
**Parties to the Transaction**

Pursuant to the information examined by the Board, the acquiring party, U.N Ro-Ro was acquired by Kohlberg Kravis & Roberts in 2007, and began to be jointly controlled by Actera Partners II L.P. ("Actera") and Esas Holding A.Ş. In 2014, U.N Ro-Ro is active in the roll-on/roll-off ("Ro-Ro") shipping market. Actera and Esas Holding are active in numerous sectors in Turkey, such as media, open-door advertisement, tourism, etc.

The acquired party, the Ulusoy Group, is controlled by the Ulusoy family, and is active in the port management, ro-ro shipping, and ship agency sectors.

**Legal Framework of the Transaction**

The acquisition of the full control of Ulusoy by U.N Ro-Ro is an acquisition transaction within the framework of Art. 5 of the Communiqué Concerning Mergers and Acquisitions that Call for the Authorization of the Competition Board [2] ("Communiqué No. 2010/4") and Art. 7 of the Competition Act. Since the transaction exceeds the turnover thresholds specified under Art. 7 of Communiqué No. 2011/4, it is subject to the Board’s authorization.

In this Decision, the Board examined whether or not the acquiring party would have a dominant position in the related market that would result in the significant lessening of competition as a result of this acquisition
transaction that is subject to authorization.

Relevant Market

Relevant Product Market. In its relevant product market analysis, the Board first listed the target's activities as port management, ro-ro shipping, and ship agency. As for port management activities, Ulusoy controls the Çeşme Port in İzmir. Accordingly, Ulusoy performs its ro-ro shipping activities out of its Çeşme Port to Trieste (Italy) three times a week with its four ro-ro ships. Ulusoy also provides ship agency services to third parties.

Firstly, the Board assessed that the ro-ro transport and the high way transport are not substitutable and referred to the past Board decisions that defined “ro-ro shipment” activities as a separate market. As a result, the first relevant product market is defined as “the tariffed sea transport services made through the ro-ro ships that carry wheeled and mobile cargo (ro-ro shipping services).”

The second relevant product market is defined as “the port services for the ro-ro ships and ferries carrying passengers and vehicles.”

The third relevant product market is defined as “the ship agency services.”

Relevant Geographical Market. The relevant geographical market definition was crucial for the assessment of this transaction. The Board defined the geographical markets, separately, for each of the relevant product markets.

The market for ro-ro shipping services. The Board first separated the ro-ro transports according to the final destinations. Therefore, transports to the Black Sea, Africa and Arabic Peninsula are separated from the transports to Europe, and the transports to Europe are defined as separate markets. Afterwards, the Board made an in-depth analysis with regard to the substitutability of the ro-ro shipping lines from Turkey to Europe. The Board defined eight shipping lines to Europe, with the final destination ports being Italy (Trieste) and France (Toulon, Sete). In its analysis, the Board listed the overlapping countries that use both European shipping lines (Trieste and France), and questioned whether these lines are substitutable for these countries, according to the variables, such as the shipment line’s price, quality, and frequency.

The Board stated that the undertakings that are active in one of the shipping lines cannot give pricing decisions independent from the other shipping line and, therefore, the European shipping lines in the same geographical market shall be considered. As a supporting fact, the Board listed the past Board decisions that were in line with the geographical market definition. Moreover, although the parties recommended other economic tests for the geographical market definition determination [3], for this case the Board found a small, but significant and non-transitory increase in the price (SSNIP) test to be more convenient. The parties claimed that the Istanbul, İzmir and Mersin take off point for the ro-ro shipping lines address different hinterlands and, therefore, constitute separate geographical markets. In conclusion, in light of its determinations, the Board defined the geographical market as "the Turkey-Europe ro-ro shipping lines, including Istanbul, İzmir and Mersin take-off point shipping lines."

The port services for the ro-ro ships and ferries carrying passengers and vehicles. The Board defined the relevant geographical market for the port services with regard to the ro-ro ships as "the catchment areas of Turkey (Mersin, Istanbul, İzmir), Italy (Trieste) and France (Toulon and Sete) where the services provided to the ro-ro lines between Turkey-Europe," and for the port services with regard to the passenger transport services as "Turkey."
The ship agency services. The Board defined the relevant geographical market for this product market as "Turkey."

Affected Markets

The Board defined "port services for the ro-ro ships," "ro-ro shipping services," and "ship agency services," as the horizontally affected markets. Moreover, the transaction that occurred in vertically affected markets in between "port services for the ro-ro ships" (Ulusoy) and "ro-ro shipping services" (UN Ro-Ro) markets.

Evaluation of Concentration

The Board has severally addressed the evaluation of concentration, separately, in terms of the relevant product market:

The market for ro-ro shipping services. The Board evaluated that if this acquisition is realized, UN Ro-Ro will hold significant market power, and its market share will dramatically increase. It confirmed this analysis with the Herfindahl-Hirschman index ("HHI"). Furthermore, the positions of the other players in the relevant market, as well as the barriers to market entry, UN Ro-Ro’s portfolio effect were also taken into account. As a result, it has been interpreted that this acquisition transaction will create competitive concerns: The market structure will change since the market players’ numbers will decrease to two, the concentration ratios will increase, and UN Ro-Ro will hold significant market power. In addition, the Board stated that as a result of the concentration, an increase in prices seems possible.

The port services for the ro-ro ships and ferries carrying passengers and vehicles. The Board took the number of transports from the Çeşme Port as a base for the relevant port’s market share calculation. Eventually, the Board evaluated that if this acquisition is realized, UN Ro-Ro will hold a significant market share. The HHI test also supported that analysis. The Board considered the barriers to market entry, and the post-transaction vertical integration. The Board concluded that UN Ro-Ro will hold a dominant position in the relevant market if the acquisition is realized.

The ship agency services. The Board evaluated that the acquisition will not create or strengthen a dominant position in the relevant market, since there are no market entry barriers, and there are many active players in the market.

The Efficiency Gains

The Board discussed the efficiency gains submitted by the parties, and concluded that the transaction is unnecessary for the submitted efficiencies to be realized.

The Remedies

The parties have submitted five behavioral remedies, including the opening of the Çeşme Port's access to the present and potential rivals for a period of five years, and the reporting of the ticket prices to the Competition Authority for a period of three years. According to the Board, while it is certain that the transaction will create difficulty with regard to the rivals’ market entry, it is not acceptable to clear the transaction along with a number of periodic behavioral remedies that can be considered insignificant as compared to market entry difficulties.
Conclusion

As a result of its examination, the Board has decided that the acquisition of the full shares of Ulusoy by UN Ro-Ro was subject to authorization under Communiqué No. 2010/4, and that the transaction in question should be rejected pursuant to Art. 7 of Act No. 4054, since it would lead to UN Ro-Ro acquiring the dominant position in the relevant market.

On the other hand, this decision of the Board is criticized in the Justification of the Dissenting Vote by one Board member, in respect to the specification of the relevant geographical market and the Board's remedy assessment.

Comment

The Decision is remarkable since it is one of the three rejection decisions of the Board. Furthermore, it is substantial with respect to the mergers and acquisitions that have been realized in Turkey, especially those concerning ro-ro shipping activities. The Decision lights the way in terms of the Board's approach to the relevant market and, therefore, the reasons for the rejection certainly set a precedent for other transactions.

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