COMPETITION & ANTITRUST - TURKEY

Competition Board issues decision on acquisition of media store chain

11 October 2018 | Contributed by ELIG Gürkaynak Attorneys-at-Law

AUTHOR

Gönenç Gürkaynak

Introduction

On 29 May 2018 the Competition Board issued its decision (18-16/293-146) regarding Turkuvaz TK Kitap ve Kırtasiye AŞ's (TveK's) acquisition of Doğan Müzik Kitap Mağazacılık Pazarlama AŞ (D&R) and its two subsidiaries (Hür Servis Sosyal Hizmetler ve TicAŞ and AGT Tanıtım Kağıt Ürünleri Sanayi ve TicA.Ş).

The acquirer, TveK, sells books, stationery, electronic devices and accessories, toys and souvenirs and is controlled by Zirve Holding AŞ and ultimately by Mr Ömer Faruk Kalyoncu. Zirve Holding AŞ wholly owns Turkuvaz Dağıtım Pazarlama AŞ, through which it is active in the newspaper, distribution, television, radio, advertising and construction sectors.

The target, D&R, is a retailer of books, e-books, music-related products (ie, CDs, DVDs and Blu-rays), home videos (ie, VCDs, DVDs and Blu-rays), stationery, games, toys, magazines, electronics and accessories, souvenirs, personal products, food and sports and outdoor products. D&R has 169 stores and operates under the D&R brand.

Relevant market sectors

The board started its assessment of the acquisition by examining the relevant market sectors and dividing the bookselling sector into:

- printing houses;
- distributors; and
- bookstores.

Printing houses are undertakings which print periodical or non-periodical publications, newspapers, magazines, brochures, catalogues, albums, guides, dictionaries, bulletins and calendars. However, there is a growing trend for bookstores to sell stationery, toys and various other products.

The board found the parties to be generally active in the sale and marketing of:

- books and magazines;
- entertainment and educational products (ie, music, games, hobby-related products and souvenirs);
- office supplies and stationery;
- toys; and
- consumer electronics (ie, mobile phones, headphones, microphones and video games and consoles).

The board also noted that TveK is active in the wholesale of media-related products, such as newspapers and magazines, and unrelated products, such as books, lighters, batteries, and CDs.

When assessing the market relevant to the acquisition, the board drew on previous jurisprudence which recognised it as the "retail sales of books, music, films, electronics, stationery, toys and other souvenirs under the same roof".(1) However, the board noted that this precedent and other relevant decisions had recognised the possibility of evaluating each of the relevant products in different sub-sectors. The board also noted that the Turkish market for newspaper and magazine distribution is a duopoly-structure, as indicated in its decision in *Doğan Dağıtım*. In its current structure, the market is controlled by Turkuvaz and Demirören Medya Yatırımları Ticaret AŞ. D&R purchases newspapers and magazines from both of these players and sells them to consumers.

As a result, the board focused its assessment on the horizontally affected markets:

- the retail sale of books;
- the wholesale of books;
- the retail sale of periodicals;
- the retail sale of stationery;
- the retail sale of games, toys and hobby products; and
- the retail sale of user electronics.

Moreover, the board assessed vertically affected markets as:

- the distribution of periodicals and non-media periodicals; and
- the printing of periodicals and non-periodicals.

The board noted that the e-commerce sector has grown steadily in Turkey (reflecting global trends) as a result of:

- technological developments;
- increased internet use;
- the ease and convenience of shopping online;
- increased consumer rights through new legislation (especially in terms of online sales);
- increased trust in credit cards (as a result of new banking legislation); and
- the trend of manufacturers selling online instead of opening physical stores.

Referring to studies by and data from the Turkish Informatics Industry Association, PwC and KPMG, the board acknowledged that online sales constitute an important source of retail sales.

While D&R and some of its competitors conduct retail sales online, there are other market players (eg, Idefix, kitapyurdu and okuoku.com) that sell only online. The board noted that although the differences between traditional and online retailers are significant for producers (in terms of investment, personnel and business models), the two sectors do not vary significantly from a consumer perspective. The board therefore found that the sale of the relevant products online or through traditional retailers could not be substituted from a supply perspective; however, the relevant sales channels could easily be substituted from a demand perspective.

Adopting an in-depth approach, the board referred to previous acquisition assessment decisions in which online channels were recognised as a separate market. The board stated that if online and retail markets compete with each other, they can be considered to be the same market. Conversely, if a product is sold only online or e-commerce provides other specific advantages for its sale, online sales are deemed to constitute a separate product market. The competition parameters when considering online and retail channels in previous decisions concerned:

- utility;
- accessibility;
- saving time;
- visuals;
- free cancellations;
- easy access and visibility of sales and other promotions; and

- comparing products with the same qualities.

The board had previously considered online and traditional retail channels to be separate markets.

