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THE COMPETITION INFRINGEMENTS IN LINER MARITIME TRANSPORT: ANANALYSIS BASED ON THE EU AND TURKEY*

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ABSTRACT

This article aims to reveal the competition issues in maritime transport and the harmonization of the arrangements between the EU and Turkey. The harmonization process is examined by comparing the relevant provisions in competition law, namely Article 101 and 102 in Treaty on the Functioning of the European Union(TFEU) and in Article 4 and 6 in the Law on the Protection of Competition No. 4054. The impacts of cartel infringement and abuse of a dominant position in the liner maritime transport is evaluated.

Keywords: *Abuse of a Dominant Position, Cartel, Maritime Transport*

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TARİFELİ DENİZYOLU TAŞIMACILIĞINDA REKABET HUKUKU İHLALLERİ: AVRUPA BİRLİĞİ VETÜRKİYE ÜZERİNE BİR İNCELEME

ÖZ

Bu çalışmanın amacı rekabet ihlallerinin denizyolu taşımacılığındaki görünümlerini ve Avrupa Birliği ile Türkiye'nin rekabet hukukuna ilişkin yasal düzenlemelerinin uyumlaştırılmasını ortaya koymaktır. Avrupa Birliği'nin İşleyişine İlişkin Anlaşma'nın 101 ve 102 maddeleri ile Rekabetin Korunması Hakkında Kanun'un 4 ve 6 maddeleri karşılaştırmalı olarak ele alınarak uyumlaştırma süreci incelenmektedir. Firmalar arasındaki ortak anlaşmaların, eylemlerin ile hakim durumun kötüye kullanımının tarifeli denizyolu taşımacılığındaki etkileri değerlendirilmiştir.

Anahtar Kelimeler: *Durumun Kötüye Kullanılması, Kartel, Denizyolu Taşımacılığı*

1. THE NOTION OF COMPETITION IN LINER SHIPPING INDUSTRY

The competition law regulates various industries with an objective of underpinning and preserving the process of competition. Firstly, any businesses have to enter the marketplace without facing the obstacles; also, any firm is able to remove freely from the market. Secondly, the elimination of any practices which are restricting, distorting, or preventing competition between thecompetent as it is harmfulness for the workable competition. Moreover, observing the dominant firm's behaviors in the marketplace is essential to determine the potential abusive impacts.

The preamble of the Law on the Protection of Competition No. 4054 illustrates that the coordination among economic units, determination of supply and demand, price and quality of theproducts or services have to be achieved in the marketplace. The limited resources can be used efficiently and consumer welfare can be increased. Also, the new entrants are able to enter the market freely in accordance with the competition arrangements. Therefore the competitive environment has to be protected and maintained.

The notion of competition can be described as a rivalry between the firms with the aim of providing benefit to the consumers (Whish, 2008: 3). It refers to a marketplace in which the sellers and buyers come together by considering their interests in the market (Lorenz, 2013: 3).

From the maritime transport perspective, the carriers which provide the carriage service to their customers desire to reduce the logistics costs as much as possible, while increasing the carriage capacity. On the other hand, the ultimate customers (shipper) expect a quality in the carriage with relatively small prices as compared to other firms that provide same service in the marketplace. (Najafi and Zolfagharinia, 2021: 2).

The competition between the carriers in the maritime transport marketplace requires various strategies such as lowering the prices, decreasing the costs of the services or market allocation. Price can be lowered in accordance with the buyers and sellers transaction. The freight rates indicate the supply and demand in the maritime transport. The changes of buyers' response to the freight rates depict the price elasticity. In recession sessions when many vessels are laid up the price tend to be elastic; whereas if all vessels are in service the price will be inelastic (Akman Bıyık and Tanyeri, 2018: 131).

