



**COMPETITION COMMITTEE**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS  
IN TURKEY**

**2003**

## Executive Summary

### 1. Changes to Competition Laws and Policies, proposed and adopted

#### 1.1 Summary of new legal provisions of competition law and related legislation

1. The Act on Making an Amendment to Certain Acts and the Statutory Decree on the Establishment and Duties of the General Directorate of National Lottery Administration (No. 4971)<sup>1</sup>, made some amendments in the Act on the Protection of Competition, the details of which are given below:

- A paragraph has been added to the end of article 15 of the Act No. 4054. Via this regulation, powers during on-the-spot examination have been clarified, and for purposes of eliminating the barriers to on-the-spot examination, the opportunity of examination by court decision has been introduced.
- Sub-paragraph (b)<sup>2</sup> of article 39 of the Act No. 4054 and the last sentence<sup>3</sup> of the article have been annulled. It was frequently criticized by undertakings which were the addressees of the Act and particularly by foreign institutions and organizations in international platforms that in accordance with these provisions annulled, 75 % of administrative fines imposed by the Authority be entered as the revenue of the Authority while 25 % as that of the Treasury, and it was expressed that this regulation would urge the Authority into a conflict of interests and impair the impartiality in its decisions. As a result of eliminating the provisions which were the subject of such criticisms, the practice referred to has been terminated, which was likely to cause uneasiness in public conscience and cast a shadow on the accountability of the administration, and it was ensured that the entire fines be entered as the revenue of the Treasury.
- The wording which took place in article 53 of the Act No. 4054 and caused hesitations as to when to publish the Board decisions has been removed. By removal of this wording, grounded decisions of the Board may be published in the Official Gazette without awaiting the jurisdictional finalization.
- Article 55 of the Act No. 4054 has been amended. Second paragraph of the article referred to had envisaged that fines might not be collected without the finalization of the Board decision. Due to the fact that finalization here means jurisdictional finalization, fines imposed by the Board could become final should a resort to jurisdiction was not made against them within due time, or should the jurisdiction approved the Board decision in the event of resort to jurisdiction, and they could only be collected in this case. This regulation in article 55 also contradicted with the general principle in the Act on Administrative Trial Procedure No. 2577, concerning "the inability of an appeal to cease the execution". It is known that cases brought against with the claim of cancelling Board decisions may not be concluded shortly due to the workload of the jurisdiction. Therefore, prior to making the said amendment in article 55, resort to jurisdiction by undertakings against which fines were applied due to an infringement of competition used to cause a considerable weakening in the power of sanction envisaged by the Act, resulting from the decrease in the value of money during two to three

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<sup>1</sup> Published in the Official Gazette dated 15.08.2003 and numbered 25200.

<sup>2</sup> This subparagraph stated that 25% of the fines, determined by the Board, would form a part of the income of the Authority.

<sup>3</sup> 'The fees stated in the paragraph (b) shall be transferred to the relevant account of the Authority after the fine becomes final and at the time fine is transferred to the Treasury accounts.'

years that lapsed in jurisdiction. Via the amendment to the article in question, both this situation has been precluded and the regulation herein has been rendered compatible with article 27 of the Act No. 2577.

2. The Communiqué Announcing the Increase in Administrative Fines Provided in Articles 16 and 17 of the Act on the Protection of Competition No. 4054, Being Valid Until 31/12/2003 was published in the Official Gazette dated 25.02.2003 and numbered 25031.

3. The Block Exemption Communiqué on Research and Development Agreements was published in the Official Gazette dated 27.08.2003 and numbered 25212.

4. With this Communiqué, it is intended that -besides an effective protection of competition- legal hesitations of undertakings which engage in R&D cooperation be relieved. It gains importance that in practices and regulations aimed at the realization of these goals, an administrative supervision as simple as possible and a legal framework as clear as possible be ensured. Therefore, in this Communiqué, instead of adopting the approach of also including seemingly reasonable limitations of competition, the approach of only including necessary prerequisites for enabling undertakings to benefit from a block exemption, and limitations of competition which shall render an agreement not caught by a block exemption has been adopted. In this manner, it would be partially possible to preclude that certain undertakings engaged in cooperation in particular issues consider provisions as to limitations of competition under block exemption as the elements to be present in an agreement, thus precluding that sometimes parties involve in agreements obligations limiting competition more than what is needed. Determining those limitations which may not be deemed reasonable in terms of competition law, and granting freedom to undertakings in other arrangements aimed at cooperation are also compatible with the recent approach that priority and weight should be given to the assessment of economic effects that agreements between undertakings would create on the relevant market.

5. The Communiqué No. 2003/3, Concerning an Amendment to the Block Exemption Communiqué on Vertical Agreements No. 2002/2 was published in the Official Gazette dated 18.09.2003 and numbered 25233.

6. The non-compete obligation has been excluded from block exemption, which had been imposed on the buyer for an indefinite period or for a period exceeding five years, in accordance with the provision of article 5/a of the Block Exemption Communiqué on Vertical Agreements No. 2002/2, which had entered into force by having been published in the Official Gazette dated 14.07.2002 and numbered 24815.

7. And the second paragraph of the same article introduces an exception and reads as: "...However, in case a part of the investment total required for enabling the buyer to realize its activity based on the agreement is covered by the supplier provided that it is not less than 35 %, the duration of non-compete obligation to be introduced on the buyer may be until ten years on condition that the part exceeding five years is only limited to the activity to be conducted in the facility where this investment has been made..."

8. For competition authorities, the duration of vertical agreements -especially that of those related with fuel oil distribution- is an important issue which does not lose topicality. In this context, the grounds of including the provision of "35 % of the investment is an exception" in the Communiqué No. 2002/2, as required by the foregoing provision may be summed up that:

- In particular sectors (it shall not be wrong to say that mainly the fuel oil distribution sector is targeted), suppliers do also invest in the area to be required by the activity,
- 5-year period may not be sufficient for ensuring the return of these investments,

- Places where such long-lasting agreements are required are determined with a certain criterion, and the duration of the non-compete obligation in agreements concluded here is extended to 10 years.

9. Nevertheless, the short-term practice has demonstrated that even though the non-compete obligations are limited to five years in the first paragraph of article 5 of the Communiqué No. 2002/2, the provision that "35 % of the investment is an exception", introduced in the following paragraph makes it possible that willing undertakings in some way exploit the gap in the Communiqué and conclude an agreement involving a non-compete obligation for 10 years. Such a practice ensured that contracts not eligible to be granted even an individual exemption under article 5 of the Act be included under block exemption.

10. The criterion of "35 % of the investment is an exception" included in article 5 sub-paragraph (a) of the Communiqué is not only a criterion incompatible with the goal of its introduction but also has a structure which is quite hard and sometimes impossible to calculate, creates an uncertainty, and may lead to cases contrary to the concept of block exemption and above it, articles 4 and 5 of the Act. For this reason, the 2nd paragraph of sub-paragraph (a) of article 5 in "The Block Exemption Communiqué on Vertical Agreements" No. 2002/2 has been amended as follows:

11. "In case of agreeing that the non-compete obligation may be implicitly renewed in a way to exceed the above-mentioned duration, the non-compete obligation shall be deemed for an indefinite period."

