



Reshaping Fuel Market in Türkiye: Turkish Competition Board’s Conditional Approval of the Acquisition of BP by PO

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I. Introduction

This article aims to provide insight into the Turkish Competition Board’s (“**Board**”) *BP-PO* decision², which is one of the most comprehensive and far-reaching merger control review decisions in fuel oil sector in recent years. The Board conditionally approved the acquisition of sole control over BP Petrolleri Anonim Şirketi and BP Turkey Refining Limited Şirketi (together, “**BP**”) by Petrol Ofisi Anonim Şirketi (“**PO**”) The Board conducted a detailed competitive analysis in accordance with the Law No. 4054 on the Protection of Competition (“**Law No. 4054**”) and concluded that the transaction may raise competitive concerns. Against this background, the Board concluded that the remedies submitted by PO sufficiently address the competitive concerns identified, considering the unique structure of the markets. This decision is not only important because its parties are important and strong players in the market, but it also requires a broad competition assessment in terms of the levels of supply, distribution, storage, wholesale, and retail.

II. Procedural Background

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² The Board’s *BP-PO* decision dated September 12, 2024, numbered 24-37/885-379.

The transaction concerned the acquisition of sole control over BP by PO, which is ultimately owned by Vitol Holding II SA (“*VITOL*”). In terms of the definition of relevant product markets, the Board assessed the relevant product markets for storage activities, for distribution activities, for retail sales, for fuel and LPG supply and for biodiesel sales. The Board defined relevant product markets as fuel supply, LPG supply, biodiesel sales, fuel storage services, LPG storage services, gasoline distribution, diesel distribution, fuel oil distribution, gas oil distribution, autogas LPG distribution, B2B retail sale of gasoline, B2B retail sale of diesel, B2C retail sale of gasoline, B2C retail sale of diesel, and retail sale of autogas LPG. The Board defined the relevant geographic markets as follows: for fuel supply, LPG supply, gasoline distribution, diesel distribution, fuel oil distribution, autogas LPG distribution, biodiesel sales, B2B retail sale of gasoline and B2B retail sale of diesel defined as Türkiye; for fuel storage defined as Mediterranean Region of Türkiye; for LPG storage left open; for B2C retail sale of gasoline, B2C retail sale of diesel and B2C retail sale of autogas it was defined as local markets represented through catchment areas (*isochrone mapping*) of 5 km radius in central districts and 20 km radius in rural districts, each centered on a BP dealer.

The Board based its assessment of the competitive concerns on stakeholder opinions. These opinions give a sense that they evaluate competition between different stations based on various factors such driving distance, location, local population and route. Accordingly, it is noted that competition takes place at both national and local levels. One of the stakeholders’ strongest concerns relates to storage facilities. In particular, the transfer of strategic storage facilities such as ATAŞ Anadolu Tasfiyehanesi Anonim Şirketi (“*Ataş*”) to PO is perceived as potentially disadvantaging competitors in terms of refuelling and stocking—especially in Mersin and the Mediterranean Region, which will further explained in the Vertical Assessment section.

The Board further assessed the horizontal and vertical effects of the transaction on the affected markets based on the storage capacity, number of dealers and breakdown of sales volum at the distribution level, using (i) market shares and (ii) concentration ratios (CR4, CR5 and Herfindahl-Hirschman Index) for 2023.

II.I. Horizontal Assessments

The Board identified horizontal overlaps in; gasoline distribution, diesel distribution, fuel oil distribution, gas oil distribution, autogas LPG distribution, B2B retail sale of gasoline, B2C

retail sale of gasoline, B2B retail sale of diesel, B2C retail sale of diesel, retail sale of autogas and fuel storage.

It is noted that the merged entity's market share, the market position of its competitors, barriers to entry and the lack of countervailing buyer power could raise competition law concerns in the (i) B2C retail sale of diesel, (ii) B2C retail sale of gasoline and (iii) retail sale of Autogas LPG markets. By contrast, no concerns are expected in the (i) gasoline distribution, (ii) Autogas LPG distribution and (iii) B2B retail sale of gasoline markets. However, the Board considered the potentially low market share in the B2B diesel retail market resulting from the transaction as an indicator of countervailing buyer power.

