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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN TURKEY

-- 2001 --

This annual report by the Turkey Delegation is submitted FOR CONSIDERATION to the Competition Committee at its forthcoming meeting on 5-6 June 2002.

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(2001)

Legislation

1. There were no amendments to the Competition Act in 2001. There have been significant sector specific legal developments though, as well as in relevant areas such as state aids and public tenders.

2. Natural Gas Market Law came into effect in 2001. Principles of "Unbundling of accounts" and "Transparency of accounts" in the framework of Directive No 98/30 of the European Parliement were accepted.

3. Electricity Market Law also came into effect in 2001. It is provided for that the electricity market intended to be liberalized, be unbundled vertically as production, transmission and distribution. It is planned that production and distribution be completely privatized, while transmission having the nature of natural monopoly shall remain as public monopoly. The said Act included the definitions of "wholesale", "retail sale" and "eligible consumer" aimed at ensuring competition in the market. It is expected that eligible consumers (customers who consume electricity over a certain amount per year and have the chance of choosing their supplier) in particular would act much more quickly in finding the most appropriate supplier. Eligible consumers' concluding bilateral agreements with producers and wholesalers shall set the first step for realizing a market of bilateral agreements, thus a more competitive market. In harmony with the Electricity Directive (No. 96/92) of the European Union, and being valid after 24 months from entry into force, the Act defined consumers who are connected to transmission and/or whose electricity consumption belonging to the previous year exceeds 9 million kilowatt /hour as eligible consumers. On the other hand, small consumers (household, small companies etc.) may come together and have the right to choose and bargain by constituting the legal personality required and joining their demand.

4. During the preparation of the said legislation, public institutions and organizations including the Competition Authority have been consulted as to regulations planned in the electricity market. The Competition Authority actively participated in the preparatory stage, and submitted written opinion about the draft acts on the electricity market.

5. Turkish Competition Authority has participated in the process of enactment of Petrolium Market Law. The draft was still being discussed by Turkish Grand National assembly by the end of 2001.

6. As for the field of public tenders, although there is no obligation for Turkey in relation to adaptation to the EU legislation under the Association Council Decision numbered 1/95, studies were initiated under the perspective of full membership and aimed at making the legislation of public tenders compatible with the EU legislation and international norms. It is expected that these studies shall conclude by the enactment of a new Bill on Tender instead of the State Tender Act No. 2886, whose preparation is in progress and which is more transparent and more competitive than the former one.

7. Turkish Competition Authority has also participated in the preparation process of Sate Aid Act.

Enforcement of Competition law and Policies

Actions against anti-competitive practises, including agreements and abuses of dominant positions.

Summaries of important cases:

Belko Decision:

8. Belko is the public entreprise which has been granted a monopoly right to operate as the sole retailer of coal -consumed for house-heating- in Ankara. The application delivered to Turkish Competition Authority in 1999 was simply a complaint of accusation of excessive pricing. The inquiry has proven the fact that the prices of Belko were higher than the prices of the competitive markets over % 60. In the course of the inquiry, cost analysis and market comparisons has been the two main streams reaching the conclusion towards the determination of excessive pricing.

9. Cost analysis focused on the comparisons between the price and cost figures of the last 5 years. The short-coming of this comparison was that the costs were inflated by irrelavent activities and ineffective operation of Belko. A considerable amount of capital transfer to the subsidiaries and losses from irrelavent activities were being reflected to the cost figures. On the other hand, a 60 % price gap was determined between the closed geographical markets and Ankara. The Board has made the assessment that the 60% excess price imposed by Belko for the coal sales was owing to increased costs resulting from inefficient management as abuse of dominance under Competition Act (Act No: 4054). The point to be underlined is that the prices fixed by companies can be assessed as excess pricing though the situation is one where benefit is not excess, and even the companies suffer form losses.

10. The Belko decision is the ever first decision of the Board regarding violation of the Act through excess pricing. Thus, it has been cleared out that over pricing can be assessed under Act No: 4054. Belko decision is also the first example of imposition of a fine to a public entreprise for the infiringement of competition rules.

