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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN TURKEY

-- 2012 --

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Executive Summary

1. Overall examination of the Turkish Competition Authority's (TCA) activities shows that in 2012 a total of 303 cases were finalized following preliminary examinations, preliminary inquiries and investigations conducted under the provisions of Articles 4¹ and 6² of the Act No 4054 on the Protection of Competition (The Competition Act or Act No 4054). During the same period 54 negative clearance/exemption decisions and 303 merger/acquisition decisions were given in addition to that number.
2. While the number of total final decisions regularly increased from 1999 to 2008, it showed a significant increase in the last three years after the decrease in 2009. As a matter of fact, while number of final decisions in 2008 was 444 and 370 in 2009, that number reached 624, 590 and 656 between 2010 and 2012. The 5% decrease in that number in 2011 as compared to the previous year was mainly caused by the decrease in the number of negative clearance/exemption and merger/acquisition/privatization files. Also the %11 increase in 2012 was a result of the increased number of merger/acquisition notifications.
3. On the other hand, the increasing trend observed in the number of competition violation cases in the last three years was found to have continued in 2012 as well. When the statistics concerning infringements of competition, which takes an important place in the activities of the TCA, are taken under examination, it can be observed that the number of finalized decisions has increased from 283 in the previous year to 303. In this context, when we take a look at the sectoral distribution of the finalized cases, we can see that the sectors of transportation, petroleum-petro chemistry/petroleum products, food products and beverages, construction services and supplies have taken the largest share among the examinations conducted. At this point, it is also seen that while the number of investigations change from year to year, the sectors these investigations take place, do not show a similar change in time barring a few exceptions.
4. When we look at the sectoral distribution of final decisions on merger/acquisition/privatization notifications, we find that one fourth of the total number of files consisted of applications related to the energy sector in 2010, but there was a balanced distribution in 2011. While in 2012, sectors that produced most notifications in the order of their share in the distribution were: transportation services, food products, energy and pharmaceutical products. It could be deduced from past experience that the TCA maintains its tendency to avoid the option of blocking a transaction in 2012 as long as they do not pose significant competition problems.
5. When statistics regarding negative clearance/exemption files are taken into account, it can be seen that a large part of the files finalized in 2012 stemmed from applications related to the petroleum, petro chemistry-petroleum products sector, as was the case in the previous year.
6. As such, and based on the data supplied above, there is a need for the establishment of cooperation mechanisms between the law-maker and the public authorities responsible for the regulation of the aforementioned sectors to discuss the measures need to be taken in relation to those sectors which are constantly the subject of competition violations or complaints, despite the investigations conducted by the TCA and the measures taken as a result of these.
7. In 2012 investigations that ended with a finding of infringement of law and a fine were scattered among cement, steel straps, industrial salt, car dealers and fruit sectors. Special emphasis should be given to the cement case as the cement industry observed a significant public interest. Uncovering a cartel in this closely followed sector increased both the public awareness and their support for the TCA. The resulting

¹ Article 4 prohibits anti-competitive agreements, concerted practices and decisions.

² Article 6 prohibits abuse of dominant position.

fine of 50 Million TL which was given to a total of ten undertakings also formed an important part of the total fines imposed in 2012.

8. A significant change in the past year occurred about the authority of appeal against the decisions of the Competition Board. With the latest amendment of the law, the Ankara Administrative Courts became the court of first instance while the Court of State had had that duty before. This change, though may cause some concerns about extension of legal proceedings in the coming period, and also about predictability and consistency, is expected to produce a positive result if the necessary measures are followed.

9. In 2012, as a step taken forward to increase the effectiveness of the TCA, the Authority published the Communiqué on the Application Procedure for Infringements of Competition which sets the boundaries of the required information that the complaints should carry. The purpose of this step is to identify a standard level of information so that to avoid the misuse of complaint rights by the undertakings or consumers and also to be able to channel the limited resources according to the TCA's priorities. In other words, with the adoption of this new Communiqué, it was aimed to create ground for a much proactive implementation of the competition law.

10. At the last week of 2012, mergers and acquisitions notification thresholds are altered by the amendment which was published in the Official Gazette (which became effective in February 2013) and also similar changes are on the agenda of the Board to increase the effectiveness of privatization transactions. In addition, as the regulations about the staff had become outdated, a new personnel regulation has been put into force.

11. Today, in developed economies, another important function competition authorities are charged with is to provide consultancy to governments on legal and administrative regulations during the preparation and/or application stages of these documents, in order to ensure that the market structure established would minimize market failures stemming from the behaviors of undertakings. Within the scope of this function, known as competition advocacy, market structure in the micro scale is shaped in accordance with the suggestions of competition authorities, which helps prevent any potential failure occurring in the future and guarantees economic efficiency. The TCA has taken this subject as one of its main policies and priorities and has provided opinions to other authorities and institutions on various subjects in 2012, as well.