II.II. Vertical Assessments

In terms of vertical overlaps, the Board conducted its assessment of input and customer foreclosure on the following overlaps: the vertical overlap between (i) LPG storage and Autogas LPG distribution markets, (ii) fuel supply and LPG distribution markets, (ii) biodiesel sales and diesel distribution markets and (iv) distribution and retail sales markets. The Board noted that no concerns are expected in the vertical overlap between (i) LPG storage and Autogas distribution markets. However, the Board concluded that even though there are no competitive concerns in the (i) fuel supply and LPG distribution markets and (ii) biodiesel and diesel distribution markets, the merged entity's position was further evaluated in terms of input and customer foreclosure. The Board concluded that no such concerns arise, as (i) other undertakings have a significant market share in the LPG storage market based on their purchase volumes, and (ii) %50 of the annual production of biodiesel is allocated to the PO's competitors.

The Board, with the Energy Market Regulatory Authority ("*EMRA*") data, evaluated that the merged entity would not lead to customer foreclosure for upstream competitors in the autogas LPG distribution market. Considering that VITOL's imports constitute a limited part of Türkiye's fuel and LPG supply, input foreclosure on downstream competitors would not arise. The Board also considered that the parties procure gasoline, diesel, fuel oil, and gas oil from domestic refineries, and autogas LPG from other distributors; imports are not their main source of source. Additionally, upstream suppliers will continue to access a sufficient customer base and sell to the merged entity. Accordingly, no competitive concerns were found regarding restricting competitors' customer access. The Board did not further evaluate the distribution and retail sales markets considering that the merged entity cannot supply from its competitors in the

upstream market and cannot sell products to its competitors in the downstream market. Finally, EMRA data showed that the merged entity's purchase share would remain below critical levels, while competitors hold a significant proportion of total purchases.

In terms of the unilateral effects of the vertical overlap between biodiesel sales and diesel distribution, the Board evaluated EMRA data from 2017 to 2023 and assessed that upstream competitors would still have sufficient access to customers post transaction and no customer-foreclosure concerns would arise. Regarding distribution and retail sale, pursuant to Law No. 5015³ and Law No. 5307⁴, distributors cannot sell to other distributors' dealers and dealers must purchase only from their own distributors. Therefore, the merged entity would not be able to source products from upstream competitors or sell to competitors in the downstream market.

The Board also considered that the transfer of BP's shares in Ataş and Çekisan Depolama Hizmetleri Limited Şirketi ("**Çekisan**") constitutes a joint venture agreement forming a cooperation that restricts competition by its nature, rather than a concentration. Accordingly, the Board decided to conduct an individual exemption assessment. As a result of its assessment, the Board decided that the conditions for an individual exemption were met within the scope of the relevant transactions, and, therefore, individual exemption could be granted in accordance with Article 5 of Law No. 4054 for the acquisition of BP's shares in Ataş and Çekisan by PO.

III. Commitments Submitted by PO

Finally, in order to eliminate competitive concerns in the markets, PO submitted behavioural and structural commitments to the Authority.

In the markets for B2C retail sale of gasoline, diesel and autogas LPG, PO submitted the following commitments independent of isochrone mapping method:

- (i) Among 220 fuel dealers owned by PO and BP that are considered to create concentration based on their location and are included in the commitment text submitted by PO, after receiving clearance; (a) within one year, 8 of them, (b) within the second year, 25 of them, (c) within the third, year 16 of them, and (d) within the fourth year, 16 of them for a total of 65 fuel dealers would be sold to the third parties.

³ Law No. 5015 on Petroleum Market.

⁴ Law No. 5307 on Liquefied Petroleum Gas Market.