The costs of maritime transport can be evaluated in two types: fixed costs and variable costs. The fix costs is stable without being affected whether the vessel is on voyage or not. However, the voyage costs emerge when the ship is on activity and it depends on each specific route. In other words,the distance crossed, cargo handling operations, the possible need of passing some channels are calculated as voyage costs and these costs can be decreased (Polo, 2012: 21). Also, the carriers can form cartels through the market allocation in line with the level of demand (Pirrong, 1992: 102). The new routes in marine trade which shorten the distance between the port of departure to the port of destination are able to change the demand (Sjostrom, 2009: 5). By doing so, the customers or territories can be shared among the competitors in the marketplace.

In maritime transport, forming an alliance is a way for carriers to protect their profits. The aimof such alliances is to achieve economies of scale and wider service coverage (Liu and Wang, 2019: 334). However, the cooperation and coordination between the firms that create synergies through the strategic alliances (Cui et al. 2018: 3117) have to be differentiated from the existence of a cartel. In the former, the alliances allow to increase efficiency for the customers; whereas the latteraims to increase the firms' profits disregarding the customers' benefits.

There are two types of alliances namely strategic (horizontal) and global alliances. Strategic (horizontal) alliances aim at cooperation in the employment and utilization of ships. The type/size of ship, sailing schedules, use of joint terminals and container co-ordination in particular

routes can be achieved by alliances which enable to efficient marine transport (Panayides and Wiedmer, 2011: 26). However, the alliances do not cover joint sales, marketing or price fixing, joint ownership of assets, the sharing of profits/losses and joint management. The global alliances is created between carriers whose vessels are on the same route with different schedules. In other words, the collaboration between the carriers promote to fulfill the demand on specific routes (Panayides and Wiedmer, 2011: 26).

The notion of dominance can be described as a capability of a firm to affect the rival's economic decisions and strategies in the marketplace. However, this dominance does not *per se* illegal under the competition law. The abusive behavior of such firm has to be determined whether there is an infringement of competition rules. The dominance in the maritime service is changeable regarding that some ports share their innovative methods and other competencies with each other through the conference system in order to reduce the transport and logistics costs (Clarke, 1997: 18).

2. COMPETITION LEGISLATION OF THE EU

The grounds of the competition can be founded in the Rome Treaty (Amato, 1997: 43). The basis of the European competition policy is identified in the Treaty through the Article 81 and 82 (currently Articles 101 and 102 in TFEU) by emphasizing the elimination of restrictive agreementsand the prevention of abusive practices of the dominant firms respectively.

Before the late 2000s, the cartel policy of the Union illustrated in three main steps (Bartalevich, 2017: 96). Firstly, the Directorate General IV starts prosecution against the potential cartel members in the case of there is a suspicion of infringement Article 81 of the EC Treaty. Secondly, the Commission inflicts administrative punishments on the firms when the cartel presenceis proved. Lastly, the members of a cartel are able to submit an appeal to the Court of First Instance.The changes in the cartel procedure started through the encourage of private antitrust enforcement. The private individuals started to file a case if there was a suspected cartel membership. The Commission intended to stimulate the damage claims for breaches of cartel arrangements. By doing so, not only the better enforcement of competition rules is ensured but also the loss recovery for consumers and companies can be achieved (Marra and Sarra, 2009: 116).

In the late 2000s, the application of cartel policy within the Union remained the same in general terms; however, the individuals are encouraged to challenge the cartel issues behind the courts by launching legal proceedings against the suspected companies in order to demand their losses which derive from the cartel agreement (Bartalevich, 2017: 97). Even the Commission showed its intention to eliminate competition infringements in a more effective manner, the reality did not meet this expectation because of the high legal service fees, lengthiness of the legal procedures, and the difficulty to prove the actual losses (Bartalevich, 2017: 97). Also, there was a change of the institutions, namely the Directorate General for Competition (DG COMP) and the General Court (Craig and de Búrca, 2015: 59) replaced their predecessors respectively (Bartalevich, 2017: 96).

