Kluwer Competition Law Blog

Recent abuse of dominance cases in the electricity sector in Turkey

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In 2018 the Turkish Competition Authority ("**TCA**") had issued three landmark decisions regarding the Turkish electricity sector. These decisions concern the largest incumbent companies operating providing electricity distribution and retail sale services in various regions of Turkey, namely; CK[1], Enerjisa[2] and Bereket[3]. In these three decisions, the TCA had imposed total fines amounting to TRY 230 million (approx. USD 38.5 million) on two electricity distribution companies (AKDEN?Z EDA?[4] and AYEDA?[5]) and six incumbent retail electricity sales companies ("**IRESCs**") that are vertically integrated with the distribution company operating in the same distribution region as themselves (CK Akdeniz EPSA?[6], AYEPSA?[7], Ba?kent EPSA?[8], Toroslar EPSA?[9], AYDEM EPSA?[10], Gediz EPSA?[11]).

The fines were based on the premises that these companies abused their dominant positions in various local electricity distribution and retail electricity markets to foreclose the competitive segment of the retail electricity market to independent electricity sales companies ("**IESs**"). The unilateral practices which led to the imposition of these fines were;

- Distribution companies' abuse of dominance in the local distribution market by granting unjust competitive advantage to IRESCs vis-à-vis the IESs (only in CK and Enerjisa decisions), and IRESCs' abuse of dominance in the local retail electricity markets by:
    - increasing the switching costs of the customers via various practices and
    - using their legal monopoly, in the market for retail sale of electricity to ineligible customers, for gaining unjust advantages in the competitive segment of the retail market [12] (in all three decisions).

Background Information concerning the Cases

Before moving on, we would like to provide a very brief overview of the current competitive framework of the Turkish electricity sector as it is very much related with the TCA's general concerns and the three landmark decisions rendered by the TCA.

The electricity sector in Turkey is only partially liberated and competitive. Electricity transmission services are still provided by a state-owned monopoly (Turkish Electricity Transmission Company – TE?A?) and distribution services are provided by privately owned local monopolies[13].

Furthermore, although the upstream market for production is fully liberated, there exists a significantly large state-owned enterprise in the production level (Electricity Generation Company – EÜA?), which is also active in the wholesale level. In the retail level, the non-eligible consumers may only be served by the retail arm of the electricity distribution company operating in the region where the customers reside (i.e. IRESC) and the retail prices for non-eligible consumers are determined by the Energy Markets Regulatory Authority ("**EMRA**"). Finally, the wholesale level is also only partially competitive because IRESCs are obliged to purchase a substantial portion of the electricity they would sell to the non-eligible consumers from EÜA?.

Competition in Turkish electricity sector, especially at the retail level, had been a major concern for the TCA since the privatization of the electricity distribution companies and the liberalization of the sales of electricity. From the very beginning, the TCA had brought up two main issues with respect to the creation and maintenance of a competitive retail electricity sales market. These were;

- potential competitive edge that may stem from the vertical integration between IRESCs and distribution companies, over the IESs, and
- IRESC's potential incentives to leverage their legal monopoly in the market for the retail sales of electricity to ineligible customers, as well as their dominance in the competitive section of the market to distort the competition and hinder the activities of the competitors in the latter market.

These concerns led the TCA to initiate preliminary inquiries against certain distribution companies and IRESCs to assess whether they had abused their dominant position[14]. Although the TCA did identify certain unilateral practices of the distribution companies and IRESCs that may have restricted the competition in various regional markets for retail sale of electricity, the TCA decided not to initiate full-fledged investigations as it came to the conclusion that the conducts in question mainly stemmed from structural problems and that EMRA was in a better position to address such problems via sector specific regulations. Yet, the TCA did warn the companies that if such practices remain, that would lead to initiation of full-fledged investigations in the future.

Moreover, on 19.01.2015, the TCA published a very detailed sector inquiry report which focused exclusively on competitive and structural problems in the wholesale and retail electricity markets[15]. The report touched upon many issues and pointed out structural problems, identifying potential sector specific regulations that could be implemented to resolve them, whilst also specifying certain types of unilateral conduct that might be problematic from a competition law perspective. Although the practices examined in the previous preliminary inquiries were not the main focus of the report, it did include references to the anti-competitive concerns associated with such practices.