11. The aim of granting exclusive right to Belko for retailing activities is to take precautions against air pollution by preventing the private enterprises from supplying low quality coal. The Competition Board has notified the opinion that this can not be a fair basis to grant an exclusive right and the same aim can be reached by an effective detection policy. The market was opened to competition under the opinion of the Competition Board.

The Turkcell Case:

12. The investigation on Turkcell İletişim Hizmetleri A.Ş. (Turkcell Communications Services Inc.) was initiated upon the complaints by Telsim Mobil Telekomünikasyon Hizmetleri A.Ş. (Telsim Mobile Telecommunication Services Inc.) and Başarı Elektronik Sanayi ve Ticaret A.Ş. (Başarı Electronic Ind. And Trade Inc.). In the complaining petition by Başarı Elektronik, Act No 4054 was called for service after the following summary is made: Turkcell practiced a distributor sales premium on other mobile phone sellers, at first which was practiced for Başarı Elektronik as well. However, later on, as Başarı Elektronik increased its market power, Turkcell lifted the supporting premium for Başarı Elektronik, and demanded line and sim card fees from the company as a discriminative behaviour, the consequent of which meant a 100 - 200 German Marks (DM) higher price of mobile phones by Başarı in comparison to those sold by other competing companies.

13. In the complaining petition by Telsim, Turkcell is said to have been abusing the dominant position it held in the GSM operators market in the market for GSM mobile telephone market, and claimed to have been hindering Telsim enter the market via using the identical distributor and dealer network, which is Turkey-wide, in the distribution system of both line and equipment markets, and via loyalty discounts, and thus high market share is protected.

14. Upon these complaints, the prepared report was discussed at the Board meeting on 20.07.2001, and the following decisions were taken:

1. Turkcell İletişim Hizmetleri A.Ş. held the dominant position in GSM services market;

2. Turkcell İletişim Hizmetleri A.Ş. :

   – exclusively had business with mobile phone distributors via campaigns or made these distributors dependent on Tukcell, and hindered these distributors enter into similar campaigns with competing operators, and consequently hindered the sales of the telephones of the distributors with the competing operator lines;

   – before December 1999, had exclusive business with its dealers and after the said date, with activation centers, and thus created hardship in the market for the competing operator as activation centers and subscriber corners are dealers of the distributors, almost all of which are - as explained above - exclusive and dependent distributors;

   and thus, violated paragraph (a) of Article 6 of the Act No: 4054;

3. Turkcell İletişim Hizmetleri A.Ş.

   – violated paragraph (b) of Article 6 of the Act No: 4054 owing to its dominant position in the GSM services market, and as consequence of discriminative practices between distributors operating in mobile phones market, leading to the creation of disadvantageous positions for those distributors that do not exclusively or dependently work with itself when compared with those who do;

   – used its dominance in the GSM operators market for the favour of KVK Mobil Telefon Sistemleri A.Ş., that had been in economic cooperation with Turkcell, and strengthened its position in mobile telephone market and restricted competition against KVK's competitors, thus violated paragraph (d) of Article 6 of the Act No: 4054;

   As a result, Turkcell İletişim Hizmetleri A.Ş. performed acts stated in above paragraphs (a) and (b) and thus led to violations falling under Article 6 of the Act No: 4054, and for this reason had to be imposed administrative fines as per paragraph 2 of Article 16 of the Act;

4. Provisions on price fixing, existing in the contracts that had been effective until December 1999 and after this date and acts built on these contracts led to violations under Article 4 of the Act No: 4054, as explained below in 5-b-i;

   And for this reason, Tukcell had to be imposed administartive fine as per paragraph 2 of Article 16 of the particular Act.

5. A total of 6.973.129.000.000 fine to be charged from Turkcell:

   – 6.275.816.100.000 TL of which corresponds to 0,9% of the annual gross income (net sales) as to end of year 1999, owing to the acts violating Article 6 of the Act - as stated

above in article 2 -, and taking into account the positive approach by Turkcell towards the investigation team;

- 697.312.900.000 TL of which corresponds to 0,1% of the annual gross income (net sales) as to end of year 1999, owing to the acts violating Article 4 of the Act - as stated above in article 3 -, and taking into account that these acts are small in number.

