



SCREENING CHAPTER 8 on COMPETITION POLICY

C. ANTITRUST

Country Session: The Republic of TURKEY
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AGENDA ITEM I: ANTITRUST RULES IN TURKEY:

**INTRODUCTION,
OVERALL ASSESSMENT AND COMPARISON
WITH EC LEGISLATION**



Legal Framework

The Turkish Constitution, Customs Union Decision 1/95, and the Law on Protection of Competition

The Turkish Constitution

Article 48:

“The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.”

Article 167:

“The State shall take measures to ensure and promote the sound, orderly functioning of (...), goods and services markets; and shall prevent the formation, in practice or by agreement, of monopolies and cartels in the markets”.



Legal Framework

Customs Union Decision 1/95

Turkey has the obligation to enact a competition law in compliance with the competition rules of the EC.

And to establish a well-functioning Competition Authority with financial and administrative autonomy.



Legal Framework

The Law on Protection of Competition No 4054 (Turkish Competition Law)

- Adopted on 7 December 1994
- Came into force on 13 December 1994

- Turkish Competition Board was appointed on 5 March 1997
- Turkish Competition Authority began to operate on 5 November 1997.

Objective:

To protect competition in markets for goods and services in order to contribute to social welfare by ensuring the most efficient allocation of resources.



Main Corpus of the Turkish Competition Law (TCL)

Substantive Articles (Three Main Prohibitions)

- Article 4: Agreements, decisions and concerted practices in restraint of competition,
- Article 6: Abuse of dominant position,
- Article 7: Mergers creating or strengthening a dominant position.

Exemption System

- Article 5 envisages an exemption mechanism for the agreements and decisions meeting certain conditions.
- The system is based on individual and group exemptions.

General Procedural Rules, Sanctions and Investigation Procedure

The rules governing general procedural aspects, sanctions and inquiry and investigation procedures are in line with the EC rules (*request for information, on the spot investigation, notification, termination of infringement, substantive fines and procedural fines, access to file, right to defence etc*).



Institutional Setting: Turkish Competition Authority (TCA)

- In operation since 5 November 1997.
- Independent in fulfilling its duties. No organ, authority or person may give commands or orders to influence the final decision of the Authority.
- Main guardian of competition.
- Responsible for **enforcing** the Turkish competition law and **advocating** for competition.
- Institutional capacity considered as adequate by the European Commission.



Organization of the Turkish Competition Authority

Established by Article 20 of the Turkish Competition Law

- Competition Board commenced duty on 5 March 1997.
- TCA started operating on 5 November 1997.

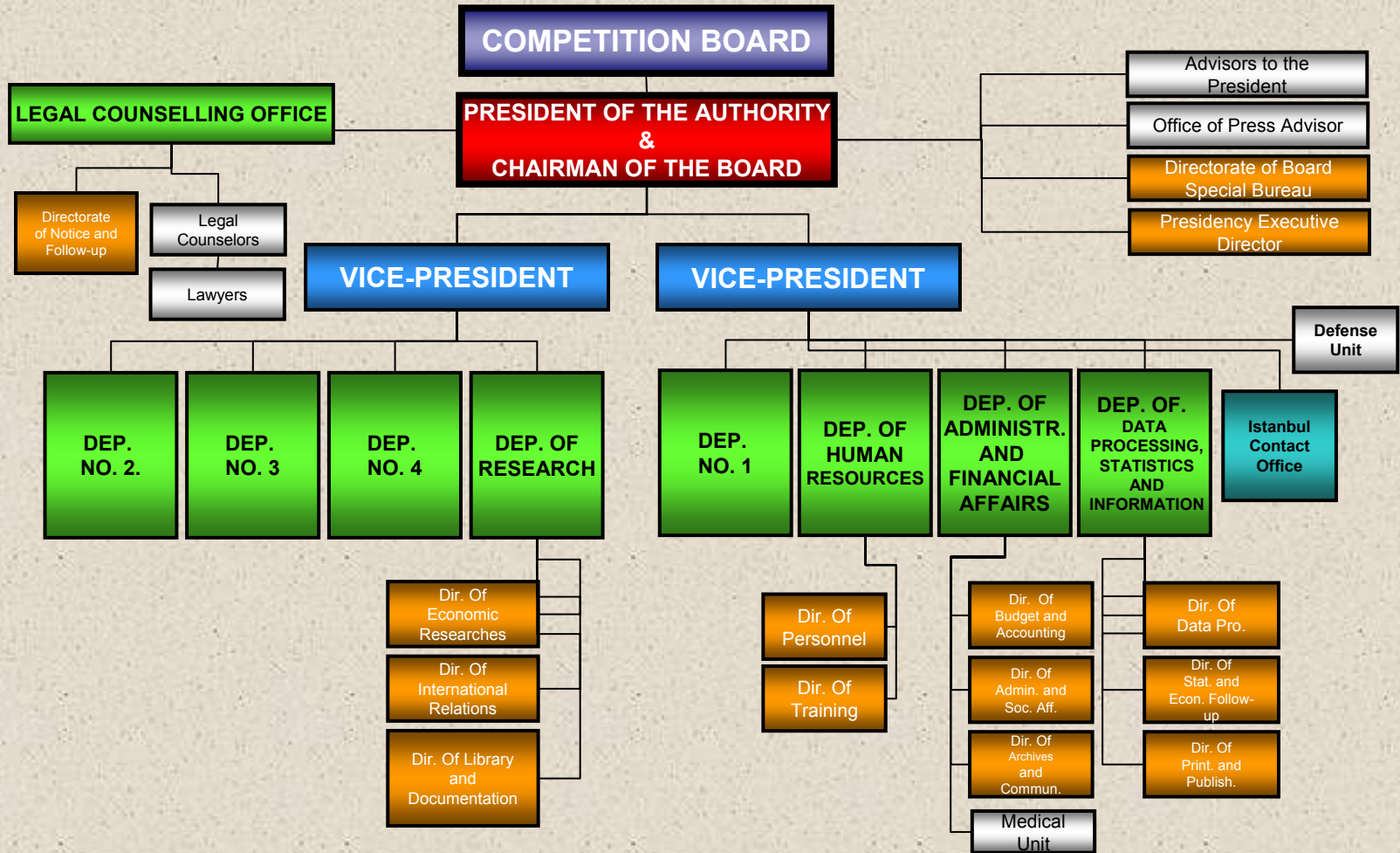
Article 21 of the Law:

TCA consists of,

- Competition Board,
- Presidency,
- Service Units

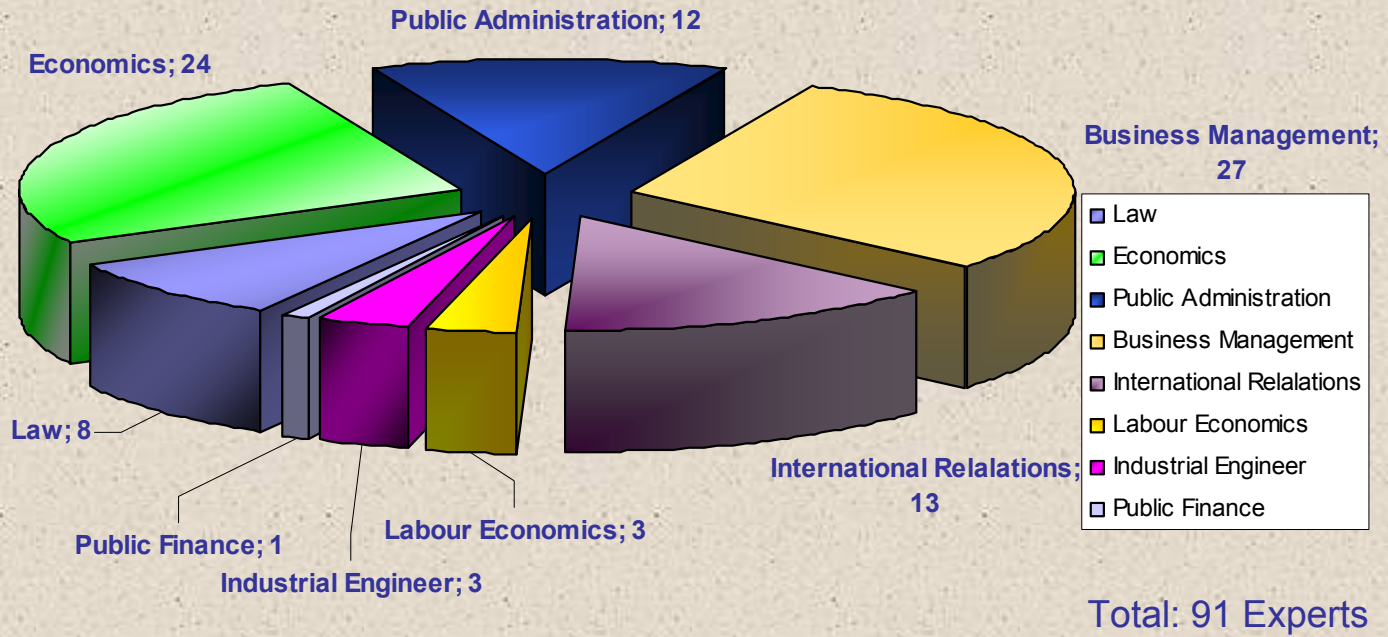


Organization Chart of the Turkish Competition Authority





Backgrounds of TCA Experts





Application: 8-Year Experience by the TCA

- Applied the Turkish competition law for about 8 years.
- Found satisfactory in the Progress Reports of the European Commission.
- Peer Review Report of the OECD evaluating the practice of the TCA has the following assessment:

“The agency has continued to make excellent progress (...), and has developed a reputation as one of Turkey’s most effective and best administered agencies. It has pursued its mission with energy, imagination, and integrity and has won respect and support from leaders in the business community. Most importantly, it has played a critically important role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms.”