Finally, the opinion issued by the TCA, which was addressed to the Electricity Distribution Services Association ("**EDSA**") and its members, namely the EDSA Notice is noteworthy. The EDSA notice, which was sent after one of the preliminary inquiries of the TCA, included a competition law-specific "do and don't list" for the IRESCs and electricity distribution companies. The EDSA Notice is a unique document in the history of Turkish competition law practice, which sets forth a very long list of unilateral practices that would be deemed as anti-competitive[16]. At the end of the notice, all undertakings were explicitly asked to terminate any practices that was mentioned in the list and they were further reminded that they could otherwise face administrative fines as a result of investigations to be initiated by the TCA in the future.

It would not be wrong to claim that the EDSA Notice was an ambitious attempt, on behalf of the

TCA, to regulate the retail electricity sales markets. Yet, the recent CK, Enerjisa and Bereket decisions indicated that the EDSA Notice had not been very effective since almost all the practices that were deemed as abuse of dominance in those decisions were among those listed in the EDSA Notice.

Below, we present an assessment of these decisions. Since there is a significant amount of overlap between these decisions both in terms of the practices under scrutiny and the conclusions reached by the TCA, our evaluations regarding these decisions will be presented collectively and differences will be pointed out when necessary.

Landmark Investigations in Turkish Retail Electricity Sales Markets

First of all, it is important to remind that CK, Enerjisa and Bereket decisions are extremely long (331 pages, 436 pages and 284 pages respectively) and include crucial findings regarding a variety of different issues, concerning the definition of relevant product and geographical markets, jurisdictional conflicts between the EMRA and the TCA, evaluation of the market structure and consumer behaviours, assessment of dominance and analysis of allegedly abusive practices. However, this paper does not aim to address all these issues in detail. Our work intends to set forth the general reasoning adopted by the TCA to justify the imposition of some of the largest monetary fines in its history, which significantly affected the way in which the distribution companies and IRESCs will have to operate.

Market Definitions and Dominance

In all three decisions the TCA assessed how the relevant markets for distribution and retail sales of electricity should be defined. With respect to distribution, there was no room for discussion and the markets were defined as regional electricity distribution services markets in line with the fact that each distribution company operated as a legal monopoly in their respective regions. Yet, there was a disagreement between the TCA and the investigated parties regarding the market definition in the retail sales of electricity.

After examining a considerable amount of data, the TCA held that the differences between residential customers, commercial customers and industrial customers[17] would justify defining three separate product markets for the retail sales of electricity. Aside from the arguments set forth with regard to the supply-side substitutability[18], probably the most important grounds for TCA's doing so were;

- the regulated tariffs which are set at different levels for each customer type by EMRA (which had crucial impacts on the prices to be offered, in the non-regulated or the competitive segment of the market, via bilateral contracts),
- different legal rules governing the agreements to be signed with the residential customers (these agreements are subject to a different legal regime as per the Consumer Protection Law) and
- the differences between the relevant customer groups in terms of their awareness levels and perceptions regarding the services purchased from the suppliers[19].

As to the geographical market, the TCA held that the data at hand showed, regardless of the type of

the customer, that the conditions of competition in each distribution region was considerably different form one another as IRESCs had much higher market shares (both in terms of electricity sold and number of customers served), when compared with the IESs in their respective distribution regions. Therefore, the TCA defined local geographical markets for retail electricity sales made to residential, commercial and industrial customers[20].

When it came to the assessment of dominance; once again there was not much debate regarding the dominance of distribution companies since they were all local legal monopolies. With respect to the dominance in local retail electricity sales markets, the TCA pointed out that the market shares of all IRESCs in their respective distribution regions were much higher when compared to their closest competitor and emphasized that the currently held market power does not seem transitory due to the presence of high entry barriers and a lack of buyer power. Hence, the TCA concluded that the distribution companies and IRESCs were in a dominant position in the relevant markets in which they operate[21].

TCA's Jurisdiction to Evaluate the Practices of the Distribution Companies and IRESCs

One of the most significant objections raised by all the parties to the investigations was that the TCA lacked the jurisdiction to evaluate the practices that are also subject to EMRA's sector specific regulations within the scope of the Act no. 4054 on the Protection of Competition ("**Competition Act**").