12. Even though it is mentioned that the elimination, again by a Board decision, of a provision which takes place in a newly issued Communiqué shall create a problem of legal confidence, insisting on the existing version of the Communiqué may lead to greater legal confusions and negativities in the future.

## **1.2 Other relevant measures, including guidelines**

13. The Competition Board Decision<sup>4</sup> Concerning the Explanation of the Block Exemption Communiqué on Vertical Agreements No. 2002/2 was published in the Official Gazette dated 09.08.2003 and numbered 25194.

14. Vertical agreements which ensure the best establishment of production and distribution process by undertakings, and usually an increased interbrand competition in a market consequently are among the leading groups of agreements to be exempted from the prohibition in article 4 of the Act on the Protection of Competition No. 4054 in the event of fulfilling certain conditions. Likewise, via the Block Exemption Communiqué on Exclusive Distribution Agreements No. 1997/3, the Block Exemption Communiqué on Exclusive Purchasing Agreements No. 1997/4, the Block Exemption Communiqué on Franchise Agreements No. 1998/7, and the Block Exemption Communiqué on Motor Vehicles Distribution and Servicing Agreements No. 1998/3, Competition Board granted block exemption, from the application of article 4 of the Act, to those vertical agreements meeting the terms provided for in the said Communiqués. It has been established as a result of the recent practices that -though they had been provided in a quite detailed manner- the said block exemption Communiqués encompassed a limited part of vertical agreements. For this reason, the Competition Board issued the Block Exemption Communiqué on Vertical Agreements No. 2002/2, which replaces the foregoing three block exemptions excluding the Communiqué No. 1998/3, and more importantly, has a much more broader scope. The goal of issuing this guide is to state as clearly as possible the points to be considered by the Board in implementing the Communiqué, thus minimizing the uncertainties which may arise in undertakings' interpretation of the Communiqué.

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<sup>4</sup> Dated 30.06.2003 and numbered 03-46/540-M.

### 1.3 Government proposals for new legislation

15. Turkey has prepared a 'Draft Bill on Monitoring and Supervising State Aid'. According to the Draft Bill, a 'State Aid Monitoring and supervising Board' and a Directorate General would be established within the State Planning Organisation (SPO). Thus, the SPO was given the task of supervising and monitoring state aid.

16. The government also prepared 'The Draft Act on the Petroleum Market', 'The Draft Bill on the Amendment of the Legislation Concerning Industrial Rights', 'The Draft Bill on Press' and 'The Draft Bill on the Turkish Union of Chambers and Stock Markets, and Chambers of Trade and Industry, Chambers of Commerce, Chambers of Industry, Chambers of Maritime Trade, and Commercial Stock Markets, and Its General Rationale'.

## 2. Enforcement of Competition Laws and Policies

### 2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

a) Summary of activities of:

#### - Competition authorities and Courts

#### Applications and Files Concluded (2002-2003)

Years	Infringement of Competition		Mergers and Acquisition		Exemptions & Negative Clearance	
	Applications	Concluded	Applications	Concluded	Applications	Concluded
2002	265	217	115	102	35	31
2003	406	303	113	107	51	38

#### State of Files By the End of Year (2002-2003)

Year	Applications	Concluded	Transfers to the Following Year
2002	415	350	351
2003	570	448	202

#### Concluded Applications Concerning Infringement of Competition (2002-2003)

Year	Those Concluded by Final Decision As a Result of Initial Examination or Preliminary Inquiry/Investigation	Those Rejected or Deemed to Have Been Rejected due to Considering Unworthy of Examination	Those Deemed to Fall Outside the Act	TOTAL
2002	38	81	98	217
2003	38	115	150	303

**With Regard To The Files Concluded By Final Decision As A Result Of Initial Examination Or Preliminary Inquiry/Investigation, Their Distribution By Relevant Articles Of The Act No. 4054 (excluding those rejected or deemed to have been rejected due to considering unworthy of examination and those deemed to fall outside the Act)**

Year	Article 4 <sup>5</sup>	Article 6 <sup>6</sup>	Article 4 & 6
2002	18	15	5
2003	18	11	9

**Decisions on Exemption/Negative Clearance**

Year	Exempted	Granted Negative Clearance	Conditionally Decided	Out of Scope	Not exempted or Not granted negative clearance	TOTAL
2002	12	11	7	1	-	31
2003	11	10	16	-	1	38

In 2003, action has been taken before the Council of State against 41 decisions of the Turkish Competition Board. The Council of State decided in favour of the Board in 17 cases whereas it ruled in disfavour of it in 3 cases.

*b) Description of Significant Cases, including those with international implications*

17. Summaries of selected decisions of the Turkish Competition Board are given below.

Decision on Çukurova Elektrik A.Ş. (Çukurova Electricity Inc.)

18. In the applications filed by Enerjisa Enerji Üretim A.Ş. (Enerjisa Energy Generation Inc.) (Enerjisa) and Toros Elektrik Üretimi Otoprodüktör Grubu A.Ş. (Torus Electricity Generation Autoproducer Group Inc.) (Torus), it is claimed that Çukurova Elektrik A.Ş. (ÇEAŞ) did not conclude the necessary contract for the transport of electricity to be generated by Enerjisa in its autoproducer plant, and did not make the necessary connection for access to the national transmission and distribution line, the same undertaking did not purchase the electricity generated in the autoproducer facilities of Toros in violation of the agreement between the parties and prevented its transport to the partners of Toros, and with these practices, ÇEAŞ abused its dominant position in the region. For purposes of examining these claims, the Competition Board decided to open an investigation against ÇEAŞ.

19. As a result of the examinations and evaluations made by the Competition Board, it has been realized that ÇEAŞ was in the position of the assigned company in the assignment region No. 1 "which was within the boundaries of the entire Provinces of Adana-Mersin-Hatay-Osmaniye, Küçüksır and Yeşildere villages under the Central sub-district of the Central district in the Province of Kahramanmaraş, and Kısıklı Village under Yeniköy sub-district of the Central district", determined in "The Regulations Designating the Regions where to Assign Organizations other than TEK (Turkish Electricity Institution)", which entered into force by the resolution of the Council of Ministers dated 16.08.1985 and numbered 9800, as required by "The Concession Contract Concerning the Assignment for Electricity Generation,

<sup>5</sup> Article 4 of the Act on the Protection of Competition No. 4054 prohibits agreements, concerted practices and decisions restricting competition.

<sup>6</sup> Article 6 of the Act on the Protection of Competition No. 4054 prohibits abuse of dominant position.

Transmission, Distribution and Trade Services in the Provinces of Adana, Mersin, Hatay, Osmaniye, and in Three Villages of the Province of Kahramanmaraş", and it was occupied with electricity generation, transmission, distribution and trade in this region, and Enerjisa and Toros which were the complaining undertakings were the auto producer companies operating in the same region at the level of generation.

