

Kluwer Competition Law Blog

Turkey: Automotive Companies are Cleared of the Allegations of Stockpiling and Competitively Sensitive Information Exchange!

Mustafa Ayna, Özlem Bağböyük, Selim Turan, Yüksel Talip Özbek (ACTECON) · Monday, October 3rd, 2022

Introduction

The automotive sector has been on the radar of the Turkish Competition Authority (“TCA”) for a long time. In this sense, the TCA conducted an investigation (“**Investigation**”) regarding the allegations that some undertakings operating in the first-hand and second-hand automotive markets violated Law. No. 4054 on the Protection of Competition (“**Competition Law**”) via stockpiling and increasing the vehicle prices together.

The reasoned decision regarding the Investigation (“**Decision**”) [1] was recently published on the TCA’s official website. As a result of the Investigation, the Competition Board (“**Board**”) decided that as the parties to the Investigation did not stockpile and increase the vehicle prices together via exchanging competitively sensitive information in the relevant markets, there was no room for any administrative fine for them.

In this regard, the prominent assessments of the Board in the Decision will be brought to your attention within this article. Within this scope;

- firstly, the general evaluations of the Board on the allegations of violations in the first-hand automotive market and the second-hand automotive market regarding all undertakings that are party to the Investigation will be included,
- subsequently, the allegedly competitively sensitive information exchange occurred among Groupe PSA Otomotiv Pazarlama A.Ş. [2] (“**PSA**”) and Doğu Otomotiv Servis ve Ticaret A.Ş. [3] (“**Doğu**”) will be examined, and
- lastly, the considerations concerning the allegations claimed in the Investigation Report prepared during the Investigation process that the competitively sensitive information exchange occurred among Borusan Otomotiv İthalat ve Dağıtım A.Ş. [4] (“**Borusan**”) and Volvo Car Turkey Otomobil Ltd. Şti. (“**Volvo**”), on which the Investigation Committee changed its opinion with the Additional Written Opinion and concluded that there was no violation, will be presented.

Insufficient Evidence to Fine the Automotive Companies in the First-Hand Market

In the decision, to evaluate the allegations made regarding stockpiling of first-hand vehicles, firstly (i) the procurement processes of the import and domestic vehicles conducted by the distributors were examined, and then (ii) evaluations were made within the framework of the data transmitted in response to the information requested from the distributors. In this context, the Board highlighted that:

- although it is seen that the strategic information about the competitors regarding *connectivity technology* [5] was requested among the relevant undertakings, it is unclear from which competitors, what kind of information and through which means it was obtained, and there is no evidence of communication among the competitors realized to obtain said information,
- since the automotive market in Turkey is a highly transparent market, undertakings can evaluate the market conditions by collecting information about competitors from public sources, by using methods such as the mystery shopper method [6],
- estimated data on advertising expenditure amounts of brands and advertising cost per vehicle are available through the analysis of publicly available data and therefore such information cannot be considered competitively sensitive; and
- the effect of the Covid-19 epidemic in the first months caused the number of vehicles produced in Turkey to almost stop completely, and the number of imported vehicles remained at a level that could not respond to the increase in demand.

For these reasons, the Board concluded that the reason for the decrease in supply was not caused by stockpiling.

In terms of the claims that the successive increase in vehicle prices was due to the mutual price increase by agreement of the distributors, the Board determined that vehicle prices had increased due to; (i) the economic landscape of the country, (ii) the negative impact of the Covid-19 epidemic on vehicle production, (iii) increasing raw material prices, (iv) the increase in exchange rates, (v) as the consumer's tendency to vehicle purchases, the vehicle prices are rising, and therefore, the inability to launch vehicles to meet the increasing demand (vi) the deterioration of the supply-demand balance, and (vii) the increase in special consumption tax ("SCA") rates.

In this context, the Board concluded that there was no evidence that the distributors increased the prices together or restricted the supply in a way that was not based on the natural market conditions. Furthermore, it was concluded that price increases were made both for the vehicle models subject to the complaints and for the other vehicle models that were declared to be the best-selling.

