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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS**
**COMPETITION COMMITTEE**

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# ROUNDTABLE ON BARRIERS TO ENTRY

**-- Note by Turkey --**

*This note is submitted by the Delegation of Turkey to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.*

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## 1. Definition of Entry Barriers

1. Regarding definition of legal or administrative barrier to entry, Turkish Competition Board (the Board), in its *Turkcell*[1] decision, gives the following description: "*Any exclusive right allocated by a public authority to operate in a market constitutes a barrier for entrance in that market. Within this frame, the obligation to obtain a permission or a license, a concession or an operating license from an institution which enjoys a public authority in order to operate in the market constitutes a "legal or administrative barrier to entry" for the undertakings which desire to enter into the market.*" The decision cites that it is not possible for any actor to enter into the GSM services market unless there is a licence issued by the Ministry of Transportation[2], that is, there is a legal barrier for an actor's entry into the market. In the same decision, the Board defines sunk costs as "*All of the costs which could not be compensated in case that the entry into the market fails are the sunk costs.*" According to the decision; "*Costs under this scope vary according to the field in which the undertaking operated such as production, research and development, distribution and marketing*" and gives all production expenditures which are spent on factory and other production factors and which can not be compensated in case that the entry fails to be successful as examples before discussing whether there are sunk costs in the case in question.

2. In its Ice cream[3] decision, the Board gives another definition that is as follows: "The scope of barriers to entry, that mean that structural features of the relevant market comprise important difficulties for the undertakings to newly enter the market, is quite wide. The principal ones of barriers in question are legal barriers, highness of the investment cost, lowness of the profitability rate of the market, existence of intellectual and industrial property rights, technological superiority, product differentiation, economies of scale, financial power of the undertaking and operating policies."

3. In its Marshall Dye[4] decision, the Board provides the following definition: "Barriers to market entry express the case where structural features of the relevant market are not appropriate for undertakings to newly enter the market. The barriers in question can be listed as legal barriers, difficulties encountered in the provision of raw materials, necessity of an high investment cost, failure of the market to allow a profitable operation of a large number of undertakings as regards its structure, existence of intellectual and industrial property rights, technological superiority, differentiated products, economies of scale, vertical integration, financial power of the undertaking and operating policies."[5]

4. Finally, the Board mentions in one of its Cement[6] decision that "In economics literature, the concept of barrier to market entry is defined as the cost of production that should be borne by the firm to newly enter the industry but not by the incumbent firm. In the European Union Law practice, many various factors that constitute a difficulty for the undertakings to newly enter the market such as the need for capital, vertical integration, excess capacity, product differentiation and industrial property rights are qualified as barriers to entry."

5. In the same decision, sunk cost is defined in the following: "Sunk cost expresses those among the costs assumed to be able to operate in a sector that, while exiting the sector, have the nature of being unable to be reconverted into money through the disposal of that asset or those among the expenditure made that have the nature of being unable to be recovered or used in another field of operation."

## 2. Experience with Entry Barriers

6. Experience of the Board with the entry barriers should be evaluated to see what types of market features are considered to be entry barriers.

7. Requirement for a significant amount of capital is considered to be deterrent for the firms to newly enter the market in *Cement* decision. The Board mentions that the European Commission evaluates

need for high amount of capital as entry barrier without taking sunk costs into account. The deficiencies in capital markets are effective in capital need's constituting an entry barrier. Due to asymmetric information in capital markets, new firms with smaller balance sheets can only raise a loan with higher interest rates because they are seen more highly to go bankrupt. Any undertaking willing to enter the market by constructing a factory with a capacity of 1 million ton/year, that is regarded as optimal scale in the sector, will need USD 100 million. The relevant market of cement is of an oligopolistic structure with undertakings having large amount of capital and this situation produces an effect that increases the need for capital for firms to newly enter the market. The Board considers it obvious for firms to newly enter the market to have difficulty to find credit or to be in a position to endure high capital cost due to the existing problems in capital markets in Turkey. Therefore, the Board thinks that sunk costs and the need for capital constitute serious entry barriers in cement market.

8. Economies of scale have an important effect over fixed cost and cost of labour in cement sector because the main process is simple, the product is homogenous and technology is applicable by everyone. Therefore, the undertaking to newly enter the market has to invest in great amounts and produce at a great scale to be able to carry out price competition. It is accepted that optimal capacity is 1 million ton per year. The cement market that has had excess supply previously due to incentives granted faces great narrowing in demand after crises following one another and then the earthquake. Excess production in the sector that is saturated is tried to be decreased via export. The Board thinks it obvious that excess supply in a sector constitutes an entry barrier. Likelihood of new firms' entry into the market is low even in case of increase in demand due to excess capacity[7] and the existence of firms benefiting economies of scale.