20. ÇEAŞ which operates Seyhan 1-2, Kadıncık 1-2, Sır and Berke dams and Hydroelectric plants at the level of generation is also the operator of all transmission lines and 66-kw and 144-kw transmission transformer centers in the region. It has been realized that ÇEAŞ, under the concession possessed by it, distributed and sold energy to consumers whose established powers in the region were above 500 kw, and the distribution to consumers below this amount was performed by TEDAŞ. Transmission and distribution facilities which form the connection points of both complainants to the interconnect system are also run by ÇEAŞ.

21. At the end of the evaluations and examinations, the relevant product market has been defined as "the market for electricity generation and transport", and the relevant geographical market as "the Assignment Region No. 1 which was within the boundaries of the entire Provinces of Adana-Mersin-Hatay-Osmaniye, Küçüksır and Yeşildere villages under the Central sub-district of the Central district in the Province of Kahramanmaraş, and Kısıklı Village under Yeniköy sub-district of the Central district", determined pursuant to the relevant Regulations and concession contract.

22. It is seen that as required by the Concession Contract signed between the Ministry and ÇEAŞ on 09.03.1998, the task of transmission and distribution in the assignment region No. 1 which is the relevant geographical market that is the subject of investigation is entrusted to ÇEAŞ, and therefore, ÇEAŞ is in a dominant position in the market for "electricity transport" (lower market). Due to the fact that electricity is a product that cannot be stored, the interconnect system (electricity transmission and distribution) has a very important share in the generation process, and in this regard, electricity transport emerges as an essential facility of the generation process. With regard to the complaint which is the subject of file, ÇEAŞ retains the essential facility, in other words, the infrastructure as to the electricity transport.

23. According to the provisions of "The Act on the Assignment of Organizations other than the Turkish Electricity Institution with Electricity Generation, Transmission, Distribution and Trade" No. 3096 and the relevant Regulations issued as per it, in order for an autoproducer facility to be able to commence generation, and for purposes of being able to connect it to the interconnect system, it needs to sign an Electricity Sales Agreement (ESA) with the assigned company operating the transmission and distribution lines. And what underlies the dispute between Enerjisa and ÇEAŞ, which is the subject of investigation is that the demand of Enerjisa for contract has been rejected by ÇEAŞ for quite a long time without justification, and that therefore the autoproducer facility could not commence operating.

24. Enerjisa asked ÇEAŞ, by referring to the Permission Contract signed by the Ministry, that necessary preparations be made for Enerjisa facility to work in connection with the National Electricity System, and for ESA. Although Enerjisa and the Ministry renewed their requests in miscellaneous letters on later dates in relation to the signing of ESA and the ability to commence to operate the facilities after realizing their temporary admission, it is understood that ÇEAŞ has not accepted these requests for a long period. As a result of a large number of correspondence among the Ministry, ÇEAŞ and Enerjisa, "The Contract Determining the Terms for Connecting to the System and for the Energy Transport" was signed between Enerjisa and ÇEAŞ on 17.8.2002, and the Voltage Application Proceedings was arranged between the parties on 10.9.2002 and the Temporary Admission Minute on 28.9.2002.

25. While rejecting Enerjisa draft, ÇEAŞ sometimes put forward technical reasons and mentioned that making a connection was impossible, and it sometimes stated that the establishment of Enerjisa without the approval of the State Planning Organization (SPO) was contrary to the concession contract and

law, the establishment and operation of auto producer facilities which caused a decrease in their large customers breached the concession contract, and Enerjisa was granted a latent energy generation and trade concession contrary to the act. A legal or technical reason which would justify the grounds of ÇEAŞ for delaying the contract could not be detected during the period which lapsed between the dates of the said proposal and the signing of the contract.

26. It is seen that the dispute between Toros and ÇEAŞ emerges from the fact that Toros realizes transport to the partners of Auto producer Group, it sells energy surplus generated by it, and from the implementation of the existing contract between the parties. It has been established that despite the ESA between Toros and ÇEAŞ, the connection of Toros with the National Interconnect System had been cut off by ÇEAŞ for some time, disagreements had persisted at the end of this period, and eventually a new contract had been signed between the parties on 17.03.2003, due to the conflicts which had arisen in excess energy prices determined by the Ministry and in energy setoff.

27. "The Contract Concerning the Permission for Establishment and Operation of a Generation Facility and for Sales of Energy Surplus with Auto producer Status" was signed between the Ministry of Energy and Natural Resources and Toros Elektrik Üretimi Otoprodüktör Grubu A.Ş. on 05.11.1998. As required by this contract signed, two ESA's were signed between Toros and ÇEAŞ on 26.07.1999, in relation to the facilities of Toros based in Adana and Mersin.

28. In ESA contracts signed with ÇEAŞ, dated 29.11.1999, in relation to Adana-Yumurtalık and Mersin auto producer facilities of Toros, facts provided were that excess electricity energy to be generated by Toros in its facilities would be sold to ÇEAŞ, Toros facilities would purchase energy from ÇEAŞ if needed, and also provided were the costs to be paid by Toros for the energy transport it would make to its partners, by utilizing the existing transmission and distribution lines belonging to ÇEAŞ.

29. As a result of examining the provisions of the Act No. 3096 and the relevant legislation, it is realized that ÇEAŞ which is the assigned company in the region that is the subject of complaint is obliged to transport the energy generated by the auto producer companies to their partners. It is observed that in accordance with the same provisions again, Toros enjoys the right to sell to ÇEAŞ the excess energy generated by it, and its cost shall be determined by the Ministry.

30. In the contracts between ÇEAŞ and Toros, there exist provisions about how these contracts may be abolished, and how and by which authorities the contractual disputes shall be settled. It is considered that ÇEAŞ should put forward its pleas such that the establishment of Toros energy breached the Concession Contract and the approval of SPO has not been received at the time of its establishment only against the Ministry which is the other party of the Concession Contract, and that furthermore, it is required to comply with the ESA contracts signed with Toros. With regard to issues like the purchase of excess energy and its price, which were the sources of dispute between Toros and itself, ÇEAŞ placed reverse power relays in the system and prevented Toros from transporting energy to its auto producer group partners, instead of settling them with the authorized bodies as mentioned in the contract, thus not fulfilling its obligations arising out of the legal legislation and ESA.

31. Despite the fact that Enerjisa facilities became ready for operation as of December 2001, ÇEAŞ prevented, from December 2001 until August 2002, the energy transport and the access of Enerjisa to the essential facility, in spite of the instructions of the Ministry and requests of Enerjisa.

32. And as to the dispute between Toros and itself, ÇEAŞ continuously objected to the establishment of auto producers in the region, it first placed reverse relays in the system and then entirely cut off the electricity of Toros for purposes of preventing the company from transporting energy to its partners, contrary to the instructions of the Ministry and legislative provisions, it informed that it would not renew

the ESA between them, and also that the existing ESA was not binding upon itself. Thus ÇEAŞ cut off the access of Toros to the essential facility, and subsequently initiated works aimed at the annulment of ESA.