6. Turkcell İletişim Hizmetleri A.Ş. was to terminate the acts stated above in article 2, that fall under Article 6 of the Act, and under this scope, not to perform any discriminative practices between mobile phone distributors and importers without a rightful reason,

   - Regarding fixing prices:

     - Turkcell could determine the sales prices for the activation services, which are performed by Turkcell dealers as a continuation of Turkcell subscriber services without bearing any commercial and financial risks, (directly via TAM - *Turkcell Subscribers Center* - or through TAN - *Turkcell Subscribers Corner* -);

     - However, Turkcell could not determine the resale prices of sim cards and counter cards, etc. whose ownership is transferred to undertakings within the vertical structure of Turkcell with the name *reseller*.

   - Regarding the exclusive operation of dealers:

     - There are no inconveniences of the exclusive operation condition with regard to rules of competition in case TAMs and TANs are not in the meantime dealers of mobile telephone distributors, as they do not create obstacles for the competing operators to have similar dealers.

     - In case TAMs and TANs are in the meantime delaers of mobile telephone distributors, as it is not possible for the competing operators to have similar delaers, and thus competition in the relevant market is considerably restricted, exclusive operation condition cannot be brought about;

   Thus, the following have been determined to be notified to the relevant undertaking:

   With regard to contracts between Turkcell İletişim Hizmetleri A.Ş. and TAMs:

   - correction be made on the provision regarding price in accordance with the above explanations;

   - deleting the provisions regarding exclusivity with TAMs, that are in the meantime dealers of mobile telephone distributors;

   - Completing necessary modifications and notifying the Turkish Competition Authority within 60 days

   and it has been concluded that Turkcell should not perform any acts which means price fixing and leads to exclusive operation.

Vertical Restraints

Volkswagen Case

15. Doğuş Otomotiv is the authorized supplier (importer) of Volkswagen vehicles in Turkey. It was detected that Doğuş Otomotiv had restricted intrabrand competition via fixing the resale prices of Volkswagen passenger cars and light commercial vehicles and also restricting passive sales, i.e. restricting resellers to supply products to consumers out of their exclusive areas. Doğuş Otomotiv is fined 0,2 % of its gross income.

Arçelik :

16. Arçelik (whose products are known under trade mark of Beko in Europe) has a significant market share in durable goods market in Turkey. Aftersales service Agreements between Arçelik and its service points are notified in order to be evaluated under Communiqué on franchise agreements. By the time of notification, the Communuqué of Competition Authority on Franchise agreements had not been enacted. Therefore, Arçelik demanded the notification be evaluated in accordance with the principles of the corresponding Communuqué valid in European Union. By the date of decision, the Block Exemption Communiqué Regarding Franchise agreements was in force. Exemption is granted with the condition that some provisions about service fees which could be interpreted as price-fixing should be cleared. This decision illustrates the sensitivity of Competition Authority towards vertically price-fixing agreements.

Mergers and Acquisitions

Benkar-Fiba (Joint-venture) Case:

17. The subject of the file is the demand for permission to establish a joint venture between Benkar Tüketici Finansmanı ve Kart Hizmetleri A.Ş., affiliated to Boyner Holding A.Ş. (hereinafter referred as 'Benkar') and Fiba Bank A.Ş., affiliated to Fiba Holding A.Ş. (hereinafter referred as 'Fiba Bank'), by cooperating in the fields of consumer finance and banking services.

18. It was determined that operation of establishing a joint venture between Benkar and Fiba Bank in the fields of consumer finance and banking services is a joint venture operation covered in the scope of "Communiqué Concerning the Mergers and Acquisitions Requiring the Permission of Board of Competition" No: 1997/1, with respect to the **total turnover and market shares** of the parties in the market.

19. The relevant product market was defined as the card systems devoted to consumer financing or shortly as **"market of credit cards allowing shopping with installments"**, which have a much **narrower** field of use compared to credit cards and which are valid **only** at the stores or chain-stores that are the **members of the system**, which are marketed by banks or consumer financing companies, which allow payment on a future date or with installments and which are valid at certain stores. The 'shopping with installments' card systems are systems incorporating three basic parties, namely the company owning the system, the consumers holding the cards and the, stores that are members of the system, and such systems are identical to credit card systems on a large scale.

