The Turkish Competition Board closes a pre-investigation on possible collusion on the construction sector and fines one undertaking for hindering on-the-spot inspection (Nuhoğlu)

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The Competition Board ("Board"), in its decision dated 21.12.2017 and numbered 17-42/669-297 ("Decision"), has imposed an administrative monetary fine on Nuhoğlu İnşaat Sanayi ve Ticaret A.Ş. ("Nuhoğlu") for hindering on-the-spot inspections in accordance with Art. 16 (1) (d) of Act No. 4054 on the Protection of Competition ("Competition Act"). The interesting fact in this case is that eventually the Board decided not to initiate a full-fledged investigation against the investigated undertakings and, therefore, they have not imposed any administrative monetary fines. The only undertaking that has had a monetary fine imposed upon it is Nuhoğlu, as it hindered the on-the-spot investigations in the pre-investigation phase.

Legal Framework

Art. 15 of the Competition Act explains "on-the-spot inspections," in detail. Moreover, Art. 16 (1) (d) of the Competition Act states that the Board shall impose administrative monetary fines on the undertakings that hinder or complicate on-the-spot inspections by five in one thousand of its gross revenue.

Background

In April, 2017, the Board initiated a pre-investigation against Fikirtepe Urban Transformation Construction Platform ("Platform") and its member undertakings. The Board examined whether the member undertakings have breached Art. 4 of the Competition Act through agreeing on the prices of the locations under urban transformation. Ultimately, with its decision dated 21.12.2017 and numbered 17-42/668-296, the Board decided not to initiate a full-fledged investigation against the Platform and its member undertakings.

Hindering the on-the-spot inspection

During the pre-investigation phase, the case handlers started to conduct on-site-inspections at the premises of
investigated undertakings, including the Nuhoğlu firm. According to the Decision, Nuhoğlu did not allow the case handlers to inspect the Platform's prime presidents’ computer, since according to the Nuhoğlu employee’s statement, the case handlers’ authority document does not include an inspection power over the relevant person’s personal computer, the Platform had already closed, and a court decision is needed to conduct the on-the-spot inspection on the relevant person’s computer. Although the case handlers explained their powers and the possible consequences of hindering on-the-spot inspections under the Competition Act, the employee did not allow the inspection to proceed. The Decision also indicates that the e-mail account that the case handlers requested to inspect was not a personal account and, indeed, it was a corporate e-mail address having the “nuhogluinsaat.com.tr” extension. Ultimately, the Board decided unanimously to impose an administrative monetary fine on Nuhoğlu. In that sense, Nuhoğlu shall pay a five in one thousand of its gross revenue for 2016.

Comment

This Decision is important, as it provides that hindering on-the-spot inspections is a serious infringement, by itself, and the resolution relating to the merits of the case does not affect this conclusion. Therefore, as it occurred in this case, although the Board decided not to initiate a full-fledged investigation against the undertaking, it still may impose an administrative fine on the undertakings for hindering the on-the-spot inspection. As a result, it is recommended to bear in mind that the Competition Authority has serious power with regard to on-the-spot inspections, and hindering or complicating inspections may have the consequence of high administrative fines that are independent from the resolution of the investigation.