33. It has been understood that ÇEAŞ delayed the request of Enerjisa for access to the infrastructure in the market for electricity transport where it was in dominant position within its assignment region, and prevented the energy transport of Toros, committing practices aimed at preventing and complicating the access of complaining undertakings to the essential facility, it explicitly manifested, via the said practices, its goal of monopolization in generation by employing the concessions granted to it, and it thus hindered de facto and potential competition in the region by using its dominant position in the lower market, and that this fact constituted the case of abuse of dominant position according to article 6 of the Act No. 4054.

34. At the end of this investigation conducted against ÇEAŞ, the following decisions were taken on 10.11.2003 with the number 03-72/874-373, by means of having evaluated the claims and pleas of the parties, information and documents collected, and statements in the investigation report:

35. It was concluded that:

1. In the assignment region No. 1 which was determined under "The Regulations Designating the Regions where to Assign Organizations other than TEK (Turkish Electricity Institution)", that was issued as per "The Act on the Assignment of Organizations other than the Turkish Electricity Institution with Electricity Generation, Transmission, Distribution and Trade" dated 04.12.1984 and No. 3096 and that entered into force with the Resolution of the Council of Ministers dated 16.08.1985 and numbered 9800, and which was shown in the Concession Contract signed between the Ministry and ÇEAŞ on 09.03.1998, ÇEAŞ retained the essential facility and was in dominant position in the market for electricity transport, it prevented the complaining undertakings from having access to the infrastructure, and that grounds put forward while doing so lacked legal and technical bases to justify the prevention,
  - From December 2001 when the facilities of Enerjisa had become ready for admission until August 2002 when "The Contract for Energy Purchase and Energy Transport" had been signed, ÇEAŞ had rejected, on various grounds, the request of Enerjisa for connection to the system, and that therefore, the infringement as to the complaint of Enerjisa covered the period between December 2001 and August 2002,
  - The fact that ÇEAŞ had placed reverse relays in the system connection points of Toros, preventing the access of the said undertaking to the system, thus the energy transport to its partners had been established with the Expert Report of Ceyhan 2nd Civil Court of First Instance, dated 21.06.2002, and reverse relays had been removed on 08.08.2002 after the precautionary measure decision taken by Mersin Commercial Court of First Instance on 07.07.2002, and that therefore, the infringement as to the complaint of Toros covered the period between 21.06.2002 and 08.08.2002,
  - Within this framework, ÇEAŞ prevented de facto and potential competition in the upper market (the market for electricity generation) by using its dominant position in the lower market (the market for electricity transport), aimed at monopolization in the electricity generation of the region, and that therefore, it abused its dominant position in the context of article 6 of the Act No. 4054,
2. For this reason, it was decided that an administrative fine of 9.557.363.023.000 TL.(nine trillion five hundred and fifty seven billion three hundred and sixty three million twenty three

thousand) be imposed on ÇEAŞ, being 2 % over the net sales of 2001 discretionally, in accordance with the 2nd paragraph of article 16 of the Act.

#### Insurance Decision

36. Upon the news published in Dünya Newspaper on 24.10.2001 that the companies Aksigorta A.Ş. (Aksigorta Inc.), Anadolu Anonim Türk Sigorta A.Ş. (Anadolu Incorporated Turkish Insurance Inc.), Axa Oyak Sigorta A.Ş. (Axa Oyak Insurance Inc.), Başak Sigorta A.Ş. (Başak Insurance Inc.), Garanti Sigorta A.Ş. (Garanti Insurance Inc.), Güneş Sigorta A.Ş. (Güneş Insurance Inc.), İsviçre Sigorta A.Ş. (İsviçre Insurance Inc.), Ray Sigorta A.Ş. (Ray Insurance Inc.), TEB Sigorta A.Ş. (TEB Insurance Inc.), T. Genel Sigorta A.Ş. (Turkish General Insurance Inc.), Yapı Kredi Sigorta A.Ş. (Yapı Kredi Insurance Inc.) had signed, under the leadership of Milli Reasürans T.A.Ş. (Milli Reasürans Turkish Inc.), a protocol between themselves and had made a gentleman's agreement about applying a minimum insurance price for fire insurance and its additional guarantees not having tariffs, it was decided, in the meeting of the Competition Board dated 09.04.2002, to open an investigation in the insurance sector.

37. During the preliminary inquiry, though not included in the preliminary inquiry, it was detected in examinations in this process that the Turkish Union of Insurance and Reassurance Companies (Union) had been issuing tariffs in certain branches of insurance, and also an investigation against the Union was opened with the same decision.

38. As a result of the investigation, it was decided in the meeting of the Board dated 30.10.2003 that:

1. a) With the protocol signed by the mentioned insurance companies and Milli Reasürans on 11.10.2001, Article 4 of the Act No. 4054 was infringed by setting minimum prices to be applied for fire insurances and their additional guarantees in terms of policies to be transferred for reinsurance,
- b) In accordance with the 2nd paragraph of article 16 of the Act No. 4054, and on a discretionary basis over the 2001 fire insurance turnovers of the undertakings which had committed the above-mentioned infringement, Anadolu Anonim Türk Sigorta A.Ş. be fined by 0.1 % (one thousandth) of its net sales as the period of participation in the infringement and its notification not to comply with the agreement were taken into account as the mitigating factors, and the other insurance companies by 0.5 % (five thousandth); and Milli Reasürans T.A.Ş. by 0.2 % (two thousandth) of its net sales as the mitigating factors were taken into account,
- c) Due to the fact that the protocol dated 11.10.2001, having the nature of breaching article 4 of the Act had not been notified to the Competition Authority within a period of one month provided for by article 2 of the Competition Board Communiqué No. 1997/6 and by article 10 of the Act No. 4054, 11 insurance companies and Milli Reasürans Türk A.Ş. which had signed the protocol and which were mentioned above be separately fined 2.311.902.000 TL. (two billion three hundred and eleven million nine hundred and two thousand), envisaged in sub-paragraph (c) of the first paragraph of article 16 in the Act, amended by the Communiqué No. 2003/1,
- d) In accordance with the third paragraph of article 16 of the Act No. 4054, those who served in the managerial bodies of the undertakings referred to be also separately fined 115.595.100 TL. (one hundred and fifteen million five hundred and ninety five thousand one hundred) discretionally, being five percent of the fine imposed on the above-

mentioned undertakings and association of undertakings, due to the failure to fulfil the obligation to notify,