20. An assessment concerning the market share was made at first, in order to determine whether the above-mentioned operation is an operation creating a dominant position in the market, or decreasing the

competition to a large extent as the result of strengthening an existing dominant position. On this course, the market share of the parties and presence of any obstacle to enter the market were inspected. With respect to the entry in the market, the risks created by "network effect" in the related product market were considered. Benkar has achieved a high market share in the market, benefiting from the advantages of being in "incumbent" position in the related market. In "Advantage Card Membership Contract" made between Benkar and the stores, the obligation of not becoming the member of another card system is included. This situation creates an 'entry obstacle' for the enterprises desiring to enter the market. Because, as the result of the exclusivity system after a certain period and with the effect of the network externalities, it becomes harder for the enterprises to newly enter the market to find stores or chain-stores to include in their systems against Advantage Card, which is the strongest rival in the market.

21. In the case of elimination of the exclusivity condition, the banks - though not active in the relative product market - which have a long-term experience, know-how and customer portfolio in **credit cards market**, which is indeed an identical market, can easily enter the market. So, the joint venture, one of the parties of which is Benkar, holding the dominant position in the relevant market, will not lead to the strengthening of the dominant position.

22. It was resolved to prohibit the exclusivity clause imposed by Benkar to the member stores, and then to grant permission to the joint venture operation, to which Benkar, currently holding the dominant position, is a party.

Exemptions

23. THY (Turkish Airlines) demanded for individual exemption for the pool agreements covering issues such as sharing of revenues and determination of capacity, signeed with Israel Airlines, Kingdom of Jordan airlines and Egypt airlines. Despite the fact that they contain particulars restricting competition, these agreements were allowed with the Resolution of Board of Competition, since they provided new developments and improvements in the provision of air transport services with the regulating of air traffic in international air transport and so led to consumer benefits.

24. In the assessment made, it was resolved that the pool agreements, signed in the frame of the rules and principles of the bilateral air transport agreements and on the course of the rights and obligations of Republic of Turkey resulting from international agreements, do not restrict competition in the relevant market more than necessary. It was determined that it is out of question, for the lines for which the above-mentioned pool agreements were made to have an intense competition and for the airline enterprises to make mutual agreements to close these lines to competition or for these enterprises to mutually abuse their dominance in the absence of competitors, and that what was aimed with the agreements was to provide the continuity of service, by decreasing the costs of these lines, in which the number of customers is restricted.

Activities of the Competiton Authority in Turkey for the year 2001		
Total Competition Activities		
	Decisions Reached	New Cases Opened
Total number of cases	121	178
- Restrictive Agreements	60	63
- Abuse of dominance	18	31
- Mergers	43	84
Restrictive Agreements (Art.4 of the Act on the Protection of the Competition no:4054)		
	Horizontal Agreements	Vertical Agreements
New cases opened	36	27
- New notifications/applications	8	20
- New own initiative procedures	6	3
- New complaints	22	4
Decisions Reached	28	32
- Rejection of complaint decisions	7	3
- Negative clearence decisions	9	4
- Exemption decisions	4	21
- Prohibition decisions	-	-
- Prohibition with fines decisions	3	2
- Closed*	5	2
Court rulings	-	-
Abuse of dominant position (Art.6 of the Act on the Protection of the Competition no:4054)		
New cases	31	
- New own initiative procedures	1	
- New complaints	30	
- New applications (neg. clerance)	-	
Decisions Reached	18	
- Rejection of complaint decisions	14	
- Negative clearence decisions	-	
- Prohibition decisions	-	
- Prohibition with fines decisions	4	
Court rulings	-	

Merger Cases	
Decisions Reached	43
- Approvals	39
- Conditional Approvals	4
- Prohibitons	-
Court rulings	-

*These are the cases of which their investigations have been launched at the own initiative of the Competition Board. Afterwards all those are found out to be not restrictive of the Act on the Protection of the Competition no:4054