

**TURKEY***(1997)***I. Introduction of Competition Legislation****1. Turkish Competition Law**

1. Turkey's competition law is the "Law No. 4054 on the Protection of Competition" which was approved by the Parliament on December 07, 1994 and entered into force on December 13, 1994. However, it was only as late as the year of 1997 (27.02.1997) when the Competition Board, to be the decision organ of the Competition Authority which is responsible for the enforcement of this Law, was constituted by a decree of Council of Ministers published in the Official Gazette No. 22918 dated February 27, 1997. Following the completion of the organisation within a 8 month period, the Competition Authority started to carry out its duties on October 05, 1997.

2. The purpose set forth in the Act is "to establish a system ensuring the necessary regulation, supervision and the prevention of abuse of dominant position by undertakings and the agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition. In other words, the Act aims to regulate the markets for goods and services in order to maintain a "workable competition" through which free trading, free access to the markets and functioning of an effective competition would be ensured.

**2. Description of the scope of application of the legislation**

3. Article 2 of the Act defines the scope of the enactment. According to Article 2, the Act regulates all agreements, decisions and concerted practices which have as their object or effect the prevention, distortion or restriction of competition amongst any undertakings which either operate in or may affect the markets for goods and services within the territory of Turkey and conduct which are deemed to create a merger or acquisition by which competition in the market would significantly be impeded.

4. The Act applies to all agreements, decisions and concerted practices which actually or potentially affect competition. In other words, not only an actual distortion but also a threat on competition would be within the scope of the Act.

5. Until and unless the Board declares otherwise, all sectors of economy and all undertakings shall be equally treated by this Act.

6. Regardless from the place of operation, as long as the agreement, decision or concerted practice or abuse of dominance or merger or acquisition impair the markets for goods and services within the territory of Turkey, they fall within the scope of the Act.

7. It would be realised from the substantial provisions of the Act that there are no exception as to different sectors of economy or as to different areas or undertakings.

## TURKEY

### **II. Arrangements Contained in the Law**

#### ***1. Description of practices, acts or behaviour subject to control***

8. The prohibited behaviour of the undertakings are stated in Articles 4, 6, and 7.

#### *Cartel agreements*

9. Cartel agreements, decisions and concerted practices which impair competition are prohibited under Article 4. The list given in the second paragraph of Article 4 enumerates the principles. Practices which are not listed may also fall within this provision since the list comprises of the practices which particularly have an impact on competition.

#### *Abuse of dominant position*

10. Article 6 of the Act deals with the abuse of a dominant position. Any abuse, by one or more undertakings acting alone or by means of an agreement or concerted practices of a dominant position in a market for goods and services within the whole territory of the state or in a substantial part of it, is unlawful and prohibited. Article 6 is in no way concerned with how a dominant position is obtained but by only with the relevant conduct of the undertaking concerned which constitutes an abuse.

11. As far as the parallel actions of the undertakings, and concerted practices are concerned, the Act brings a presumption of concerted practices where the parties are deemed to have concluded a concerted practice. They may be freed from liability only if they prove the contrary. Therefore, in cases where a concerted practice of an undertaking is at issue, the burden of proof is upon the undertakings concerned.

#### *Mergers and acquisitions*

12. Article 7 of the Act deals with mergers and acquisitions. Merger of two or more undertakings, or acquisition, except acquisition by inheritance, by an undertaking or by a person, of another undertaking, either by acquisition of all or a part of its assets or securities or other means by which that person or undertaking acquires a controlling power in that undertaking concerned, which would create or strengthen the dominant position of one or more undertakings as a result of which competition would be significantly impeded in a market for goods and services. Under this provision, the Act empowers the Board to determine and publish accordingly, the categories of mergers and acquisitions which, to be considered as legally valid, require a prior notification to the Board. The categories of mergers and acquisitions which require a prior notification, to be considered as legally valid, shall be published by the Competition Board and the thresholds for prohibited mergers and acquisitions are to be determined by the Board.

#### *Exemption*

13. Article 5 brings the possibility of getting an exemption from the application of Article 4, if the agreement, decision or concerted practice concerned meets the requirements stated in paragraphs a, b, c and d which otherwise would be subject to the consequences of Article 4.

14. By this provision on granting exemption either individual or block the Act focuses directly on the challenged restraint's impact on competitive conditions. In other words, a restrictive practice could be justified by virtue of contributing to improved methods of production or distribution or to economic progress.

15. Article 5 of the Act, does not set out any exemption clause for the abuse of dominant position.

### **III. Enforcement of the legislation**

16. The Competition Authority which is established by this Law, which enjoys administrative and financial independence and a public legal personality for the purposes of establishment and improvement of markets for goods and services within free and effective competition and the supervision of enforcement of the Law and also exercise all other duties attributed to itself by the Law. The Authority is independent in carrying out its tasks. No any organ, body or person can give or order directives to affect the final decisions of the Authority.

17. The enforcement of the legislation involves three bodies: A Competition Board, a Directorate and Service Departments.

