Remedies in Turkcell Case

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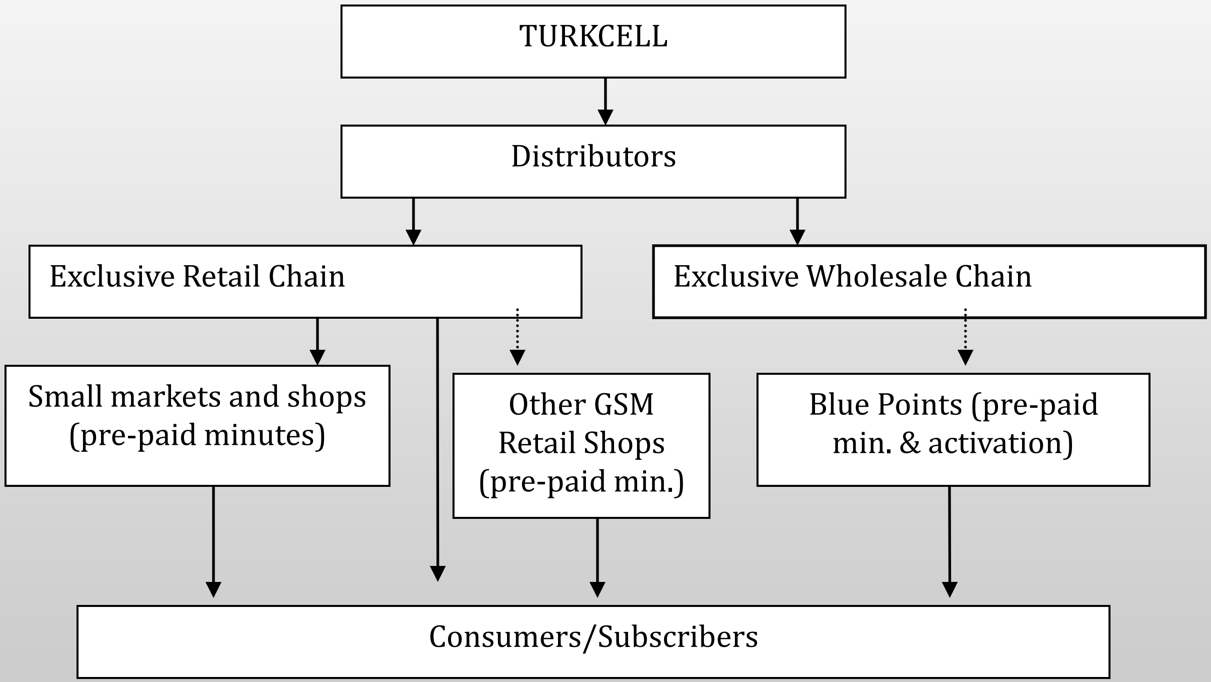
The Case in Brief

- **Allegations**
  - Turkcell is trying to create *de-facto* exclusivity in the non-exclusive retail chain called “Blue Points”.
  - Turkcell’s conduct prevents Blue Points from selling competitors’ (Avea and Vodafone) prepaid minutes and making subscriber activations for rival operators.
- **The relevant market and Turkcell’s position**
- **Facts and theory of harm**
  - Turkcell abused its dominant position by complicating the activities’ of its competitors thereby restricting competition in the market.
  - Blue Point Project (decoration covenants) and on-the-spot inspections (*incentive*)
  - Importance of non-exclusive chain for mobile network operators (*effect*)
  - Importance of Blue Points in non-exclusive chain/Turkcell sales chain (*effect*)
  - Number of competitor pre-paid minutes sold and subscriber activations made in Blue Points (*effect)*
- **Efficiency arguments of Turkcell?**

Turkcell Distribution Channel



Remedies of the Case

- In this case Turkish Competition Board (TCB) imposed three different types of remedies:
  - Prohibitory conduct remedy
  - Affirmative conduct remedy
  - Monetary Penalty

Prohibitory Conduct Remedy

- TCB ordered Turkcell to cease these anti-competitive practices:
  - omitting the decoration clauses from covenants,
  - stopping exerting pressure on Blue Points about placing competitors’ decorations and not selling their products,
  - ceasing *any other* conduct that prevents Blue Points to offer competitors’ products and services.

Affirmative Conduct Remedy

- TCB ordered Turkcell to announce these issues to its distribution and sales channel in an effective way.
  - The purpose was to ensure compliance with the prohibition.
  - *In practice;* Turkcell prepared a document, sent it to its distribution and sales channel and also to Turkish Competition Authority.

Monetary Penalty

- TCB imposed on Turkcell a total amount of 90 million Turkish Liras (approximately $ 50 million)
  - It is the highest amount of penalty ever imposed by the Board.
  - But legal minimum percentage of its turnover possible to impose (0,5%).
    - The actual and potential harm of the conduct was taken into account.
  - Aggravating factors:
    - Since the duration of the conduct was between 1-5 years, initial fine was increased by 50%.
    - Since there was a repetition of the abusive conduct [Article 6(a)], fine was increased by another 50%.
  - No mitigating factors.

Few more words…

- Turkcell case is in line with the case-law because
  - TCB designed prohibitory conduct remedies for all exclusive dealing cases in which it decided that the undertaking concerned abused its dominant position and
  - Also imposed a fine - although the decided percentage of turnover differs.
- It diverges from other exclusive dealing cases since TCB designed an affirmative conduct remedy this time.
- TCB's general approach to remedies in exclusive dealing cases show that prohibitory conduct remedy (and monetary penalty) is regarded as sufficient for stopping abusive conduct, prevent its recurrence and restore competition in the market.
- Two remarks on TCB's general approach to remedies in exclusive dealing (and actually all unilateral) cases:
  - No time limit for remedies.
  - No structural remedies imposed so far (legal uncertainty)