

## Competition & Antitrust - Turkey

### Competition Board grants conditional approval of Pirelli acquisition

Contributed by **ELIG, Attorneys-at-Law**

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#### Introduction

The Competition Board recently published its reasoned decision regarding NV Bekaert SA's acquisition of Pirelli Tyre SpA's steel tyre cord business in Turkey.

The initial agreement concerned Bekaert's acquisition of Pirelli's global steel tyre cord business, which consists of five plants located in five different countries (Italy, Romania, Brazil, China and Turkey), by the end of 2014. In late October 2014 Turkey was the sole pending jurisdiction for clearance and the board placed the transaction under Phase 2 review. To that end, the parties agreed to split the transaction into:

- the non-problematic global section of the transaction, which concerned the acquisition of four plants located in Brazil, Italy, Romania and China; and
- the problematic Turkish section of the transaction, which concerned the acquisition of Pirelli's plant in Turkey.

Considering the board's precedents, methods such as carve-out and hold separate do not eliminate the filing requirement altogether and cannot be recommended authoritatively as safe early closing mechanisms that the board recognises. Therefore, the parties took every possible measure – such as preparing two separate sale and purchase agreements – to prevent the board from misjudging the new transactions and considering the division of the transaction a carve-out. The board set a precedent and approved Bekaert's acquisition of Pirelli's assets in Brazil, Italy, Romania and China, considering it to be a separate transaction from the acquisition in Turkey.<sup>(1)</sup>

#### Competition concerns

The board's major concern regarding the acquisition of Pirelli's Turkish plant was understood to relate to local customers active in Turkey. This is the first case in which the board has approved commitments aimed at the protection of customers. It also sets a precedent in the sense that the board's conditional approval is based solely on behavioural remedies provided during the Phase 2 review. The board judged that Bekaert's behavioural remedies qualified to:

- ensure an uninterrupted supply;
- prevent price increases; and
- enable potential competitors to emerge and flourish.

In its analysis of the transaction, the board evaluated the competitive structure in the relevant markets and concluded that, on completion of the transaction, Bekaert would be in a dominant position for steel tyre cord and bead wire in Turkey. The board examined approval decisions from the European Commission and the Brazilian Competition Authority in detail. In contrast to the Brazilian and EU transactions, the dynamics of the Turkish transaction were different, as there were only two undertakings producing steel tyre cord in Turkey. Further, Asian producers played a significant role in the assessments by the European Commission and the Brazilian Competition Authority, but were not active in the Turkish market.

#### Remedies

Under the Guidelines on Remedies that are Acceptable to the Turkish Competition Authority in Merger/Acquisition Transactions, the parties to a merger or acquisition that results in competition concerns can submit proposals for possible remedies – either structural or behavioural – to eliminate these concerns.

Author

Gönenç Gürkaynak



Initially, Bekaert committed to maintain the parties' existing supply relationships with local customers by offering to conclude long-term supply agreements on an arm's-length basis for a period of at least three years. Bekaert argued that this would ensure an uninterrupted supply of steel tyre cord to local customers. However, the board judged that this commitment was insufficient to eliminate the competition concerns. The transaction was placed under Phase 2 review. Bekaert submitted its revised commitments to the Competition Authority. The parties drew up similar, but more concrete commitments. During the Phase 2 review, Bekaert proposed to conclude long-term supply agreements with its local customers for a period of at least three years. The commitments included the following:

- Bekaert would supply steel tyre cord to local customers at competitive prices.
- Local customers would not be required to purchase their supplies from Bekaert.
- Bekaert would provide the amounts ordered in compliance with the quality standards and other specifications indicated by local customers.
- Bekaert would provide additional customer service support as well as developing strategies to help reduce costs for local customers.

#### **Structural and behavioural remedies**

Structural remedies concern divestitures, whereas behavioural remedies regulate the future market behaviour of the parties. Although the guidelines deem structural remedies to be more appropriate for achieving sustainable solutions in a relatively short term without monitoring their consummation, it does not rule out behavioural remedies that facilitate access to essential infrastructure and raw materials. The fact that Bekaert's proposed remedies were purely behavioural is noteworthy, as behavioural remedies are considered secondary to structural remedies and/or the termination of relations with competitors. The board will accept behavioural remedies in exceptional cases, if they are as effective as structural remedies at avoiding the costs of monitoring the undertaking which has given the remedies. Further, the board may approve the application of behavioural remedies for a limited period, which will be determined on a case-by-case basis.

The board analysed Bekaert's proposed remedies and concluded that Bekaert would be unable to impose prices throughout the commitment period on the basis of its market power, as its local customers were not obliged to purchase a minimum amount, and could be supplied by Bekaert's competitors. Given that orders from local customers were not limited to a maximum amount and that Bekaert had to supply the exact amount that local customers ordered, the board assessed that there was no risk of Bekaert limiting its supply during the remedy period.

The authority referred Bekaert's commitment letter to local customers, which evaluated the remedies as being positive overall. In light of the guidelines, the board judged Bekaert's commitment to be transparent and foreseeable, and found that the three-year-period allowed local customers to switch suppliers and enabled potential competitors to put competitive pressure on Bekaert. Consequently, the board decided that Bekaert's proposed commitments to enter into supply agreements with local customers were sufficient to eliminate the competition concerns that might result from the transaction and granted it conditional approval.

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

#### **Endnote**

(1) December 11 2014, 14-50/897-M.

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