

Competition Board concludes ready-mixed concrete investigation with no fines

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The Competition Board launched a fully-fledged investigation into 10 ready-mixed concrete companies active in the city of Izmir, which had been accused of undertaking a concerted practice for three months and thus violating Article 4 of Law 4054. Following a 16-month investigation, on August 22 2017 the Competition Board published the outcome of a high-profile investigation into the ready-mixed concrete market.

During the investigation, the investigation team stated that five of the undertakings concerned, namely Çimbeton Hazır Beton ve Prefabrik Yapı Elemanları San ve Tic AŞ (a subsidiary of Cementir Holding SpA, which is part of the Caltagirone Group), Batıbeton Sanayi AŞ, Dere Beton Hazır Beton ve Yaş Sıva San ve Tic AŞ, Kavnak Beton İnş San ve Tic AŞ and Varol Beton ve Yapı Endüstri San Tic AŞ had raised their prices following an information exchange, which had led to a concerted practice that constituted a cartel within the meaning of the Regulation on Fines.

Therefore, the investigation team suggested that the five undertakings should be subject to administrative fines ranging from 2% to 4% of their annual turnover. Akçansa Çimento San ve Tic AŞ (a joint venture between HeidelbergCement and Sabanci Holding) and four other undertakings were excluded from the scope of the investigation.

After evaluating the evidence, written defences and investigation file, the board decided not to render administrative fines, concluding that none of the undertakings had violated Article 4 of Law 4054.

Lawyers acting for Akçansa and Çimbeton commented as follows:

"We are happy to see that the Turkish Competition Board has accepted the necessity of standards of proof in concerted practice cases concerning the existence of corroborating factors. This is a precedent with substantial instructive value for similar cases of short-terms parallel behaviour allegations in the future."

The decision sets a landmark precedent, as it is likely that it might signal that a period of three months will be considered too short to allege the existence of a concerted practice. The board could have changed its approach regarding the evaluation of a concerted practice's duration, as in its recent decision in Aegean Cement Producers (16-02/44-14, January 14 2016), in which it found the existence of concerted practices with a duration of three months in two separate instances within the period examined and fined six cement producers accordingly.

The reasoned decision is expected to be published in the following months and is likely to provide insight into the board's approach on concerted practices and the direction in which competition enforcement is moving.

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