- (ii) Following the transfer of the afore mentioned fuel dealers to third parties the total volume of fuel (including gasoline, diesel, and autogas LPG) to be transferred to third parties shall be, after receiving clearance; (a) within one year, between 15% and 20%, (b) within the second year 20% and 25, (c) within the third year, and (d) within the fourth year, the remaining amount for a total volume of 80,000 tons divestiture.

As for commitments under the isochrone mapping, taking into account the catchment areas where unilateral concerns arising from concentration are indicated and included in the commitment text, to eliminate the competitive concerns PO submitted the following commitments:

- (i) For fuel stations, in a manner that reduces the merged entity's market share for the critical thresholds in the catchment areas where post-transaction its market share would be above 40% in at least two product groups or above 50% in at least one product group after receiving clearance, (a) within one year, to divest 23, (b) within the second year, to divest 11, (c) within the third year, to divest 11, and (d) within the fourth year, to divest 5 in a manner that it would not exceed the 10% of which the divesting thereof has been committed regarding the above indicated fuel dealers, for the selling a total of 50 fuel stations to third parties.
- (ii) For the abovementioned fuel dealers that are transferred to third parties, they shall not sign a dealership agreement with PO or any undertaking within the same economic unit as PO for a period of five years starting from the selling date,
- (iii) Following the transfer of the fuel dealers, the total volume of fuel (including gasoline, diesel, and autogas LPG) to be sold to the third parties shall be, after receiving clearance, (a) within one year, 45% to 55%, (b) within the second year, 15% to 20%, (c) within the third year, 16% to 21%, and (d) within the fourth year, the remaining amount, for a total of 94,500 tons of fuel (including gasoline, diesel, and autogas LPG) divestiture.
- (iv) PO accepts with good faith to provide the Board with the list of fuel dealers that will be given priority in divestments related to fuel dealers to be carried, with the

reservation of being able to change which ones as long as it divests in accordance with the specifics.

In order to eliminate the potential negative effects that the concentration of operations in fuel storage services may have on the wholesale and retail fuel distribution market, PO has committed not to terminate the rights arising from ongoing contracts of the current rights holders in the storage facilities, and not to exceed 50% of its shares in Ataş and 52% in Çekisan for three years after the transaction, including its voting rights, in order to prevent certain storage facilities' restarting their activities. PO will request the Board to review the decision if other stakeholders vote against it.

Lastly, to address the potential competition concerns on the gas oil distribution market, PO has committed (i) not to exceed the 606-ton sales volume for three years, which is determined by EMRA for 2023, and (ii) to comply with these sales volume, the distribution shall inform EMRA.

IV. Conclusion

As its final decision, the Board concluded that the behavioural and structural commitments submitted by PO were sufficient to eliminate the competitive concerns identified during the review process. Accordingly, the Board conditionally approved the transaction subject to the commitments by a majority vote.

Despite the majority, two members of the Board, namely Hasan Hüseyin Ünlü and Berat Uzun argued in their dissenting opinion that the transaction would result in significant impediment of effective competition on the following grounds:

The Board members stated that in the fuel distribution sector, PO, Opet, and Shell hold approximately 67% of the market, followed by BP, Total and TP, with approximately 23%, while the remaining 10% is shared by approximately 30 undertakings. In this regard, they assessed that the market structure is tightly oligopolistic. The acquirer PO is the market leader with a 24% market share and that post transaction, its market share would mathematically reach 32%, significantly surpassing its two closest competitors (Opet and Shell), which each hold around 20% of the market share. The Board members made an assessment in terms of the dealers that the merged entity will have 2700 dealers which will provide a significant

competitive advantage against the other players in the market. They concluded that the commitments submitted were insufficient to remedy these concerns, and a final review process should have remained.

This decision serves as a landmark precedent that will likely guide future merger reviews in network industries. The Board identified numerous relevant products markets, while carrying out a thorough analysis of both horizontal and vertical effects of the transaction. This decision is also significant as it emphasizes the importance of the commitment mechanism in terms of merger control in Türkiye.

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