The Turkish Competition Board's Multifaceted Investigation and Landmark Decision in the Tractor Sector: Tractor Suppliers Decision

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I. Introduction

This article aims to provide insight into the Turkish Competition Board's ("***Board***") decision[1] to conclude the investigation concerning 10 (ten) undertakings operating in the manufacture and supply of tractors. The decision is a recent landmark enforcement action addressing multiple forms of anti-competitive conduct in relation to resale price maintenance, competitively sensitive information exchange and anticompetitive agreements within the scope of Article 4 of Law No. 4054 on the Protection of Competition ("***Law No. 4054***").

II. Procedural Background

The Board decided to launch an investigation into several undertakings in the tractor manufacturing and sales sector to determine whether the undertakings violated Article 4 of Law No. 4054. The investigation was multifaceted: it involved numerous undertakings and certain undertakings applied for commitments to remedy competition concerns. More specifically, the Board accepted the relevant undertakings' commitment proposals which are related to passive sales restrictions, non-competition obligations and territory and customer restrictions.

Before delving into the substantial analysis, the Board examined the activities of investigated parties and the dynamics of the market, and noted that the market could be defined as the "sales of tractors", or "sales of agricultural tractors" and "sales of tractors for gardening", while it did not

[1] The Board's *Tractor Suppliers* decision dated 18.07.2024 and numbered 24-30/717-301.

make an exact relevant product market definition pursuant to paragraph 20 of the Guidelines on the Definition of the Relevant Market, considering that defining a relevant product market would not have an impact on the Board's examination and assessments.

III. The Board's Assessments on the Violation of Article 4 of Law No. 4054

Before delving into the Board's assessment of the case at hand concerning the resale price maintenance allegations and the Board's findings, the concept of resale price maintenance and the Board's approach should be examined. Fixing the purchase or sale price of products or services, or those elements such as cost and profit which form the price, and any terms of purchase or sale, are considered within the prohibition set out in Article 4(1)(a) of Law No. 4054. Accordingly, instructing dealers and/or customers not to sell below a certain price level or at a certain profit margin; or monitoring the resale prices and taking actions for the implementation of such prices through monitoring practices would be considered as resale price maintenance and thus violate competition law. Resale price maintenance practices are considered as practices that may facilitate collusion at production and distribution levels, lead to increased prices, prevent new entries to markets or lead to foreclosure of the markets to competitors and overall become far from creating efficiencies for the consumers.

While restricting a reseller's discretion and ability to determine its own prices is prohibited, both Communiqué No. 2002/2 and the Guidelines on Vertical Agreements set forth that a supplier can determine maximum resale prices or recommend resale prices provided that they do not transform into fixed or minimum sales prices—especially through pressure or encouragement of a supplier. Moreover, resale price maintenance does not only occur through the explicit provisions of vertical agreements; it may also be generated indirectly by means of miscellaneous practices. Most common indirect resale price maintenance practices include withdrawing incentives, determining the buyer's profit margin, sanctioning the distributors that are not applying the prices recommended by the suppliers, sending out price lists without noting their recommended nature, as well as price monitoring through hand terminals and invoice controls, which strengthen the effectiveness of the foregoing measures.

Based on the principles mentioned above, the Board referred to its past decisions, in which it is stated that resale price maintenance is a by object restriction[2], and examined the dynamics of the case at hand. The Board assessed the dealership agreement executed by Hattat Traktör Sanayi ve Ticaret AŞ ("***HATTAT***") and it found that, within the scope of the agreement, dealers agreed to comply with the prices determined by HATTAT and compensate the damages occurred on HATTAT in case they make sales above or below the level previously determined. HATTAT determined fixed prices to be applied by the dealers and made it possible to sanction dealers who do not comply with these prices. Thus, the Board evaluated that the relevant clauses led to the resale price maintenance by object and noted that even though the prices determined by HATTAT and the resale prices differentiated from each other based on the invoices examined during the investigation, HATTAT violated Article 4 of Law No. 4054 by determining resale prices of its dealers.

