

Competition - Turkey

Investigation into misuse of waste paper export restrictions closed without fine

Contributed by **ELIG**

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The Competition Board has just announced the outcome of its investigation against nine Turkish paper recycling companies, including Modern Karton, the largest in the sector. The investigation has been closed without a monetary fine.

The investigation is one of those rare cases in Turkey in which a policy concern not directly related to competition law (in this case relating to minimising trade deficit) may have played a part in the outcome of the decision, together with a state action defence of the parties concerned, as the parties' collective behaviour was influenced by a set of rules brought in by the ministry to tackle trade deficit.

The board found that the defendants had violated competition laws by harmonising their commercial behaviour and colluding against those waste paper producers that aim to export waste paper. However, the board did not levy turnover-based monetary fines against the defendants and granted three-year exemptions, as of the effective date of the regulation on the registered export of waste paper, Communiqué 2011/6 (ie, June 2011), under a number of objective criteria. These objective criteria have not yet been announced, but will be delivered to the defendants by the presidency of the Competition Authority shortly.

Under Communiqué 2011/6 waste paper producers must submit at least three approval letters issued by Turkish recycling companies in order to be allowed to export. Following a complaint that the recycling companies had misused this regulation to prevent waste paper export and coordinated their commercial behaviour with respect to waste paper producers, particularly in relation to the issuing of the approval letters, the Competition Board initiated an investigation. After presentation of the parties' defences, the board concluded that the defendants' acts merited an individual exemption, despite these actions violating Article 4 of the Law on the Protection of Competition (4054, closely modelled on Article 101 of the Treaty on the Functioning of the European Union). As the board accepted the defence that the cumulative conditions of individual exemption were met, the board granted a three-year exemption to each defendant as of June 2011. The exemptions will end in June 2014.

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