No Exchange of Competitively Sensitive Information in the Second-Hand Automotive Market

In the Decision, regarding the second-hand automotive market, the claims examined are:

- *“the groups operating in this market such as gallery rental companies, cause the models of vehicles that are already few in the market to lose their availability in the first-hand automotive market by purchasing them from dealers”* and;
- *“After purchasing vehicles, they offer them for sale through online and physical sales channels, well above the price of the first-hand vehicles.”*

The Board decided that there was no exchange of competitively sensitive information between the relevant undertakings due to the following reasons:

- weekly vehicle sales and announced vehicle numbers are retrospective information and can be obtained from open sources by following the tender platforms,
- the platform in question is used as a side sales channel and therefore obtaining certain information about the tender is a requirement for the execution of the commercial relationship,
- information on price changes is not commercially strategic information, but a general assessment of automotive companies,
- it is not clear which brand, segment, model, mileage, or equipment level the information regarding the stock load and the number of vehicles planned to be sold in the future covers, and it is related to the general stock status and sales strategy of the undertaking, and
- there is no evidence that information regarding stock, sales targets, and similar issues are shared continuously, systematically and in a divided way.

The Information Exchange between Do?u? and PSA could not be Proved!

In the Investigation Report and Additional Written Opinion, it was claimed that a direct competitively sensitive information exchange was carried out between Do?u? and PSA since some of the correspondence containing information about PSA's increase in prices and sales targets were identified within Do?u?, and it was not possible to obtain such information from a source other than the distributor. In this respect, administrative fines were requested both in the Investigation Report and in the Additional Written Opinion against Do?u? and PSA because they violated the Competition Law.

In the Decision, it was determined that information regarding Peugeot light commercial vehicles was included in the internal correspondence made by Do?u? on 11.03.2020 and the price strategies planned to be implemented were discussed. The Board also stated that the information on Peugeot's sales volumes brand light commercial vehicles in January and February 2020, the list prices as well as final responses to the customer, possible loan campaigns, etc., were discussed to take action on the pricing of a Do?u? light commercial model. The Decision, analysed the relevant correspondence, including:

- in March, specific models of Peugeot will be brought to Turkey,
- Peugeot Active 100hp vehicles will be brought only as fleet vehicles,
- Peugeot Active Comfort vehicles will not be brought in March,
- which model Peugeot manual vehicles will be brought to Turkey predominantly in March, and which ones will be brought in relatively small numbers,
- for a certain model, Peugeot was working on a new campaign including a TRY 50,000 loan with 12-month maturity and 0.69 interest rate.

However, the Board evaluated that the statements used in the correspondence **were not sufficient to prove the existence of communication** between Do?u? and PSA considering the facts that:

- no clear source is specified in the relevant correspondence regarding how the competitively sensitive information reached Do?u? employees, and
- it is common for undertakings to assess market conditions by monitoring information regarding competitors obtained through publicly available sources, such as the mystery shopping method.

In this context, **the Board decided that it could not be proved that there was an information exchange between Do?u? and PSA within the scope of the findings, and accordingly there was no need to impose fines on the undertakings.**

The Board and the Investigation Committee Parted Their Ways: Volvo and Borusan are Cleared of the Allegation of Price Information Exchange

In an internal correspondence obtained during the inspection carried out within Borusan, it was determined that Borusan employees shared within their company the information that the delivery quotas of certain Volvo models for the January-March period were already exhausted.

The Investigation Report concluded that Borusan and Volvo violated Article 4 of the Competition Law since (i) the internal correspondence between Borusan officials was about obtaining the information that the delivery quotas for some of Volvo's vehicles have been exhausted within the scope of the strategy of increasing the vehicles' price and (ii) Borusan plans to abolish the campaigns to maximize the profit to be obtained from the sale of vehicles of similar models with Volvo. In this respect, an administrative fine was requested against Borusan and Volvo in the Investigation Report.