On the national level, the application of cartel policy requires that the shared competence between the Commission and the National Competition Authorities (NCA) is essential (Bartalevich,2017: 96). Each member state design their domestic legal system by granting the courts a jurisdictionon the application of competition law.

Article 101 TFEU prohibits (*per se*) the restrictive agreements between the market operators in the same economic level (*horizontal agreement*) and in different economic level (*vertical agreement*). The decisions by associations of undertakings and concerted practices are also prohibited. The agreement breaches the competition if it has an appreciable impact on the trade between member states of EU; also, if it has an object or effect on prevention, restriction or distortion of competition. In line with the Article 101/3 TFEU, some restrictive agreements can be deemed as an exemption for the competition breaches if such agreements generate economic benefits. In other words, the benefits of an agreement are counterbalance the negative impacts in the marketplace to take an exemption.

Article 101/3 TFEU requires four cumulative conditions to be met. Firstly, the production or distribution of goods have to be improved or contributed to promoting technical or economic progress. Secondly, consumers must receive a fair share of benefits. Thirdly, the restrictions must be crucial to the attainment of these objectives. Lastly, the agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. Today the cartel enforcement on the national level is conducted in conjunction with the decentralization process as the NCAs are under the obligation to apply Article 101 TFEU in harmony with their national competition laws.

According to the dominance-based approach, dominance is defined by the Commission regarding the volume of the market share of a firm. Hereunder, the firms which hold at least 40% ofthe overall market share were deemed dominant. The effects-based approach is applicable today andstates that the dominance of a firm cannot be per se illegal under the competition law; however, there is a potential to foreclosure the market to its rivals which is considered as an infringement of free competition (Bartalevich, 2017: 102).

3. COMPETITION LEGISLATION OF TURKEY

The fairly-working competition in the Turkish economy has started to gain importance in the perspective of aiming full membership of the European Union (Türkkan, 2009: 19). The association agreement between Turkey and EU, envisages the harmonization and implementation of whole national law with the EU level as well as the competition policy (Mumcu and Zenginobuz, 2001).

The legal basis of the Turkish competition regime has emerged with the adoption of Law on the Protection of Competition and the establishment of Turkish Competition Authority respectively (Aydın, 2012: 303). The Law no 4054 was come into force in 7 December 1994; Article 20 requires that the Competition Authority has to be established. In line with the related provision the Competition Authority was established in 13 December 1994 and had started to operate in 1997. The Competition Authority established as a regulatory organ to assure the implementation of competitionrules and business affairs by the actors of the marketplace ultimately in favor of the consumers (İşmen, 2003).

The Turkish Competition Law is arranged in the light of EU acquis and case law (Odman Boztosun, 2009: 72). The purpose of the Turkish competition policy mainly covers the harmonization of economic rights and freedoms with global standards as well as imposing sanctions to the competition infringements. As the Turkish Constitution envisages the elimination of monopolistic powers and cartels which threatens the effective-working competition environment, these objects canbe achieved by the competition rules. In this case, the Competition Authority is obliged to take necessary measures and impose sanctions in order to prevent the incompatibilities against the competition conditions. Moreover, the dominant position is determined the economic power of the company in the marketplace which are able to affect their rivals' economic decisions and strategies.

4. EU COMPETITION LAW AND LINER MARITIME TRANSPORT

The reform of competition policies, especially the modernization of antitrust rules, has always been important in the EU. In this sense, it is inevitably necessary to regulate the maritime sector in conjunction with the Union's policies. Until today, many changes could be seen in the EU's competition policy through the regulations, decisions and case law.

Article 101 TFEU prohibits any agreement, concerted practice or decisions between the undertakings which aim to restrict, distort or prevent competition. However, Article 101/3 TFEU makes an exemption for that general rule. In order to apply the exemption provision some objectives have to be met. First, the agreement, decision or concerted practice must be able to contribute the production or distribution methods of goods. Second, the technical or economic progress have to be encouraged and the consumers have to be benefited from such improvements. There is not any restriction imposed to the undertakings to attain these objectives and is not any possibility to eliminate competition.

