

May 26 2022

Competition Board issues first reverse Morris trust decision in Regal/Rexnord acquisition

ELIG Gurkaynak Attorneys-at-Law | Competition & Antitrust - Turkey

- > [Facts](#)
- > [Decision](#)
- > [Comment](#)

On 15 April 2021, the Competition Board (the Board) unconditionally approved⁽¹⁾ Regal Beloit Corporation's acquisition of sole control over Rexnord Corporation's process and motion control (PMC) business segment.

Facts

The transaction concerns an acquisition carried through reverse Morris trust (RMT), a method granting certain exemptions from US tax legislation provided that specific conditions are met. The parties submitted that the preference of an RMT transaction was absent of any other intention apart from having the advantage of being granted with certain exceptions and indicated that the RMT method was not pertinent to any criteria that should be considered as a basis while evaluating the transaction.

The transaction was shaped around two separate procedures:

- the separation of Rexnord's PMC business by transferring it to Land Newco Inc (SpinCo), a spinoff to Rexnord and an agent company established only for the purpose of the transaction; and
- immediate combination of SpinCo with Regal through a RMT transaction.

Although the transaction is planned to be completed through two consecutive and inseparable operations, only the second was evaluated within the meaning of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4), as a permanent change of control will occur only following the second action taken by the parties. The Board then proceeded with three separate analyses on the relevant product markets and evaluated three markets that generate a horizontal overlap between the parties' activities – namely the coupling market, the bearing market and the flat-top conveyor solutions market. Eventually, in light of the provided information and based on its evaluations, the Board granted its unconditional approval on the transaction concluding that it does not give rise to any competitive concerns within the Turkish markets.

Decision

Transaction

The transaction subject to the decision was the acquisition of the Rexnord's PMC business through an inverted triangle merger (ie, RMT) through SpinCo, a subsidiary of Rexnord. As part of the transaction, Rexnord will first separate its PMC business by establishing SpinCo, and subsequently Regal's subsidiary Phoenix 2021 Inc and SpinCo will merge, and the PMC business will be transferred to Regal by the exchange of SpinCo's shares with Regal.

The Board determined that the transfer of the PMC business to SpinCo (ie, the first transaction) would not create a permanent change in control within the scope of the Communiqué No. 2010/4, whereas the merger of Phoenix and SpinCo (ie, the second transaction) would create a permanent change in control of SpinCo within the scope of Communiqué No. 2010/4. The Board explained that the division of assets to be made following the closing will be legally binding and the second transaction will be carried out immediately after the first transaction. Considering that the final transaction is the transfer of PMC business to Regal and, therefore, SpinCo's control will be permanently changed after such transaction, the Board concluded that the second transaction was within the scope of Communiqué No. 2010/4.

Communiqué No. 2010/4 lays out which types of mergers and acquisitions are subject to a mandatory merger control filing in Turkey. Accordingly, any transaction that exceeds certain turnover thresholds set out under article 7 of the Communiqué No. 2010/4 is subject to a mandatory merger control filing, provided that such transaction also leads to a permanent change of control.

Horizontal and vertical overlaps between parties' activities

Based on the information provided by the parties, the Board assessed that despite the fact that the parties' activities horizontally overlapped in the design, manufacturing and sale of the following, there was very limited worldwide vertical overlap:

- couplings;
- gear drives;
- bearings;
- flat-top conveyer solutions; and
- global industrial chain markets.

Further, the Board proceeded with its evaluations concerning the Turkish markets and concluded that the parties' activities overlap in the above areas, noting that Regal was not active in the gear drives and industrial chain markets in Turkey. With regard to horizontal overlaps, the Board determined that the transaction ends up with a limited number of horizontally overlapped markets in Turkey, while it does not cause any vertical overlap. The Board then resumed to its assessments by separately analysing the coupling, bearing and flat-top conveyor markets.