Another major examination in the investigation concerned whether the tractor manufacturers had entered into any anticompetitive agreement with each other – such as price fixing.

Under Article 4 of Law No. 4054, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect of the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

Cartels are described as agreements (i) restricting competition and/or concerted practices between competitors for price-fixing; (ii) allocating customers, providers, territories or trade channels; (iii) restricting the amount of supply or imposing quotas and bid rigging. The Board referred to various decisions, in which undertakings agreed on prices and assigned a coordinator for the proper implementation of the cartel[3], or undertakings agreed on minimum prices of the products[4] and determined that these undertakings violated Article 4 of the Law No. 4054.

[2] Sony Eurasia (22.11.2018; 18-44/703-345), Turkcell (10.01.2019; 19-03/23-10), Groupe SEB (04.03.2021; 21-11/154-63) etc.
[3] Cherry (24.07.2007; 07-60/713-245).
[4] Dried Fig (16.03.2012; 12-12/383-112).

In line with the foregoing, the Board stated that based on the correspondence obtained during the on-site inspection, at first glance, investigated undertakings were suspected to have agreed on tractor prices to be sold at trade fairs. To better understand the case at hand, the Board examined the dynamics of trade fairs, and noted that the correspondences and the meetings conducted were mostly related to the rental prices of trade fair spaces. Upon deeper analysis, the Board concluded that the correspondences obtained during the on-site inspection did not establish that there is an anticompetitive agreement between competitor undertakings that has the aim or effect of restricting competition.

Thirdly, the Board examined the concerns related to anticompetitive information exchange and referred to its previous decisions, in which undertakings exchanged information on prices, capacity usages, production amounts and sales values,[5] and in which it was determined that the anticompetitive information exchange was considered as by object restriction[6].

The Board examined both the internal correspondences of the undertakings and the correspondences with regards to current and future price lists as well as price increases of competitor undertakings. The Board first assessed the internal correspondences of investigated undertakings and indicated that the internal correspondences could not prove the direct information exchange between competitor undertakings. Second, for correspondences that show knowledge of competitors' prices or strategies, the Board noted that the information on prices and price rates of competitors was obtained from various dealers. The Board cited to the existence of the mental element (i.e. intent) for there to be an indirect information exchange, meaning that the information must be shared with the dealer with the intention of communicating it to a competitor. Further, the Board also noted by reference to the EC's Guidelines on Horizontal Agreements that there will not be an infringement where the third party obtains an undertaking's commercially sensitive information and, without informing that very undertaking passes the information on to that undertaking's competitors. The Board examined the scope of the indirect information exchange and evaluated based on the correspondences obtained during the on-site inspection that the exchanged information could be collected from publicly available sources or were related to the

[5] Enamel Coil (04.07.2007; 07-56/672-209).
[6] Hot Air Balloon (26.10.2021; 21-17/208-86).

previous price lists of undertakings, and therefore could not amount to the anticompetitive information exchange. In terms of the information exchange other than price information, the Board assessed the information exchange regarding production and stock levels of undertakings and determined that the information exchanged within this scope was mostly obtained from publicly available sources or from dealers and did not have the aim or effect of preventing competition.

IV. Conclusion

In light of the foregoing substantive assessments, the Board decided that HATTAT violated Article 4 of Law No. 4054 through resale price maintenance and imposed an administrative monetary fine on HATTAT.

In terms of the allegations of anticompetitive information exchange and/or agreements, the Board did not find a violation or impose an administrative monetary fine for the relevant undertakings.

The decision also includes a dissenting opinion of a Board member stating that the turnover generated through exports should not be excluded when calculating the turnover subject to the administrative monetary fine.

This decision is of importance as it highlights the Board's approach to various competition law matters, including anticompetitive information exchange and agreements and resale price maintenance, and provides comprehensive analyses of these matters. Indeed, this decision not only resolves a particular investigation but also brings about the Board's recent enforcement trends by also mirroring recent European competition law influences whether through citing EC's Guidelines on Horizontal Agreements or echoing recent jurisprudence.

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