The board also referred to the European Commission's decisions in *Lagardere v Naxetis* and *Egmont v Bonnier*, as well as the UK Competition and Markets Authority's decision in *HMV v Ottokar*, and found that in cases of asymmetrical competition (ie, where sales in one channel can place significant competitive pressure on other channels that cannot be deemed as competition for the sales channel in question), a separate market definition is required depending on the channel exercising the competitive pressure. In other words, if online sales channels exercise competitive pressure on traditional sales channels (whereas traditional channels will not be deemed as competition to online sales channels), the market must be defined as a whole and not divided into online and traditional sales.

The board also drew on the French Competition Authority's recent decision in *Fnac v Darty*, in which it deemed that online and retail sales constitute one single market, which it defined as 'retail sales'. The board found the French Competition Authority's findings to be noteworthy in terms of its assessment of defining the relevant product market, taking into account the growth of online sales, consumer experience, multi-channel business models and the ability to compare prices available via online channels.

In its assessment of online and traditional retail channels, the board noted that:

- the turnover obtained from the online retail sector is growing rapidly and its growth has exceeded that of traditional retail channels; and
- price is the main element that attracts consumers to the online retail channel, which results in significant competitive pressure being applied to the traditional retail channel.

The board concluded that the two channels constituted a single market: the market for the retail sale of books.

In order to examine the competitive significance that location can have on bricks-and-mortar stores, the board assessed the turnover of a number of stores. It noted that D&R's competitors unanimously believed that:

- neither shopping centres nor street-based stores were superior in terms of rental conditions and consumer visibility; and
- the most important elements to consider were:
  - customer potential;
  - rent conditions;
  - nearby competitors; and
  - operational infrastructure.

In light of these factors, the board made no distinction between online and traditional sales and shopping centres and high street shops.

Relevant geographic market

In its geographic market assessment, the board stated that in terms of the broader national market (ie, Turkey), TveK's acquisition of D&R would create no competition law concerns in the retail market for books. However, given that the parties' activities were mainly traditional retail activities, different local markets (ie, cities and their districts) needed to be evaluated separately.

In its analysis, the board referred to its approach in previous cases in which it had evaluated regional market shares (eg, *Migros v Tesco*, in which the parties' turnovers had overlapped).(2) When considering online sales, the board noted that if the understanding of the market were to be extended to include the online channel, this would artificially bring together non-competing undertakings and enhance the market. Therefore, in accordance with the current doctrine, the fact that the online retail channel cannot be limited to a specific area could result in local conditions being overlooked, whereas customer preferences are shaped by both geographical proximity and available online alternatives.

In this context, the board decided on 47 district-based geographical markets for each relevant product market on a retail level. The board noted that there are no geographical differences in market conditions on a wholesale level and defined the geographical market as Turkey.

Assessment

In assessing and determining a dominant position, the board stated that it would need to consider the relevant market's current status, future dynamics and any potential competition concerns. The lack of entry barriers to potential entrants to the market was deemed to be a significant competitive pressure that would prevent any potential competition restrictions. As a result, the board found that TveK's acquisition of D&R would not lead to a significant restriction of competition at the district level for the following reasons:

- The parties' market shares in each horizontally affected market and in the broad geographical market (ie, Turkey) would create no significant level of concentration.
- The market for the distribution of periodicals and non-media products in Turkey is a duopoly. The board noted that Zirve Holding is vertically integrated in terms of publishing, distribution and sales. In this regard, the board initially assessed the possible input foreclosure effects that could arise from the acquisition if periodicals and non-media products were not supplied to competitor bookshops.
- The board found that the periodicals and non-media products that TveK distributed constituted a small portion of its turnover and that the newspapers and magazines that it supplied constituted a small portion of the national newspapers and magazines distributed in Turkey. Therefore, the board found that TveK would have neither the ability nor the incentive to engage in input foreclosure conduct upon the proposed acquisition's conclusion.
- The board assessed the possible customer foreclosure conduct that the transaction could cause and found that if competitor publishers and distributors could not sell their products in TveK stores, this would not give rise to significant competitive restrictions in the market. Therefore, the board found no evidence of customer foreclosure.
- The board assessed the possible anti-competitive vertical effects that could materialise in the periodical and non-periodical publication market and found no competition law concerns with regard to customer or input foreclose given:
    - TveK's limited publishing activities;
    - the dispersed market structure; and
    - D&R's and TveK's relatively low purchase ratios among the 28 publishing and distribution houses from which they purchase their products.

- The board found that the transaction posed no competition concerns in a national context. Competition concerns would arise only in a relatively limited number of city districts. That said, the board indicated that as the parties' market shares were relatively low on a national basis, the fact that online sales create significant competition pressure within the retail book market and the lack of significant commercial differences between stores located in shopping centres or on the high street, the transaction would not result in a significant reduction of competition in the relevant districts.

In light of the above, the board approved the transaction unconditionally.

For further information on this topic please contact Gönenç Gürkaynak at ELIG Gürkaynak Attorneys-at-Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@elig.com). The ELIG Gürkaynak Attorneys-at-Law website can be accessed at www.elig.com.

Endnotes

(1) *Nezih-1* decision, dated 22 April 2010 (10-33/529-188).

(2) *Migros v Tesco* decision, dated 9 February 2017 (17-06/56-22).