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The Turkish Competition Board prohibits the publishing of price lists by two professional federations of translators and translation offices (*TUÇEF / TURÇEF*)

ANTICOMPETITIVE PRACTICES, EXCHANGE OF INFORMATION, INVESTIGATIONS / INQUIRIES, PRICES, OTHER SERVICES, TURKEY

Turkish Competition Authority, TUÇEF and TURÇEF, 18-13/230-105, 3 May 2018

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This case summary includes an analysis of the Turkish Competition Board's ("**Board**") *TUÇEF and TURÇEF* decision (03.05.2018; 18-13/230-105). The Board reviewed the allegations put forward by Berkay Gökçe, a real person, against TURÇEF Yeminli Çevirmenlik Federasyonu ("**TURÇEF**") and TUÇEF Uluslararası Çevirmenler ve Çeviri Kuruluşları Federasyonu ("**TUÇEF**"). The Board assessed the allegation that TUÇEF and TURÇEF publish price lists periodically. The Board found that although the published price lists consist only of recommended prices and are not binding, they still pose a risk of violating Law No. 4054 on the Protection of Competition ("**Law No. 4054**"). Against this background, the Board decided to task the Presidency of the Competition Authority to send a written opinion to TUÇEF and TURÇEF under Article 9(3) of Law No. 4054, despite the fact that it decided that there was no need to initiate a full-fledged investigation.

Background

TURÇEF is a federation founded by translators and translation offices with certain certificates, licenses and qualifications to enhance vocational cooperation between national associations. The members of TURÇEF comprise of 15 associations, 52 agencies and approximately 3,000 translators.

Similarly, TUÇEF aims to ensure vocational cooperation between associations founded by translators and translation offices.

Accordingly, activities subject to the complaint is mostly related to translation services. However, the Board did not find it necessary to define a relevant market with respect to the paragraph 20 of the Guidelines on the Definition of Relevant Market.

According to Berkay Gökçe's complaint, TUÇEF and TURÇEF periodically publish price lists for translation services and thereby violate Article 4 of Law No. 4054. As a result, the Board initiated a preliminary investigation.

Within the preliminary investigation period, the Competition Authority requested information from TURÇEF, TUÇEF, the complainant and translation offices (i.e. Aktaş, ATM, Anadil, Konsolosluk).

According to the information submitted by TURÇEF, published price lists (i) are not subject to any sanction mechanism, (ii) do not carry any official status given that the association of undertaking was not founded by law, (iii) indicate the average prices of the market and (iv) consist only of recommended prices. TURÇEF underlined that translators set their own prices according to the importance level of the work and it is impossible to monitor whether translators comply with the price lists as translators do not invoice their customers since they are not subject to any income tax. On that note, TURÇEF also indicated that (i) translation offices invoice their customers on behalf of their translators and pay salaries to their translators.

On a different note, TURÇEF submitted that since 2016 the price lists are submitted to the Ministry of Justice's Expert Office upon their request.

Furthermore, the Board assessed the information and documents obtained from translation offices (i.e. invoice sample of a 1000-2000 character English to Turkish translation for each month in 2017, information on how translation fees are determined and whether it is mandatory to comply with TUÇEF and TURÇEF's recommended prices).

In its assessments, the Board confirmed that superior entities founded pursuant to Law No. 5253 on Associations constitute "associations of undertakings" as defined under Article 3 of Law No. 4054.

While evaluating price lists within the scope of Article 4(a) of Law No. 4054, the Board referred to previous Turkish Competition Board case law [1] in which the Board concluded that recommended price lists are capable of hindering competition regardless of their advisory nature and actual effect on the market. In *Reklamcılar Derneği* (02.08.2007, 07-63/782-287), the Board rendered that the recommended price lists are capable of signaling how much the prices should be and thus create concerted practice among advertisers although it did not find any effect to that end on the market. Accordingly, the Board noted that an effects based analysis is not necessary to establish a competition law violation and a violation can be established merely due to a decision and/or practice which is "capable" of restricting competition. The Board further re-affirmed this position in *Reklamcılar Derneği III* (09.01.2014, 14-01/1-1) and *Association of Security Services Organization Union* (18.03.2015, 15-12/166-78) upon their exemption request for recommended price lists. The Board also noted in *Associations of Optician Retailers* (04.01.2006, 06-01/6-3) that price determination is in and of itself against competition law although they are of advisory nature in both EU and US practice.

Noting that the price lists published by TUÇEF and TURÇEF are of advisory nature, not binding and thus are not subject to any sanction mechanism, the Board realized that TUÇEF and TURÇEF obtain the authorization to publish price lists from their own statutes. After evaluating invoice samples provided by TUÇEF and TURÇEF member translation offices, the Board concluded that prices offered by translation offices (i) are lower than the prices in the price lists and (ii) differ significantly for similar assignments. With these in mind, the Board decided that the price lists published by TUÇEF and TURÇEF are not obligatory. On the other hand, in light of the case law mentioned above, the Board further underlined that these recommended price lists are capable of hindering competition although they have not lead to price uniformity hereunder yet.

As a result, the Board decided that there was no need to initiate a full-fledged investigation. The Board also decided that a written opinion should be delivered to TUÇEF and TURÇEF in accordance with Article 9(3) of Law No. 4054 in order that TUÇEF and TURÇEF should end their decisions and practices leading to the preparation and publishing of price lists. Lastly, the Board decided that amendments to be made in the statutes pursuant to the preparation and publishing of the price lists should be submitted the Competition Authority within 90 day after the reasoned decision is served.

Comments

A competition law opinion based on the literal interpretation of Article 9(3) of Law No. 4054 propounds that the Board is entitled to task the Presidency of the Competition Authority to send a written opinion only in cases which it finds an infringement of Law No. 4054. This approach is occasionally favored by administrative courts as well. However, in practice, the Board tasks the Presidency of the Competition Authority to send a written opinion in cases where it does not launch a full-fledged investigation. This decision therefore establishes once again that the Board is empowered by law to freely decide whether or not to send a written opinion, in the order it desires, depending on the circumstances and specific facts of a given case, without a preliminary condition to launch an investigation. This decision also provides a valuable insight on the Board's approach with respect to recommended price lists published by associations of undertakings from a competition law perspective. As an additional remark, the Board confirms hereunder that superior entities founded pursuant to Law No. 5253 on Associations constitute "associations of undertakings" as defined under Article 3 of Law No. 4054.

[1] *Reklamcılar Derneği* (02.08.2007, 07-63/782-287), *Reklamcılar Derneği II* (17.07.2003, 03-51/576-252), *Associations of Optician Retailers* (04.01.2006, 06-01/6-3), *Association of All Optician Retailers* (17.04.2013, 13-22/308-144), *Reklamcılar Derneği III* (09.01.2014, 14-01/1-1), *Association of Security Services Organization Union* (18.03.2015, 15-12/166-78).