Applications Concluded (1999 - 2004)

	Competition Infringements	Exemption / Negative Clearance	Mergers & Acquisitions	TOTAL
1999	11	13	68	92
2000	40	11	100	151
2001	40	27	86	153
2002	53	26	103	182
2003	54	36	106	196
2004	91	76	122	289
Total	289	189	585	1063



Alignment with the EC Rules



The Alignment of the Turkish Competition Policy with the EC Rules

Three requirements for alignment :

- 1. Institutional Capacity,**
- 2. Legislation,**
- 3. Credible Application.**



The Harmonisation of the Turkish Competition Policy with the EC Rules

Antitrust Rules

- Decisions of the European Commission and EC Courts are taken into consideration in interpreting substantive articles of the competition law.
- Some secondary legislation (regulation and informative notices) of EC is not adopted; however, they are taken into consideration in implementation, such as;

Certain block exemption regulations

(Specialization, technology transfer and sectoral block exemption regulations)

Certain Notices

(Ancillary restraints, market definitions, subcontracting agreement etc.)

Certain Guidelines

(Horizontal mergers etc.)



Working Group Meeting Held in Brussels on 3 March 2005

- Alignment requires institutional capacity, legislation and credible implementation.
- Alignment is required in **terms of substance** not in terms of procedure.
- The TCA has sufficient institutional capacity and credible implementation.
- Regarding certain secondary legislation not directly adopted by the TCA, it was agreed that the adoption of the principles contained in these legislations will be sufficient with the condition that the TCA is loyal to them.
- No need for direct translation of the said legislation in competition policy.
- “What is permitted in the EC should not be prohibited in Turkey”



Harmonisation Agenda of the TCA

Following the meeting held in Brussels, the TCA has set an agenda as follows:

- TCL needs to be amended for the adoption of the newly introduced legislation in EC modernisation framework.
- After the amendment of the TCL, the TCA plans to revise its existing secondary legislation accordingly.



AGENDA ITEM II: PROCEDURAL RULES



Related articles of TCL on the implementation of rules on competition

TR Procedural Rules (Turkish Competition Law No:4054)	EC Procedural Rules (Council Regulation 1/2003 and Commission Regulation 773/2004)
<p><u>Turkish Competition Law No:4054</u></p> <ol style="list-style-type: none"> 1. Article 9: Termination of infringement. 2. Article 9(4): Interim Measures 3. Article 12: Notification system (Not Compulsory). 4. <u>No Commitment Mechanism</u> 5. Article 14: Request for information. 6. Article 15: On the Spot Investigation. 7. <u>No power to search at Home.</u> 8. Article 16: Fines for procedural failures and infringements of substantial rules up to a maximum of % 10 of the net sale in the previous year. 9. Article 17: Periodic Fines. 	<p><u>Council Regulation 1/2003</u></p> <ol style="list-style-type: none"> 1. Article 7: Finding and termination of infringement 2. Article 8: Interim measures 3. <u>Notification system is abolished</u> 4. Article 9: Commitment Mechanism. 5. Article 18: Requests for information 6. Article 20: The Commission's powers of inspection 7. Article 21: Inspection of other premises (importantly homes of the managers etc) 8. Article 23: Fines 9. Article 24: Periodic Fines



AGENDA ITEM II: PROCEDURAL RULES

TR Procedural Rules	EC Procedural Rules
<u>Turkish Competition Law No:4054</u>	<u>Council Regulation 1/2003</u>
10. Article 19: Prescription in Fines and Periodic Fines	10. Article 25: Limitation periods for the imposition of penalties
11. Article 13: Revocation of Exemption or Negative Clearance Decisions.	11. Article 29: Withdrawal in individual cases
12. Article 46 and Article 47: Hearing / Principles Concerning the Hearing	12. Article 27: Hearing
13. Article 25: Secrecy	13. Article 28: Professional secrecy
14. Article 52 / Article 53/2: Points Required in Decisions/ Taking the Decisions to Writing	14. Article 30: Publication of decisions
15. Article 55/1: Appealing Against Decisions of the Board	15. Article 31: Review by the Court of Justice
16. Articles from 40 to 59: Investigative Procedure (initiation of proceeding, statement of objections, access to file, right to defence, hearing,)	16. Commission Regulation 773/2004 (Implementing Regulation for Regulation 1/2003): This Regulation sets the rules for investigative procedures in accordance with Regulation 1/2003



EVALUATION

- Turkish procedural rules are mainly in line with the EC procedural rules.
- For a more effective enforcement, TCA has been working to prepare a draft bill that envisages re-design of the certain procedural rules considering Regulation 1/2003.