2. a) With the Strike, Lockout, Confusion, People's Movements, Malicious Acts and Terror Tariff prepared and forwarded to the members by the Turkish Union of Insurance Companies since 1992, tariffs and conditions to be applied in terms of certain guarantees granted in addition to fire insurance had been being determined, and thus article 4 of the Act No. 4054 was infringed,
  - b) Due to this infringement, the Turkish Union of Insurance and Reassurance Companies be fined 9.247.613.000 TL. (nine billion two hundred and fourty seven million six hundred and thirteen thousand) discretionally, in accordance with the 2nd paragraph of article 16 of the Act No. 4054, amended by the Competition Board Communiqué No. 2003/1,
  - c) Since it was realized that with regard to the tariffs in force since 1992, not only notification had not been made to the Competition Authority until 5.5.1998, as required by article 3 of "The Communiqué Concerning the Rights and Obligations of Undertakings Arising from the Act No. 4054 After the Establishment of the Organization of the Competition Authority" No. 1997/6, but also no notification had been made in the following years though they had been updated and had continued to be applied, a fine of 2.311.902.000 TL. (two billion three hundred and eleven million nine hundred and two thousand) be applied on the Turkish Union of Insurance and Reassurance Companies, in accordance with the provision of article 16/1-c of the Act No. 4054, amended by the Communiqué No. 2003/1, due to the failure to fulfil the obligation to notify, envisaged by article 10 of the same Act and article 3 of the Communiqué No. 1997/6, in relation to the said decision of the association of undertakings,
  - d) In accordance with the third paragraph of article 16 of the Act No. 4054, those who served in the managerial bodies of the Turkish Union of Insurance and Reassurance Companies at the time when there was the obligation to notify be separately fined 115.595.100 TL. (one hundred and fifteen million five hundred and ninety five thousand one hundred) discretionally, being five percent of the penalty imposed on the union referred to, due to the failure to fulfil the obligation to notify mentioned in the previous article,
3. The parties and the Ministry in charge of performing the necessary regulations be notified, along the lines of article 9/1 of the Act No. 4054, about how to terminate such infringements established by the Competition Board, and the behaviour to be carried out or avoided for the re-establishment of competition in the relevant market.

## 2.2 *Mergers and Acquisitions*

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

### **Mergers and Acquisitions (excluding those deemed out of scope)**

	<b>Mergers/Acquisitions</b>	<b>Privatisation</b>	<b>Joint Venture</b>	<b>TOTAL</b>
<b>2002</b>	55	-	5	60
<b>2003</b>	54	10	5	69

### Decisions For Mergers and Acquisitions

Year	Those Permitted	Those Granted Conditional Permission	Those Not Permitted	Those Deemed Out of Scope	TOTAL
2002	54	6	-	42	102
2003	60	9	-	38	107

### Mergers and Acquisitions according to partners

	Joint Venture	Merger	Acquisition	TOTAL
<b>Domestic-Domestic</b>	1	1	20	22
<b>Domestic-Foreign</b>	2	-	13	15
<b>Foreign-Foreign</b>	2	2	28	32
<b>TOTAL</b>	5	3	61	69

#### b) Summary of significant cases

39. Decision concerning the acquisition via privatisation of TEKEL is summarised below.

The Decision of the Competition Board on the Acquisition via Privatization of TEKEL Alkollü İçkiler San. ve Tic. A.Ş. (TEKEL Alcoholic Beverages Industry and Trade Inc.) by the Joint Venture Group<sup>7</sup>

40. It was requested that the transaction of privatisation the entire shares of Alkollü İçkiler Sanayi ve Ticaret A.Ş. (Alcoholic Beverages Industry and Trade Inc.) via the method of block sales be allowed by the Competition Authority. Alkollü İçkiler Sanayi ve Ticaret A.Ş. which operates in the areas of production of Raki, Vodka, Gin, Cognac, Whisky, Liquor, Beer, Wine and Suma already owns 19 production facilities. The privatization transaction involves 19 factories of Alkollü İçkiler Sanayi ve Ticaret A.Ş., being 8 drink factories, 4 wine factories, 5 suma factories, 1 beer factory and 1 cognac factory, and the affiliated partnership named TEKEL GmbH operating in Germany. At the same time, the ownership of İstanbul, Ankara and İzmir factories which are among the immovables owned by Alkollü İçkiler Sanayi ve Ticaret A.Ş. would remain with TEKEL A.Ş. (TEKEL Inc.), and it has been envisaged that the five-year right of use for the said facilities be transferred free of charge.

41. With regard to the alcoholic beverages part of the privatization transaction which was the subject of examination, four different product markets have been identified, being the raki market, the beer market, the wine and vermouth market, and the other high alcoholic drinks market. Having taken into account that the conditions as to access to sources of supply, production, distribution, marketing and sales did not present a regional difference in terms of the alcoholic beverages sector, the relevant geographical market has been determined as "the borders of the Turkish Republic".

42. In accordance with the provision of article 7 of the Act No. 4054, merger of two or more undertakings, aimed at creating a dominant position or strengthening their dominant position, as a result of

<sup>7</sup> The Joint Venture Group was created by Nurol Holding A.Ş. (Nurol Holding Company Inc.), Limak İnşaat San. ve Tic. A.Ş. (Limak Construction Industry and Trade Inc.), Özaltın İnşaat Tic. ve San. A.Ş. (Özaltın Construction Trade and Industry Inc.) and TÜTSAB Tekel Ürünleri Toptan Satıcılar Birliği Tic. A.Ş. (TÜTSAB Tekel Products Wholesalers Union Trade Inc.).

which, competition is significantly decreased in any market for goods or services in the whole or a part of the territory, or acquisition, except acquisition by way of inheritance, by any undertaking or person, of another undertaking, either by acquisition of its assets or all or a part of its partnership shares, or of other means which confer it/him the power to hold a managerial right, is illegal. From this point, it was needed to establish whether a dominant position would be created or an existing dominant position would be strengthened in the markets identified above, as a result of the acquisition of TEKEL Alcoholic Drinks Establishment by the Joint Venture Group.

#### Beer Market

43. As is expressed above, the market share of TEKEL in the beer market is at an extremely low level like 1 %. Therefore, it has been concluded that creating a dominant position in the market referred to would not be in question following privatization.

#### Wine Market

44. When the wine market is considered, although the position of TEKEL in terms of the market share is not at a negligible level like in the beer market, it is observed that as regards the current situation, it is not in a position to create a competitive concern. Likewise, while the market share of TEKEL branded products in the relevant market was 20 % as of 2002, the total market share of its three major competitors having a relatively significant market share was at the level of 25 %, and on the other hand, the share of about 20 producers having small market shares amounted to 55 %. In the light of these information, the conclusion arrived at was that in the wine market which had a competitive structure, TEKEL did not have such a market power to distort the competitive structure though it was already the market leader, and that therefore, its acquisition by the joint venture group would not bring about an inconvenience in the context of article 7 of the Act.

#### Raki and High Alcoholic Beverages Market

45. It has been concluded that although TEKEL had a high market share in the raki and high alcoholic beverages markets, potential competitive conditions were present in the markets referred to, in other words, following the acquisition transaction, the joint venture group would be exposed to the competitive pressure of undertakings which planned to enter the market or would enter the market de facto after a short period of time, and that therefore, it would not assume a dominant position in the relevant markets as a result of the acquisition transaction.

