. In this regard, the Board underlined increasing costs and decreasing profitability in the market. In more detail, the Board first noted that (i) the most important costs items for red meat production consist of the costs of livestock and feed and (ii) the rise in the feed costs due to the increasing inflation and currency rates directly affect the cost of red meat production. The Board then referred to the red meat/feed parity (i.e. amount of feed that can be purchased by a kilogram of red meat) and stated that, in order to earn a profit, an animal breeder should be able to buy 23 kg feed in return for the sale of 1 kg red meat. To that end, the Board highlighted that the amount of feed that can be purchased by a kilogram of red meat was 22.65 kg in 2018 and decreased to 15.34 kg in 2022.

The Board's Analysis of the Communication Evidence in light of the Market Dynamics

The decision includes the findings obtained in the on-site inspections conducted at the premises of the undertakings subject to the preliminary investigation. All the findings of the Board listed in the decision pertain to correspondences in the WhatsApp group named “Animal Breeding Platform” (Hayvancılık Platformu). The said group with 256 participants was created on January 2022. The participants consist of representatives of undertakings operating in the market at different scales, persons with knowledge about the market or are well-known in the market, journalists and representatives of various non-governmental organizations.

From the WhatsApp correspondences included in the decision, it may be inferred that the participants discussed (i) current slaughter prices in specific regions and for different kinds of animals, (ii) their expectations on the slaughter prices, (iii) business strategies, (iv)

government policies and (v) rising costs. In one of these correspondences, it is stated that *“Friends, the prices of the meat is significantly increasing but we still make a loss. If the feed prices do not decrease, we will keep making a loss. We are not able to buy new livestock in place of the one we sold. If the Ministry does not decide on imported livestock, there will be significant problems in the upcoming months. I would say all of us should keep the animals in our hand.”*

In light of these, the Board analyzed the claims that (i) the competitor undertakings engaged in an agreement on price fixing and (ii) the competitor undertakings engaged in an agreement on the restriction of supply.

In its analysis, the Board first stated that the correspondences may imply close monitoring by the undertakings over the slaughter prices. It noted that the reason behind such monitoring is that the said prices have become important for animal breeders due to the rising costs. Notably, whilst analyzing the correspondences, the Board discussed the changes in slaughter prices in detail with an assessment pertaining to a timeframe between 2017 and 2021. To that end, the Board noted that even though the slaughter fee per kilogram of red meat rose to TL 60.48 from TL 26.52, the amount of feed that can be purchased by a kilogram of red meat decreased to 15.89 kg from 22.65 kg between January 2018 and December 2021 in the same period. Furthermore, the Board underlined that although the price of red meat sold by the slaughterhouse and the slaughter price significantly increased in 2022, the amount of feed that can be purchased by a kilogram of red meat kept decreasing.

Having noted the reason behind the close monitoring of slaughter prices in the relevant WhatsApp group, the Board stated that pursuant to the Guidelines on Horizontal Cooperation Agreements (*“Guidelines on Horizontal Agreements”*), the exchange of competitively sensitive information on future plans among competitors may constitute a competition law violation, however, in the relevant WhatsApp group, the undertakings have shared slaughter prices that already realized in the market. Accordingly, the Board deemed that the undertakings did not share the relevant slaughter price information in order to reduce the uncertainty in the market or determine the prices collectively. To that end, the Board concluded that the undertakings did not have an anti-competitive goal whilst sharing information over WhatsApp groups.

As for the restriction of supply, the Board stated that it is seen in some social media posts and the application of the Ministry that some people who are not animal breeders suggested that

livestock should not be sent to slaughterhouses to increase the prices. The Board nevertheless noted that no correspondences showing the existence of an agreement to restrict the supply of red meat between the investigated undertakings were found in the on-site inspections. In addition to this finding, the Board underlined that abstaining from slaughtering livestock after a certain age is not rational as such livestock do consume more feed, whereas they do not gain any more weight. The Board also considered the market structure and stated that (i) more than 97.5% of animal breeding undertakings in Turkey are small enterprises operated with less than 50 livestock and, (ii) hence the market structure is not suitable for an agreement restricting the supply.

Decision and Conclusion

Against the foregoing, the Board decided not to launch a full-fledged investigation by stating that (i) the correspondences mostly included wishes of the undertakings regarding the policies related to the industry, (ii) although there were complaints and wishes related to the prices in the market as well as the raising costs in the correspondences, these cannot be deemed as an agreement and/or concerted practice within the scope of Article 4 of Law No. 4054 and (iii) the opinions of the persons who know the industry are not investment suggestions and are mere speculative opinions regarding the progress of prices and costs. The Board also added that the recent price increases in the red meat market in Turkey were due to rising costs and structural problems faced in the market, rather than anti-competitive conduct.

The decision is noteworthy since the Board decided that the WhatsApp correspondences between competitor undertakings where current prices and supply-related issues were discussed do not indicate a violation. The Board found that the undertakings did not have the object of the restriction of competition while sharing current slaughter prices. With respect to the restriction of supply, the Board took into account the facts that (i) it is not economically rational to abstain from sending livestock to slaughterhouses after a certain period and (ii) the market structure consisting of mainly small-scale businesses is not suitable for an agreement on the restriction of supply. Overall, highlighting the rising costs and decreasing profitability in the market, the Board found that the price increases in the market were not the result of anti-competitive conduct.

Last but not the least, although the Board concluded that there was not enough evidence to launch a full-fledged investigation against the undertakings, it nonetheless noted that the social media posts by people who are not animal breeders regarding the desired slaughter

prices and whether to send livestock to slaughtering could lead to an anti-competitive outcome considering that such posts may affect the decision-making process of the small scale undertakings operating in the relevant market. Accordingly, the Board stated that both the Turkish Red Meat Producers Central Union (“*Tüketbir*”) and National Red Meat Council (“*UKON*”) (i.e. non-governmental organizations active in the industry) were informed that it would be useful to warn their members against such communications. The decision notes that Tüketbir already warned its members not to take such posts into account.

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