The parties emphasized that some of the practices (*e.g.* the interactions between the distribution companies and IRESCs), the legality of which were questioned by the TCA, were already governed by the EMRA's regulations with a view of maintaining a competitive market. On that basis, they argued that EMRA had the exclusive jurisdiction to decide whether the distribution companies' and IRESCs' practices are in violation of sector specific regulations or not. In response to these, the TCA referred to the established case law of the Council of State, which clearly set forth that a conduct which constitutes a violation of sector specific regulations may also be anti-competitive in terms of the Competition Act and that the TCA must conduct its own assessment accordingly. The TCA further added that a conduct would not break the Competition Act only because it violates sector specific regulations but that a competition-law based assessment would always be necessary.

TCA's Emphasis on Behavioural Economics in Assessing Consumer Behaviour

One of the most exceptional features of the TCA's CK, Enerjisa and Bereket decisions is the TCA's heavy reliance on behavioural economics in evaluating the effects of certain practices on market competition. In all the decisions there is a lengthy section reserved specifically for the limits of rational choice theory from a behavioural economics perspective. Most of the concepts of behavioural economics, which were dealt with in Nobel laureate Daniel Kahnemann's seminal book titled "Thinking Fast and Slow", are evaluated from a competition law perspective. Some of these concepts (especially anchoring, availability heuristic, endowment effect, disposition effect and status quos bias) are directly relied upon when assessing the potential effects of certain practices on the customers and these assessments led the TCA to decide that such practices are abusive.

At the risk of oversimplification, the outcome of the TCA's evaluations on the basis of behavioural economics can be summarized as follows. In general; the customers in the electricity market are not well informed about their rights, they value the services of IRESCs (which are their default electricity provider) very highly despite the absence of rational justifications for doing so, they are not capable of comparing the pros and cons of the offers made by various electricity sales companies, they are risk averse by nature and they refrain from changing their existing provider in the absence of very strong incentives.

Considering the foregoing, the TCA held that IRESCs abused the bounded rationality of the customers by way of certain practices to increase the switching costs and excluding the IES from the retail electricity sales markets.

Practices Examined within the Scope of the Investigations

In all the decisions, the TCA has identified two main categories of potentially abusive conduct and all the specific practices examined by the TCA fell within the scope of one of these two main categories. Very brief explanations concerning all different types of abusive practices identified by the TCA is provided below.

1. Discriminatory practices that stem from the interaction between the distribution companies and IRESCs that favours IRESCs vis-à-vis the IESs

a. Distribution companies' sharing sensitive information with IRESCs (only CK was fined for this practice)

The TCA held that certain information possessed by the distribution companies, due to their legal monopoly in the upstream market (*i.e.* regional market for electricity distribution) is of significance in the downstream market (*i.e.* regional market for retail sales of electricity) and that the distribution companies' sharing such information with IRESCs could place the IESs at a competitive disadvantage.

In the CK Decision, the TCA held that, among others, the IRESC obtained strategic customer data from the distribution company, concerning historical consumption rates and contact information of the customers who were in the eligible customer portfolio of the IESs. The TCA concluded the distribution company's systematic sharing of the foregoing with the IRESC would constitute an abuse of dominance.

b. Distribution companies' granting advantages to IRESCs (CK and Enerjisa were fined for this practice)

Under this category, the TCA examined two types of conduct;

- Distribution companies' performing certain activities in the downstream market on behalf of the IRESCs
- Distribution companies' favouring the IRESCs while providing services in the upstream market

While assessing whether the distribution companies granted any advantages to IRESCs by conducting certain activities on behalf of them, the TCA pointed out that under normal

circumstances, the distribution companies would not be expected to engage in any activities, that fall under the responsibility of the electricity sales companies as per the relevant legislation (*e.g.* delivering debt notices to the customers, signing bilateral agreements etc.). Moreover, the TCA also underscored that the IESs could never procure such services from the distribution companies. Hence the TCA reiterated that distribution companies' providing these services on behalf of the IRESCs would confer IRESCs an undue competitive advantage to the detriment of the IESs. In both CK and Enerjisa decisions, the TCA condemned such practices as abuse of dominance.