Article 102 TFEU prevents the abuse of a dominant position within the whole or substantial part of an integral market. The types of abusive behaviors are listed in the related provision; however, the list is not exhaustive. Firstly, the dominant undertaking may impose unfair prices or trading conditions by direct or indirect way. Secondly, the limitation in production, market or technical development to the detriment of the customers deemed as an abusive behavior. Thirdly, discrimination between the trading parties by applying dissimilar requirements to the equivalent transactions may be an infringement. Lastly, making additional requirements for the conclusion of contracts which have not connection with the subject of main contract deemed as illegal.

Regulation 4056/86 was being central in the marine sector by monitoring the behaviors of theplayers and imposing effective limitations to their activities which were incompatible with the objectives of competition. Previously the maritime sector was regulated by the initiatives of the players such as the shippers and carriers (Liu, 2009: 10); however, this was changed with the adoptionof Regulation 4056/86.

The Regulation mainly examines the liner conferences between the shipping companies to prevent the competition incompatibilities. The liner (shipping) conference is an agreement between at least two companies aiming to provide scheduled cargo carriage or passenger

service. The shipping service of goods or passengers is conducted in a particular trade route under the standard conditions which are agreed by the contracting parties. The crucial point is that the common terms which are accepted by the parties may be harmful to the competitive environment (Munari, 2009: 5).

For instance, firms can lower the carriage prices following the liner conference; consequently, other companies apart from the contracting parties of shipping conference have no longer any reason to conduct their transport services (Case No IV/34.446). Additionally, the contracting parties may refuse to supply services by decreasing the carrying capacity to the detriment of their competitors.

Regulation 4056/86 mainly deals with such issues as mentioned above with the objective of protecting the competitive environment in the maritime sector. However, the shipping companies which are the parties of a liner conference have some doubts about the interpretation of Regulation; they tend to interpret the Regulation as broad as possible to obtain an excuse for their misconduct through the block exemption provisions. In that regard, the TAA (Case No IV/34.446), FEFC (Case No IV/33.218), and TACA (Case No IV/35.134) decisions are helpful examples to illustrate the different perceptions of the Commission, the Courts and the parties of the shipping conferences.

The common ground of all three cases is that they entirely concern about the application of Regulation 4056/86 to maritime competition issues. The matters of price fixing and carrying capacity are allowed by Article 3 of Regulation 4056/86. Even though the horizontal price fixing and limitation of output deemed as a breach of competition, they are acceptable under the scope of Article 3 as long as provide reliable and scheduled transport services (Fitzgerald, 2002: 41).

In TAA, TACA, and FEFC cases, the collective price fixing for the domestic transport operations was founded as a competition breach by the Commission whereas the parties of that liner conferences expected to grant an exemption for their conduct. The Commission argued that Article 1 of Regulation 4056/86 is applicable to international maritime services rather than the inland transport operations; therefore, the Commission rejected the applicants' claims in cases mentioned above relying on the scope of Regulation. In other words, the Commission stated that the exemptions couldnot be interpreted broadly than the extent of Regulation.

Moreover, the capacity management on the ships was examined in TAA and TACA cases. The members of TAA decided not to use the ship

capacity fully to increase the freight rates. If the supply is limited by using less than the whole capacity of a ship the prices can be raised. The Commission found that the limitation of output by reducing the available capacity of a vessel incompatible with Article 3 of Regulation 4056/86. According to the Commission's view, the capacity withdrawals can only be acceptable to deal with the short-term fluctuation by reducing the costs (Fitzgerald, 2003: 57). In this case, transport users endure the losses of the firms by paying relatively high amounts of money to the transport services. In TACA case, the Commission also affirmed that the capacity withdrawals could be an exemption of competition in the low seasons such as Christmasand New Year.