12. In addition to these efforts, sector inquiries are regarded as important tools that could be employed in the competition advocacy work. As a matter of fact, final reports of the sector inquiries on natural gas and fast moving consumer goods sectors are welcomed with great enthusiasm and provided the public with the needed ground for further discussions.

13. Also the TCA shared its fourth competition letter titled "Public policies and practices that negatively affect competition in the markets." with the public in 2012. Moreover, the TCA published its first competition report which analyzes eleven key sectors in depth and points out the required actions need to be taken for increasing the competitive environments found in these sectors.

14. In order to follow international developments related to the jurisdiction of the TCA, participation and contribution was provided for a large number of activities in foreign countries in 2012. As in the previous years, relations with the EU, OECD, ICN and UNCTAD were maintained at the same level of intensity and oral and written contributions provided in the meetings of the aforementioned organizations allowed the international assessment of the activities of the TCA.

15. Of particular importance in terms of multi-lateral relationships, following the Istanbul Conference on "Identifying the Needs of the Organization of Islamic Cooperation (OIC) Member States in the Area of Competition Law and Policy" in 2011, further efforts has been put to the task of identifying the needs of the OIC countries in coordination with the relevant counterparts in the OIC organization in 2012. Under bilateral relations, various activities were carried out with a large number of competition authorities, especially with those the TCA have signed a cooperation protocol, such as exchanging of information and experience, sharing technical assistance and participating in the events organized by them. A technical assistance program has been conducted for the officials of Afghanistan's Competition Directorate and also for the Authority of Mongolia. Several training seminars to the members of Organization of Islamic Cooperation are also underway. Also last year, in addition to the existing nine, additional cooperation protocols were signed with the competition authorities of Egypt and Turkish Republic of Northern Cyprus.

16. Lastly, some of the activities in the area of education, which are deemed particularly important by the TCA, should be mentioned. In 2012 as with previous years the TCA's investment in its own personnel continued with increased pace. Besides the improvement of the content and the increase in number of internal trainings, the TCA continued to support its case handlers to attend one or two year master programs at the high end universities of the world.

17. Efforts that are being put in the task of making the new institutional structure work in a more effective way continued intensively in 2012. In parallel to the modern approach brought to the management and organization of the work with the restructuring carried out at the end of 2011, now the main aim of TCA is to increase organizational effectiveness in the coming period. E-signature application and electronic information management system both of which are introduced in 2012 will provide a significant contribution to the functioning of achieving this goal. In addition, "internal control system" which was being developed in the past year, is expected to increase the quality of the management and thus the standard of the TCA's activities.

18. The TCA's work in 2012 on improving the legislation and increase the dynamism of institutional operation for the purpose of creation of a competitive environment in the goods and services market also created a foundation and opportunity for more sophisticated activities. It is clear that this work is also in line with the TCA's aim of becoming one of the world's leading competition authorities and public institutions.

1. Changes to competition laws and policies, proposed or adopted

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

1.1.1 The Communiqué on the Applications Procedures for Infringements of Competition Entered into Force

19. "Communiqué on the Application Procedures for Infringements of Competition," which was prepared in order to establish and announce the procedures and principles concerning the applications made to the Competition Authority and as well as the assessment of such applications, has entered into force after its publication in the Official Gazette dated 23.08.2012 and numbered 28390.

20. The Communiqué introduces regulations and explanations on the required form and conditions of the applications, as well as the assessment of the notifications made to the relevant persons about their applications and the process.

1.1.2. The Communiqué on the Amendments Made to the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board

21. With the Communiqué no 2012/3, published in the Official Gazette dated 29.12.2012 and numbered 28512, article 7 of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board No: 2010/4, which is on merger and acquisition transactions subject to authorization, was amended, effective as of February 1, 2013.

22. With this amendment made, among the thresholds enforced, the first one about the domestic turnover is left unaffected; while for the second set of thresholds which is the one that takes global turnover into account, the Turkish turnover threshold of 5 million TL was raised to 30 million TL. In the determination of the said threshold, the turnover of the merging parties or of the acquired asset or operation shall be taken as the basis. The regulation also revoked the existing exception of notification given to transactions which do not result any concentration vertically or horizontally (which was defined as “non-existence of an affected market”)

2. Enforcement of competition laws and policies

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

2.1.1 Summary of significant cases – Examples from the decisions on competition infringements

- SODAŞ/OKS Investigation Decision and Leniency Application [Decision Date and Number: 03.05.2012, 12-24/711-199]

Within the scope of the investigation, the claims that Sodaş Sodyum Sanayi A.Ş. (SODAŞ) and Otuzbir Kimya ve San. Türk Ltd. Şti. (OKS) fixed powder sodium sulfate and crystal sodium sulfate prices in collusion and allocated customers and that Alkim Alkali Kimya A.Ş. (ALKİM), SODAŞ and OKS fixed prices for raw salt was examined.

