The Turkish Competition Board imposes administrative fine on an electricity distribution company and subsidiary for abusing their dominant positions (Akdeniz Elektrik Dağıtım / CK Akdeniz Elektrik Perakende Satış)

UNILATERAL PRACTICES, ABUSE OF DOMINANCE, TURKEY, ANTICOMPETITIVE OBJECT / EFFECT, ELECTRICITY

Turkish Competition Board, Akdeniz Elektrik / CK Akdeniz / AK DEN / 2M Enerji / Fina Elektrik / İpragaz, Decision No: 18-06/101-52, 20 February 2018

Ercüment Erdem | Erdem & Erdem (Istanbul)
e-Competitions News Issue February 2018

The Competition Board ("Board"), in its decision dated 20.02.2018 and numbered 18-06/101-52 ("Decision") [1], has imposed an administrative monetary fine on Akdeniz Elektrik Dağıtım A.Ş. ("Akdeniz EDAS") and CK Akdeniz Elektrik Perakende Satış A.Ş. ("CK Akdeniz") for abusing their dominant positions in accordance with Art. 16 (3) of Act No. 4054 on the Protection of Competition ("Competition Act").

Akdeniz EDAS is an electricity distribution company that is exclusively authorized in the Antalya, Isparta, and Burdur provinces. CK Akdeniz is Akdeniz EDAS’s Authorized Supply Company that was established in 2013, in line with the legal unbundling provisions.

In the Decision, the Board has evaluated the abuse of dominant position allegations against Akdeniz EDAS and CK Akdeniz and, consequently, clarified a number of issues that have been unanswered for some time.

Background

Until 2016, the Board had rejected allegations made against distribution and supply companies regarding their activities that aggravate independent supply companies’ activities and/or obstruct consumers’ opportunities to change their suppliers. Moreover, with regard to the same allegations, the Board had closed the pre-investigations by providing an opinion under Article 9/3 of the Competition Act, instead of conducting an investigation. As of 2016, on the other hand, the Board’s attitude has experienced a change: The Board has decided to open investigations in relation to these allegations.

Decision

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In the subject matter Decision, the Board evaluated the allegations with regard to Article 6 of the Competition Act, those being "abuse of dominant position," in general. These allegations may be summarized as aggravation of the activities of competitor suppliers, obstruction of independent consumers’ transition to Independent Supply Companies, and discrimination in favor of the Authorized Supply Companies.

In the Decision, the Board has rendered a detailed market definition analysis, and has defined the relevant markets much narrower than in its previous decisions. Accordingly, regarding the distribution of electricity, which is a natural monopoly, the related market has been determined as 'electricity distribution service,' and provinces wherein these distribution companies operate have been determined as the geographical markets. The related market for retail electricity sales is divided into various sub-markets.

In terms of distribution services, distribution companies are found to be dominant in the area in which they operate. In terms of sales of retail electricity, it is determined that the Authorized Supply Company is dominant in the markets of 'electricity retail sales made to industrial customers connected to the system at the distribution level,' 'electricity retail sales made to commercial customers,' and 'electricity retail sales made to residential customers.'

The Violations

The Board has examined the actions in the sense of Article 6 of the Competition Act, and has categorized the violation topics as: (i) Actions regarding the placement of independent supply companies in a disadvantageous position by giving access to the Authorized Supply Companies to competitive sensitive information that is within the distribution company's monopoly; and (ii) Actions regarding the aggregation of the change of suppliers of the free customers, and increase of transaction costs. The Board further categorized the latter category as: (i) At the stage of participation in the portfolio; (ii) At the stage of supply of electricity; and (iii) At the stage of leaving the portfolio.

In the Decision, the activities related to the unbundling rules in the electricity sector have been examined, in detail. Accordingly, the Board has reviewed the actions of distribution companies that give Authorized Supply Companies access to sensitive information through e-mails and other similar means. In addition, the Board has evaluated the distribution companies' implementation that allows their own staff to perform various activities on behalf of the Authorized Supply Companies.

In this context, there are various explanations about how the Competition Authority's sectorial regulations and competition law rules can be applied, together. Furthermore, the Board has stated that it examines competition law violations in the form of abuse of the dominant position that can arise as a result of violation of the unbundling rules between the distribution companies and the Authorized Supply Companies, not the violation of the unbundling rules, itself.

Conclusion

The Board has unanimously decided that distribution companies and the Authorized Supply Companies that operate in the relevant regions are in violation of the Competition Act for abuse of their dominant positions. In that sense, firstly, the Board's determinations regarding the dominant position and the relevant markets are crucial. In addition, the Board's listed violation categories are enlightening, and it is fair to say that the Decision is likely to lead to radical changes in the electricity sector.

[1] For the reasoned Decision, please see: http://www.rekabet.gov.tr/Karar?kararId=537b366a-8bd7-4821-8760-
For detailed information, Decision, p. 24 ff.