In this context, Borusan alleged that the information in question is obtained from independent research companies and by the mystery shopper method. Furthermore, Volvo alleged that the information regarding vehicle availability can be easily known by a customer who wants to buy a vehicle, and the only way to get the information regarding Volvo's stock data is not to exchange information with Borusan. In addition, the statements used in the related correspondence were not sufficient to show the existence of any communication between Borusan and Volvo.

The written plea submitted by Borusan that the source of the information regarding Volvo is an independent research company was found acceptable by the Investigation Committee, and in this respect, the Committee changed its opinion in the Additional Written Opinion and concluded that Borusan and Volvo did not violate the Competition Law. The Board stated in its Decision that:

- the automotive market in Turkey is a very transparent market and a lot of information, including future sales forecasts, is regularly shared within the Automotive Distributors' Association and the Automotive Manufacturers Association, and
- undertakings in the relevant market are already able to obtain information about market conditions by following information about competitors from public sources through methods such as mystery shoppers.

In this regard, the available evidence was not qualified to prove that Article 4 of the Competition Law was violated through the exchange of information regarding prices between Borusan and Volvo.

Conclusion

With the Decision, the Board completed the Investigation, the outcome of which has been eagerly awaited by the parties to the Investigation and the entire competition law community, without

imposing a fine on any undertaking. We consider that the Decision is important in terms of expressing the standard of proof foreseen by the Board towards competitively sensitive information exchange.

To sum up, with the Decision, the Board underlined that:

- to prove the alleged competitively sensitive information exchange between competitors, the source of the information shared in the internal correspondence must be included in the relevant correspondence or there must be other evidence showing this,
- respecting the pleadings of the undertakings party to the investigation, the mere sharing of information within the rival companies that the Board deems to be available from publicly available sources cannot, by itself, prove the existence of an infringement and,
- there was no proof that the distributors raised the prices simultaneously or restricted the supply in a way that was not consistent with the dynamics of the market.

Although the news is limited to the developments described above, considering the history of Turkish competition law and the dynamic nature of the automotive industry, we anticipate that the automotive sector is likely to remain on the Competition Board's radar. In this respect, we will continue to keep you updated on the current developments in the sector.

[1] The Board's decision dated 03.03.2022 and numbered 22-11/170-69.

[2] Groupe PSA is the distributor of Citroen, DS, Peugeot and Opel brands.

[3] Do?u? is the distributor of Volkswagen Passenger Car, Audi, SEAT, CUPRA, Škoda, Bentley, Lamborghini, Porsche, Volkswagen Commercial Vehicle, and Scania brands.

[4] Borusan is the distributor of BMW, MINI, BMW Motorrad, Jaguar and Land Rover brands.

[5] Connectivity technology can be defined as one that enables a car with an Internet connection and WLAN network to communicate with other internet-connected components via certain protocols with the help of such a connection.

[6] The mystery shopper technique involves a researcher acting as a customer without the customer service staff's knowledge.

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

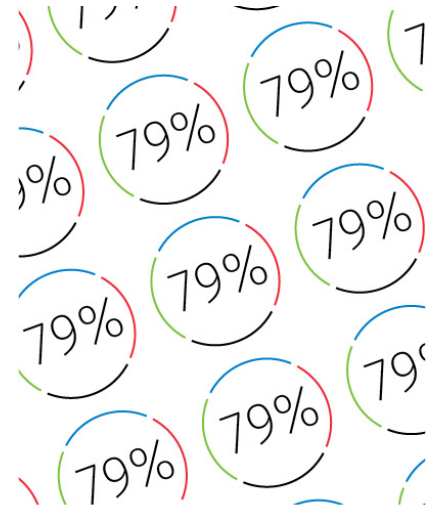
Kluwer Competition Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers are coping with increased volume & complexity of information. Kluwer Competition Law enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

79% of the lawyers experience significant impact on their work as they are coping with increased volume & complexity of information.

Discover how Kluwer Competition Law can help you.
Speed, Accuracy & Superior advice all in one.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Monday, October 3rd, 2022 at 9:00 am and is filed under [Information exchange, Pricing, Standard of Proof, Turkey](#)
You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.