The preamble of Regulation 4056/86 emphasizes that the conditions in Article 85(3) of the EC Treaty have to be satisfied in order to make an exemption to companies under the scope of that Regulation (Pozdnakova, 2008: 121). Although the liner conferences between the shipping companiesaim to provide and maintain the stability in shipping services as well as encourage the reliable services, it does not seem necessary to make a block or individual exceptions to all shipping agreements (Fitzgerald, 2002: 42-43).

The objectives of shipping conferences cannot prevail over the purposes of competition rules. The competition infringements such as horizontal price fixing or capacity withdrawal have to be indispensable to accomplish the objective of stability; thus the exemptions can be granted to the shipping companies. The indispensability of these breaches can be observed by balancing the adverse effects of the infringements and possible positive effects on the competitive transport environment (Monti, 2003: 6).

The purpose of the Commission is to evaluate each case by taking into account the specific situations and apply the most convenient rules to them. The Court of First Instance emphasized the relation between Regulation 4056/86 and the related provisions of the EC Treaty. Because of the factthat regulation is secondary legislation, it has to be interpreted in conjunction with the Articles 85 and86 of the EC Treaty.

Today, the common grounds of maritime transport and competition in EU level are arranged by Regulation 906/2009. This regulation illustrates the application of Article 81/3 (today 101/3 TFEU) to the agreements, decisions and concerted practices between the liner shipping companies. If there is a consortium agreement between the shipping companies on the grounds of joint operationswhich require a high level of investment, then it falls under the scope of the Regulation. The legal form

of such agreement is not as important as the underlying economic reality.

The Regulation provides a block exemption and sets the standards for the shipping companiesto benefit from privileges if the conditions in Article 101/3 have met. The determination of the consortia between the shipping companies whether it falls under the scope of Article 101 requires to evaluate the market share thresholds as well as the marketplace. In other words, the features of markets with small volumes carried or the market share threshold have to be considered. The market share threshold is exceeded as a result of the existence in the consortia of a small carrier. In some situations the consortium cannot benefit from the exemptions due to there is no operational efficiencysuch as the unjustified limitation of capacity, fixing the freight rates or market allocation (Commission Regulation No 906/2009). By another saying, the hardcore restraints on the competition have to be excluded from the scope of the Regulation; hence, the agreements which contain restrictions have to be indispensable for the attainment of the competition objectives.

4.1. The Application of Article 101 TFEU to Liner Maritime Transport Services

The Commission concerns with the enforcement of Article 101 to the maritime transport issues, therefore, many legal arrangements are published such as regulations and guidelines. In this sense, the Commission observes the cooperation agreements between liner shipping companies whether the agreement breaches the competition by its object. The liner conferences in maritime transport emerged as an attempt of the shipping companies which desire to protect their economic strength in the transport sector against the global trade. Therefore, the rationale behind the adoption of Regulation 4056/86 is to arrange the maritime transport in line with the competition rules (European Commission, 2012: 2).

The Commission does not allow the information exchange as the shared data has the potential to distort effective competition. The market structure, as well as the characteristics of the information,have to be taken into account (Evans, 2005: 6) assessing whether the information exchange can be caught by Article 101(1) TFEU. Hence, the exchange of information related to the investment capacity and the financial situation of the firms are prohibited by the Commission (European Commission, 2012: 2).

The liner conferences refer to a group of carriers that provide liner maritime transport service in a specific route. Through the liner conferences, the carriers are able to conduct carriage in line witha written

agreement or a concurrence on main elements such as price, frequency of voyage (Kutoğlu,2007: 11). The prevention of tacit collusion between the firms which are the signatories of the liner conferences is another objective of the Commission while the collusion infringes the antitrust rules as indicated in Article 101 TFEU. The price fixing or sharing the market or consumers are able to infringe the competition (Orhon, 2019: 101). Moreover, Regulation 4056/86 eliminates the possible anticompetitive practices such as price fixing and capacity management through the liner conferences which are based on mutual cooperation between the signatory companies. The liner companies can benefit from an exemption if they are member of a conference; so that the individual carrier cannot able to enjoy privileges (Akkaya, 2019: 153).