Fines in Antitrust Cases

Guideline on Setting Fines:

- **Article 16 TCL sets certain principles.**
- **No notice or guideline on setting fines.**



Notice on Leniency

- No notice on leniency.
- Amendment in TCL is needed.
- In practice, the Board imposes minimum fines on whistleblowers.



AGENDA ITEM III: SUBSTANTIVE RULES

1. Notices of a General Nature

De Minimis Notice

- No notice on *de minimis*.
- Amendment of the TCL is needed.

Notice on Relevant Market

- Concept of relevant market defined in Merger Communiqué.



Guideline on Effect on Trade:

- As this guideline explains what to understand from “effect on trade”, we believe that this guideline should be applicable after Turkey becomes a full member.

Guideline on Application of Article 81 (3):

- Regulation 1/2003 abolished the notification system. This means that article 81/3 directly applies. The abolishment of the notification system has been followed by a wave of publication of guideline with a view to guiding the undertakings in evaluating whether their agreements can be exempted or not. We should consider Guideline on Application of Article 81(3) in this context. The guideline has a critical role for the agreements not falling under *De Minimis* as well as block exemption regulations.
- The TCA does not have such a guideline yet.
- The exemption system of the Turkish competition regime is based on Article 81 (3). The Turkish system is based upon individual and block exemption methods. In contrary to the EC, the Turkish system still keeps notification which is not compulsory. In this context, there is a slight difference in between the two system. Thus we believe that the guideline on application of Article 81(3) has become also helpful for the TCA in its analysis of individual exemption cases.



2. Horizontal Cooperation Agreements

1. Commission Regulation on Specialisation:

- No secondary legislation regarding specialisation agreements.
- No application that culminate in enough experience to prepare any secondary legislation with respect to such agreements.
- We are not sure about the necessity of such a regulation in Turkey.

2. Regulation On R&D:

TR/ Communiqué on Research and Development No:2002/2	EC/ Commission Regulation on Research and Development No:2659
------------------------------------------------------	---------------------------------------------------------------

The Communiqué follows Commission Regulation 2659/2000;

but it differs in some aspects from it such as;

- duration of the exemption for projects involving joint exploitation of the results,
- market share caps.



3. Commission Guideline on Horizontal Cooperation Agreements

There is no such a guideline issued by the TCA. We are examining the Guideline and issuing such a guideline may be beneficial for the business community. On the other hand, it is important to state that when adopting such a guideline, the experience accumulated since 1997 should be regarded significantly as done by the European Commission.



3. VERTICAL AGREEMENTS

1. COMMISSION REGULATION NO: 2790/1999

TR Vertical Agreements	EC Vertical Agreements
Communiqué on Vertical Agreements No:2002/2	Commission Regulation of Vertical Restrains No:2790/1999
Guideline on Vertical Agreements	Guideline on Vertical Agreements

Block Exemption Communiqué Regarding Vertical Agreements Communiqué No: 2002/2 is largely based on Commission Regulation (EC) No 2790/1999 of 22 December 1999. Basically it differs from its counterpart in terms of the absence of market share cap for the application of the block exemption.

Guidelines on the Explanation of the Block Exemption Communiqué on Vertical Agreements No: 2002/2 has been issued in 2003. Although it is less detailed than its counterpart, its counterpart is also taken into consideration in practice.

Evaluation

The Turkish legislation in the field of vertical agreements should be regarded as in line with the EC legislation

4. TECHNOLOGY TRANSFER

- No secondary legislation.
- Preparations for issuing such a communiqué were delayed due to other rules on IP.
- Board takes the principles in the Regulation into account.
- Example: Commission Decision of *Moosehead/Whitbread* decision of 23 March 1990 (90/186/EEC) was taken into consideration in
 - *Miller* decision (14.11.2002; 02-70/843-347)
 - *Beck's* decision (12.6.2003; 03-42/463-202)



MOTOR VEHICLES



TCA Communiqué No. 2005/4 Motor Vehicle Block Exemption

- Limited scope of the former Communiqué 1998/3 (parallel to 1475/95)
- 1998/3 encouraged a restrictive system combining selective and exclusive distribution.
- Inadequate independence for dealers
- Problems with multibranding and the need to increase intrabrand competition
- Lack of alternatives in after-sales servicing and spare parts
- Assessment of problems (institutional experiences and claims of the sector)



Objectives of the Communiqué 2005/4

- Encouraging alternative distribution channels for new cars, spare parts and after-sales servicing.
- Providing flexibility to the suppliers in establishing their systems.
- Enabling spare part producers to compete.
- Facilitating access for independent repairers to inputs like technical information, spare parts, and diagnostic equipment.



