

The Turkish Competition Board decides that a mechanical door lock manufacturer did not abuse its dominant position through various pricing practices (Kale Kilit)

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The Competition Board (“Board”) decided in its decision dated 06.12.2012 and numbered 12-62/1633-598 that Kale Kilit ve Kalıp Sanayi Anonim Şirketi (“Kale Kilit”) did not carry the characteristics of abuse with its predatory pricing practices and discount systems, and therefore decided not to impose administrative fines on Kale Kilit.

Undertaking Subject to the Investigation

Kale Kilit is a company established in 1953 that produces mechanical door locks used in construction.

Legal Framework of the Investigation

Article 6 of the Act on the Protection of Competition No. 4054 (“Competition Act”) prohibits the abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own, or through agreements with others or through concerted practices.

The Board provides a sample list of types of anticompetitive behavior. Although predatory pricing and discount systems are not stated in that list, they are considered as behavior which may cause abuses of dominant position both under European Union and Turkish Competition laws. However, such behavior does not carry the characteristics of destroying the competitor party.

The above-mentioned behaviors constituting abuse of dominant position are circumstances that are regulated in the Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings No. 2009/C 45/02 (“Guidance”) [1], and in the Draft Guide on Evaluation with regards to the Abusive Exclusionary

Conduct of Undertakings in a Dominant Position [2] (“Draft Guide”), which was submitted to public opinion on 18.07.2013.

Determination of Dominant Position

In order to apply Article 6 of the Competition Act, the undertaking should be dominant in the related market. This condition is expressed both in the Guidance and the Draft Guide. Indeed, this condition is explicitly stated in chapter 6 of the Draft Guide as “*in order to consider a behavior as an abuse, the undertaking realizing such behavior must be in a dominant position in the related market [...].*” However the Board prefers to evaluate whether the behaviors of the undertakings constitute an abuse of dominant position before determining if the undertakings are in dominant position in the relevant market.

It is clear that, the Board’s attitude towards pricing policies is not correct. Primarily, an undertaking’s dominant position should be established in order to examine whether their behavior carries the characteristics of abuse of dominant position, as stated under the Competition Act.

Relevant Market

Relevant Product Market. The relevant product market comprises all those products and/or services regarded as interchangeable or substitutable by the consumer by reason of the products’ characteristics, their prices and their intended use. Therefore, when determining the related product market, whether or not products may be interchanged and/or substituted shall be taken into account. In the Kale Kilit case, in determining the relevant product market, the door’s type and profile thickness was important. Under this scope, types of locks could be categorized as steel door, wooden door, iron door, PVC door locks and barrel locks [3].

Product groups of steel door locks, wooden door locks (interior room, outdoor), iron door locks and PVC door locks produced by Kale Kilit are differentiated by both their qualifications and prices. In addition, locks used in each kind of door are also different. In other words, the doors and locks are not substitutable.

Regarding the above-mentioned statements, the Board determined the related products market as “*steel door locks market*”, “*wooden door locks market*”, “*iron door locks market*”, “*PVC door locks market*” and “*barrel market*”. **Relevant Geographical Market.** The relevant geographical market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and distinguishable from neighboring markets.

Since the competition conditions do not differentiate from a region of the country to another region and competition conditions are in homogenous structure, the related geographical market accepted by the Board is Turkey.

Predatory Pricing Evaluation

The Board examined whether Kale Kilit did push out its competitors from the relevant market by selling their products below production cost for a certain period. Predatory pricing is an undertaking’s way of accepting revenue loss by making sales below cost for a certain period for the

purpose of pushing its current or potential competitors out of the market.

In predatory pricing evaluation, the Board examines three criteria, which are competitor test, intention and harvest (earnings accrued in the long-term following a period of predatory pricing). In fact, these three criteria are linked to each other. In a competitor test, the possibility of whether the market is closed to another competitor is examined. This test is also found in the Guidance and the Draft Guide. Within this framework, the Board made a price-cost examination and thus found that those common and general costs with regards to Kale Kilit product groups were not determined through arbitrary methods but through reasonable cost criteria. In other words, the Board determined that Kale Kilit had no intention of pushing its competitors out of the market.

Evaluation of Discount Systems

The Board examined whether Kale Kilit discriminated among the dealers and abused their dominant position.

Discount systems mean price discounts provided to the consumers in return for certain loyal buying activity. Discount systems may take on a variety of forms under the conditions of dynamic business life and their structures differ in terms of functioning and effects.

In the evaluation of discount services, the Board examined three criteria: alternative procurement resource, product range and distribution network. The Board first determined which dealers have an alternative distribution network in the relevant market other than Kale Kilit. Thus, such dealers are not the last sale point providing the products being transmitted to the ultimate consumer in the relevant market, but they are the intervening entities intervening to transmit the products to the last sale points or the previous resale points.

Additionally, Kale Kilit does not prohibit the sale of competitors products by its distributors and other discount systems are also applied by other undertakings to their distributors in the relevant market.

Lastly, the competitor players may transmit their products to the last sale points by similar or different distributors/ distribution networks.

As per the above-mentioned statements, the Board decided that Kale Kilit's implementation regarding the discount/premium system to its dealers does not carry anticompetitive characteristics.

Conclusion

This decision of the Board is extremely important since two types of behavior commonly seen in practice but not listed under Article 6 of the Competition Act are examined. The circumstances under which such behaviors constitute an abuse of dominant position is also determined in this decision.

The criteria designated in the decision are also stated in the Guidance and mentioned in the Draft Guide, which clearly shows that the related decision has become a guiding light for the Draft Guide. However, no reference is made to this decision in the Draft Guide. We think that it would be better to make reference to prior Board decisions as it is the case in the Guidance. In this way, the

comprehension of the Board's practice will be easier.

Moreover, the Board's abstention to examine whether or not Kale Kilit is dominant in the relevant markets is inappropriate since the Board evaluated the anticompetitive behaviors before determining the Kale Kilit is in dominant position in the relevant market. Nevertheless, as mentioned above, in order to consider the predatory pricing or discount systems as anticompetitive, undertakings realizing these implementations must primarily be in a dominant position.

[1] For the Guidance please see. <http://eur-lex.europa.eu/LexUriServ...> (Access on 22.07.2013).

[2] For the Draft Guide please see. <http://www.rekabet.gov.tr/default.a...> (Access on 22.07.2013).

[3] "Barrel" (cylinder) is the object in which keys are put.

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