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TURKISH COMPETITION BOARD FINES DOMINANT CHLOR-ALKALI PRODUCER FOR PREDATORY PRICING

The Turkish Competition Board (the "**Board**") has recently published its reasoned decision[1] imposing an administrative fine of TRY 164,484,083.28 on Koruma Klor Alkali Sanayi ve Ticaret Anonim Şirketi ("**Koruma Klor**"). The Board found that Koruma Klor abused its dominant position by engaging in predatory pricing in the hydrochloric acid, sodium hypochlorite and ferric chloride markets, in breach of Article 6 of Law No. 4054 on the Protection of Competition (the "**Competition Law**").

The Board found that Koruma Klor's below-cost sales targeted new entrants, particularly in specific regions, customer accounts and public tenders. Its assessment combined detailed price-cost comparisons with evidence of an exclusionary strategy. It also rejected the argument that the profitability of Koruma Klor's overall product portfolio ruled out a finding of predation.

1. Background



The Board opened the investigation on 12 June 2024, after an ex officio preliminary investigation into allegedly exclusionary conduct in the chlor-alkali sector. Two new players entered the market in the last quarter of 2023, and Koruma Klor cut its prices substantially after they entered. The investigation focused on Koruma Klor's pricing after these entries and also covered its pricing in ferric chloride tenders.

The Board defined separate product markets for hydrochloric acid, sodium hypochlorite and ferric chloride, with a national geographic market for each. It found that Koruma Klor held a dominant position in all three product markets, based on its persistently high market shares, geographically dispersed production facilities, group logistics capabilities and financial strength. The Board identified significant investment and permitting requirements, incumbent know-how and limited countervailing buyer power as further factors supporting this conclusion.

[1] The Board's decision dated 25 December 2025 and numbered 25-49/1205-680.

2. The Board's Predatory Pricing Analysis



The Board relied on principles established in EU and Turkish predatory pricing cases, including *AKZO*[2], *Tetra Pak II*[3], *Wanadoo*[4], *Qualcomm*[5] and *Intel*[6]. It treated prices below the relevant cost benchmark as evidence of sacrifice. It assessed prices above that benchmark together with other evidence of an exclusionary strategy. The Board also reiterated that proof of possible recoupment is not required to establish predatory pricing.

For hydrochloric acid and sodium hypochlorite, the Board compared prices with average avoidable cost ("**AAC**") and with a broader cost measure used as a proxy for average total cost ("**ATC**"), based on Koruma Klor's own accounting records. The analysis was carried out at transaction level and examined prices by customer and province. Intra-group and export sales were excluded from the analysis. This granular approach allowed the Board to identify losses linked to specific customers and regions that overall profitability figures did not reveal.

Koruma Klor argued that the production costs of hydrochloric acid and sodium hypochlorite should not be analyzed separately because two products are made through an integrated production process. The Board rejected this argument. It held that profitability at portfolio level did not answer whether Koruma Klor had sacrificed profits on specific products, customers or regions. The Board therefore kept to a product-specific assessment rather than a portfolio-wide analysis.

The Board found sustained below-cost pricing throughout 2024. In hydrochloric acid, sales below AAC accounted for 40.32% of the sales examined. The findings for the sodium hypochlorite market were similar. The Board also identified cases where one of the new entrants stopped supplying a customer after Koruma Klor cut its prices to that specific customer. The key question was therefore not whether prices were below cost across the whole country, but whether the pricing strategy was capable of limiting the new entrants' expansion.

The Board also analyzed Koruma Klor's pricing in public tenders for ferric chloride. In 2024, Koruma Klor won three tenders held by the water and sewerage authorities of certain municipalities. Its bids on those tenders were below production cost, even before taking into account transport, marketing or administrative expenses or any expected cost increases over the supply period. The Board gave particular weight to the fact that the same competitor took part in each tender.

Koruma Klor further argued that recoupment was unlikely given the characteristics of the sector. The Board reiterated that neither the actual exit of competitors nor the recovery of losses through later prices increased is required to establish predatory pricing. The relevant question was whether the below-cost pricing was capable of producing anticompetitive foreclosure.

3. Exclusionary Intent

The Board acknowledged that aggressive price competition, including a dominant undertaking's efforts to retain customers, is not unlawful in itself. However, it read the pricing analysis together with internal communications that suggested exclusionary intent, and it checked those communications against actual

2 Case C-62/86, AKZO Chemie BV v. Commission [1991],
3 Case C – 333/94, Tetra Pak International SA v. Commission, [1996],
4 T-340/03, France Télécom SA v. Commission,
5 Case AT.39711 – Qualcomm.
6 Intel v. Commission (COMP/37990).

transactions. In one instance, the underlying cost data confirmed a sales representative's statement that Koruma Klor was selling at a loss.

The Board also examined an exclusive purchasing arrangement between Koruma Klor and the second-largest customer of one of the new entrants. The Board did not treat this arrangement as separate abuse. It did, however, treat it further evidence supporting of a broader exclusionary strategy.

4. Administrative Fine

The Board applied the fining regulation published on 27 December 2024, having concluded that it was more favourable to Koruma Klor than the previous regime. The infringement was treated as covering 2024. No increase for duration was applied because the infringement did not last longer than one year.

The Board also distinguished this conduct from the conduct that examined in a parallel Article 4 proceeding: the latter conduct in that proceeding was aimed at increasing margins in municipal tenders. The Article 6 conduct, by contrast, involved giving up profits in order to exclude competitors. Because the two infringements pursed different objectives, the Board considered it appropriate ot impose separate fines.

5. Conclusion

The decision is one of the Board's most detailed predatory pricing assessments to date. A key aspect is its treatment of joint production in the chlor-alkali industry. The Board rejected Koruma Klor's argument that profitability should be assessed as the level of the electrochemical unit ("**ECU**") or the wider product portfolio. It applied a product-specific approach instead. In the Board's view, overall profitability does not rule out the possibility that losses on particular products or transactions are part of an exclusionary strategy.

The decision also confirms that predatory pricing may be established even where below-cost pricing is limited to particular customers, regions or tenders. It is also not necessary to show that competitors have left the market or that the dominant undertaking has later recovered its losses. For dominant suppliers, the decision shows why targeted discounts and tender bids should be assessed against the costs of the relevant product or transaction, rather than against overall portfolio profitability alone.

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