Main Features and Provisions of the Communiqué 2005/4

- In line with Regulation 1400/2002
- Sets rules as a black list that the undertakings should not do
- Three types of clauses:
 - general conditions (market thresholds),
 - hardcore restrictions,
 - specific conditions (non-compete clauses and location clauses)



AGENDA ITEM IV: SECTOR SPECIFIC RULES



INSURANCE



Commission Regulation No: 358/2003 Covers

- Joint Calculations, Tables and Studies
- Standard Policy Conditions and Models
- Common coverage of Certain Types of Risks
- Security Devices



Joint Calculations, Studies and Tables-1

According to Insurance Law No 7397;

Premiums and tariffs for;

- Compulsory insurance branches are determined by State Ministry,
- Life insurances and health insurances lasting more than 1 year are approved by the Undersecretariat of Treasury
- All other insurance branches are determined freely by the insurance companies



Joint Calculations, Studies and Tables-2

- 47 insurance companies operating in Turkey.
- Each company calculates its net premium relying on its own expertise information based on its own customers.
- No statistical data gathered for actuarial calculations and studies.
- Need for statistical data based on a broad number of insurance contracts to calculate healthy net premiums.



Standard Policy Conditions

- Article 28 Insurance Law No 7397: Insurance policies must be issued in accordance with the general conditions approved by the Treasury.
- In practice, Treasury determines and publishes detailed standard policy conditions for each insurance branch.
- *Draft* Insurance Law authorizes the Treasury to abolish the obligation of approval, and leave the determination of standard policy conditions to the insurance companies.



Common Coverage of Certain Types of Risks & Security Devices

- Examples of co-insurance and co-reinsurance pools in Turkey were very limited in the past, but increasing in number recently.
- The installation of security devices, are more commonly required by insurers (to cover specific risks or to grant particular insurance conditions)

Turkish Competition Authority

- No block exemption
- Insurance Case: Two restrictive arrangements:
 - 1) Protocol signed among 12 undertakings to set minimum gross premium rates for the commercial and industrial fire insurance policies which are to be transferred for reinsurance,
 - 2) Publication of premium tariffs by the Association of Turkish Insurance and Reinsurance Companies in some insurance branches.
- The undertakings and the association of undertakings are fined.
- In case there was a block exemption regulation in Turkey, these arrangements could not enjoy immunity : binding and concerning commercial premiums.



**SCREENING CHAPTER 08
COMPETITION POLICY**

AIR TRANSPORT

**Country Session: The Republic of TURKEY
1-2 December 2005**

Commission Regulation No: 1617/93

- Regulation covers: a) consultations on passenger tariffs
b) slot allocation and airport scheduling
- The Regulation expired on 30 June 2005
- It is not certain whether or to what extent the block exemption regulation should be further extended or discontinued.



TURKISH AIR TRANSPORT MARKET

- Monopoly of Turkish Airlines in domestic lines abolished and the market opened to free competition by January 2004.
- Recent liberalization attempt in domestic flights market, enhanced competition not only in the domestic lines but also in the international flights.
- There are 13 private airline companies other than Turkish Airlines.
- Turkish Airlines (the national carrier) and Atlasjet Airlines are members of IATA.



Consultation on Passenger Tariffs

- No consultations among airline companies on passenger or cargo tariffs regarding routes within Turkey.
- Each company determines its fares for domestic flights independently.
- Turkish Airlines and Atlasjet Airlines attend the IATA Passenger Tariff Consultation Meetings, but generally they do not use the tariffs and conditions agreed upon in these meetings as a reference.
- The international flight tariffs are determined via bilateral agreements signed with third country airline companies.

Slot Allocation and Airport Scheduling

- Directive issued by the General Directorate of Civil Aviation prepared largely according to the IATA principles and standards.
- Slot Commission: functions under the coordination of the Ministry of Transport and by the chairmanship of the General Directorate of Civil Aviation,
- Slot Commission: formed by the representatives of State Airports Authority Operational Slot Unit, Slot Coordination Unit, Turkish Private Aviation Enterprises Association, the operator of the terminal in question, the airline companies and ground handling companies.
- The Commission takes the IATA criteria into account in slot allocation and airport scheduling.

