

The Turkish Competition Board decides that several chicken producers and their professional association distorted competition by establishing a cartel and inflicts fines (Abalıoglu, Banvit, Beypi, CP, Erpilic, Keskinoglu, Pak Tavuk, Seker Pilic and Sen Pilic)

Turkey, Anticompetitive practices, Cartel, Price fixing, Exchange of information, Refusal to supply, Agriculture/Food products

Turkish Competition Board (Rekabet Kurulu, 25 November 2009, Case n 09-57/1393-362, Abalıoglu, Banvit, Beypi, CP, Erpilic, Keskinoglu, Pak Tavuk, Seker Pilic and Sen Pilic (<http://www.rekabet.gov.tr/dosyalar/...>))

Ercüment Erdem, e-Competitions, N° 31622, www.concurrences.com

The Competition Board ("CB"), at its discretion, sentenced nine leading undertakings, namely *Abalıoglu, Banvit, Beypi, CP, Erpilic, Keskinoglu, Pak Tavuk, Seker Pilic* and *Sen Pilic* to pay a fine of 0.8% of their gross income as accrued at the end of the year 2008. Moreover, the CB had increased the fine of *Pak Tavuk* depending on *Zuhal Dastan's*- president of Association of White Meat Producers and Breeders Union ("*Besd-Bir*") and president of *Pak Tavuk* - decisive influence on the violation and warned *Besd-Bir* to abstain from behaviors which lend themselves to anti-competitive practices.

Allegations

The CB has, ex officio, made an investigation into the alleged agreements between 27 chicken producers which are restricting the amount of supply and fixing prices, and into the allegations regarding *Besd-Bir's* enabling of such agreements.

Cartel inspection

In light of the documents found at the premises and information obtained from the parties as a result of the investigation, the CB determined that some of the undertakings (i) agreed on increasing chicken prices, (ii) engaged in activities to restrict the amount of supply, (iii) tried to increase the transparency in the market by sharing confidential information and future price lists with each other, and (iv) tried to restrict the production of other chicken producers by suggesting their dealers make agreements with dealers of other producers. In addition, the CB reached the conclusion that *Besd-Bir* had

acted in a way that enables such anti-competitive practices and the coordination between the relevant undertakings.

The CB stated that these actions by the undertakings are examples of a "cartel" within the scope of the Competition Law. The methods which cartels use to prevent or restrict competition are mentioned in the decision as follows: (i) mutually determining the prices of products of members, (ii) allocation of the market between the members, (iii) restricting the production of member undertakings (controlling the amount of supply), and (iv) bid rigging. Deriving from these points, cartels are prohibited pursuant to Article 4 of the Competition Act.

The investigation determined that the cartel in question sometimes had the character of an export cartel. Additionally, it decided that the aim of the export cartel was to restrict the amount of supply in the domestic market. Therefore, it is also within the scope of Article 4 of the Competition Act.

Evaluation of individual exemption

As a result of its exemption evaluation, the CB decided that the undertakings under investigation cannot benefit from an exemption because they do not meet the conditions envisaged under Article 5 of the Competition Act taking into consideration the actual and possible effects of the agreements concluded between them.

General evaluation

The general evaluation states that it is not possible to determine each and every collaboration by the undertakings during the long term that covers all the agreements. Therefore, instead of a static approach, the concept of "a single continuing and long lasting understanding or cooperation" that covers the entire process of competition infringement should be taken into consideration for agreements of such long duration. In this case, an integrated approach has been adopted to examine the coordination between the undertakings, and in this way it was determined that Abalıoglu, Banvit, Beypi, CP, Erpilic, Keskinoglu, Pak Pilic, Seker Pilic and Sen Pilic had actively joined in the practices of supply restriction and price fixing.

It is also mentioned that Besd-Bir, which is the association of undertakings, has a significant role in the sector of chicken producing. It organizes meetings, produces statistics regarding the chicken market through the information it obtains from its members, and shares such statistics with requesting parties and the public. This structure places Besd-Bir in a position where chicken producers meet under its roof and exchange sensitive information about competition. In these meetings, discussions oriented to the market and such items as seasonal evaluations, sale policies, prices, costs, and sales systems are held. The CB concluded that the Besd-Bir meetings are not solely aiming to deal with sector specific problems, but are also intended to find ways to restrict the amount of supply, which should be balanced by market mechanisms. Moreover, it was determined that during periods when the sector had an economic crisis, Besd-Bir encouraged its members to restrict their supply.

The CB also investigated the effects of agreements on the relevant market. On one hand, the agreements on price fixing have been proved by market outputs. On the other hand, it could not be determined whether the agreements on restricting the amount of supply have been fulfilled or not. However, it was noted that the correspondence between the parties includes statements declaring that the practices as to restricting the supply had been successful in 2005. The CB stated that although there are many undertakings in the chicken production sector, the market share of the nine main actors who have been active in anti-competitive practices are big enough to have significant effects in the market.

In light of the price analysis and statements of the undertakings, the coordination between the undertakings as regards price fixing and supply restriction has been successful from time to time. However, this coordination could not be

consistently maintained, and therefore its effect on the chicken market was limited.

In conclusion, it was determined that Abalıoglu, Banvit, Beypi, CP, Erpilic, Keskinoglu, Pak Pilic, Seker Pilic and Sen Pilic had been in active communication, that agreements had been formed in the surroundings of these undertakings, and that the other undertakings with minor market shares had been informed about the agreements from time to time by the major undertakings.

Fines

Pursuant to the Fines Regulation Article 5, the CB determined the basic fine as 2% since the nine undertakings taking part in anti-competitive practices had been involved in the cartel from time to time during a period between the years 2005 to 2008 and since the total duration of each undertaking's involvement in the cartel had not exceeded one year. The basic fine was decreased by a ratio of 3/5 because of the external economic shocks to the chicken market during the last five years.

Dissenting opinion

One of the CB members, namely Resit Gurpinar, declared his dissenting opinion. He stated that (i) due to the hard times in the chicken sector, the undertakings held meetings and communicated with each other to conclude agreements; (ii) however, their efforts never evolved beyond the planning stage and were not fulfilled; (iii) there is no decisive and sufficient evidence to prove the establishment of cartels; (iv) moreover, the essential element of a cartel, which is the sanction envisaged if the members do not obey cartel agreements, do not exist in this case. Therefore, the dissenting CB member is of the opinion that there was not a cartel between the chicken producers, but that, nevertheless, the undertakings' attempts to engage in anti-competitive practices are in violation of Article 4 of the Competition Act.

Conclusion

The above explained decision of the CB is a rather significant, because this is one of the few decisions where the CB deals with the concept of "cartel". It must be stated that Competition Authority has made a through investigation on the undertakings in question and the CB carefully evaluated the outputs of such investigations. Thus, the CB tried to explicitly display the merits of its decision. However, it should be also stated that there are still vague issues regarding the CB's decision. There were more than 20 undertakings under investigation and among them, more than 15 undertakings were found to be sticking with the alleged agreements. The CB should have merited its decision in detail on how the above mentioned nine undertakings were chosen to be sentenced.

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