9. Vertical integration is regarded as entry barrier in *Cement* decision. Cement is produced from clinker after some additives are put in. Cement is the main input for ready-mixed concrete. Due to these features of clinker, cement and ready-mixed concrete, the existence of firms with an integrated system that operate at production levels of each of these products is regarded as constituting entry barriers by the Board. Integrated firms that operate in all the markets of clinker, cement and ready-mixed concrete can not only produce trouble for independent cement or ready-mixed concrete producers that need them to obtain main ingredients for production, but also are serious entry barriers. Any undertaking willing to enter any of the market of clinker, cement and ready-mixed concrete has to bear the hardships and disadvantages because there are producers that produce all the three products in the market. For instance, because a firm willing to enter ready-mixed concrete market will gain cost advantage if it produces clinker and cement, the requirement to realize similar integration to enter an integrated market can be said to be an important entry barrier.

10. The need for high technology and high investment cost in production activities, constant research and development activities are accepted as conditions that impact entry to the relevant markets of civilian helicopters, military helicopters, large commercial planes, business jets, maintenance and development of civilian planes, guided arms and guided arms systems and military transport planes (CN-235).[8] No need for advanced technical knowledge and specialization, low investment costs such as an average of USD 1 million for every 1000 tons of enamelled coil wire capacity, short time period necessary for investment such as ability to construct a facility of an average size less than a year and easiness to increase capacity are mentioned to discard existence of entry barriers in Bemka Joint Venture.[9] In this decision, the Board takes into account absence of actual or legal barriers that complicate imports and the international commercial connections of many users that can facilitate import if domestic prices rise. Because production does not require a large amount of capital, it has been decided that no barrier preventing entry to and exit the market existed in *Marshall Dye*.[10]

11. That the products has high technology is not regarded as creating barriers to entry in network sector in a Board decision regarding an acquisition in the relevant market of switches and routers.[11] The Board, in its decision, takes into account the factors that average growth rate is 30-40% in the network

sector, the forecasts shows that the growth will continue increasingly, new entry is encouraged by the speedy growth, innovation in the sector is done mostly by small players of flexible structure concentrated on certain fields, the behaviours of customers[12] encourages new entry to the market, the buyers buy the products from different sellers, new undertakings are attracted into the sector and the new comers could find place in the market and new progress in recent years in information technology leads suppliers of telephone equipments to realize great investment for computer network technology via both research and development and acquisitions. Therefore, although the acquiring undertaking's market share would become 70,5% and CR4 would become 89,7% in the router market following the acquisition, the Board did not rule that competition would be significantly decreased in the market.

12. In its *BIRYAY*[13] decision regarding the market of newspaper and magazine distribution, economic barriers to market entry are listed as largeness of physical capacity and personnel for establishment of a distribution company, necessities for having a good organization, technical equipment and experience for distribution of many newspapers and magazines, initial investment costs and other processes and it is determined that those barriers allow only owners of great capital to enter the market.[14] In the market in question, entry to the market and ability to exist in the market require two elements of critical importance that are setting up sale points the number of which is sufficient enough to present the publications to the readers and feeding the sale points with publications in sufficient numbers and varieties. As a result, in this case, the Board regards a serious barrier to market entry the requirement to set up sale points in excess of ten thousand the existing ones of which are hard and economically irrational to substitute and the reason of this barrier to market entry is determined by the Board as the exclusive agreements with sale points concluded by the jointly dominant undertakings that prohibit rivals to use those sale points to sell their publications.

13. In *IGSAŞ Privatisation*[15] decision concerning nitrogenous fertilizers market and composite fertilizers market, the Board mentions that cost of a new production facility at a level of USD 300-400 million, instability as a result of openness to political impacts due to provision of input by the sector to agriculture complicate entry by foreign producers and new local producers. Moreover, operating as a supplier has become more complicated because the need of numerous farmers scattered all the regions of Turkey with limited buying power can be satisfied by a widespread distribution network. Without having a widespread distribution network, it is hard to keep efficiency in a limited region with small scale sales due to validity of economics of scale especially for transport of fertilizer through sea route (transport disadvantage can be overcome in case of transport through sea route at a scale of 20,000-30,000 thousand tons). Moreover, it is a necessity to provide the distributors a wide range of products because farmers tend to buy all their needs from a single sale point and this requires the suppliers to operate at large scales and complicates small scale establishments' remaining in the market against those that provide fertilizers of different variety to their distributors and constitutes barrier to entry.

