

The Turkish Competition Board authorizes the assignment of the operational rights of the Antalya airport to third parties (Antalya Gazipa Airport/Aydođan-Gazipa-TAV)

Turkey, Mergers, Relevant market, Privatisation, Transport

By its decision dated 11 January 2007, the Turkish Competition Board (hereinafter referred as "CB") granted authorization regarding the assignment of the operational rights of Antalya Gazipa^a Airport through renting all facilities, equipment and systems in its current borders, for a period of 25 years.

First of all, we should introduce an overview of the application of Turkish Competition Law to privatizations. The Act on the Protection of Competition Numbered 4054 (hereinafter referred as "Competition Act") does not discriminate the public and private undertakings. As a result of this view, the transfer of public undertakings to private sector is examined and inspected by CB, like other mergers and acquisitions. However, as public monopolies have some concessions; their transfer through privatization differs from mergers and acquisitions between private undertakings.

The CB holds its inspections with regards to privatization issues through a separate regulation which is Communiqué no.1998/4 on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid (hereinafter referred as "Communiqué no.1998/4"). Communiqué no.1998/4 sets forth the procedures and principles to be followed in pre-notification [1] and authorization [2] applications to be submitted to CB in order for the acquisitions via privatization to be valid.

Applicable Regulations to the case

CB decided that a lease period of 25 years would provide the transferee to carry out a determining impact on the airport through the concession rights, which will be granted to him. Therefore, the assignment is deemed as an acquisition in accordance with the Article 2 of the Communiqué on Merger and Acquisition Calling for Authorization of the CB numbered 1997/1 (hereinafter referred as "Communiqué no.1997/1"). The CB also stated that the said transaction has to be evaluated in the scope of the Communiqué no.1998/4.

Market definition

The CB stated that the entire airport operation (all services) can be provided by a sole enterprise, but it is also possible for these services to be provided by different entities. At this point, the discretionary power regarding the service providing procedure -in other words, the power to determinate which service shall be provided by how many party/ies - belongs to the State Airports Authority (hereinafter designated as "DHMI"), owning the airport's property and operational rights.

In the light of the foregoing, the CB resumed that the airport operations market is divided in to three sub-markets: (a) Airport infrastructure services market, (b) Airport ground handling market, (c) Market of other commercial services related to the airport.

CB underlined that preferences of the consumers are significant for the determination of the relevant geographic market. For the airway companies, who are the primary clients of the airports; the quality of the infrastructure and the ground handling services provided by the airport appears as a preference factor. However as the tariffs applied by the airport operators are determined by DHMI, the choice of airport does not make a serious difference regarding the costs of the airway companies. Consequently, the essential factor for determining the airway companies' preferences shall only be the potential of the airport and the preferences of the passengers.

At this point, the CB examined the distinction between the local airport and international airport. Thus, CB stated that the local or international character of the airport presents an important preference reason for both the airway companies and the passengers. The hinterland of the local airports, which are largely used for domestic flights, is limited when compared with the hinterland of the international airports. After these examinations, the CB cited that Gazipa⁰a Airport is situated on a distance of 187 km. from Antalya, 45 km. from Alanya and 5 km. from Gazipa⁰a. It is seen that Antalya Airport is mainly used by international flight passengers who stayed on Antalya province because of the natural and historical beauties of the region. However, on the other hand, with its current potential, Gazipa⁰a Airport provides services for small airplanes having 10-15 passengers' capacity.

Without taking into consideration the local and international airport distinction, the CB stated that Gazipa⁰a Airport is in the same relevant market as Antalya Airport and further stated that if future investments are made for the development of Gazipa⁰a Airport, it would also be preferred by the passengers who will stay in Antalya and other close provinces and the said airport may be considered to be at the same market with Antalya Airport.

We consider that this approach of the CB is based on mere assumptions regarding future investments that may be made for the development of Gazipa⁰a Airport.

