The Turkish Competition board grants conditional authorization for the complete acquisition of Financière Lafarge by the Army Solidarity institution

Turkey, Mergers, Control (notion), Remedies (mergers), Ancillary restriction, Construction

The Turkish Competition Board ("CB" or "Board") authorised the acquisition by the Army Solidarity Institution (OYAK) of the shares in Lafarge Aslan Aşârmento A.&#350; ("Lafarge Aslan"), Lafarge Ere&#357;ü Aşârmento San. ve Tic. A.&#350; ("Lafarge Ere"), Lafarge Beton A.&#350; ("Lafarge Beton") and registered under Financiâ‘re Lafarge SAS ("Financiâ‘re Lafarge"), Agreta&#351; Agrega A.&#350; and natural person shareholders under certain conditions.

Transaction

A share purchase agreement ("SPA") was signed between Financiâ‘re Lafarge , Agreta&#351; Agrega and OYAK on April 4, 2009. As per the SPA, all shares registered under Financiâ‘re Lafarge , Agreta&#351; Agrega and natural persons shareholders in Lafarge Aslan, Lafarge Ere&#357;ü and Lafarge Beton are to be acquired by OYAK.

Nevertheless, considering that Lafarge Aslan, Lafarge Ere&#357;ü and Lafarge Beton act within the boundaries of Turkish Republic on behalf of and in the sole control of Financiâ‘re Lafarge , the above-mentioned acquisition corresponds de facto to the full acquisition of Lafarge Aslan, Lafarge Ere&#357;ü and Lafarge Beton by OYAK.

Determination of the Scope

The CB, in the view of the Communiqué on the Mergers and Acquisitions Calling for Authorization of the Competition Board no. 1997/1 (Communication no.1997/1), asserted that the relevant transaction constitutes an acquisition calling for authorization [1].

Parties
Lafarge Group which embodies Financière Lafarge and Agreta Agrega is an undertaking acting worldwide in the production and commercialization of cement, ready-mixed concrete, aggregate and plaster. OYAK is an aid and old-age pension fund for the members of the Turkish Armed Forces.

**Relevant Market**

The CB, taking into account the activities of the parties to the acquisition, determined three relevant product markets:

Cement market. The CB, in order to determine the relevant geographical market for cement, applied the SSNIP test. The European Union practice has been taken into account for this test and within this scope, the rate of 10% corresponding to a "minor, permanent" change in prices has been used.

Ready-mixed concrete market,

Aggregate market and

Port management market (Darıca Port pertaining to Lafarge Aslan).

As to the geographical market, the Board determined different geographical markets for each of the relevant product markets. For the cement market, the geographical market was defined as Kocaeli-Sakarya, Bolu-Düzce and Zonguldak. For the ready-mixed concrete market, the geographical market is Istanbul, Gebze, Kocaeli, Adapazarı. However, no geographical market has been determined for aggregate because the entire aggregate production of OYAK is always purchased by OYAK group companies and only 35% of the Lafarge Group's aggregate production is sold to third parties. Thus, the CB concluded that this part of the transaction does not fall within the framework of Article 7 of the Act on the Protection of Competition (the "Act") No. 4054 providing the creation or strengthening of a dominant position. For the port management market, the geographical market is the Izmit Gulf.

**Investigation and Commitments**

After examination of the above-mentioned markets, the Board concluded, in the view of both the characteristics of the cement market and the region of Zonguldak, that competition concerns will arise following the acquisition of Lafarge Ereğli by OYAK.

Thus, the parties submitted divestiture commitments in order to have their transaction approved by the Board. The First Amendment Protocol dated July 29, 2009, contains a commitment under which:

The shares of Lafarge Ereğli owned by Agreta Agrega are taken outside the scope of the transfer and

All of the shares of Lafarge Ereğli owned by Lafarge Aslan will be sold to Agreta Agrega prior to the finalization of the transaction.

The Commitments are not expressly regulated by the Act on the Protection of Competition No. 4054. The only article referring to this system is Article 6 (3) of Communiqué No. 1997/1. Similar to the European Practice, in Turkish law structural commitments such as divestiture are preferred. As a matter of fact, the CB gave till now numerous decisions on the basis of divestiture remedies although there is no express legal ground which permits giving conditional authorization under Turkish law.
Ancillary Restrictions

The transaction contains several non-compete obligations for the area for cement "Kocaeli, Sakarya, Bolu, Düzce", for ready-mixed concrete "Istanbul, Kocaeli, Tekirdağ, Balıkesir" and for aggregate "the Marmara Region".

Within this framework and in consideration of the Commission Notice on Restrictions Directly Related and Necessary to Concentrations [3], the geographical areas agreed upon under the Second Amendment Protocol concluded by the parties and notified to the Competition Authority on November 5, 2009, have been accepted as ancillary restraints.

Conclusion

The Board, as a result of its examination, decided that:

There is no obstacle to the authorization of the acquisition by OYAK of the shares that are in Lafarge Beton and are registered under Lafarge Aslan, Financière Lafarge, Agreta &#351; Agrega and natural person shareholders, since the transaction would not result in the creation or strengthening of a dominant position by one or more undertakings in the determined markets and thus in significant lessening of effective competition.

There is no obstacle to the authorization of the acquisition by OYAK of the shares that are in Lafarge and Lafarge Ere &#287;li and are registered under Financière Lafarge SAS, Agreta &#351; Agrega, Lafarge Aslan and natural person shareholders on condition that the changes contained in the above-mentioned First Amendment Protocol are made.

[1] To consult the Communiqué 1997/1, see the following link: http://www.rekabet.gov.tr/dosyalar/....

[2] To consult the Act, see the following link: http://www.rekabet.gov.tr/index.php/....

[3] To consult the Notice, see the following link: http://eur-lex.europa.eu/LexUriServ/....

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