Market: Powder sodium sulfate, crystal sodium sulfate and raw salt markets

Findings: During on-the-spot inspections conducted at both SODAŞ and OKS many documents were recovered indicating that the parties fixed prices in powder sodium sulfate and crystal sodium sulfate markets and engaged in customer allocation. In the observations and assessments made in this framework, it was found that OKS and SODAŞ jointly maintained prices for powder sodium sulfate and crystal sodium sulfate and engaged in customer allocation during the time period from September 2005 to April 2011.

In terms of the raw salt market, the investigation took into account the duration of the relevant practices of Alkim and SODAŞ, which are parts of the same economic entity (the ALKİM-SODAŞ Group), along with OKS, as well as the effect of these practices on the relevant market, and concluded that imposing administrative fines on the ALKİM-SODAŞ Group and Otuzbir Kimya ve Sanayi Türk Ltd. Şti. for their actions in the raw salt market was not necessary.

An application was made by SODAŞ within the framework of the Regulation on Active Cooperation for Detecting Cartels (Leniency Regulation) concerning its practices in the powder sodium sulfate and crystal sodium sulfate markets. In the application, the relevant company accepted that SODAŞ and OKS both maintained prices for sodium sulfate and engaged in customer allocation since 2004, and requested immunity from fines as a result of its active cooperation. Competition Board, in turn, decided that the relevant application should be accepted

under article 5.1(a) of the Leniency Regulation, as it carried the conditions set out in article 6 of the regulation.

Conclusion: With regard to sodium sulfate market, it was decided that OKS and SODAŞ violated article 4 of the Act No 4054 within the time period of September 2005 to April 2011 by fixing prices for powder sodium sulfate and crystal sodium sulfate and by allocating customers, and therefore administrative fines should be imposed on OKS and SODAŞ; however, since SODAŞ's application to benefit from the Leniency Regulation was accepted, the fine to be imposed on the aforementioned undertaking should be discounted by a third in accordance with the related provision of the Regulation.

Also, it was decided that an administrative fine should be imposed on those employees of OKS and SODAŞ found to have had a decisive effect on the violation; however, since SODAŞ's application to benefit from the Leniency Regulation was accepted, this fine also should be discounted by a half for SODAŞ employees.

With regard to raw salt market, in light of the duration of the relevant practices and their effects on the relevant market, it was decided that imposing administrative fines on ALKİM-SODAŞ Group and OKS was not necessary.

- Investigation Decision on Istanbul Toyota Dealers [Decision Date and Number: 20.11.2012; 12-58/1556-558]

Market: The market for the distribution, sales and marketing of new Toyota brand vehicles and after-sales spare parts, maintenance and repair market for Toyota brand vehicles.

Findings: After the information and documents gathered during the investigation process were evaluated as a whole, it was determined that the dealers under investigation entered into an agreement between 2006 and 2011 aimed at limiting competition by fixing the sales prices of new Toyota brand vehicles as well as after-sales maintenance and repair service fees, and that they were in communication with each other to maintain the collusion which are accepted as actions prohibited by article 4 of the Competition Act.

During the dawn-raids conducted, letters and price listings were found, which included prices undertakings under investigation had set on a model by model basis for TOYOTA brand vehicles. These documents also showed that dealers sent each other supplementary price lists called special prices in addition to TOYOTA's recommended price lists and that dealers maintained and exchanged applicable discount rates and sales prices for each model.

It was concluded that the different agreements found between the dealers, which were prohibited by the article 4 of the Competition Act, were continuous in nature therefore should be treated as a single continuous conduct.

Conclusion: It was decided that administrative fines should be imposed on nine dealers which were found to have violated article 4 of the Act no 4054 by concluding agreements on the sales prices for new Toyota brand vehicles and on after-sales maintenance-repair service fees.

- Eastern Anatolia and Southeastern Anatolia, Adana and Eastern Black Sea Regions Cement Investigation [Decision Date and Number: 06.04.2012, 12-17/499-140]

Market: Cement Market

Findings: On the course of the dawn-raids several documents collected from the undertakings contained dates and agreed prices. It was investigated whether there was particular conduct on the dates corresponding to the statements in the documents and it was determined that the undertakings mostly implemented the points they agreed upon.

Firstly, based on the document dated 29.03.2010 collected from Kars Çimento, it was found that a meeting was held with the participation of sales and marketing directors of cement companies in the region and that a decision was taken to increase bulk cement prices. This observation was supported by the travel records collected from the undertakings mentioned in the document which show that the relevant personnel were in Ankara where the meeting held on the aforementioned date. The statements in the document were separately examined and analyzed whether each statement in favor of a price increase was implemented by the relevant undertaking. Undertakings' weighted average sales prices for bulk cement in 2010 for each province were examined however a conclusion that there was an increase in prices following the meeting held on 29.03.201 could not be reached. Aside from that, it was observed that undertakings generally acted in compliance with the other decisions mentioned in the document.