Consortium refers as an operational cooperation between the carriers and it has emerged through the containerization process in the marketplace. It aims to meet the demand of carriage that cannot be satisfied in a specific time period (Orhon, 2019: 124). Consortium is a type of joint ventureand is differentiated from the liner conferences on the basis of co-invest procedure, rationalizing the carriage activities for its members and risk sharing (Kutoğlu, 2007: 18). The members of a consortium are not correlate with organizations unlike the liner conferences (Orhon, 2019: 124).

The cooperation agreements and their possible effects on the competitive environment are examined under Regulation 906/2009 in a more comprehensive manner. The consortia have deemed as a positive form of cooperation between the companies as long as it does not affect the competition adversely, ultimately serving the enforcement of the competition on its merits. The common use of port terminals and related services, co-marketing can be exemptions for the consortiums. The rationale behind the exemption is to increase the carriage performance through the cooperation and provide quality services with lower prices to the customers as well (Orhon, 2019: 128).

The consortium between the shipping companies is identified in the Regulation (Commission Regulation (EC) No 906/2009) as a way to improve productivity and quality in liner maritime transport. Through the consortia the operation of vessels as well as the utilization of port facilities can be done in an efficient manner; thus, economies of scale can be achieved. The capacity of the vessels can be operated as efficient as possible and it helps to encourage the technical progress. Even there are some fluctuations in the marketplace regarding the demand and supply side, the capacity adjustments can be made by the consortium.

4.2. The Application of Article 102 TFEU to Liner Maritime Transport Services

The application of Article 102 is firstly required the definition of the relevant market which is the core factor for analyzing the abuse of a dominant position. The abusive practices of a dominant firm can only make sense concerning a specific market (Baatz, 2014: 515). Therefore, the description of the geographic market and the product market is essential. The market definition in maritime sector includes the shipping industry, port industry, crew market and logistic support businesses that involved in the transport chain (Popa et al. 2017: 109). The determination of the dominance may change regarding the relevant market analysis. For instance, under one definition, a port may hold a substantial part of the market power whereas another market description may alter the dominance position of this port (AT. 35388 Irish Continental Group v./ CCI Morlaix (Roscoff)).

The relevant geographic market can be described as a bounded area in which the competition conditions are almost homogenous. In other words, the competition conditions emerge as an indicator to differentiate the geographic market and its neighbor areas. The geographic market includes the demand and supply of a service in which the market conditions of competition are sufficiently similar (Guidelines on the application of Article 81 of the EC Treaty to maritime transport services 2008/C 245/02). In other words, the boundaries for the geographic market can draw where the competition conditions in neighboring areas are appreciably different. From the maritime sector perspective, the geographic market includes the ports as well as the transport services between the particular ports or countries (Baatz, 2014: 516). In other words, the geographic market covers the carriage of products from the lading port to the port of destination. Even the maritime transport is carried between the point of origin and point of destination the real point of origin and destination may be different in some cases due to the ship's route and each case has to be evaluated distinctly. Moreover, the various transport methods by combining the sea, rail or road requires a separate analysis to detect the relevantmarket. (Anderson and Renault, 2008: 32).

The relevant product market is explained by the Commission and the European Courts by mainly focusing on the notion of interchangeability of one product or service with another. The interchangeability means that there is high cross-elasticity on the products or services (Baatz, 2014: 517). The consumers have to perceive the service substitutable on the grounds of service characteristics, price

and intended use (Guidelines on the application of Article 81 of the EC Treaty to maritime transport services 2008/C 245/02). The relevant product market for services is capable of satisfying constant needs of customers and the level of interchangeability with other services has to be a limited extend (Case 322/81, Michelin v Commission). In other words, the definition of relevant product market for services requires that the service cannot be substitutable for other (Anderson and Renault, 2008: 27).

