The Turkish Competition Board authorizes several mergers in the fast-moving consumer goods market (Migros)

DISTRIBUTION/RETAIL, MERGERS, MERGER NOTIFICATION, TURKEY, EFFECT ON COMPETITION, MERGER CLEARANCE (PHASE I)

Turkish Competition Board, Migros-Kipa, 22 June 2016
Turkish Competition Board, Kiler-Carrefour, 2015-3-34, 06 April 2015
Turkish Competition Board, Anadolu Group-Migros, 15-29/420-117, 9 July 2015

Ercüment Erdem | Erdem & Erdem (Istanbul)
e-Competitions News Issue June 2016

The FMCG Sector

The fast-moving consumer goods ("FMCG") sector is one of the largest industries worldwide. The FMCG retail is an indispensable part of the product distribution chain, and it plays a key role in price-making and the producers’ reaching the final consumer in all steps of the retail chain. In this respect, the FMCG sector has strong relations with other sectors that affect the economy.

The FMCG retail market has enlarged significantly and has made progress since the 1990s in Turkey, and continuously keeps growing. In terms of competition law practice, the recent mergers of large groups, such as the Carrefour-Kiler merger in 2015, the Anadolu Group-Migros merger in 2015, and the potential Migros-Kipa merger in 2016 are some of the most substantial transactions in the FMCG retail sector.

As specified in the Final Report on the Sector Examination into the Retailing of Turkish Fast Moving Consumer Goods ("Sector Report") published by the Turkish Competition Authority ("TCA"), there are ensuing discussions in many countries, including Turkey, such as how to manage the transformation of the retail sector, whether this sector that is highly competitive by its structure needs any intervention and, if so, what should the scope and extent be. As a result of the sector investigation, certain recommendations of the TCA for competition policy are stated as follows: (i) provision of effective merger control, (ii) inclusion of market share cap of the buyer (such as 30%) into the vertical agreements legislation, (iii) following the market share of the buyer with market improvement and growth.

Some of the recent spectacular merger transactions realized in the Turkish FMCG sector are briefly examined hereunder:

Carrefour-Kiler Merger in 2015
The Competition Board ("Board") authorized acquisition of 85% of the shares of Kiler Alışveriş Hizmetleri Gıda San.
ve Tic. A.Ş. ("Kiler") by Carrefour Sabancı Tic. Merk. A.Ş. ("CarrefourSA") [7]. Kiler is active in FMCG retailing and
operates 202 stores, where 68 of them are operated by Kiler Ankara Mağazacılık Sanayi ve Ticaret A.Ş. ("Kiler Ankara"), a 100%
subsidiary of Kiler. The acquirer, CarrefourSA, is a publicly held company incorporated in Turkey, having 443 stores consisting of 27 hypermarkets, 219 supermarkets, 171 mini and 26 gourmet markets as of 06.05.2015 and being active in FMCG retailing.

As per the said decision of the Board, when determining the relevant product market in the FMCG retailing sector,
the supply market should be considered as the upstream market in the supply chain, and the retail market should
be considered as the sub-market.

The Board has made its examinations in certain state/provinces, such as Istanbul/Bayrampaşa, Adana/Çukurova,
Mersin/Anamur, Karabük Merkez and Mardin/Kızıltepe, and determined a market share threshold at 40%. At first
sight, although the said market share gives the impression that a dominant position may be created in these
regions, when the general market structure is taken into consideration, and both the level of the current
competition environment, and the existence of the potential competition conditions form an opinion that the
potential of the lessening of competition in the relevant market is low. Additionally, since Migros, Turkey’s biggest
organized retailer is active in the above-stated regions that are not yet saturated due to the increasing consumer
demands and buying power, the potential competition is high.

The Board has acknowledged the fact that following the acquisition transaction, there will be a sufficient number
of strong competitors that are active in the relevant market in the centers where Kiler and CarrefourSA coincide.
Another point worth-emphasizing is that the nationwide positioning of Kiler and CarrefourSA does not coincide; they
are complementary to each other. As a result, the Board decided that the merger transaction shall not create a
dominant position that would result in significant lessening of competition in the relevant market.