With respect to the second type of abusive conduct, the TCA indicated that the distribution companies are legally obliged to provide certain services in the upstream market (*e.g.* certain repair and maintenance services) to everyone under equal and non-discriminatory terms. Yet, in the CK Decision, the TCA had found evidence that the distribution company favoured the customers of the IRESC and concluded that this amounted to an abuse of dominance.

c. Distribution companies' irregular and false meter reading practices (only CK was fined for this practice)

As per the relevant legislation in Turkey, meter reading must be carried out exclusively by the distribution companies. Therefore, the distribution companies read the meters of the customers of IRESCs as well as the IESs. The TCA stated that in case the quality of meter reading services provided to the customers of the IESs is degraded, this could place the IESs in a competitive disadvantage vis-à-vis the IRESCs. In the CK Decision, the TCA, by examining the relevant data, found that there was considerable degradation in the quality of meter reading services (especially in the form of significant delays) provided to the customers that recently switched to the portfolio of the IESs. The TCA disregarded the explanations by CK as to the objective grounds for the de-facto situation and decided that this constituted an abuse of dominance in the upstream market that restricts competition in the downstream market to the advantage of the IRESCs.

2. Practices of IRESCs that aim to make it more difficult for the eligible customers to change their electricity supplier and to increase switching costs

a. At the stage of including customers in the eligible customer portfolio

The TCA had made it clear before (especially in the previous preliminary inquiry decisions and the EDSA Notice) that it is of utmost significance to ensure that IRESCs and IESs compete on equal grounds for signing bilateral agreements with eligible customers. The TCA realized that the IRESCs have a natural advantage in that respect due to being the exclusive supplier of all the ineligible customers, as they possess the consumption and contact information of the latter. Although this could not be challenged from a competition law perspective, the TCA was extra cautious for any unilateral conduct of the IRESCs that could amplify the effects of this inherent advantage.

Below is a list of unilateral conduct that constitute examples as to how the IRESCs strengthened their position vis-à-vis the IESs in terms of the competition for signing bilateral agreements with these customers. Although these conducts were deemed as different type of violations in CK, Enerjisa and Bereket decisions, the underlying premise, which led to the characterization of such conduct as abusive was the same. That is, when the IRESCs use their power in the regulated portion of the retail electricity sales market to create competitive advantages for themselves in the competitive portion this restricts the competitive process in the latter to the disadvantage of the

IESs.

i. Moving customers that do not exceed the eligibility thresholds to the eligible customer portfolio of the IRESC by way of contracts with dilatory conditions (CK, Enerjisa and Bereket were fined for this practice)

In the CK, Enerjisa and Bereket decisions, the TCA determined that relevant IRESCs were offering bilateral agreements with dilatory conditions to their ineligible customers, which foresee that these customers would be automatically moved to the ineligible customer portfolio of the IRESC as soon as they exceed the eligibility thresholds foreseen by the relevant EMRA regulations. The TCA decided that IRESC's moving the customers in their regulated customer portfolio to their eligible customer portfolio immediately after they become eligible would increase the switching costs in the market to the detriment of the IESs.

It is important to note that neither of the IRESCs under scrutiny had received any commitments from the customers that sign these bilateral agreements to prevent supplier switches for a specific period (e.g. for the contract term) and these customers were always free to switch their suppliers whenever they desire without incurring any additional costs. Yet, the TCA referred to its detailed explanations regarding behavioural economics while assessing the effects of these agreements in practice and held that these agreements contributed to the existing biases and perceptions of the customers that already constitute a switching barrier. Hence, the TCA concluded that this practice was abusive, mainly due to the specific conditions of the relevant market and the bounded rationality of the customers therein.

