COMPETITION & ANTITRUST - TURKEY

Competition Board concludes preliminary investigation into fuel wholesale market

August 04 2016 | Contributed by ELIG, Attorneys-at-Law

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Introduction

The Competition Board recently published a reasoned decision (March 16 2016, 16-10/159-70) following a preliminary investigation of Türkiye Petrol Rafinerileri AŞ (TUPRAS), which was established by the government with the aim of gathering oil refiners in Turkey under one single roof. The investigation followed allegations by the oil distribution association Akaryakıt Ana Dağıtım Şirketleri Derneği (ADER) that TUPRAS's turnover premium system – in the context of its 2016 fuel sale system for undertakings that conduct distribution activities in the fuel sector based on diesel purchases from TUPRAS – will further strengthen the largest distributors in the fuel distribution market, where profit margins are relatively low. Further, ADER alleged that the gradual premium system – determined with wide ranges – would discriminate against certain distributors and exclude mid and low-level distributors from the market.

In its assessment, the board defined the relevant product market as the fuel wholesale market and – based on previous board decisions – concluded that TUPRAS is in a dominant position within the relevant market and assessed TUPRAS's turnover premium system subject to the case at hand.

Exclusionary and discriminatory effects

The Competition Board found that TUPRAS's 2016 fuel sale system included a gradual turnover premium system where fuel grades are determined pursuant to annual demand and are fixed for one year. The board stated that in the context of the abuse of market dominance, the anti-competitive effects of rebate systems are categorised as exclusionary and discriminatory and analysed TUPRAS's fuel sale system accordingly.

The board found that TUPRAS's fuel sale system produced no exclusionary effects, as nearly half of the fuel demand in the market is supplied by imports and TUPRAS is the only source of local production.

Regarding the discriminatory effects of TUPRAS's fuel sale system for distributors active in the downstream market, the board found the following:

- The premium system grants flexibility to customers, as despite being retrospective and progressive, customers can benefit from the higher grade premium if they exceed the agreed purchase amount or move to the lower grade if their purchase amount is below the agreed threshold.
- The premium system is not personalised; instead it is standard targeted, transparent and consists of quantity discounts granted under equal conditions and at objective rates to all customers. Further, the system is not based on a distributor's specific qualities, rather it is designed according to the commercial transaction. Therefore, the premium system does not result in anti-competitive exclusionary effects among distributors.

AUTHOR

Gönenç Gürkaynak

- The premium system is implemented principally to evaluate the excess fuel production capacity generated by TUPRAS's investments; almost half of the existing fuel demand in the market is supplied by imports and a large portion of the demand will be supplied by imports following the relevant capacity increase and there are no restrictions imposed on imports by distributors.
- The premium system has a structure where fuel grades start from relatively low tonnages within reason (ie, 10,000 tonnes), the lowest premium rate (1.75%) corresponds to purchases of between 10,000 and 100,000 tonnes and the highest premium rate (3%) corresponds to purchases of 1,500,000 tonnes and above. Although the premium rates are increased with 0.25% grades, for each additional increase of 0.25% the purchase amount increase rises continually and therefore the results will favour small and mid-sized distributors, in line with the decrease in the marginal yield of the turnover premium system.

In light of the above, the board decided that TUPRAS's turnover premium system does not constitute an abuse of market dominance and the board decided against undertaking a fully-fledged investigation.

Comment

The TUPRAS decision sets out significant parameters and considerations regarding the application of turnover premium rebate systems by undertakings in a dominant market position. Pursuant to the board's assessment, turnover premium systems that are not personalised, but standard targeted, transparent, granted to all customers under equal terms and at objective rates – and where economies of scale are taken into consideration along with the balance of non-discrimination among the undertakings active in the relevant market – do not generate competition concerns under Law 4054 on the Protection of Competition.

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