18. The Competition Board is comprised of eleven members including the Director and the Vice-Director.

### **IV. Changes to competition laws and policies, proposed or adopted**

#### ***1. Summary of new legal provisions of competition law and related legislation***

19. The necessary communiqués foreseen by the law which have rapidly come into force, are as follows:

- Communiqué on the Mergers and Acquisitions which are subject to the permission of the Competition Board (1997/1);
- Communiqué on the Procedures and Principles of the Agreements, Concerted Practices, Decisions of Associations of Undertakings according to Article 10 of the Competition Law (1997/2). That article is related to exemption and negative clearance;
- Communiqué on Group Exemption for Exclusive Distribution Agreements (1997/3);
- Communiqué on Group Exemption for Exclusive Purchasing Agreements (1997/4);
- Communiqué on the Establishment of the Organisation of the Competition Authority (1997/5);
- Communiqué on the Rights and Obligations of Undertakings and Associations of Undertakings which arise from the Law No. 4054 after the establishment of the organisation of the Competition Authority (1997/6);

## TURKEY

- Communiqué on Group Exemption Concerning Motor Vehicle Distribution and Servicing Agreements (1998/3).

### **2. *Government proposals for new legislation***

20. With a view to achieving the economic integration sought by the Customs Union, Turkey's legislation in the field of competition is made compatible with that of the European Union. In this context, Communiqués on block exemption ( such as franchising, technology transfer) are being prepared in line with that of the EU, and expected to be issued shortly.

## **V. Enforcement of competition laws and policies**

### **1. *Action against anticompetitive practices, including agreements and abuses of dominant positions***

#### *a) Summary of activities :*

21. Between 05.11.1997-31.12.1997, out of the total number of 50 applications concerning infringement of competition rules, the Competition Authority completed the initial examinations of 16 cases, where it initiated preliminary investigation for 4 of the cases. The Authority started the investigation procedure for 3 of the cases involving cement manufacturing, media and LPG sectors, after the completion of their preliminary investigations. 1 of them concerning the field of electrical engineering is still under the preliminary investigation process. The remaining 34 of the applications are still under the initial examination process so as to determine whether they fall within the scope of the Law.

### **2. *Mergers and acquisitions***

#### *a) Statistics on number, size and type of mergers notified and/or controlled under competition laws*

22. Out of the total number of 8 notifications received between 05.11.1997-31.12.1997, 5 of the cases have been concluded ( listed below). 3 of them are still under examination.

#### **ET VE BALIK ÜRÜNLERU A.S. (meat sector)**

The Competition Board declared the acquisition of Süt Endüstrisi A.S. ve Yem Sanayi ve Tic. A.S. by Et ve Baluk Ürünleri A.S. not to be a concentration under the 1997/1 Communiqué.

#### **MULTA TURUZM A.S. (tourism sector)**

The Competition Board declared the acquisition of Bosstay A.S by Milta Turizm Usletmeleri A.S. not to be a concentration under the 1997/1 Communiqué.

#### **ECZACIBASI HOLDUNG (ceramics sector)**

The Competition Board declared the acquisition of Eczacubasu Seramik A.S. by Eczacubasu Holding not to be a concentration under the 1997/1 Communiqué.

DUNARSU (machine carpet sector)

The Competition Board declared the acquisition of Akdösem A.S. and Akarsu A.S. by Dinarsu T.A.S. not to be a concentration under the 1997/1 Communiqué.

TURBAN BODRUM MARINA (marinary sector)

The Competition Board declared the acquisition and sale of Turban Bodrum Marina not to be a concentration under the 1997/1 Communiqué.

*b) Summary of significant cases*

TURBAN BODRUM MARINA

23. The acquisition and sale of Turban Bodrum Marina was approved by the Privatisation High Authority according to the privatisation policy of the Turkish Republic. The Privatisation High Authority has brought the related transaction before the Competition Board for permission.

Taking the inherent structure of the marinary sector and the % 5 share, 305 billion total net sales that will be hold by Karada Tourism as a result of the acquisition in the related geographical market into consideration, the so-called transaction had been decided as not being an acquisition under the 1997/1 Communiqué.

**VI. The role of competition authorities in the formulation and implementation of other policies**

24. In accordance with Article 16 of the Privatisation Code, in order to prevent the distortion of competition in the relevant markets, necessary measures are being taken by the Competition Authority.

25. Competition laws do not, in fact, detail all the competition policy of a state. Apart from competition laws, competition policy is a broad concept including subsidies, domestic and foreign trade, state monopoly and public buying policies. Turkey's competition policy as creating and maintaining a healthy and competitive domestic environment, is designed to build a powerful Turkish Economy with high competitive power abroad. Such a policy can only be successful by directing all the instruments of the state towards the same target. The conductor of this mechanism will be the Competition Authority.

**VII. Resources of Competition Authorities**

*1. Resources overall (current numbers and change over previous year)*

a) Annual budget (in your currency and USD): 4.362.000.000.000 TL

28.051.447 USD

## TURKEY

*b) Number of employees (person-years)*

- Economists: 5
- Lawyers: 3
- Other professionals: 19 (Management, Political Science and Public Administration, International Relations, Industrial Engineering, etc.)
- Support staff: 73
- All staff combined: 100

**2. *Human resources (person-years) applied totally to anticompetitive practices, merger review and enforcement and advocacy: 27***

**3. *Period covered by the above information: 27.02.1997-31.12.1997***