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The Turkish Competition Authority concludes that there is no evidence indicating the undertakings operating in the commercial vehicle sector have engaged in information exchange (*BNC / Anadolu Isuzu / Ford / Iveco / Man...*)

ANTICOMPETITIVE PRACTICES, EXCHANGE OF INFORMATION, INVESTIGATIONS / INQUIRIES, RELEVANT MARKET, TRANSPORTS, TURKEY, EFFECT ON COMPETITION, TRANSPORT (ROAD)

Turkish Competition Authority, *BNC / Anadolu Isuzu / Ford / Iveco / Man...*, 23-39/723-247, Decision, 17 August 2023 (Turkish)

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This article summarizes the Turkish Competition Board's ("**Board**") Commercial Vehicles Decision [1] ("**Commercial Vehicles Decision**"), where allegation that undertakings operating in the light, medium and heavy commercial vehicle sector violated Article 4 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**") were examined within the scope of a preliminary investigation.

The allegations concerned the competitive information exchange between nine undertakings operating in the commercial vehicle sector. The Board found that there is no unlawful information exchange and did not launch a full-fledged investigation on the grounds that no evidence had been found indicating involvement in an information exchange of a nature that hinders competition.

I. Relevant Market

The Board has primarily included industry-specific information in its Commercial Vehicles Decision, stating that (i) on a global scale, automotive industry production is typically classified into two main segments: passenger vehicles and commercial vehicles, each encompassing further sub-segmentations; (ii) commercial vehicles are vehicles used for freight and passenger transportation to generate income and have commercial license plates; (iii) within commercial vehicles, sub-segments can be delineated based on different criteria such as axle count, tonnage, and usage purpose.

In this regard, the Board has stated that commercial vehicles are classified as light, medium, and heavy vehicles. The Board, evaluating the activities of undertakings concerning commercial vehicles weighing over 3.5 tons within the scope of preliminary investigation, has noted significant differences between heavy commercial vehicles weighing over 3.5 tons and both passenger cars and light commercial vehicles weighing less than 3.5 tons. Additionally, the Board has assessed that heavy commercial vehicles over 3.5 tons differ from passenger cars and light commercial vehicles below 3.5 tons in terms of technical specifications, usage purposes, and consumer structure, and therefore do not serve as substitutes for each other.

In light of these evaluations, the Board has assessed that, by also referring to past Board decisions, [2] a clear distinction can be made in terms of product groups such as "*heavy commercial vehicle market*". Nonetheless, since this would not impact the evaluations to be conducted within the scope of the file, the Board has not found it necessary to determine the relevant product market.

II. Board's Assessment Regarding Information Exchange Among Competing Undertakings

Documents obtained from an on-site inspection conducted during another investigation in the same sector revealed that certain undertakings operating in the commercial vehicle sector may have access to their competitors' vehicle stock numbers and competitive price quotations offered to customers. In this context, the Board has evaluated that this data/information may be of a competitively sensitive strategic nature and, therefore, it is necessary to determine whether they were obtained through communication among competitors.

Within the theoretical framework, the Board has defined the exchange of information as the sharing of sensitive commercial data capable of impacting competition-related decisions among competitors. The Board has stated that any communication, whether direct or indirect, that aims to alter competitive conditions or has such an effect would be considered a violation within the scope of the Article 4 of the Law. Consequently, the Board cites that such exchanges can reveal strategies related to pricing, production, inventory, and customers, potentially limiting competition or aiding cartel-like coordination. These exchanges, categorized by the Guidelines on Horizontal Cooperation Agreements ("*Guidelines*") as either having object of restricting competition or having a restrictive effect on competition. The Board has stated that information exchanges among competitors aiming to restrict competition, without the need for analysing their effects, are deemed as restrictions of competition. The Board, by referencing the competition concerns outlined in the Guidelines regarding information exchanges, indicates the role of such exchanges in achieving, monitoring, and sustaining collusive outcome within a market. In this context, the Board highlights that information exchanges can increase transparency, thereby facilitating the aforementioned elements of collusive outcome.