**Anadolu Group-Migros Merger in 2015**

The Board authorized the establishment of control over Migros Ticaret A.Ş. ("Migros") via the acquisition of the
majority shares of MH Perakendecilik ve Ticaret A.Ş., which is under the control of Moonlight Capital S.A., by
Anadolu Endüstri Holding A.Ş. ("AEH"), with certain conditions based on the commitments submitted by AEH.

The Anadolu Group operates in several markets, such as the alcoholic beverages market (by Anadolu Efes), the
non-alcoholic beverages market (by Coca Cola İçecek A.Ş.), the olive oil market (by Ana Gıda), the fresh vegetables
and fruits market (by Anadolu Etap), and the stationery equipment market (by Adel). Additionally, Anadolu Group
has retail stores named 'Ekomini' with respect to FMCGs, while Migros is an important organized retailer chain in
the Turkish FMCG retail sector.

The Board concluded its final examination and, during the final examination process, it assessed whether the
relevant transaction would allow the undertaking in question to achieve a dominant position in the market, in
violation of Art. 7 of Act No. 4054 on the Protection of Competition, thereby significantly reducing competition.

In accordance with the Board's assessments, one of the relevant product markets has been determined as the
organized FMCG retail market. Additionally, the Board stated that the acquisition of Migros by AEH is a vertical
integration that may cause input limitation, customer restrictions, and effects that may result in coordination
between the rivals.
As a result of the aforementioned final examination, the Competition Board made the decision dated 09.07.2015 and numbered 15-29/420-117 concluding that the said merger transaction does not lead to a significant reduction in competition through the creation or strengthening of a dominant position under Art. 7 of Act No. 4054 on the Protection of Competition in any product market other than the beer market.

In relation to the beer market, the Board took into consideration AEH’s various commitments, including those ensuring that Migros would continue its commercial relationships with the competitors of Anadolu Efes Biracilik ve Malt Sanayii A.Ş. (Anadolu Efes), objectively, and in line with certain criteria, that it would again enter into commercial relationships with new entrants into the beer market in competition with Anadolu Efes in an objective manner and in accordance with certain criteria, that it would not prevent the sales of products in competition with Anadolu Efes products, that it would maintain all supplier/producer, product and brand varieties previously provided to customers in the beer category, and that it would maintain shelf shares and displays in the hot/cold areas in accordance with certain criteria. The Board also took into account Moonlight Capital S.A.’s assurance that it had no objections to the implementation of the commitments undertaken by the transaction parties for the interim period in which joint control over Migros would be established, and that it would not prevent the implementation of these commitments by AEH or by Migros, so long as its shareholder status in Migros continued. In light of all of these considerations, the Board decided that the transaction in question should be authorized.

Potential Migros-Kipa Merger in 2016

The latest significant merger application made in the FMCG retail market on 22.06.2016 to the Board is related to the acquisition of approximately 95.495% shares of Tesco Kipa Kitle Paz. Tic. Lojistik ve Gıda San. A.Ş. (“Kipa”) by Migros. This potential transaction has not yet been authorized by the Board, but it is important since Migros, the biggest organized retailer of Turkey, is planning to acquire the shares of Kipa that has 168 stores with a 324,000 m2 net sales area, and a 303,000 m2 real estate portfolio leased by third parties.

Conclusion

The FMCG sector is important in terms of competition law practice. The recent mergers of large groups, such as the Carrefour-Kiler merger, the Anadolu Group-Migros merger, and the potential Migros-Kipa merger are some of the most substantial transactions of the FMCG retail sector. Each of these transactions have unique characteristics, and their competition law concerns differ. In parallel with the Sector Report of the TCA, an effective merger control has been made by the Board when examining the Carrefour-Kiler and Anadolu Group-Migros mergers. Particularly, the Anadolu Group-Migros merger is essential since it contains guidance in terms of the vertical integrations in the FMCG sector. Finally, the outcomes of the potential Migros-Kipa merger remain outstanding; however, the Board’s competition law concerns regarding this potential merger are expected to be heard soon.