Evaluation of the Transaction in Respect of the Communiqué n° 1997/1

In this transaction, the potential assignees (*Aydođan A.^a, Gazipa⁰a A.^a and TAV*) are not active in the airport terminal operations market of Antalya province. Moreover, *Aydođan A.^a and Gazipa⁰a A.^a* do not have any operation in ground handling market in Antalya province. However, Hava⁰ -being the joint venture company of TAV Group and Park Group - is providing the ground handling in Antalya Airport so it is active in the same relevant market.

The CB underlined that within the scope of this transaction, the ground handling services will also be assigned together with the operational rights. Therefore, regardless of the assignee's identity, in consequence of this privatization, a vertical integration will occur since the terminal services and ground handling would be provided by the same undertaking.

Furthermore, the CB stated that in case that TAV would be the assignee, TAV -being the parent company- and Hava⁰ -being the joint venture company of TAV Group - will act on the same market.

On this matter, in contradiction to its aforementioned examinations, the CB affirmed that the said vertical concentration does not constitute a barrier to entry for the other entities which may enter into the market. Consequently, the competition on the relevant markets will not be subject to a substantial restriction.

The CB justified its conclusions by the following statements:

As a first point, the relevant terminal and ground handling markets are being regulated by DHMI and General Directorate of Civil Aviation.

Secondly, according to the preferences of the airway companies, they may either receive ground handling services from the assignee or provide their own ground handling services.

CB herein noted that in this case, although it is not possible for another supplier other than the assignee to provide ground handling services in Gazipa^a Airport; there is an opportunity for competition within the Antalya Airport, which constitutes a major part of the relevant market.

In addition to the above explanations, CB stated that Gazipa^a Airport's current capacity, compared with the Antalya Airport, is not sufficient and its geographical location is not available for the take-off and landing for large airplanes. As the passenger capacity is concerned, there is a difference of 1/20; as the parking capacity is concerned, there is a difference of 1/90 between the Gazipa^a Airport and Antalya Airport.

In the light of the foregoing and by taking into consideration this scale difference between Gazipa^a and Antalya Airports, CB underlines that the vertical integration and barriers for entry, which may occur specifically in Gazipa^a Airport would only have a limited effect on the entire relevant market. Consequently, CB stated that a sole undertaking to provide both terminal management and the ground handling services, will not constitute a serious restriction on market competition.

The CB, also examined the possible risk of coordination between TAV and HAVA^a (the joint venture company established by TAV and Park Group). As only one of the parent companies- TAV continues acting on the same market with the joint venture company and the other parent company - Park Group does not have any activities within the relevant market CB stated that this situation will not constitute a competition coordination of the independent undertakings in the scope of the Article 4 of the Competition Act.

Although, we acknowledge that the relevant markets are regulated by the abovementioned authorities, in its Iskenderun Port decision (dated 20 October 2005 and n° 05-70/967-261), the CB has decided otherwise. The CB has considered that Iskenderun Port (general cargo) and Mersin Port (mainly container) are in the same product and geographical market and did not approve that the operator of Mersin Port operates also Iskenderun Port, in order not to strength the dominant position of Mersin Port's operator in this market.

[1] Communiqué n° 1998/4, Article 3 with the title of "Acquisitions via Privatization Subject to Pre-notification" provides that prior to announcement of the tender conditions in case where the market share of undertaking to be privatized exceeds 20% or where the turnover of the same undertaking exceeds 20.000.000 NTL or even though the aforesaid limits are not exceeded, where the undertaking to be privatized does have judicial or de facto privileges, the opinion of the Competition Board should be obtained. This opinion will be taken as the basis in the preparation of the tender documents.

[2] Same Communiqué Article 5 with the title of "Acquisitions via Privatization Subject to Notification" disposes that following the tender, the authorization of the Competition Board must be obtained where the acquiring parties' total market share in the relevant product market exceeds 25% or where the acquiring parties' turnover exceeds 25.000.000 NTL.

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