As a final remark, the TCA also pointed out that while CK did not make any notifications to the customers that signed these bilateral agreements before moving them to the eligible customer portfolio, Enerjisa did indeed make informative notifications. However, the TCA did not consider that this difference in practices affected the illegality of the conduct in question.

ii. Moving customers that exceed the eligibility thresholds to the eligible customer portfolio of the IRESC without signing any contract with the customer (CK and Enerjisa were fined for this practice)

During the course of the investigations, the TCA realized that Enerjisa and CK had number of customers in the eligible customer portfolio of their respective IRESCs with whom no valid bilateral agreement was conducted (in general there was either no bilateral agreement or the bilateral agreement lacked the signature of the customer). The TCA regarded this as evidence of IRESCs' strengthening their eligible customer portfolio and raising switching costs to the detriment of the IESs and held that this practice amounted to an abuse of dominant position.

iii. Obtaining IA-02 Forms[22] from customers who sign bilateral contracts that do not contain a date of signing (CK and Enerjisa were fined for this practice)

Before summarizing this violation, the function of IA-02 forms will be explained briefly. As per the relevant legislations and regulations governing the Turkish electricity sector, the retail electricity sales companies must submit forms (called IA-02) that contain basic information regarding the eligible customer to be included in the portfolio, to the Turkish Energy Exchange ("**EP?A?**") which is responsible for managing energy markets. The critical issue here is that these forms included a "signing date" and in case more than one company claims that it has signed a

bilateral agreement with the same customer, EP?A? honoured the claim of the company that submitted the most recent IA-02 form.

In the Enerjisa and CK decisions, the TCA found that IRESCs had many IA-02 forms that do not contain a date of signing. The TCA argued that IRESCs intentionally obtained such IA-02 forms to be able to fill the date just before making an application to EP?A? and ensure that it would always have the most recent IA-02 forms. Although there was some evidence that might support such an interpretation in the CK Decision, the TCA was unable to find any evidence in the Enerjisa Decision. Still, the TCA deemed that this was an abuse in both cases. This shows that the TCA considered this to be an abuse, not because of the motive behind the practice, but the potential effects that it may have on competition. We refer here to "potential" effects because the decisions do not comprise an effect-based assessment to show how these forms were utilized by the IRESCs in practice.

b. At the stage of providing electricity to eligible customers within the portfolio

i. Leveraging the legal monopoly in the market for the retail sales of electricity to ineligible customers

1. Switching customers between regulated and eligible customer portfolio of the IRESC (CK and Enerjisa were fined for this practice)

In the CK and Enerjisa decisions, the TCA examined IRESCs' switching some of their customers (especially industrial customers with high consumption rates) between their regulated and eligible customer portfolios during the term of the bilateral agreements. The reason why IRESCs relied on such practices was cost minimization. The IRESCs had come up with a contractual framework, whereby they serve their customers under bilateral agreements during the seasons where the price of electricity in the wholesale markets is low and switch them to their regulated customer portfolio (under which it is impossible for them to incur any losses due to the cost-based nature of the regulated tariffs) when the prices are high. Via this practice, the IRESCs protects themselves from the volatility of electricity prices and prevent seasonal losses during high-cost seasons.

Although there was no evidence to indicate that the IRESCs engaged in such switching practices to exclude the IESs from the market, the TCA decided that this practice was a manifestation of the IRESCs market power which stems from their legal monopoly in the regulated portion of the market. The TCA reasoned that switching was a practice that may never be implemented or matched by the IESs and decided that the IRESCs benefited from an undue competitive advantage in the competitive portion of the market by way of abusing their dominant position in the regulated market via switching.

2. Using power take-off procedures that is only applicable for regulated customers to force eligible customers to pay their due debts stemming from bilateral contracts (CK and Bereket were fined for this practice)

As a brief background, according to the relevant legislations and regulations in Turkish electricity markets, it is not possible for the retail electricity sales companies to take-off the electricity of their customers due to defaults on payments accruing from bilateral agreements. The companies may only remove the customers from their eligible customer portfolio and these customers continue to be served by the IRESC under regulated tariffs. Only IRESCs have the right to initiate power take-off procedures if the customers default on their payments accruing from regulated electricity sales

contracts. Therefore, in practice the risks related with collection of debts is lower for regulated customers due to the possibility of relying on power take-off in case of non-payment. It is critical to underscore that neither the IRESCs nor the IESs may take-off the power of their customers that defaults on the debts accruing from the bilateral contracts.