The second group of documents examined concerned only four out of the ten undertakings under investigation. It was determined that the words, "prefab business" and "briquette business" in these documents were used to refer to cement firms. It was decided that the relevant undertakings were in collusion to ensure that cement prices were increased, or at least not decreased, after 26.04.2010. In addition to the documents, it was established that after June 2010, the undertakings in question implemented significant joint increases at certain rates in average cement prices in some provinces and was found out that these increases were a result of collusion between the undertakings.

An important observation made in the decision is about whether the two sets of documents mentioned above were indicative of a single infringement or separate infringements. According to the decision, the second group of documents collected showed that there was a more intense and continuous type of communication between the 4 undertakings mentioned in those documents. However, it was concluded that there was a single infringement due to the fact that there was significant overlap between the chronological processes of the two groups of documents and the fact that geographical regions they are related also overlapped and any other evidence did not suggest two independent instances of conduct.

On the other hand, even though the decision concluded that a single infringement had taken place, article 5.2³ of the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, was taken into account in the calculation of the base fine to be imposed on the four undertakings which were mentioned second set of documents. As a result, the rates of fines were set at a higher level for the four undertakings in question.

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The article states that "In the determination of the rates written under paragraph one, issues such as the market power of the undertakings or associations of undertakings concerned, and the gravity of the damage which occurred or is likely to occur as a result of the violation shall be considered".

Conclusion: The board decided that all undertakings under investigation violated article 4 of the Act and imposed administrative fines on these undertakings.

- UN Ro-Ro İşletmeleri A.Ş. Investigation Decision [Decision Date and Number: 05.10.2012, 12-46/1409-461]

Market: The market for scheduled marine transportation services between Turkey and Europe with ro-ro ships carrying wheeled and mobile cargo.

Findings: It was found that the party under investigation, the UN Ro-Ro, held dominant position in the market for scheduled marine transportation services provided on the ro-ro lines between Turkey and Europe. It was also decided that the exclusion of UND Deniz from the ticket recognition and service provision system established by UN Ro-Ro together with Ulusoy Ro-Ro İşletmeleri A.Ş. did not violate the exemption condition introduced by the Board decision dated 03.05.2007 and numbered 07-37/380-141, and that therefore the relevant practice did not constitute an infringement under article 4 of the Act no 4054 and also under article 6. However it was established that UN Ro-Ro excluded its main rival from the market by implementing predatory pricing in the Pendik-Marseilles ro-ro line. In addition, it was concluded that UN Ro-Ro obstructed the operations of its competitor with certain practices other than predatory pricing.

Conclusion: It was decided that the aforementioned practices of UN Ro-Ro constituted an abuse of dominant position under article 6 of the Act no 4054 and that therefore the an administrative imposed on the relevant company.

- Kayseri Bosch Retailers Investigation Decision [Decision Date and Number: 12.06.2012, 12-32/916-275]

Market: White goods and other electronic goods retail sales market.

Findings: In light of the documents and information acquired through the on-the-spot inspections conducted within the scope of the case, it was found that some Bosch retailers operating in the Kayseri province engaged in joint pricing by signing an agreement between them. According to this agreement the dealers prepared certain price lists based on but separate from the Bosch recommended prices, exchanged these lists among themselves and applied the prices set, also jointly determined other terms of sales and exchanged information related to their inventory levels.

Conclusion: As a result of the investigation, the Board decided that the undertakings concerned, violated the Act no 4054 by concluding agreements to fix sales prices of Bosch brand products, and therefore imposed administrative fines under article 16 of the Act no 4054.

- Dried Fig Investigation Decision [Decision Date and Number: 16.03.2012, 12-12/383-112]

Market: Dried fig supply market

Findings: In light of the documents and information gathered through the on-the-spot inspections conducted, it was determined that there was an agreement between undertakings active in the dried fig market to fix the purchase price of the product paid to the suppliers.

Conclusion: As a result of the investigation, the Board concluded that 10 undertakings active in purchasing dried figs in the Aydın province violated article 4 of the Act no 4054 by participating

in an agreement aimed at fixing maximum purchase price for dried figs and consequently imposed administrative fines on the aforementioned ten undertakings.

In addition it was decided that the relevant undertakings should be informed that any practice which definitely or potentially leads to the same results with the practices already found to constitute a violation must be avoided. It was also decided that opinions should be rendered to the relevant public institutions stating that regulations prepared for the agricultural sector must take competition rules into consideration.

2.2. *Mergers and Acquisitions*

2.2.1 *Summary of significant cases*

- YKM/Boyner (BBM) Acquisition Decision [Decision Date and Number: 09.08.2012, 12-41/1162-378]

The case involved the analysis of the request for the authorization of the acquisition of control over Yeni Karamürsel Giyim ve İhtiyaç Mad. Tic. San. A.Ş. and YKM Yeni Karamürsel Giyim ve İhtiyaç Maddeleri Pazarlama A.Ş. (together "YKM") by Boyner Büyük Mağazacılık A.Ş. (BBM) through the share transfer method, by the notification made by BBM.