GÖNENC
GÜRKAYNAK



EBRU İNCE



ÇİĞDEM GİZEM
OKKAOLU

Board's analysis of coupling market

In its evaluations, the Board defined couplings as "machine parts used in order to transfer a movement to another equipment", further dividing their usage as rigid couplings and flexible couplings within the scope of the transaction. In addition, the Board remarked that while couplings could be defined as a "separate relevant market" and as "switchable couplings" by reference to its previous cases,⁽²⁾ the Board also mentioned a more recent decision⁽³⁾ in which couplings were considered as a power transfer elements on a more upstream degree. The Board remarked in accordance with the information provided by the parties that there was no overlap in Turkey in switchable couplings market and the market share in affected markets is minimal, even if the Board were to define relevant market as couplings market for the purpose of transaction.

The Board finally concluded that there was no need for a precise market definition considering the absence of anticompetitive concerns and underlined the presence of a large number of competitors active in the coupling market.

Board's analysis on bearing market

Further, the Board delivered its assessments on the bearing market, rendering it as the second market affected by the transaction. The Board remarked that bearings are used to decrease the friction of joint pieces and to support or direct a rotating, slipping or swinging shaft, pivot or disk, and distinguished bearings as "flat and rotating". The Board referred to its precedent⁽⁴⁾ while providing explanations that bearings can be classified as product-oriented or sector-oriented. The Board remarked that in its previous decision, the substitutability of the bearing types was considered while delivering the product-oriented distinction. In terms of the sector-oriented bearings, the precedent decision focused on end-user of the product by segmenting the bearings further into industrial and automotive bearings.

The Board concluded that there was no need for a precise market definition considering the parties' minimal market shares and large number of competitors active in the bearing market.

Board's analysis on flat-top conveyor solutions market

Lastly, in terms of the affected market definition, the Board determined flat-top conveyor solutions market as the final market affected by the transaction. The Board explained that conveyor solutions, as an upper segment, signifies "transportation, transfer, accumulation, measurement, elevation and landing of objects of different sizes and shapes on the conveyor systems". The Board remarked that different kinds of conveyor chains (eg, flat conveyor chains with metal and plastic links and conveyor chains with plastic modular belts) are supplied for the consumers in the markets for food and beverages, and also in automotive and material handling industries. It was concluded that the activities of the parties overlap in the food and beverages sector, as the conveyor products are used in the machines to join various stations transporting products from one place to another.

The unilateral anticompetitive effects that may emerge as a consequence of the transaction and the effects generating coordination were also analysed while eliminating the anticompetitive concerns to preserve effective competition.

In light of its assessments, the Board determined that the transaction will not result in reducing the effective competition regardless of the market definition. It was concluded that:

- customers were able to readily reach alternative providers considering the wide range of competitors in the flat-top conveyor solutions market;
- there were no entry barriers to such market, as the conveyor solutions manufactured for food and beverage sector did not necessitate a specific technology or a fixed cost; and
- the coordinative effects could be stabilised by the powerful buyers in the market, as the manufactured products did not require the existence of particular technology and design.

Comment

The Board's *Regal/Rexnord* decision is the first and only decisional practice concerning an acquisition that employs an RMT transaction. Even though the parties' preference to use an RMT process does not constitute the key element of the transaction, as the parties indicated that there is no particular reason aside from benefiting from the certain exemptions from tax legislation, the decision is nevertheless worthy of examination.

For further information on this topic please contact Gönenç Gürkaynak, Ebru İnce or Çiğdem Gizem Okkaoğlu at ELIG Gürkaynak Attorneys-at-Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@eliglegal.com, ebru.ince@elig.com or cigdem.okkaoglu@elig.com). The ELIG Gürkaynak Attorneys-at-Law website can be accessed at www.elig.com.

Endnotes

(1) Decision dated 15 April 2021, numbered 21-22/260-113.

(2) Decisions dated 10 October 2012, numbered 12-49/1436-487, and 18 February 2016, numbered 16-05/107-48.

(3) Decision dated 27 August 2018, numbered 18-29/483-235.

(4) Decision dated 10 October 2000, numbered 00-38/419-235.