The second step after determining the relevant market is the assessment of the dominant position. Article 102 TFEU mainly describes the dominant position as an economic strength of an undertaking. The dominant company enables to take economic decisions disregarding its competitors which may destroy and restrict the competition. The market share of an undertaking is the primary indicator to assess the dominance (Strong et al. 2000: 209).

If a company owns at least 40% of the whole market shares, it most likely has a dominant position. The lower thresholds also illustrate the dominance, particularly in the fragmented markets. Therefore, the market share of a particular company has to be compared with the nearest competitor's market power in order to determine dominance, as there are no specific market share thresholds that explicitly illustrates the dominant position (Office for Competition and Consumers' Protection, 2003: 12)

Besides the market share, the undertakings financial and technical resources have to be taken into account whether the sources are sufficient for the company to maintain control of the marketplace (Baatz, 2014: 518). The abusive practices which have the purpose of eliminating the principal rivals of a dominant undertaking are regarded as a competition infringement. For instance, the predatory pricing which is conducted by the dominant undertaking by offering lower freight rates in the transport sector is anti-competitive behavior (Baatz, 2014: 519). Moreover, the discriminatory practices of a dominant undertaking have to be eliminated as the firms which are equivalent to each other cannot enjoy the same level of fair conditions in the marketplace (Case C-18/93).

The main reason behind the prevention of competition infringements which are particularly indicated in Article 1012 TFEU is to protect the relevant market from the adverse effects of the abusive practices of the dominant firms. The anticompetitive behaviors may negatively affect the entire market or the considerable part of it. Therefore, Article 102 is allocated to ensure the effective competition as well as the undistorted market structure.

5. TURKISH COMPETITION LAW AND LINER MARITIME TRANSPORT

Turkish Commercial Law can be admitted as the main regulation which deals with the maritime law in Turkey. In Turkey, there are no specific competition rules which are allocated to arrange the maritime sector (Kutoğlu, 2007), it can be stated that the competition breaches related tothe maritime affairs can be resolved by the related provisions in Turkish Competition Law which are in harmony with the EU arrangements, as well as the case decisions of the Competition Authority.

Even though, various rules and codes have existed with the aim of arranging the specific areas related to the maritime law, these sources regulate the matters of maritime law in a narrower extent (Bilgehan et al. 2015: 52) compared to the related sections of Turkish Commercial Law.

The behaviors of the firms in the maritime transport sector are envisaged by the competition rules which ultimately aim to protect the level of competitiveness in the marketplace. Through the achievement of a fair competitive environment, the quality of shipping service is increased, and the marine transport is conducted with reasonable prices (Kadıoğlu, 2010: 248).

5.1. The Application of Article 4 Act no 4054 to Liner Maritime Transport Services

The anticompetitive behaviors through the agreements, decisions and concerted practices between the undertakings are eliminated under the scope of Article 4 on Law no 4054. The prevention,restriction or distortion of competition through the direct or indirect impact of the agreements, decisions, and concerted practices are prohibited. The breach is occurred when there is an object of the restriction of competition; also, there is a current or possible impact on the distortion of competition.This provision mainly deals with the cartel infringements by aiming the similar objectives with referred Article 101 TFEU. The Turkish Competition Authority is competent to monitor the cartel infringements, and in case there is a breach of competition the Competition Board is authorized to conduct an investigation against the members of a cartel (Campbell and McMillan, 2019: 268).

The actual and likely adverse effects of a cartel agreement such as the distortion or restriction of a competitive environment are envisaged extensively by the Competition Board. Conversely, to Article 101 TFEU,

the application of the de minimis doctrine is excluded under the Turkish Competition Law (Campbell and McMillan, 2019: 269). In other words, there is no exemption for the cartel agreements regarding whether the agreement has significant negative effects on most of the market as all types of such deals infringe the competition in an actual or potential way.