Market: Retail market, cosmetics supply market and shopping center operation market

Findings: A domestic undertaking with foreign partners, BBM is a joint venture established by the Boyner Group and Fernella S.A.R.L. while the YKM was established as a domestic undertaking. Main area of activity for both undertakings is retail store operation. The parties sell domestic and foreign brands as well as their own special brands of various categories including women's, men's, children's clothing, footwear and accessories, cosmetics, and home decoration products as well as electrical home appliances.

In the evaluation of the relevant transaction, especially in terms of the retailing dimension of the transaction; department store format and its transformation, the development of specialized store operation, spread of shopping centers and the effect of consumer choice on this transformation and development and the parallel transformations in the world were examined. As a result, it was concluded that scope of the market could not be restricted with department stores and relevant product market was defined, in its narrowest sense, as "department stores and specialized stores aimed at mid- and high-income groups and specialized shopping sites (virtual department stores) which sell seasonal products subject to e-commerce". Also, it was found that market definitions based on product groups could also be made, however defining markets for categories other than "cosmetics supply market" was deemed unnecessary since definitions based on these product groups would have no effect on the evaluation. Lastly, "Shopping center operation market" was also included in the assessment due to the fact that shopping centers played a notable role in establishing consumer shopping habits and thereby competitive conditions, and also because that a majority of both BBM and YKM stores were situated within shopping centers thus increasing the probability that transaction in question would have an effect on this market, particularly with respect to shopping centers to be opened in the future.

In evaluating the relevant transaction, consumption habits of the consumers, the effect of shopping centers and the parallel transformations in the world were examined, and it was concluded that there was not any factors to cause regional differentiation on the supply side, since conditions concerning access to sources of supply, entry into markets, production, distribution,

marketing and sales for the products sold by BBM and YKM did not offer marginal regional differences; on the other hand, a differentiation on the basis of the provinces may be considered from the demand side, since demand for the stores were mostly local. Within this framework, it was decided that relevant geographical market in relation to the retail market could be defined on the basis of the provinces in terms of demand and at a local level with respect to attraction centers of shopping centers; on the other hand, taking into account the increasing online sales, it might also be possible to define the geographical market as "Turkey" as well. In terms of the supply market and shopping center operation market, geographical market was defined as "Turkey," taking into consideration of the relevant case-law and supply conditions. Even though geographical market was identified as "Turkey" in the decision, the evaluation conducted included province-based analyses in order to examine whether there was concentrations at the province level.

The legal assessment concerning the effects of the transaction in relation to the retail market was conducted taking into consideration that there were a large number of specialized stores in every category creating alternative shopping choices for BBM and YKM customers, YKM was not the first alternative among other stores after BBM for BBM customers. Also it is found that BBM was not the first choice of YKM customers, and both analyses included specialized stores among the top five choices of customers. This information was interpreted as customers perceived department stores and specialized stores as substitutes for each other and therefore these types of stores were in competition with each other. Also the launch of new shopping centers each year was seen as a factor diminishing the effect of the relevant transaction on the retail market. On the other hand, province-based analyses were conducted where both BBM and YKM were present, and it was found that in those provinces, the undertaking became the market leader following the transaction but did not reach a significant market share (at most 24.71%). Thus, it was concluded that consumers faced no restrictions in terms of the sources they could procure the products they required, and that this situation was also true for suppliers. It was observed that interviews conducted with competitors and suppliers in the sector during both the Preliminary Inquiry and Final Examination phases predominantly supported these findings.

The legal assessment concerning the effects of the transaction on the selective cosmetics market has gained particular importance since this was a market where after transaction concentration was higher in comparison to other product categories. It was found that BBM's market share following the acquisition would reach about 25%; however this concentration level was not identified high enough to the level required for a finding of dominant position. It was observed that the parties to the transaction faced strong domestic competitors within the cosmetics market as well as foreign chains which recently entered the market.

The findings about the shopping center operation market, focused on the possibility that after the transaction the BBM's brand/store portfolio and the consequent increased bargaining power would enable it to offer more favorable prices in terms of lease conditions to shopping center investors/manager in comparison to other retailers and to acquire a certain competitive power in the categories it competed. Other groups besides the BBM which present shopping centers with a brand and store portfolio were examined and it was determined that the BBM attained a size of at most 10% in a shopping center. It was determined that besides multi-brand/multi-store groups, there were strong domestic and foreign brands which also lease large stores while offering a single brand.

Also, for provinces where the parties of the transaction co-existed in the same shopping center analyses were conducted on the basis of the provinces, on the basis of local regions in large provinces and on the basis of the shopping center where they co-existed. It was determined that,

within the six provinces concerned, they did not reach a significant share in terms of sales area in the province as a general, in the local regions or in the shopping centers in question. Moreover, it was also determined that they could not exceed a share of 10% even within the shopping centers in which both had a presence, which might be seen as the narrowest market. Information was also requested from large shopping center investors/managers operating in Turkey and it was observed that the transaction would have limited effects on these groups as well.

