

Kluwer Competition Law Blog

Commercial Vehicles Sector Cleared of Illegal Info Exchange Allegations

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Introduction

There has always been a thin line between legitimate market research and potentially anticompetitive information exchanges. Caselaw on such matters is of a particular importance. On 01 January 2023, a preliminary inquiry into several undertakings active in the light and medium class and heavy commercial vehicles market[1] was initiated to determine whether these undertakings had violated Article 4 of Law No. 4054 on the Protection of Competition (“**Turkish Competition Law**”) (the equivalent of Article 101 TFEU) via exchange of information.

Following a preliminary inquiry, the Turkish Competition Authority (“**TCA**”) decided[2] not to initiate an investigation into the undertakings active in the light and medium class and heavy commercial vehicles market since no evidence showing the existence of a violation existed.

The decision is of importance as it sheds light on the TCA’s current approach towards assessments of both legitimate sources of information and the structure of competition in the relevant market. The findings suggest that the current practices of gathering and utilizing market information, primarily through lawful and transparent means, do not contravene competition laws.

Assessment of Findings

Most of the findings obtained from the undertakings party to the preliminary inquiry relate to (i) competitor price information and (ii) market share data. Apart from these, there are also correspondences indicating that the undertakings obtained competitor information on premium systems, campaigns, vehicle delivery times, vehicle specifications and details of customers’ purchases such as brands, quantities, and prices. In a significant portion of the correspondence, it is understood that the source of the information is field research or publicly available sources. In some correspondence, however, the source of the information is not specified.

Some of these findings are presented below as samples:

BMC Internal:

“I spoke with Baykar, and learned the offers they received from Ford. I updated them according to the current costs of our own vehicles with AEBS.

You can find the price comparison prepared accordingly in the attached file.

Regards,”

ISUZU Internal:

“Mr. (.....),

The list of competitor prices we have learned from our customers and our dealer Enke is attached.

I submit it for your information.”

ISUZU Internal:

“Hello,

The updated market report for November according to ADA and HCVA data is attached.

Since AMA November data are not available, the midibus-bus data are based on October. It will be updated separately when AMA November data is released.

Regards,”

RENAULT TRUCKS Internal:

“Friends;

I need market information, but you need to collect it from customers within the framework of competition law. I would like to remind you again that you should not contact competitors. The information we are trying to obtain is to share your impressions from your customer visits.

Please send it using the attached file.”

(.....)

“Hello, Mr. (.....),

The brand price data information we have received from customers is attached for your information.

We receive such price information from customers every month. The prices received are constantly changing and exaggerated prices are also said to be due to the lack of product supply. Especially Volvo, Scania, and MB price information are constantly changing. From the construction group, price changes are very noticeable on the basis of customer and quantity. Serious discounts may be available for quantity purchases.

For your information.”

Evaluating the findings, the TCA made the following assessments:

- Undertakings operating in the sector were able to obtain the price offers of competing undertakings frequently.
- Among the documents received within the scope of on-site examinations, no document indicates that the price offers of competing undertakings had been shared directly between competitors and with the object of restricting competition.
- Price information could be obtained during customer visits, through dealers, as a result of field studies or from the websites of the undertakings.
- A bargaining system in which customers shared the price offer received from one undertaking with another undertaking to obtain a better price offer and increase their bargaining power was common.
- Both market research by undertakings and price information obtained through customers and dealers were used by undertakings to offer lower offers, to gain new customers or to prevent the loss of existing customers, and ultimately to make competitive moves.
- The market share data of competitors was available to undertakings through the Automotive

Distributors Association (“**ADA**”), Automotive Manufacturers Association (“**AMA**”), Heavy Commercial Vehicle Association (“**HCVA**”), and the Turkish Statistical Institute (“**TSI**”), which shared data on the sector.

- The data shared publicly and retrospectively by the ADA, AMA, HCVA, and TSI did not lead to anticompetitive effects.

Consequently, the TCA concluded that the analysed communications did not constitute an exchange of information that restricts competition.

Assessment of the Market

After determining that the analysed communications did not violate competition law, the TCA made a further assessment as to whether the characteristics of the relevant market were conducive to a possible exchange of information. In this context, firstly, they stated that many players were operating in the market. The TCA concluded that this situation might have caused difficulties for the undertakings to agree on possible coordination conditions and to reach collusive outcomes on prices.

Secondly, the TCA stated that the most important pricing criteria of undertakings operating in the light and medium class and heavy commercial vehicle sector were macroeconomic factors and market conditions such as raw material and energy prices, inflation, and exchange rate movements. Thus, recent issues in the automotive sector such as the chip shortage, supply problems, raw material prices, and fluctuations in exchange rates led to a rapid increase in commercial vehicle prices. Consequently, undertakings found it challenging to monitor each others’ prices due to the necessity of constantly adjusting pricing strategies to accommodate fluctuating costs.

Ultimately, it was noted that the existence of product differentiation in the market and the diversity in the services offered price discrepancies, complicating the acquisition of competitor price information and understanding the pricing behaviour of competitors.

Based on this market assessment, the TCA concluded that the market structure does not preclude the establishment of competition violation. However, in parallel with the evaluations and findings, they decided not to initiate an investigation due to the lack of evidence indicating the existence of a violation within the scope of the preliminary investigation.

Conclusion

The TCA’s decision not to initiate an investigation into the undertakings within the commercial vehicle sector underscores a nuanced understanding of market dynamics and competitive behaviour. This outcome highlights the importance of distinguishing between legitimate market research and potentially anticompetitive information exchanges. The findings suggest that the current practices of gathering and utilizing market information, primarily through lawful and transparent means, do not contravene competition laws.

Furthermore, the decision sheds light on the complexities of monitoring and interpreting competitor behaviours in a market characterized by fluctuating costs, diverse product offerings, and intense competition. It serves as a reminder to businesses about the legal boundaries of competitive intelligence.

**The authors provided counsel to Iveco Araç Sanayi ve Tic. A? (IVECO Turkey) throughout the proceedings.*

[1] The undertakings party to the preliminary inquiry are Anadolu Isuzu Otomotiv Sanayi ve Tic. A? (“ISUZU”), BMC Otomotiv Sanayi ve Tic. A? (“BMC”), Do?u? Otomotiv Servis ve Tic. A? (“SCANIA”), Ford Otomotiv Sanayi A? (“FORD OTOSAN”), Iveco Araç Sanayi ve Tic. A? (“IVECO”), Man Kamyon ve Otobüs Tic. A? (“MAN”), Marubeni Da??t?m ve Servis A.?. (“VOLVO”), Mercedes-Benz Türk A? (“MERCEDES”), and Volvo Group Otomotiv Tic. Ltd. ?ti. (“RENAULT TRUCKS”).

[2] TCA decision dated 17 July 2023 and numbered 23-39/723-247.

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