

Competition & Antitrust - Turkey

Full immunity granted to leniency application made after preliminary investigation

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Decision Comment

Decision

On October 22 2014 the Competition Board concluded a cartel investigation against four fresh yeast producers (Dosu Maya Mayacılık AŞ, Mauri Maya Sanayi AŞ, Öz Maya Sanayi AŞ and Pak Gıda Üretim ve Pazarlama AŞ).⁽¹⁾ The board found that the yeast producers had violated Article 4 of Law 4054 on the Protection of Competition by jointly setting the sales price of fresh bread yeast.

The reasoned decision was published on March 30 2015 and, within the scope of its investigation, the board revealed that the four fresh bread yeast producers had many contacts for price fixing and its implementation. The producers monitored whether the price transitions were reflected in the market and their persistent willingness to influence these price transitions was evident in email messages that the board obtained. Accordingly, the board imposed an administrative fine of approximately TRY14 million (€5 million) as follows:

- Dosu Maya received a 1.8% turnover-based fine, which corresponds to approximately TRY2.7 million (€900,000).
- Öz Maya received a fine of approximately TRY5.8 million (€2 million – 2.7% of its annual turnover).
- Pak Gıda received a fine of approximately TRY5.6 million (€1.9 million – 1.8% of its annual turnover).

The board also held that Mauri Maya was to be fined at a rate of 4.5% of its turnover, which would have been among the highest fine rates in the board's history. However, Mauri Maya submitted a leniency application immediately after the Competition Authority investigation began. The board eventually granted Mauri Maya full immunity, even though the case handlers had recommended a fine reduction of 33.3% or 50% instead of full immunity, on the grounds that the authority was already in possession of sufficient evidence to justify the finding of a violation.

In doing so, the board considered the quality, effectiveness and timeliness of Mauri Maya's active cooperation throughout the investigation, during which it had provided substantive evidence on the existence of the cartel. During dawn raids, the authority had obtained documents which, at best, vaguely hinted at the existence of a vertical violation, but offered no evidence of a cartel. The information and documents that Mauri Maya provided within the scope of its leniency application provided detailed evidence of the cartel's existence, including details of:

- meetings in different cities in which shareholders or senior executives participated on behalf of the parties; and
- correspondence between senior executives regarding these meetings, along with the receipt from a restaurant where one of the cartellists' important meetings was held.

Comment

The board's decision constitutes an important precedent under Turkish competition law regarding the implementation of leniency programmes. Insofar as publicly available information is concerned, it is the first decision in which the board granted full immunity to a leniency applicant that submitted its application after the preliminary investigation had begun and dawn raids had taken place. Article 4(2) of the Regulation on Active Cooperation for Detecting Cartels provides that the first applicant following the board's decision to carry out a pre-investigation can be granted full immunity if the authority does not have sufficient evidence to find a violation of Article 4 of Law 4054. Further, the Guidelines on the Explanation of the Regulation on Active Cooperation for Discovery of Cartels reveal that leniency applications submitted around the time that the board launches its pre-investigation – or during its early stages – have a high chance of obtaining full immunity compared to those made at a later stage. The decision establishes that as long as the leniency application has sufficient content and added

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value for an investigation, the timing of the application is not an obstacle to the grant of full immunity.

Through its decision, the board implicitly encourages cartelist to apply for leniency, even in cases where a preliminary investigation has already been initiated and where the authority has conducted dawn raids to search for evidence. The leniency programmes aim to increase the probability of cartel detection and to make cooperation with the authorities more profitable for cartel members. The programmes also aid cartel detection by encouraging undertakings to provide first-hand and direct insider evidence and to cooperate proactively with a successful enforcement action. The case at hand perfectly serves the leniency programmes' objectives and the board's approach is expected to result in an increase in the number of similar applications in future.

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Endnote

(1) Decision 14-42/738-346.

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