Conclusion: As a result of the evaluations conducted on the markets with has the potential to be affected by the notified transaction, it was concluded that the acquisition of control over YKM by BBM through share transfer would not result in the creation of a dominant position within the relevant markets, or in the strengthening of an existing dominant position. Thus, the transaction has been cleared.

- The assessment of commitments given under the AFM Uluslararası Film Prodüksiyon Ticaret ve Sanayi A.Ş. (AFM) Acquisition Decision dated 17.11.2011 and numbered 11-57/1473-539[Decision Date and Number: 22.11.2012, 12-59/1590]

Market: The market for movie theater services, multiplex movie theater services and tradition/shopping center movie theater services.

Findings: The Board authorized the acquisition of the majority shares of AFM by MARS and the acquisition of 50% of the shares of Spark Entertainment Ltd. Şti., which holds joint control over MARS, by ESAS HOLDİNG, which holds sole control over AFM, provided that certain commitments were fulfilled.

The aforementioned commitments included the transfer of nine movie theatres to third parties and also the closure of three.

In order to ensure that the commitments were fulfilled, the buyers were examined to determine whether they carried the characteristics of suitable buyers. According to the "Buyer Conditions," which specified the characteristics to be fulfilled by the buyers, the Buyer had to be independent from the parties to the transaction and had no relations with them, the Buyer had to have financial resources, business experience and the ability to become an efficient competitor in the market through the Divested Business, and the acquisition transaction of the Buyer should not cause any further competitive problems.

In accordance with the information obtained from the buyers, each acquisition was examined under these headings After Board-appointed, independent Divestiture Expert's assessment on the candidate buyers were taken into consideration, it was established that the candidates fulfilled the suitable buyer conditions.

Nonetheless, since all transactions had the nature of an acquisition, legal evaluation concerning acquisitions were conducted under the scope of the Act no 4054 and other relevant legislation, and it was established that acquisition of the assets related to the commitments by the buyers would not result in the creation of a dominant position or the strengthening of an existing one.

Conclusion: It was concluded that the buyers for the nine businesses to be divested within the framework of the commitments fulfilled the specified buyer conditions and the acquisition transactions did not constitute violations under article 7 of the Act no 4054; therefore, it was decided that all of the commitments were fulfilled.

- Acquisition of the "Hare" ve "Maestro" Assets by Diageo[Decision Date and Number: 06.04.2012, 12-17/458-M]

An examination was conducted concerning the request for the authorization of Mey İçki Sanayi ve Ticaret A.Ş.'s (Mey İçki) implementation of the commitment included in the Board decision dated 17.08.2011 and numbered 11-45/1043-356 related to the acquisition of all of the shares of Mey İçki by Diageo plc. (Diageo), which stipulated the transfer of the "Maestro Assets" in the gin market, and "Hare Assets" in the liquor market to a suitable buyer as well as the transfer of the Bilecik Production Facility if requested by the buyer.

Market: Alcoholic beverages market.

Findings: The acquisition of all of the shares of Mey İçki by Diageo was authorized under article 7 of the Act no 4054, subject to some conditions and obligations. The main commitment in the relevant decision may be summarized as follows: "...divestiture of Mey İçki's "Maestro Assets" in the gin market and "Hare Assets" in the liquor market via transfer to a suitable buyer as well as the transfer of the Bilecik Production Facility if requested by the buyer within a period of 6+6 months."

Other commitments included various proposals to ensure that the businesses to be divested were managed separately and independently until the end of the divestiture period, and the business to be divested was operated in a manner to maintain its marketability at the time of sale. Also it was decided that the suitable buyer must carry the following characteristics: it should not be an undertaking controlled by Diageo and/or Mey İçki, it should be independent from Diageo and/or Mey İçki, it should have the necessary financial resources and equipment to be able to operate the assets to be divested in a manner to be able to compete with other market players, and it should be qualified to obtain the necessary licenses and permits required by administrative authorities.

In the first six-month period which comprised the primary unbundling phase, monthly supervising expert reports covering the issues raised in the Board decision were submitted to the TCA. During the primary unbundling phase, an agreement was concluded with Antalya Alkollü İçecekler San. Tic. A.Ş. (Antalya) on the sale of the assets to be divested and the information and documents related to the application were submitted.

Regarding the application, assessments were made on whether the assets to be transferred were in compliance with the commitments, on the content of the monthly supervising expert reports, and on whether Antalya carried the characteristics of a suitable buyer.

The report on whether the acquiring undertaking met the necessary criteria prepared by the supervising expert as well as other documents were examined and, it was evaluated, in light of its production capacity and financial competence, whether Antalya was a suitable buyer with the financial resources and equipment required in order to be able to operate the divested assets in a manner to actively conduct business in the market and to compete with other market players. As a result it was decided that Antalya fulfilled the criteria specified in the Board decision and the transaction could be authorized.

