

Competition Board concludes preliminary investigation into air conditioning sector

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Introduction

On February 9 2018 the Competition Board published its reasoned decision (17-36/578-252, November 9 2017) following a preliminary investigation into allegations that Teknosa İç ve Dış Tic AŞ had violated Law 4054 on the Protection of Competition by restricting İklimSA distributors from selling to the complainant. The complainant, which sells domestic appliances and air conditioners, had purchased products from İklimSA and sold them through its own store and website and a number of e-commerce websites.

Teknosa is a chain of technology retailers founded in 2000 under Hacı Sabancı Holding AŞ. It operates in the air conditioning sector through its İklimSA brand, which has 200 distributors and 245 authorised service stations, in addition to other electronic sectors.

It was claimed that Teknosa had instructed İklimSA that if its products were sold to the complainant, it would halt the payment of distribution premiums and end its commercial relationship with İklimSA distributors. Further, a notarised notice sent to the complainant stated that Teknosa owned the İKLİMSA and SİGMA trademarks as well as other similar brands. As a result, only distributors and branches authorised by Teknosa could sell said products. A preliminary investigation was launched to determine whether Teknosa had restricted the sale of İklimSA products to the complainant by pressuring its distributors.

Relevant product market

As part of its preliminary investigation, the Competition Board defined 'air conditioning' as the conditioning of the temperature, moisture, cleanliness and movement of indoor air to a level appropriate for human health. The board noted that the heating, cooling, ventilation and air conditioning sector incorporates many other products (eg, air conditioning systems, central heating boilers and industrial coolers).

The board stated that the heating sector includes all types of boiler, radiator, burner and central heating boilers, as well as other products that provide water heating. Different air conditioning systems are used for private residences and public areas (eg, factories, hospitals, schools and cinemas). The board classified cooling and ventilation products into the following groups:

- personal air conditioning, which includes products for personal use in private homes;
- mid-commercial air conditioning; and
- central air conditioning, which is generally used in hospitals, production facilities, business centres and malls.

A high number of central air conditioning products require the producer to provide authorised

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repair services for the duration of the product's guarantee. More than 150 local and foreign firms are active in the air conditioning sector.

The board also noted that the Air Conditioning and Refrigeration Manufacturer's Association has 107 members, which constitutes 80% to 90% of the Turkish market.

The board stated that İklimSA is primarily active in the air conditioning sector and its products are differentiated based on their location of use, purpose of use and technical characteristics. Based on the cited precedent (11-46/1135-399, August 25 2011), which examined heating, climatisation and ventilation market, the board concluded that these markets are not substitutes for each other in terms of supply or demand. In this respect, the board noted that the case at hand did not require a conclusive definition of the relevant product market (in line with Article 20 of the Guidelines on the Relevant Market), as any alternative market definition would not affect the outcome of the board's evaluation.

Assessment of Teknosa's conduct

In the context of Law 4054, the Competition Board examined:

- İklimSA's product distribution system;
- the authorised sales agreement that İklimSA had signed with its distributors; and
- the restrictions placed on distributors.

The board noted the scope of İklimSA's sales agreement, which was limited to "any electric and electronic devices that are deemed appropriate for sale by the SELLER". The sales agreement required distributors to "agree, declare and undertake that [the BUYER] will not sell products whether physically or through the internet, to any sales point that is not authorized by the SELLER". The agreement also stated that İklimSA could inspect whether the duties imposed by the agreements were being fulfilled. The board mentioned that many organisational, physical, financial and IT-related standards had been imposed on authorised İklimSA distributors. The relevant agreements also included a non-compete clause, which stated that distributors could not sell competitors' products.

The board also examined the vertical nature of the relationship between İklimSA and its distributors under the Block Exemption Communiqué on Vertical Agreements (2002/2). As İklimSA's share of the air conditioning market was below the 40% threshold, the board determined that it could evaluate its conduct. When evaluating the relevant agreements, the board found that the vertical relationship between İklimSA and its distributors was characterised as a selective distribution system with a non-compete element.

The board stated that a 'selective distribution system' is one in which the supplier undertakes to sell the relevant products and services directly or indirectly to distributors that it chooses and authorises under specific criteria. In addition, the distributors must undertake not to sell said products and services to unauthorised distributors. The board examined the agreement between İklimSA and its distributors, under which İklimSA distributed products via its network of distributors on the proviso that they fulfil certain conditions and sell only to authorised resellers (ie, a selective distribution system). It found that an extensive number of services were provided to customers by distributors or service points (eg, discovery services, which are free of charge) which allowed them to select suitable products and additional installation, maintenance and help services.

The board noted that, according to the information provided by the undertakings, if products are sold through unauthorised distributors and installations are carried out by unauthorised services, this can lead to serious hazards (eg, fires due to the use of inappropriate electrical cables or gas leaks due to unsuitable or cheap pipes). Having considered these technical issues, the board stated that the selective distribution system and use of authorised distributors were significant factors. Further, unauthorised distributors, also known as 'spot-sellers', had been a reason for concern in the past due to stolen goods. The board further noted that some unauthorised sellers had claimed to be İklimSA-authorized distributors on their virtual stores, which had resulted in legal action being taken against them.

The board found that İklimSA had nonetheless attempted to create a sub-distributor network and allowed for the sale of relevant sub-distributors alongside its distributors. Moreover, the board noted that there were no obstacles for these authorised sellers to conduct sales in physical and virtual stores that belong to third parties. As a result, the board determined that the written notice to restrict sales made to unauthorised distributors was allowed under Communiqué 2002/2. The board also noted that no proof had been found during the on-site inspections to support the claim that İklimSA had restricted the sale of its distributors through their physical sales points or the Internet.

Decision

Considering the above, the board concluded that the authorised seller agreement in question included no provisions restricting sales by distributors via their physical stores or online, except for sales to unauthorised resellers. As a result, the board decided not to undertake a fully fledged investigation.

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