In the CK and Bereket decisions, the TCA has found evidence indicating that the IRESCs, after removing the customers that default on their debts accruing from the bilateral contracts from the eligible customer portfolio and moving them to the regulated portfolio, threatened to take-off the power of such customers if they do not pay their former debts which accrued from the bilateral contracts. By this practice, the IRESCs were able to rely on power take-off remedy to ensure the collection of its receivables stemming from the bilateral agreements as well as those stemming from the regulated agreements. This was an option not available for the IESs. According to the TCA's point of view, the IRESCs obtained an undue advantage, via leveraging their monopoly in the regulated market, vis-à-vis the IESs by reducing the risk of non-collection. Thus, this was also deemed as an abuse of dominant position.

c. At the stage of customers' leaving the eligible customer portfolio

i. Bilateral contracts with long term commitments and automatic renewal clauses (CK, Enerjisa and Bereket were fined for this practice)

The final type of abuse, which is the most conventional one in terms of general competition law perspective, is concerning long-term bilateral agreements that bind the customers via contractual penalties (or termination fees in case of consumers).

The TCA determined that CK, Enerjisa and Bereket all signed bilateral agreements with various customers which included automatic renewal clauses that also covered customers' commitments not to terminate the contract until the end of the term of the contract. The TCA stated that although automatic extension clauses are necessary and beneficial in contracts regarding the provision of utilities to ensure the continuity of the service, it nonetheless emphasized that the extension of the commitments served no such service. The TCA emphasized that the competition is already very weak in the markets for the retail sales of electricity and that the IRESCs already have a very high market share. Therefore, it concluded that the presence of such clauses increased switching costs and further restricted the competition in the relevant market, thereby constituting an abuse.

The Role and Assessment of "Anti-competitive Effect" in Abuse of Dominance

Arguably the most controversial aspect of all three decisions was the assessment of anti-competitive effect stemming from the unilateral practices that constituted the subject of the investigations. In these decisions, the TCA focused mainly on the potential effects rather than the actual effects and the notion of anti-competitive intent. Although the presence of anti-competitive intent is an important criterion for the TCA in determining whether a conduct amounts to abuse of dominance, in most of the cases, intent is deemed to be secondary to the effect.

In CK, Enerjisa and Bereket decisions, the TCA expressly stipulated that the presence of anti-competitive intent may be enough to conclude that a unilateral conduct is abusive, especially in case such conduct is only a barrier before trade and has no efficiency enhancing effects. Still, it should be noted that the TCA did not solely rely on anti-competitive intent while deciding that CK,

Enerjisa and Bereket violated the Competition Act and it also analysed actual and (mainly) potential effects.

The effect-based assessment conducted by the TCA was far from convincing the parties of the investigation. Although there is a comprehensive and multi-faceted debate with respect to TCA's assessments in the decisions, one of the key issues, which was strongly challenged by the parties was the TCA's considering the average customer base of the IESs as a benchmark when evaluating the effects of the conduct in question. As a result of this approach and due to the great difference between the number of the customers of the IESs and the number of total customers in the relevant market, the TCA deemed that certain practices which affected only a negligible portion of the entire market had significant impacts on market competition as they affected a large portion of the average customer base of the IESs. In any case, the TCA stressed that the potential effects of the relevant practices were sufficient for establishing the presence of a violation.

Conclusion

CK, Enerjisa and Bereket decisions of the TCA signify the beginning of a new era in the retail level of Turkish electricity markets as the playing field of IRESCs is significantly restrained. The TCA identified a certain set of practices are considered as abuse of dominance, solely due to the structure of the relevant markets and the characteristics of the customers in those markets.

From the perspective of the market participants, the violations listed in these three decisions will not be any different from detailed sector specific regulations of EMRA, which expressly prohibits certain practices ex-ante, based on assessments concerning their potential outcomes, without taking into consideration their actual affects.

From the perspective of competition law in general, these decisions may be deemed as important signals as to how the TCA may adapt its conventional tools when dealing with markets that have distinct properties and how the competition law may complement deficient sector specific regulations in markets with structural problems.

The long-term effects of these decisions in the electricity markets in particular and the markets with structural imperfections in general, are yet to be seen. However, the fact that the TCA did not hesitate to rely on unconventional tools, such as behavioural economics, which are normally alien to competition law, to address the case-specific concerns, indicates that a similar path may be followed in other areas as well.

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[1] TCA's decision dated 20.02.2018 and numbered 18-06/101-52.

[2] TCA's decision dated 08.08.2018 and numbered 18-27/461-224.

[3] TCA's decision dated 01.10.2018 and numbered 18-36/583-284.