In the last phase of the file, the transfer of the business to be divested to Antalya was examined under article 7 of the Act no 4054. In light of the market shares of the gin and liquor brands to be acquired by Antalya as well as the gin and liquor brands Antalya acquired as a result of its previous Burgaz acquisition, concerns were raised on whether the acquisition of the Maestro brand, which allowed Mey İçki to hold a dominant position in the gin market, would lead to the

strengthening of that dominant position. In the evaluation conducted, it was decided that Diageo would not allow the creation of a dominant position in the market by wearing down Antalya's high market share and also that Antalya's current low share in the gin market was not sufficiently large to strengthen a dominant position in a market with the presence of a strong competitor like Diageo. Lastly it is stated that the transaction would allow for the creation of a more competitive structure in the gin market as compared to the past rather than the opposite.

Conclusion: In relation to the relevant transaction, the Board decided that the transfer of the Maestro Assets and Hare Assets to Antalya should be authorized within the framework of the commitments presented by Diageo plc. to the Competition Authority included in the Competition Board decision dated 17.08.2011 and numbered 11-45/1043-356, and that following the realization of the aforementioned transaction, Diageo fulfilled its commitments.

2.3. *Opinions*

23. This section includes examples from the opinions submitted to various authorities and organizations concerning implementation or amendments in legislation in 2012, in accordance with articles 27(g) and 30(f) of the Competition Act⁴

2.3.1 *Opinion on Draft Bill on the Amendment of the Natural Gas Market Law No 4646*

24. The TCA gave its opinion on the Draft Bill on the Amendment of the Natural Gas Market Law No 4646 which had been drafted by the Ministry of Energy and Natural Resources and which brought a number of innovations in terms of market design and included proposed structural changes to Petroleum Pipeline Cooperation (PPC).

25. Firstly, TCA in its opinion stated that although it perceives steps taken toward the liberalization of imports as encouraging, the proposed limitations onto the sales and purchases transactions of PPC is not in line with the aim of forming a competitive market and will result in a restriction of competition. In this context, it stated that the restriction on natural gas imports should be removed both for PPC and for other undertakings active in the market and further regulations should be aimed at making PPC an active competitor both as a purchaser in imports market and as well as a seller in the local market.

26. Regarding the proposed change which allows for tenders to be opened for the natural gas purchase and sale contracts transferred by the PPC, it is pointed out that even though this contract transfers provide an increase in the number of active participants in the market they can not be regarded as means providing new entrance as the quantity of the natural gas entering the market remains the same. At this point TCA stated that in order to reach the goal of increasing the participants active in the market aimed by the proposed change, the regulation could be relaxed to allow wholesale purchasers to sell to other wholesale purchasers (not only to final customers).

27. Finally, the draft bill suggested splitting the PPC into three independent undertakings each one taking one of the three roles of PPC which are the transmission of natural gas, the operation of liquid natural gas facilities and the commercial activities. With regard to this suggestion TCA proposed a legal separation of the companies instead of a full structural separation.

⁴ Article 27(g) empowers the Competition Board to opine, directly or upon the request of the Ministry of Customs and Trade, concerning the amendments to be made to the legislation with regard to the competition law whereas Article 30(f) empowers the Presidency of the TCA to opine about decisions to be taken as to the competition policy, and the relevant legislation.

2.3.2 *Opinion on Draft text of planned amendments to be made on the secondary legislation devoted to the separating of electricity distribution and retail activities*

28. In the opinion of the TCA concerned, it is acknowledged that in vertically integrated structures operating in network industries, the parts that are suitable to be opened to competition can be separated from the parts that are not and even though there are various forms of separation, with the amendment to the Law No 4628 “legal separation model” is adopted for the Turkish Electricity market.

29. Within the scope of the opinion, it is stated that it is necessary that accounts should be separated, administrative separation should be provided, competition-sensitive information exchange should be prevented and barriers which make it hard for consumers to switch suppliers should be removed in order to achieve an effective legal separation.

30. In the opinion, with regard to preventing the exchange of commercially sensitive information it is put forward that as a result of the nature of the activities distribution companies may possess commercially sensitive information (customer consumption volumes, demand profiles and contact information) and it is suggested that it should be made clear what information can be shared with whom, and how often, and also what information is confidential. In this context, the risk of emergence of possible competition problems are vocalized as the distribution company will share the same physical environment, information systems and infrastructure with the retail company during the three-year transition period.

31. With respect to the goal of removing obstacles consumers face when changing suppliers, TCA emphasized that it is important that the contractual and perceptual (psychological) transactions costs faced by consumers are reduced and also the consumers should be provided a guaranteed stream of electricity when their supplier goes out of market. Moreover, TCA added that although the draft contains some provisions aimed at accomplishing this task, more emphasis could be given to prevent companies to increase transaction costs by their specific conducts.