The firms, even they conduct their service in the same marketplace, may decide to perform different applications for their partnerships on the basis of price, payment, instalment, reduction or terms of delivery. This situation emerges as a part of freedom of contract and customs of trade and cannot be deemed illegal under the competition law (Ateş, 2014: 22). The breach occurs when a company provide such exemptions to the detriment of its components in the marketplace. If there is a coordination between the carriers and that allotment is not harmful for the other ones to compete in the marketplace; then, the relationship between the firms which based on a custom trade has to be respected. The compliance of the marine trade matters with the competition rules is essential to provide an effective marine trade. The effectiveness in trade contributes to the national economic growth in the long run (Gürkaynak, 2018: 180).

It can be stated that the Competition Board's decisions (Decision no. 05-18/201-65 Europe Mediterranian) are in line with the EU arrangements. It (Decision no. 06-79/1032/298 Gelibolu) states that if more than one undertaking operates in the same route, then they tend to act in accordance with the others even they are rivals in the marketplace.

5.2. The Application of Article 6 Act no 4054 to Liner Maritime Transport Services

The abusive practices by the dominant undertakings in a marketplace are envisaged under Article 6 on Turkish Competition Law. The existence of abuse of a dominant position is required to apply Article 6. Contrary to Article 4, the undertakings in question do not necessarily conduct their activities through the agreements or the concerted practices with the other companies (Aktaş, 2011). The economic behaviors of the dominant firms and the effects of the activities to the marketplace are sufficient to determine the competition breaches.

The economic activities of the dominant firms have to be observed cautiously as the firms which hold different levels of market power can be perceived differently under the notion of competition. In other words, some of the firms' activities are not regarded as a competition infringement whereas the behaviors of the firms which have a dominance

can be caught under the scope of Article 6. Therefore, it is expected that the undertakings which have significant market powerenvisage their economic activities whether they lead to an aggressive competition to the detriment of their rivals (Mateus and Moreira, 2005: 306). Having a dominant position is not merely considered as a competition breach, due to it is an expected occurrence if a company conduct its activities efficient and effective manner. The breach occurs if the dominant position used against the current or potential rivals to provide service in the same marketplace.

Due to Turkish competition law does not specifically arrange the breaches in maritime transport, the general rules in Article 6 Act no 4054 can be applied in line with the referred provisionArticle 102 TFEU. Also, the Competition Board's decisions can be a guidance for the determinationof dominance and the abusive behaviors of a dominant firm in the marketplace.

6. CONCLUSION

Many regulations are arranged to determine and prevent competition infringements in maritime transport both at the EU level and in Turkey. Both the cartel infringement and abuse of a dominant position are prohibited under Articles 101 and 102 in TFEU and in Articles 4 and 6 in Act No. 4054. However, the competition breaches in maritime transport are not specifically determined under Turkish law. Such lack of specific arrangements regarding maritime transport can be filled by the EU legal arrangements in line with the harmonization process. Due to Turkey being a candidate state to become a member of the EU, harmonizing the rules in maritime transport is crucial to provide an effective and efficient maritime transport mechanism.

The given compensations can observe the effect on the application of competition arrangements to the firms in breach considering the decision of the Competition Authorities and theCompetition Board. The compensations can dissuade the firms from infringing the competition rules without heavily damaging their economic existence in the marketplace and their reputation in the eyes of the consumers.

The analysis of competition infringements in maritime transport requires differentiation of similar notions such as a cartel's existence or the cooperation between the companies. Moreover, theport clusters which ultimately aim for consumer benefit have to be regarded separately from the abuse of a dominant position. The determination of these notions under each competition breach necessitates focusing on the consumer benefit and the overall impact on the marketplace.

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