46. In the light of establishments and evaluations, the conclusion was that the transaction of acquisition, by the Joint Venture Group, of TEKEL Alkollü İçkiler Sanayi ve Ticaret A.Ş. which was under the scope of privatization might be allowed on grounds that the transaction of acquisition via privatization of TEKEL Alkollü İçkiler Sanayi ve Ticaret A.Ş. by the Joint Venture Group set up by the undertakings Nurol Holding A.Ş., Limak İnşaat Sanayi ve Ticaret A.Ş., Özaltın İnşaat Ticaret ve Sanayi A.Ş. and TÜTSAB Tekel Ürünleri Toptan Satıcılar Birliği Ticaret A.Ş. was an acquisition transaction caught by the Communiqué No. 1998/4 in view of the total turnover and market share of the parties in the relevant product market, and on grounds that a new dominant position would not be created or an existing dominant position would not be strengthened as a result of the acquisition transaction, due to the fact that potential competitive conditions existed in the raki and high alcoholic beverages market.

**3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

- In 2003, The Competition Authority gave opinions on the ‘Draft Bill on Monitoring and Supervision State Aid’ which was prepared by the Prime Ministry. The Authority supported that it had the ability to fulfil the task of monitoring and supervising state aid owing to its independence and based on its experience since 1997. In this context, the Authority notified its position on this issue to the Prime Ministry and other ministries. Benefits of leaving this task to the Competition Authority, which formed a part of the above mentioned opinions, are quoted below:

‘.....Authorities, having the task to supervise and monitor, must be independent from the performing authorities. It should as well be borne in mind that the independence of the authorities can only be guaranteed through administrative and financial autonomy. Since December 1994 in Turkey, there is a Competition Law parallel with the Treaty of Rome, Articles 81 and 82; and since February 1997, an independent Competition Authority in charge of enforcing this law. The 5 years period has been intensive, and now the Authority has institutional experience and trained personnel.

The thing missing in Turkey is the assessment and inspection of the effect of state aids on competitive conditions in goods and services markets with regard to undertakings due to EU and other international treaties. The task, which has got to be evaluated from the view of competition, is considered to be performed by a competition authority, having an intense experience and knowledge about healthy markets of goods and services. Within the scope of its authority, granted by the Act No: 4054, the Competition Authority is well in position to perform this task.

In addition to this, it should not be neglected that there shall be conflicts of authority and tasks in case another authority is established as the issue mainly concerns competition law. On the other hand, time loss owing to the time required for establishment of a new body shall add as a burden during this economic situation that Turkey is in. In case Turkey becomes a full member of the EU, it must be borne in mind that EU Commission shall be in charge of this task, thus establishment of a new authority for a temporary time will have certain drawbacks.

Thus, it is considered that in compliance with the EU's integral model for violations of competition and supervision of state aid, the task of supervising and monitoring state aid, which forms an inseparable part of competition law, should be assigned to the Competition Authority.’

- In the application filed with the Competition Authority by the Turkish Union of Banks (TBB), it was communicated that with the new Banks Act issued in 1999 and the amendments to this act, differences between public and private banks were eliminated, but intervention in the selection of banks where public institutions and organizations would deposit their monies, through the provisions introduced in budgetary acts not only contradicted with the principle of free competition but also was contrary to the Constitution's principle as to "The Equality Before Law", "The Fundamental Principles of Law", and the notion of "Legal State". It has been stated that the efficiency which might be displayed by the banking system in the collection of resources and having them utilized within the market mechanism would be distorted by such interventions preventing the flow of resources, and it would lead to serious negativities in the bank system which was undergoing the stage of reform.

Provisions introduced in statutory regulations mentioned in the application of TBB, and practices based on such provisions are not compatible with the principles of free competition due to the limiting and discriminatory provisions introduced in the entry of public resources to the banking system, and do mean a discriminatory practice between banks which have to operate within same conditions. In the same way, the limitation of activities of state economic enterprises, their affiliated partnerships, establishments and enterprises which are supposed to utilize their resources and operate within the system under the conditions of free market presents as distorting competitive conditions in the sector where these enterprises operate. In this context, the claim by TBB that public treasury is required to be conducted by all banks is justifiable in terms of competition policy. Even though it is accepted that the policy-making as to how to incorporate the resources of public institutions into the system would be a political choice, the ability to verify such a choice in terms of competition policy may be possible if it encompasses an equal practice for all actors.

With regard to the legislative regulations mentioned and in accordance with the Act on the Protection of Competition No. 4054, the Competition Board possesses the task of notifying that an amendment be made to the relevant legislation, according to article 27 sub-paragraph (g) of the Act, in case the State commits practices distorting competition, through acts and other legislations, or decisions of the Council of Ministers which is the executive body. The issue was discussed in the Competition Board meeting dated 15.05.2003 and numbered 03-32/404-176, and it has been considered that for purposes of ensuring the removal of similar provisions in the Budgetary Act and the other relevant legislations as well, it would contribute to the establishment of market competition that the authorized bodies be notified through the relevant Ministry about making a regulation in the intended amendment to the Banks Act, aimed at the elimination of provisions in miscellaneous acts that monies of various institutions be collected in state banks.

- The opinion of our Authority was requested by the T.R. Prime Ministry, General Directorate of Acts and Decisions about "The Draft Bill on the Turkish Union of Chambers and Stock Markets, and Chambers of Trade and Industry, Chambers of Commerce, Chambers of Industry, Chambers of Maritime Trade, and Commercial Stock Markets", and "Its General Rationale".

Article 12 of the bill which is the subject of examination provides the tasks of chambers. Sub-paragraph (1) of this article reads as: "To determine and approve a price tariff where necessary, whose principles and procedures shall comply with the Regulations to be issued by the Ministry". It is seen that with the article referred to, chambers of trade and industry, and chambers of commerce and chambers of industry are empowered with determining prices. Yet, pursuant to the example included in sub-paragraph (a) of the second paragraph of article 4 in the Act on the Protection of Competition No. 4054, entitled "Agreements, Concerted Practices and Decisions Limiting Competition", "fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and all kinds of purchase or sale terms" is caught by the prohibition of the article referred to. In other words, preparation, determination and approval of a price tariff by professional organizations is a practice which has the nature of eliminating competition in the relevant market, and in this regard, it explicitly contradicts with the Act on the Protection of Competition No. 4054. Another point to be emphasized within this framework is that the application of prices determined by tariffs fixed or approved by a chamber as minimum, maximum or fixed prices shall not rule out the competition-restricting nature of the practice. Therefore, it is deemed appropriate to exclude article 12 sub-paragraph (1) from the draft without substitution.