[4] The distribution company operating in Turkey's Mediterranean region, which is controlled by CK.

[5] The distribution company operating in Istanbul's Anatolian side, which is controlled by Enerjisa.

[6] The IRESC operating in Turkey's Mediterranean region, which is controlled by CK.

[7] The IRESC operating in Istanbul's Anatolian side, which is controlled by Enerjisa.

[8] The IRESC operating in Turkey's Central Anatolian region, which is controlled by Enerjisa.

[9] The IRESC operating in Turkey's Southern region, which is controlled by Enerjisa.

[10] The IRESC operating in Turkey's Southern Aegean region, which is controlled by Bereket.

[11] The IRESC operating in Turkey's Northern Aegean region, which is controlled by Bereket.

[12] Ineligible customers refer to the customers whose annual electricity consumption is below a certain threshold (1600 kWh a year as of 2019) and who are not allowed to enter into bilateral electricity sales contracts with the IESs and are legally obliged to purchase electricity from the IRESCs in their region under regulated contracts and prices.

[13] The distribution regions are determined by the state and are privatized through tender procedures (Turkey was divided into 21 distribution regions prior to the privatization). Each successful tenderer company operates as a legal monopoly in the concerned region and controls IRESC that operates in that region.

[14] TCA's decisions; dated 22.10.2014 and numbered 14-42/762-337, dated 22.10.2014 and numbered 14-42/762-338 and dated 03.12.2014 and numbered 14-47/860-390.

[15] https://www.rekabet.gov.tr/Dosya/sektor-raporlari/10-elektrik-toptan-sati (last date of access: 17.05.2019).

[16] The list comprises of seven main categories of anti-competitive conduct and very specific practices were listed under some of these categories as examples. The main categories are as follows:

- Discriminatory practices that stem from the interaction between the distribution companies and IRESCs that favours IRESCs vis-à-vis the IES
- Practices of the distribution companies and IRESCs that aim to make it more difficult for the eligible customers to switch supplier and to increase switching costs
- IRECSs' practice of transferring ineligible customers that are not expected to become eligible in the near future to the eligible customer portfolio by way of the commitment mechanism with the aim of preventing these customers to change electricity providers in the future, without properly informing them
- Signing long-term bilateral agreements with the eligible customers that include unfair terms and have automatic renewal clauses
- Joint practices of the distribution companies and IRESCs that aim to hinder the activities of the IES
- Collusion between different distribution companies and IRESCs to refrain from engaging in active sales and marketing operations in one another's regions
- Discrimination by way of distribution companies' holding on to technical capacities for

unlicensed electricity generation in order to allocate these to themselves or their related companies and refraining from evaluating the applications of other investors

[17] The market for retail electricity sales to industrial customers was further subdivided as “retail electricity sales to industrial customers that are connected at the transmission level” and “retail electricity sales to industrial customers that are connected at the distribution level”. Yet, as none of the alleged abusive practices concerned the retail electricity sales to industrial customers that are connected at the transmission level, the presence of such a product market did not have any implications.

[18] While making a demand-side assessment with an effort to determine the relevant product markets, the TCA had also evaluated supply-side substitutability between the retail sale activities focusing different customer groups; notably the daily load curves of different customer groups and their convenience to be used as an instrument to meet the balancing requirements stipulated by the sector-specific regulations.

[19] For example, it was argued that the residential customers perceive electricity as a household necessity while the industrial customers and some customers included in the commercial segment perceive electricity as an input for their business activities that affect their costs of operation. As a result, elasticities of demand of the consumer groups differ significantly.

[20] The TCA concluded that the market for “retail electricity sales to industrial customers that are connected at the transmission level” was country wide as the conditions of competition was very similar in all the regions.

[21] No dominance was found in the countrywide market for retail electricity sales to industrial customers that are connected at the transmission level.

[22] IA-02 Form is the Power Sale Notification Form, which is a compulsory standard annex to power sale contract. When the same customer has bilateral contracts with more than one electricity sales companies, the customer is registered in the portfolio of the company that submits the most recent IA-02 Form.

This entry was posted on Monday, June 17th, 2019 at 1:00 pm and is filed under Source: OECD“>Abuse of dominance, Electricity, Turkey
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