Turkish Competition Authority

- IATA tariff conferences enjoy immunity from anti-trust and competition laws worldwide : no cases filed concerning IATA tariffs
- No complaints lodged concerning slot allocation and airport scheduling, or a possible collusion in the domestic flights market.
- Case: Pooling arrangements between Turkish Airlines and third country- Israel, Egypt and Jordan- airline companies including competition restrictions such as revenue sharing and capacity fixing arrangements were cleared for five years.

EVALUATION

- No block exemption regulation for the air transport sector
- Turkish Competition Authority is closely following the developments in this issue, and is planning to make the necessary adaptations when the new regulation or notice is adopted by the Commission.
- Until that date, the issues covered by the previous Regulation 1617/93 will be handled via individual exemption cases.



MARITIME TRANSPORT



Liner Conferences

- No block exemption for Liner Shipping Conferences.
- In 2003 and 2005, in two cases based on a complaint, the Turkish Competition Board decided not to prosecute the conferences in question covered by the Regulation No. 4056/86.
- In 2003, a working group was formed in order to initiate the preparations of adopting a block exemption parallel with the EC's block exemption regulation for liner shipping conferences.
- However, studies were postponed given the fact that the EC is currently reviewing its block exemption regulation (No.4056/86).

Consortium Agreements

- No block exemption for consortium agreements in shipping.
- There are no cases handled by the Turkish Competition Authority in relation to consortium agreements.

Conclusion

- The Turkish Competition Authority is planning to adapt its policy on liner conferences to the EC's new policy in this field.
- On the other hand, even if there is no block exemption, it is possible to examine the liner conference and consortium agreements under the provisions of the Act on individual exemption.



AGENDA ITEM V: ARTICLE 86



There are two main aspects of art. 86:

- **Art. 86/1 which obliges Member States not to infringe the other articles, particularly those related with competition, of the Treaty while granting exclusive and special rights by any measure. The obligation in art. 86/1 is directed to Member States, not undertakings. So our evaluations must focus on the measures taken by the government and state institutions of Turkey. And here we will assess the alignment of state measures particularly considering the antitrust point of view.**
- **In Art. 86/2 the main focus is on the undertakings with special mission (SGEI and revenue producing monopolies i.e. public undertakings).**

Below, Turkish legislation and practice will be assessed considering article 86 from an antitrust point of view.



Article 86/1

As regards article 86/1 there is not an explicit legislation on the control of State grants for exclusive and special rights. Until now in practice, TCA assessed these grants in two different ways:



First,

In its earlier decisions TCA assessed the State grants under article 7 of Competition Law considering these grants as mergers/acquisitions.

But this approach which was followed in some decisions is questionable. TEAŞ (Turkish Electricity Production and Transmission Company), TEDAŞ (Turkish Electricity Distribution Company) and GSM-1800 are examples of such decisions.



- **TEAŞ Decision**: TCA assessed the acquisition of operating rights of TEAŞ's thermal power plants to private undertakings.
- **TEDAŞ Decision**: TCA assessed the acquisition of operating rights of TEDAŞ's electricity distribution institutions located in 17 different task areas to private undertakings.
- **GSM 1800 Decision**: TCA assessed the concession agreement which grants a private undertaking to establish and operate the GSM 1800 system and which was signed between the private undertaking and the Ministry of Transport of Turkish Republic.

Second,

In its later decisions TCA started to not evaluate such kind of state actions (i.e. state grants and concession agreements) under the Law No. 4054 but continued to assess the activities of the undertakings which were granted such rights.

PROMODİREKT decision of TCA and Council of State's decision in this case is an example of this later approach.



PROMODİREKT Decision of TCA:

This case is related with the exclusive right (right to produce the signs/marks which will be stamped on the tap of the drinking water demijohns) which was granted by the Health Ministry of Turkish Republic to an undertaking – TESEV (Foundation of Turkish Health Education).

It was complained that by granting this exclusive right Health Ministry exceeded its authority that was given by a Decree Law.

In the decision TCA concluded that it is not under its authority to evaluate this situation and rejected the complaint.



Article 86/1

In 1999 and 2001, the Prime Ministry issued two circulars stating view of the Competition Board should be taken in any regulation be performed by public institutions regarding competition rules.



Article 86/1

Another point to mention is that in the draft modification proposals of Competition Law No: 4054, TCA plans to recommend the following points:

The requirement to ask the opinion of the TCA about:

- The new legislation which affects the conditions of competition in the goods and services markets or which grants special privileges to public or private undertakings,
- The draft versions of laws, decree laws, regulations, by-laws.

In case the TCA finds out the administrative transactions and arrangements which prevent, restrict or distort the competition in goods and services markets, the Authority may sue about these transactions and arrangements.



Article 86/2

Concerning article 86/2 from the definitions in the Law No: 4054, Decisions of the Competition Authority and the Council of State it is clear that antitrust rules are applicable to all kinds of economic activities of every undertaking (both to the private and public undertakings).

