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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
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Working Party No. 2 on Competition and Regulation

ENHANCING THE ROLE OF COMPETITION IN THE REGULATION OF BANKS

-- Turkey --

This note is submitted by the Turkish Delegation to the Working Party No. 2 FOR DISCUSSION at its next meeting on 19 February 1998.

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ENHANCING THE ROLE OF COMPETITION IN THE REGULATION OF BANKS

-- Turkey --

1. Banking has commonly been treated as a matter of public interest although banks are operated for profit as in all other types of business. This treatment gives way in many of the countries in the world to regulate the banking sector more detailed and more strictly compared to the other sectors. Basic aim of banking regulation is consumer protection in general sense and in most cases the term “consumer” is understood as “depositor”. Other major areas of interest of banking regulation are to protect monetary stability and the efficiency and competition in the financial system.

Turkish Banking System and the Major Aspects of Banking Regulation in Turkey

2. As of December 1997, there are 72 banks operating in Turkey and 7 of these are state owned. As of September 1997 state owned banks hold 40 % of assets, 38 % of loans and 41 % of the deposits of the whole system.

3. There is no restriction on entering into the banking sector for both domestic and foreign investors that bear the conditions and qualifications specified in the Banks Act. However according to the Act, the final decision is made for the new entrants by the Council of Ministers. Banks operating in Turkey, with the exception of State Banks, have the right to open branches up to 10 in a calendar year without prior permission if they meet the standard ratios that are put into force according to the Act. However, they have to inform the Undersecretariat of Treasury at least 30 days prior to the date of opening. Banks have to get the prior permission of the Undersecretariat for each of their branches exceeding 10 in a calendar year. If they do not meet the standard ratios they have to get prior permission for each of their branches regardless of the number.

4. According to the Banks Act, the Council of Ministers has the authority to determine the minimum or maximum rates of interests and other benefits on deposits and the maximum rates of interests to be charged in credit transactions and to liberate them partially or completely. The Council of Ministers also has the right to transfer its authority related to the interest rates on deposits to the Central Bank. In 1987, rates on credit transactions and deposits liberated by Council of Ministers and the Central Bank respectively. There is no other price restrictions for other banking transactions.

5. Banks are not allowed to engage in purchase and sale of commodities and real estates for trading purposes. There are not any restrictions on ownership linkages among financial institutions. However, according to the capital adequacy regulation, financial subsidiaries of the banks are deducted from the capital.

6. Banks are not allowed to hold the shares of a non-financial company over 15 percent of their own funds and the total sum of investments in these companies may not exceed 60 percent of their own funds. Banks may not acquire real estates exceeding the number and size needed by them for the banking activities and total registered value of the real estates acquired by banks may not exceed half of their own funds. There are also lending limits in the Banks Act, parallel to the regulations of the EU.

7. According to the Act, all banks collecting deposits are obliged to have their savings deposits insured. To define the savings deposits to be insured and to determine the amount and other related matters of insurance are at the discretion and authority of the Council of Ministers. According to the Council of Ministers Decree issued in 1994 all savings deposits are covered by deposit insurance without limit. The premium is differentiated according to the capital adequacy ratio of the banks.

8. Capital adequacy is regulated in the same way as it is in EU directives and in BIS regulations. All banks have to meet the minimum ratio of 8 % capital base over their risk weighted assets and off-balance sheet items. The minimum capital amount required for new entrants is 3.6 trillion TL which is approximately 18 million USD for the time being.

9. There are two types of reserves that Banks are required to hold. One is the reserves on deposits and the other is the liquidity reserves. Deposit reserve requirement is 8% for Turkish Lira deposits and 11% for foreign exchange deposits. These reserves are kept in cash with the Central Bank. On the other hand, liquidity reserve requirement is differentiated into two categories as reserves against deposits and reserves against liabilities other than deposits. Liquidity reserve requirement is 6% for Turkish Lira deposits and 3% for FX deposits, and they have to be kept as government bonds at the Central Bank. Liquidity reserve requirement for other liabilities is 8% cash and 6% government bonds for their TL liabilities and 11% cash and 3% governments bonds for their FX liabilities. Those also have to be kept with the Central Bank.

10. There are no requirements to direct credit to favoured sectors, but lending limits in the Act are expanded for the credits that are extended to exporters and foreign construction services.

11. According to Banks Act, the Council of Ministers is authorized to revoke the permission of collecting deposits and carrying out banking transactions of a bank that becomes insolvent. After that, the Deposit Insurance Fund is obliged to pay the depositors the amount that is under the coverage of deposit insurance scheme and to request the bankruptcy of the bank. The fund participates in the estate of the bankruptcy administration as preferential creditor.

12. The main regulatory agency in the banking industry is the Undersecretariat of Treasury that is organised under the Prime Ministry. It exercises the power of setting and issuing the regulations concerning the matters for which it has been authorised by the Banks Act.

13. According to the Act, it is required that, for most of the regulations that will be issued, the Banks Association of Turkey is asked to express its approaches and comments. Banks Association of Turkey is a non-governmental organisation formed according to the Banks Act by all of the banks operating in Turkey and is charged with and authorised for, ensuring the development of the banking profession, securing the banks to work in unity, in a dignified and disciplined manner as required by the banking profession, and in accordance with the needs and conditions of the national economy and taking and implementing all measures necessary for prevention of unfair competition among banks.

14. Banking regulation does not prohibit any kind of inter-bank arrangements and agreements unless those arrangements and agreements violate the laws. In Turkish banking industry, such kinds of arrangements and agreements are in the areas which necessitate cooperation and collaboration among banks, such as ATM services. Those kinds of arrangements and agreements do not damage the competition and on the contrary, they serve as consumer protection mechanisms.

Competition Law and the Banking Sector

15. The national competition law is issued in December 1994 and there are no exemptions of sectors to the application of law. The law requires the Competition Protection Board to be organised as the enforcement authority and the Board has been organised recently. However, in the Banks Act, an article regulates voluntary mergers and transfers of banks. According to that article, merger of any one of the banks operating in Turkey with one or several other banks or transfer of its debts, credits and deposits to another bank operating in Turkey is subject to prior permission of the Ministry that the Undersecretariat of Treasury is attached. The Ministry gives permission for merger or transfer if it concludes that merger and transfer is not against the benefits of the parties. On the other hand, competition law prohibits all kinds of mergers and transfers that damages the competition in any sector. In that context, the Ministry has to evaluate whether the transfer or merger violates the competition law before giving permission. Those two provisions are complementary. The logic behind the provision on mergers and transfers in the Banks Act is obviously the protection of competition and it is necessitated due to the absence of a general competition law in the date of issuance of the Banks Act.

16. Competition law is enforced by the Competition Protection Board in all sectors without any exemptions. However, in the case of mergers and transfers of the banks the Ministry that the Undersecretariat of Treasury is attached is authorised to permit by taking into consideration the provisions of the competition law as mentioned above and the approaches of those laws can be accepted as complementary.