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

32. In addition to the developments mentioned above, a protocol was signed between Banking Sector Regulation and Supervision Agency and the TCA in 2012, aimed at ensuring mutual cooperation, information and opinion exchange, and coordination for the purposes of establishing, developing and protecting a free and healthy competitive environment in electronic communications market. This protocol is in addition to the one signed with the Public Procurement Authority in 2009 and to the one signed with Communication Technologies Authority in 2011. Efforts for signing a similar protocol with the Energy Market Regulatory Authority are ongoing.

4. Resources of the TCA

4.1 Resources overall (current numbers and change over previous years)

4.1.1 Annual budget (in TL and USD)

33. Revenues of the TCA are determined by the Competition Act as follows in Article 39. According to this article, revenues of the TCA set up the budget of the TCA, and they are made up of the following items of revenues:

- The subsidy to be allocated in the budget of the Ministry of Customs and Trade,
- Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the remaining portion in case of capital increase,
- Publication and other revenues.

34. Revenues belonging to the TCA are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank.

35. The spending budget of the TCA in year 2012 was 47,6 million TL approximately 26,4 million USD. This shows a %5 increase from the previous year.

36. Moreover, although it is provided for in Article 39 of the Competition Act, there has not been a subsidy in the budget of the Ministry of Customs and Trade and the TCA has not taken any aid from the general budget transfer scheme since its establishment in 1997.

4.1.2 *Number of employees*

- Non-administrative competition staff 144
- All staff combined: 341

4.2 *Human resources (person-years) applied to: Enforcement against anticompetitive practices, Merger review and enforcement; Advocacy efforts.*

37. Turkish Competition Authority was not structured as to assign staff with respect to competition enforcement activities. Rather the staff is divided into five main enforcement departments which are assigned sectoral areas. Any merger filings or antitrust infringement complaints regarding a sector are delivered to the head of the department assigned to that sector. Then the department head distributes cases to NAC staff for analysis. There is also NAC Staff employed in External Relations, Training and Competition Advocacy; Strategy Development and Decisions Departments.

4.3 *Period covered by the above information:*

- 2012

ANNEX: STATISTICAL INFORMATION FOR THE YEAR 2012**Table 1. Files Concluded**

Year	Infringements of Competition	Exemption/Negative Clearance	Merger/Acquisition/Joint Venture/Privatization	Total
2011	293	54	253	590
2012	303	50	303	656

Table 2. Files Concluded Under the Scope of Articles 4 and 6 of the Competition Act

Year	Article 4	Article 6	Both Together (4 and 6)	Total
2011	158	95	30	283
2012	168	108	27	303

Table 3. Horizontal and Vertical Agreements Examined under the Scope of Article 4 of the Competition Act

Year	Horizontal	Vertical	Together (H/V)	Total
2011	108	75	5	188
2012	121	67	6	194

Table 4. Results of the Applications Regarding Exemption and Negative Clearance

Concluded Negative Clearance Files			Concluded Exemption Files								
Applications that are granted Negative Clearance	Applications that are granted Negative Clearance with Conditions	Applications that are not Granted Negative Clearance	Cases including Agreements that are granted individual exemption	Cases including Agreements that are not Granted Exemption and Required Corrections	Cases including Agreements that are Under The Scope of Block Exemption	Cases including Agreements that are Granted Individual Exemption with Conditions	Cases including Agreements that are under the scope of Block Exemption after conditions	Cases including Agreements that are not granted exemption	Cases including Agreements from which exemption was withdrawn	Cases including Agreements where individual and block exemption were evaluated together	
2011	9	-	-	21	-	6	6	1	8	-	3
2012	12	-	-	20	-	3	8	1	5	-	1

Table 5. Number of Merger and Acquisition Decisions

Year	Merger	Acquisition	Joint Venture	Privatization	Total
2011	3	168	68	14	253
2012	1	190	91	21	303

Table 6. Results of Merger and Acquisition Notifications

Year	Cleared	Cleared Under Conditions	Blocked	Out of scope (not satisfying the thresholds)
2011	191	4	-	58
2012	262	-	-	41

Table 7. Fines Imposed (TL)**

	Year	Total	Infringements	Merger/Acquisition	Exemption/Negative Clearance
Fines related to substance	2011	459.508.920	459.508.920		
	2012	60.411.864	60.411.864		
Fines imposed on executives	2011	-			
	2012	20.718	20.718		
False or misleading information in an application	2011	-			
	2012	-			
False or misleading information given during on the spot inspections	2011	12.327	12.327		
	2012	76.129	76.129		
Finalizing a transaction without permission of the Competition Board/Failure to notify within due date	2011	1.698		1.698	
	2012	119.057		119.057	
Incompliance with the decision of the Competition Board related to Article 9	2011	-			
	2012	-			
Hindrance of on the spot inspection	2011	859.518	859.518		
	2012	-			

** The table does not reflect new fines in the files annulled by the Council of State, the high administrative court against decisions of the Competition Board, and taken again by the Competition Board and takes into account the subparagraphs of Articles of the Competition Act amended by the Act dated 23.01.2008 and numbered 5728.