There is not any derogation from the antitrust rules for the undertakings which carry out services of general economic interest.



Article 86/2

In the reasoning of Article 2 of Law No 4054 it is clearly declared that

“... Competition rules should be applicable to all undertakings. It is not important whether the undertaking is owned by public or private entities. Although the aim of the protection of public interest and public order/safety goes front in the competition law, it is a necessity that the activities of the undertakings entrusted with the operation of services of general economic interest should not conflict with the competition rules. ...”



Council of State, in its PROMODİREKT decision, stated that:

“...as it is seen it is anticipated that competition rules will be applicable to all undertakings which carry out an economic activity. For this reason, the undertakings which were granted exclusive, special or privileged rights by the state or public undertakings are under the scope of the (Competition) Law.”

In BELKO decision, the Council of State followed the EC approach concluding that:

- “... it is understood that although the public service undertaken by BELKO is a kind of *service of general economic interest*, application of competition rules to the economic activities of BELKO will not disable BELKO actually or legally to undertake the public service.”



Article 86/2

In this regard, TCA imposed significant amount of fines to Turkish Telecommunications Company (Turk Telekom) which was a publicly owned undertaking at the time of the decision, because of its anti-competitive activities in some of the telecommunication markets.

There are also other decisions of TCA related with different public undertakings such as Turkish Sugar, İstanbul Sea Buses and TEKEL. In all of these decisions TCA approved that these enterprises are undertakings within the meaning of the Law No: 4054.

It is important to affirm that, following the EC application, TCA considered its state of action in its decisions taking into account whether the activities of these undertakings were based on their own initiatives or not.



AGENDA ITEM VI: MERGER CONTROL



General Overview

Mergers and Acquisitions are subject to the control of the Competition Board, via Article 7 of the Competition Law.

The Board issues Communiqués.

Privatisation is another important process.



Mergers Decisions by Type (1999 - 2004)

	1999	2000	2001	2002	2003	2004
Mergers	5	13	6	14	7	7
Acquisitions	56	70	73	83	76	88
Joint Ventures	5	11	7	6	9	8
Privatisation	2	6	0	0	14	19
TOTAL	68	100	86	103	106	122

1. Framework Legislation

- Main provision is the Article 7 of the TCL, which also empowers the Board to issue communiqués.
- The Board issued *Communiqué on the Mergers and Acquisitions Calling for the Authorization of the Competition Board* (Communiqué No: 1997/1) in 1997, matching the EC Merger Regulation (No: 4064/89).

- Current EC Merger Regulation (No.139/2004) prohibits the mergers and acquisitions that would “*significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position*”
- The TCA plans to follow the same approach.



AGENDA ITEM VI: MERGER CONTROL

Subject	TR	EC	*
<i>Appraisal of concentrations & definition of concentration</i>	6,2,3 Com 1997/1	2, 3 ECR 139/2004	
<i>Pre-notification requirement</i>	Com 1997/1	4 ECR 139/2004	1
<i>Calculation of turnover, examination of the notification and initiation of proceedings, suspension of concentrations and powers of decision of the commission</i>	10-11 Comp. Law 5, 6, 9 Com 1997/1	5-8 ECR 139/2004	
<i>Ancillary restraints</i>	-	Commission Notice	2

(1) Unlike the EC, there is no publication of the notification to the public in advance.

(2) No regulation, but taken into consideration in Decisions, in line with the EC.



AGENDA ITEM VI: MERGER CONTROL

Subject	TR	EC	*
<i>Time limits for initiating proceedings</i>	10-11 Comp. Law	10 ECR 139/2004	3
<i>Requests for information, the Commission's powers of inspection, periodic penalty payments, and fines</i>	14-17 Comp. Act Com 1997/1	11, 13-15 ECR 139/2004	
<i>Judicial Review</i>	55 Comp. Law	16 ECR 139/2004	
<i>Professional secrecy.</i>	25, 47, 53 Comp. Law	17 ECR 139/2004	

(3) Turkish legislation requires the Authority and the Board assess a merger within a shorter period of time compared to the EC.



AGENDA ITEM VI: MERGER CONTROL

Subject	TR	EC	*
<i>Hearing of the parties and of third persons</i>	7 Com 1997/1	16 ECR 139/2004	(4)
<i>Rights of defense, hearing, access to file, protection of trade secrets</i>	25, 47, 53 Comp. Law	16 ECR 139/2004	

(4) Unlike the EC, it is not mandatory to invite the third parties, but the Board may invite the parties. In addition third parties with legitimate interest may submit their opinions to the Board.