Sub-paragraph (b) of the same article imposes on chambers the task of "...providing their members with any kind of information in the event of their resort, which may be needed by them in executing their profession, or facilitating the obtaining of them...", and sub-paragraph (c) that of "...making any examinations concerning trade and industry, keeping statistics and indices of economic, commercial and industrial activities within their region, following up and recording market prices of major items, and extending them through appropriate means". It is a fact that these tasks imposed on chambers are among the major tasks expected to be fulfilled by professional organizations, and thus, an important service is fulfilled in terms of economic life and public administration. On the other side, that certain information about the activities of undertakings are readily available to all undertakings operating in the market facilitates, in some market structures, practices to lead to the restriction of competition, and even emerges as a condition of such practices. This situation is particularly in question for oligopoly markets where homogeneous products are supplied. In such markets, undertakings' possession of up-to-date and detailed information such as information on production capacity, production amount, production costs and sale price of their competitors enables competition-restricting concerted practices in the market, and also facilitates supervisions as to the implementation of potential competition-restricting agreements, setting the basis for concluding such agreements. On the other hand, for markets which do not present the structural characteristics referred to, availability of the above-listed information to undertakings increases the transparency of the market and facilitates that entrepreneurs plan their competitive behaviours and monitor their effects, creating an effect of increasing competition. Also taking this point into account, it is thought that there is no need to make an amendment to the articles referred to, but it would be proper to stress that the Competition Authority may object to the application of the articles on a concrete case basis.

- The opinion of our Authority was requested by the T.R. Prime Ministry, General Directorate of Acts and Decisions about "The Draft Bill on Press".

The rights of obtaining-disseminating information, criticizing, and creating works, which are the basis of the freedom of press only gain significance in the event of communicating works created to other people. Therefore, regulating and guaranteeing the communication of a work to its reader becomes as important as its process of creation, and it is even noticed that the process of communicating works to the public affects the formation of works. It is impossible for a publication to continue its publication life, which does not reach (or is not made to reach) the reader. For this reason, including in the act the provision of article 27 of the Press Bill, entitled "The Distribution of Periodicals", which aims to prevent abuse in the distribution of periodicals, presents a great necessity for employing the freedom of press. However, as it would be mentioned below in detail, it is considered that article 27 of the Draft Bill is not adequate in terms of securing that periodicals reach readers, and that therefore, it would be appropriate to amend the article referred to so as to also include the periodicals' offer for sale. Namely;

When the relevant administrative transactions of the Competition Authority to date are examined at length, it is seen that it has conducted three investigations concerning the distribution of publications (newspaper and journal), and the main subject of the first two investigations was that undertakings in the market for newspaper and journal distribution prevented competition in the market for newspaper and journal publication.

In the initial decision of the Competition Board dated 17.07.2000 and numbered 00-26/292-162, published in the Official Gazette dated 26.04.2001 and numbered 24384,

establishments made were that undertakings dealing with the distribution of newspapers and journals aggravated the distribution conditions against those undertakings in the market for newspaper and journal publication, and periodicals of publishers who did not accept new distribution conditions were not distributed, and also existing distribution companies prevented, from reaching readers, publications of publishers who wished to distribute, within their own means (in other words, with the identity of a distribution company), newspapers and journals published by them.

Similarly, via the Board decision dated 14.12.2000 and numbered 00-49/529-291, published in the Official Gazette dated 16.04.2001 and numbered 24375, punished were the behaviours of distribution companies, aimed at preventing, from being offered to readers, publications distributed through competing distribution companies.

As is mentioned in the decisions referred to as well, newspaper and journal (periodical) distribution is "a whole made up of distribution companies, and main and subsidiary dealership organization, and also covers the service which takes place until periodicals delivered to the distribution company by the publishing house are made to reach readers at final points of sale".

The point strongly emphasized in both decisions is that "final points of sale" also generally known as "newspaper dealers" have a strategic importance in offering periodicals to readers. Likewise, it has been established that undertakings having a joint dominant position in the market for newspaper and journal distribution exerted pressure on dealers which wished to sell periodicals brought by different distribution companies, preventing the sale of competing publications, and thus, they hindered or complicated the market entry of new distribution companies and newspaper-journal publishers who wished to work with these companies. Yet, a sound development of newspaper and journal publication is also dependent on a sound continuation of the distribution activity, and a competitive environment in the distribution market is the guarantee of freedom in the publication market.

And a sound functioning of the newspaper and journal distribution activity is dependent on the fact that final points of sale having strategic importance for distribution are open to access by all distribution companies, and so is this situation on the fact that certain distribution companies are prevented from exerting pressure on these points. Likewise, in its above-mentioned decisions, the Competition Board has taken notice of this point, and at the initial stage, it prohibited distribution companies from "concluding exclusive agreements" with final points of sale, i.e. prohibited preventing final points of sale from selling publications from other distribution companies (competing publications).

On the other hand, within the framework of investigations, it has been established that the introduction of exclusivity prohibition was not sufficient alone for a sound fulfilment of distribution and sale activities for newspapers and journals, and dealers granted the opportunity to conclude contracts also with other distribution companies again could not use this freedom due to various pressures and "were left in the position to choose" the distribution company which had the broadest range of products.

Within the framework of these explanations, it is conceived that the title of article 27 of the Press Bill, entitled "The Distribution of Periodicals" be changed as "The Periodicals' Distribution and Offer for Sale", and that new paragraphs be added to the article and it be provided as follows:

«The Periodicals' Distribution and Offer for Sale

Article 27- Those individuals who distribute periodicals are obliged to distribute publications they are asked to distribute, under the same conditions with the precedents determined according to the criteria such as sale price, circulation and number of pages from among the publications distributed by them. Those who act contrary to this provision shall be punished by a heavy fine of half the total cost of the publication they avoid to distribute.

Those individuals who offer periodicals for sale at retail may make an agreement with as many distribution companies as they like at a time, and may sell publications they wish. No one may impose on natural or legal persons offering periodicals for sale at retail the obligation not to sell competing publications, and may not commit acts which are subject to the condition of not selling competing publications or which shall create such a consequence.

In places of sale established by municipalities and operated by municipalities or individuals empowered by municipalities, or leased to third persons, so as to also include the sale activities for periodicals, those individuals who offer periodicals for sale at retail are obliged to offer for sale periodicals complying with the legislation, under the same conditions with precedents in terms of criteria such as sale price, number of sale and number of pages, and in return for a reasonable price or commission rate, regardless of the distribution company they come from. Those who act contrary to this provision shall be punished by an administrative fine of half the total cost of the publication they avoid to offer for sale. Municipalities take necessary measures in accordance with this paragraph, and apply the administrative fine stated in this paragraph, where end sellers avoid offering periodicals for sale.

For purposes of applying the article herein, the provisions of the Act on the Protection of Competition dated 7.12.1994 and No. 4054 are reserved.”

- The opinion of our Authority was requested by the Telecommunications Authority about "The Draft Procedures and Principles Concerning the Separation of Accounts and Cost Accounting", prepared under "The Access and Interconnection Regulations" which entered into force by having been published in the Official Gazette dated May 23, 2003 and numbered 25116.

