

Turkish Competition Authority Signals Certain Information Transfers in the Insurance Market May Require Individual Exemptions

6 Apr 2017

The Turkish Competition Authority recently published a decision about a negative clearance/individual exemption application for an agreement between two competing insurance companies. The Competition Board's ("**Board**") decision signals that co-insurance and re-insurance agreements between competitors should be considered competition law sensitive. As a result, related information transfers, which are common in the insurance market, may require a re-evaluation from a competition law perspective.

The Agreement

The agreement in question outlines co-operation between Aksigorta A.Ş. ("**Aksigorta**") and Acıbadem Sağlık ve Hayat Sigorta A.Ş. ("**Acıbadem**"), regarding co-insurance, re-insurance and operational services.

Notably, it involves agreement that Acıbadem would:

- Provide services to Aksigorta in operational matters related to existing health products.
- Develop a new product to be sold and delivered to customers under the Aksigorta brand.
- Provide services to develop a health insurance product, which Aksigorta would sell.
- Co-insure and re-insure Aksigorta's health insurance products.

The specific agreement provisions are not included in the Board's decision. However, the decision reveals that the agreement contains restrictive provisions regarding:

- Transfer of confidential and technical information, trade secrets, as well as customer and market information between the parties.
- Determination of price, profit margin and re-insurance commission.
- Making Aksigorta entering similar collaborations with other parties difficult.

The parties have also entered a Confidentiality Agreement, committing to transfer technical information and trade secrets to each other, as well as all kinds of customer and market information.

The Board's Decision

In principle, it is important for the Board to evaluate competition restriction provisions in agreements concluded between undertakings which compete and operate in the same market. The Board noted that Aksigorta and Acıbadem are engaged in competing activities for insurance services and in the relevant product market (the health insurance market).

The Board conducted a negative clearance and individual exemption examination for the agreement. In general terms, a negative clearance application involves parties seeking the Board to make a determination that their agreement does not breach competition laws. If the Board declines a negative clearance application, the parties must obtain an individual exemption, or ensure the agreement falls into one of the group exemptions which apply to certain types of agreements.

The Board declined the negative clearance application due to the confidentiality agreement, which involves sharing technical information between the parties. The Board considers this to be a restrictive practice.

Accordingly, the parties were required to obtain an individual or group exemption in order for the agreement to proceed.

The Board commented that co-insurance relationships fall within the scope of a group exemption. However, re-insurance relationships are not within the group exemption's scope. Therefore, an individual exemption was required in these circumstances.

The Board ultimately granted an individual exemption for the agreement. In the process, it noted that competitor undertakings should continue to compete after concluding such an agreement.

The Board's comments during evaluation of the agreements offer insight into how it views the competition law aspects of these arrangements:

"Taking into consideration the following facts;

- *ACIBADEM and AKSIGORTA continue to sell their products as two competitors,*
- *ACIBADEM continue to create its own products independently,*
- *Parties has no right to interfere each other in relation to operation,*
- *ACIBADEM is serving Aksigorta only in relation to products,*

It has been observed that the agreement does not contain any action disturbing/restricting the competition more than what is necessary."

Please see this [link](#) for the full text of the Board's decision, based on an application dated 11 May 2016 and numbered 16-16/269-120 (only available in Turkish).

Related Practices

- [Antitrust and Competition](#)

Related Attorneys

- [BENAN ARSEVEN](#)
- [C. HAZAL BAYDAR, LL.M.](#)