2. Implementing Rules

Subject	TR	EC
<i>persons entitled to submit notifications, submission of notifications, information and documents to be provided and effective date of notification</i>	12 Comp. Law 5 Com 1997/1	2- 5 ECR 802/2004

Rules regarding periods and time limits, hearings, decisions, access to the file, transmission of the documents etc. in Turkish competition legislation respect the principles set by the relevant EC legislation, with some minor details on time limits.

3. Notices and Guidelines

- Guideline on horizontal mergers and relevant notices such as simplified procedures, do not exist yet.
- The essence of the Commission notices on *ancillary restraints*, *relevant market*, *concept of concentration*, *concept of full-function joint ventures*, *concept of undertaking*, and *remedies* are employed in certain provisions of the Communiqué 1997/1 and/or applied either explicitly or implicitly in the decisions of the Board.



3. Notices & Guidelines

Subject	TR	EC	*
<i>Guideline on horizontal mergers</i>	-	<i>Guideline</i>	
<i>Simplified procedures</i>	-	<i>Notice</i>	
<i>Ancillary restraints</i>	-	<i>Notice</i>	
<i>Relevant market</i>	<i>4 Com 1997/1</i>	<i>Notice</i>	
<i>Concept of concentration</i>	<i>12 Comp. Law 2,3 Com 1997/1</i>	<i>Notice</i>	
<i>Concept of full-function joint ventures</i>	<i>2(c) Com 1997/1</i>	<i>Notice</i>	
<i>Concept of undertaking</i>	<i>4 Com 1997/1</i>	<i>Notice</i>	
<i>Calculation of turnover</i>	<i>11(b) Comp. Law Com 1997/1</i>	<i>Notice</i>	
<i>Remedies</i>		<i>Notice</i>	



Examples:

- Article 4 of the Communiqué 1997/1 perfectly corresponds to the principles of the Commission Notice on the definition of the relevant market, and Article 7(1) of the Turkish Competition Law and Articles 2 and 3 of the Communiqué 1997/1 are parallel to the provisions of Commission Notice on the concept of concentration.
- Articles 2(c) of the Communiqué 1997/1 deals with the concept of full-function joint ventures and Article 4 of the Communiqué 1997/1 provides definitions and detailed rules for both the concept of undertakings concerned and calculation of turnover. All those definitions, provisions and their application are again in line with relevant EC regulations and notices.



4. Privatisation

Communiqué Regarding the Methods and Principles to be Pursued During the Course of Pre-Notifications and Applications for Authorization Made to the Competition Authority in order to Acquisitions via Privatisation to Judicially be Valid Communiqué No: 1998/4.

The TCA interferes in two stages:

- delivering opinion before the bidding process
- authorization

• Examples of Privatisation Cases

– TEKEL

– İGSAŞ (Fertilizers)

– Türk Telekom A.Ş.

– TÜPRAŞ



TEKEL

- TEKEL's monopoly eliminated prior to the tender,
- TCA approved a block sale of TEKEL's alcoholic beverage facilities to a joint venture.



IGSAŞ (Fertilizers)

The Board rejected privatisation of IGSAŞ, a state firm manufacturing nitrogenous and composite fertilizers.

The prospective purchaser already had a significant presence in the relevant market.

Turk Telekom

- In the process of privatisation of the Board proposed;
 - Divestiture of the cable television operation to a different entity
 - Establishment of the Internet access operation as a separate unit
 - Blocking the company controlling the dominant GSM operator from bidding.



• TÜPRAŞ

Sale of TÜPRAŞ, holding 86% of Turkey's petroleum refining capacity approved on the condition that any new refining capacity investment by the firm would be assessed for entry deterrence effects on potential entrants into the refining market.



**AGENDA ITEM VII:
NATIONAL TRADING MONOPOLIES (Article 31 EC) (Eur-Lex 08.90)**

**Country Session: The Republic of TURKEY
01-02 December 2005**



•TMO (TURKISH GRAIN BOARD)

Monopoly on purchasing, marketing, distribution and exporting of opium in Turkey, in the framework of generally acceptable drugs control concerns.

(The Law Concerning Drugs, No.3298; Regulation No.88/12850; Decision of UN)



•ETI MADEN (ETI MINING)

Monopoly in researching and exploration of boron, thorium, and uranium ores. (The Law Concerning Mining, No.2840). However, for the time being there is no production of thorium and uranium in Turkey. On the other hand, there is no restriction on export, import or production of advanced boron products.



•TÜPRAS (PETROLEUM REFINERIES)

Even though there is no monopoly status on imports, export or production of refinery products given to any company, TUPRAS has a dominant position in the market. (Tender for privatization of this company has been finalized.)

- In terms of Commission Directive 88/301/EEC, there is no legal restriction in the market regarding telecommunications terminal equipments in Turkey.