The Board acknowledges that information exchanges are commonplace in commercial activities and can yield certain efficiencies, such as reducing information asymmetry and enabling benchmarking within a market. However, the Board emphasizes that the effect of information exchanges on competition depends on both the nature of shared information and the market structure, including factors such as the level of concentration, transparency, complexity symmetry of firms within the market. The Board indicates that the likelihood of collusive outcomes resulting from information exchange is higher in concentrated, transparent, and less complex markets with symmetric firms. Furthermore, the Board asserts that, concerning the nature of shared information, exchanges that render fundamental competitive parameters, such as price and production quantities, transparent based on the structure of the market under consideration, thereby eliminating uncertainties regarding the market conduct of the undertakings, would restrict competition. Ultimately, competition-sensitive information exchange can breach competition laws if it

reduces uncertainty and facilitates cooperation that hinders competition. Consequently, the Board underscores the necessity to scrutinize the findings from the on-site inspection to ascertain if they constitute a violation, based on the aforementioned theoretical framework concerning information exchanges.

In the light of the foregoing, the Board assessed undertakings operating in the commercial vehicle sector often acquire price quotes from competing undertakings, indicating the need to evaluate price information possessing competitively sensitive characteristics within the scope of information exchange. In this regard, the Board has made the following assessments:

1. Among the numerous documents obtained during on-site inspections, no document indicating direct information share among competitors or sharing with the intention of restricting competition of price quotes belonging to competitor undertakings has been identified.
2. The Board evaluated that the price information can be accessed through dealerships, fieldwork, or the websites of undertakings during customer visits. However, no expression suggesting that acquired competitor price quotes were used for purposes contrary to competition was found in the contents of the examined documents.
3. Given the industry's structure and functioning, it is understood that undertakings operating in the sector can closely monitor prices through market research or, without additional effort, acquire information about price quotes from other market players - through customers. It is evident that a bargaining practice where customers share price quotes obtained from one undertaking with another undertaking is highly prevalent to secure better quotes and enhance bargaining power.
4. Furthermore, it is observed that both market research by undertakings and price information obtained through customers and dealers are used by undertakings to offer lower quotes, attract new customers, prevent the loss of existing customers, and ultimately make competitive moves.
5. Some communications among undertakings involve discussions about market share information of other players in the sector, indicating that undertakings can obtain information about market data. It is understood that undertakings gain access to such data through industry-specific data sharing facilitated by the Automotive Distributors' Association ("*ODD*"), Automotive Industry Association ("*OSD*"), Commercial Vehicles Association ("*TAİD*"), and the Turkish Statistical Institute ("*TÜİK*"). Historical data in reports published by ODD, OSD, and TAİD concerning the commercial vehicle sector are publicly available, allowing equal access to this data by all competitors and customers. Consequently, undertakings and customers benefit from gaining insights into the overall state of the sector through this information. When information moves away from being a trade secret and becomes publicly available, based on past data rather than future-oriented, it is accepted that information exchange has limited disruptive effects on competition. Therefore, data obtained from the sector through ODD, OSD, TAİD, and TÜİK via this method is considered not to have a competition-restricting effect among competitors. Hence, the relevant correspondence has been evaluated as not constituting information exchange that restricts competition.

III. Conclusion

In this context, the Board has concluded that there is no evidence indicating that undertakings operating in commercial vehicle sector have engaged in information exchange that restricts competition, and no findings suggesting a violation of Article 4 of Law No. 4054 have been found among the documents obtained during the preliminary investigation. Therefore, the Board concluded that there is no need to initiate a full-fledged investigation against the said undertakings. This decision represents a coherent continuation of the Board's established

jurisprudence, underscoring the nuances and complexities inherent in information exchange practices within the commercial vehicle sector. It also emphasizes the significance of considering market structure and dynamics when assessing whether information exchanges within a sector restrict competition.

[1] Commercial Vehicles Decision (17.08.2023; 23-39/723-247).

[2] The decisions of the Board dated 20.09.2012 and numbered 12-44/1350-455, 05.10.2011 and numbered 11-51/1288-453, 06.06.2012 and numbered 12-30/891-269, and 21.10.2021 and numbered 21-51/714-355.