Infringements of competition called cross-subsidization and price squeeze emerge as the distortion of competition in a retail market by an operator who is in dominant position in the market or has the right of legal monopoly like generally in countries where the sector is newly opened to competition, by means of employing revenues obtained in a market for subsidizing its operation in those segments of the market open to competition, or by means of raising input prices of its competitors operating in the same market. The said infringements of competition not easy to establish because of the problem of information asymmetry frequently come up in those segments of industry open to competition, due to the monopolistic and oligopolistic structure of the market. Therefore, for purposes of preventing likely infringements of competition, separating the accounting system of businesses and services of different nature, and introducing the practice of cost accounting are deemed favourable in terms of creating a fair competitive environment.

Separating accounts and necessitating the practice of cost accounting are considered as an important tool which may be used both for ensuring transparency and preventing undertakings to newly enter the market from being exposed to a discriminative practice,

and for precluding competition-distorting practices such as cross-subsidization, price squeeze and abusive pricing.

The goal of separation of accounts is to establish the readiness of operators subject to regulation as to which services would be offered by them in the market at what costs. Thus, it is intended to be able to clearly establish which service or services is/are priced below or above its/their cost(s), and it is targeted to preclude likely inefficiencies. When it is examined in this regard, the consideration, while introducing the principles of separation of accounts and cost accounting, of the harmony with the Commission Recommendation numbered 98/232 which is the basis of the European Union practices, is noticed as another factor that would increase the applicability of this regulation.

Within the framework of the above information, the most fundamental goal of the obligation of separation of accounts is that it serves to enable a transparent establishment of services offered in a competitive structure and vice-versa, and costs of relevant operators. In this context, although it may be considered that the obligation of separation of accounts may be imposed on all operators operating in the market, what is essential as required by market economy is that such an obligation be imposed on operators who are in dominant position in the market, or who have an efficient market power.

Therefore, we face, as a point to be carefully examined at length, the issue as to for which enterprises the separation of accounts and cost accounting under the Draft Procedures and Principles would be deemed compulsory. It is seen that by article 5 of *"The Draft Procedures and Principles Concerning the Separation of Accounts and Cost Accounting"*, entitled "Separation of Accounts", the obligation of separation of accounts is imposed on entire operators of fixed telecommunications network and mobile telecommunications network. And in article 18 of *"The Access and Interconnection Regulations"*, entitled "Separation of Accounts", it is stated that operators who have an efficient market power are obliged to separate accounts, and the second sentence of the said article puts that "The obligation of separation of accounts may also be imposed on operators who are obliged by the Authority to ensure interconnection". In the definitions section of the Regulations, the concept of "the one obliged with interconnection" is defined so as to include the Turkish Telecommunications Inc. (TTAŞ), and other operators who are obliged by the Authority with interconnection (Telecommunications Authority). And in article 10 of the said Regulations, concerning interconnection, it has been determined that TTAŞ and other operators having an efficient market power are the ones obliged with interconnection, and the later part of the article rules that in case the Authority decides that an operator's not allowing interconnection or putting forward unreasonable durations and terms that would lead to the same consequence prevents the formation of a competitive environment, or the resulting situation is against users, it shall determine the said operator as the one obliged with interconnection.

From the relevant parts of the "Access and Interconnection Regulations" included above, it is realized that TTAŞ and other operators determined by the Authority to have an efficient market power are the ones obliged with interconnection, and also other operators to be determined by the Authority in accordance with article 10 of the said Regulations shall be the ones obliged with interconnection. Again in accordance with article 18 of the same Regulations, entitled "Separation of Accounts", it is understood that the obligation to separate accounts may solely be imposed on operators having an

efficient market power, TTAŞ, and other operators determined by the Authority as the ones obliged with interconnection.

However, as is also mentioned above, it is observed that under "The Draft Procedures and Principles of Separation of Accounts and Cost Accounting", the obligation to separate accounts is imposed on entire operators of fixed and mobile telecommunications networks. Even though article 2 of the Draft Procedures and Principles, entitled "Scope" delineates the operators on whom the obligation to separate accounts shall be imposed, it should be expressed that entire operators of fixed and mobile telecommunications networks are not under the obligation to separate accounts. Otherwise, a situation contrary to "The Access and Interconnection Regulations" which is the basis of the Draft Procedures and Principles would be created. Consequently, it is deemed appropriate that the obligation to separate accounts be merely imposed on TTAŞ, those operators who have an efficient market power, and operators determined as the ones obliged with interconnection, in accordance with article 10 of "The Access and Interconnection Regulations".

#### **4. Resources of Competition Authority**

##### **4.1 Resources overall (current numbers and change over previous year)**

a) Annual Budget in 2003 is 86,225,184,457,660 TL; approximately 60 million USD.<sup>8</sup>

47. Annual Budget in 2002 is 106,939,181,898,593 TL; 71 million USD.<sup>9</sup>

b) Number of employees (person-years)

48. According to Article 35 of the Act on the Protection of Competition No. 4054 assistant experts have to hold 'a university degree in law, economics, political sciences, business administration, industrial engineering or in management engineering or any equivalent degrees obtained abroad'. Currently there are 84 assistant experts on competition and experts on competition who are mainly responsible for competition investigations, assessment of mergers and acquisitions, exemptions and negative clearance. Apart from those, there are 6 examination experts mainly responsible for decisions of the Turkish Competition Board with their reasoning, 4 lawyers mainly responsible to deal with cases before the Council of State and 4 assistant experts on research. The number is 321 when all staff is taken into consideration in 2003 whereas it was 316 in 2002.

##### **4.2 Human resources (persons-years) applied to**

a) Enforcement against anticompetitive practises, b) Merger review, c) Advocacy efforts

49. All tasks granted by the Act on the Protection of Competition No. 4054 are carried out by personnel of profession who are experts on competition and assistant experts on competition total number of whom is 84.

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<sup>8</sup> 1 USD= 1,450,000 TL.

<sup>9</sup> 1USD = 1,505,839 TL.

**4.3** *Period covered by the above information*

50. The number of personnel of profession, that is 84, is valid for 2001, 2002 and 2003.

**5. Summaries of or references to new reports and studies on competition policy issues**

51. In 2003, The Turkish Competition Authority continued to organize conferences, symposiums and congress on competition related issues. In this context, 3 symposiums, a congress and a conference took place, the titles of which are given: Symposium on the Competition Policy and the Control of Mergers and Acquisitions, Symposium on the Role and Significance of the Competition Policy in the Way of Full membership to the EU, Symposium on Current Issues in the Competition Law, Congress on Competition: Regulation and Policies, Thursday Conferences: Opening Energy Services to Competition: The French Case.

52. The Competition Authority published the following books in 2003: 4<sup>th</sup> Annual Report, Symposium on Public Undertakings, Legal Monopolies and Competition, which took place in 2002, and Symposium on Current Issues in Competition Law, Decisions of the Board in 2001 and 2002. Furthermore, 4 Competition Journals, a graduate dissertation on 'Enforcement of the EC Competition Rules on Banking Sector', 46 thesis of expertise written by the assistant experts on competition were published.