14. It is necessary to obtain a licence to enter into GSM services market in Turkey. In Turkcell decision, the Board mentions that "Even if the existence of an undertaking which acquired the right to operate in GSM services market after obtaining concession from the state is permitted "legally", a certain period is required for that undertaking to "actually" enter into the market and have a considerable power in that particular market. The positions of the operators which are already existing in the market will be affected adversely proportional to the level of difficulty and length of the process within which the recent participants in the market will acquire efficiency. In other words, to the extent that it can be mentioned about the barriers which extend this process or make it difficult, the positions and powers of the existing operators in the market will be guaranteed, their possibility to engage in non-competitive behaviours will increase and it will be easy to talk about the existence of the dominant position." Then, the Board explains those barriers as sunk costs, the definition of which is given above, including infrastructure investment costs; marketing, sales and distribution expenditures; product dependency and network externalities; vertical integration.

15. Infrastructure investment costs in GSM services market most of which are sunk costs, according to the decision, constitute the biggest share of the expenditures of the undertakings and the main factor to regard them as sunk cost is one of the article in the licence contract that obligates transfer of the infrastructure to the State free of charge at the expiry of the license period. The greatness of infrastructure investment costs can extend the length of time for the existing operators to create demand for themselves and can create deterrent effect on many actors on the issue of entry.

16. Moreover, GSM operators have to develop the infrastructures continuously to perform the infrastructure obligations in the license contracts and increase the technical capacity in parallel to the increase in the number of subscribers and increase the variety of the services they provide. Furthermore, the operators are required to update their technologies frequently within the scope of the rapidly changing conditions and establish required connections with other technology markets. Competition through service variety and quality becomes more important as number of subscribers and operators increase and competitive power declines if necessary technological investments are not made in time. Therefore, the decision concludes that size of infrastructure investments constitutes barrier for actual entry in the market.

17. As to marketing, sales and distribution expenditures, they include the establishment and operation of the distribution network, production management, market researches, direct marketing, advertisement and presentation costs the size of which can restrict the ability of new operators to efficiently present themselves in the market. The Board takes into account the following reasoning "*Since GSM technologies include high technology and are strange and complex for the user, the marketing of these services require high presentation expenditures for the operators. The fact that GSM services are sold together with the devices in practice brings together with it the obligation to undertake part of the advertisement expenditures which include the presentation of devices in campaigns arranged with the distributors. Advertisements published in printed and visual media and other expenditures related to marketing constitute a significant item in the costs of the existing operators*."

18. Regarding product dependency and network externalities, the Board provides that Turkcell, the dominant undertaking, can cause a differentiation in GSM services and create a brand dependency towards its services. Turkcell has acquired a loyal consumer mass because it began to the licensed period with many more subscribers, it continued its infrastructure works incessantly and efficiently, reached the necessary size of coverage area earlier than its rival, set up an efficient and exclusive distribution network and number portability that was not regulated by telecommunication legislation would constitute switching cost for the subscribers. Regarding network externalities[16], Turkcell has more subscribers than its competitors in the GSM services market and the consumers prefer Turkcell because it has the most widespread network in the market and they want to make use of the rate discounts applied within the network, another reason is that they hold the opinion that the communication between the same network will be more trouble-free, it is natural that the consumers' expectations are positive towards future size of the network and they find it safer to be a part of a large network and think that they will benefit from technical developments regarding services and infrastructure to a larger extent. As a result, product dependency cause more binding effects due to externalities and customers that has chosen Turkcell will be highly likely tied to his/her preference and lead other consumers with whom he/she interacts to make the same choice. The Board concludes that this makes entry in the market harder.

19. With respect to vertical integration, more efficient marketing and distribution opportunities in a particular market can enable an undertaking to have a certain cost advantage against other firms and this can delay the entry of competitors to the market. The Board says that this can delay actual (de facto) entry to the market of that undertaking's rivals and in this case entry barriers can be the case. The undertaking makes new entry difficult by restraining various marketing and distribution channels through making them dependent upon itself. Turkcell has a wide, efficient and a dependent distribution network and its methods

including exclusivity, various support and loyalty programs causing brand dependency create cost increasing impacts for the competitors.

20. Finally, apart from those, *Turkcell* decision mentions group advantages as a sort of entry barriers. Turkcell's partners engage in operations in various markets including banking and financial services, media tourism, iron – steel, paper products, textile, commercial vehicle production and construction sectors and information technologies. It is stated that Turkcell has enlarged its activities through power of its partners and the companies in which it is a partner and made use of the synergy provided by largeness and being widespread and strengthened its power. Absence of a group advantage similar to Turkcell for operators to newly enter the market can be evaluated as an entry barrier.

21. Turkcell has made an significant portion of distributors of mobile phones, who can not accept the risk of not working with Turkcell due to effect of network externalities caused by the market structure, not to work with competitor operators and the Board considers that this practice complicates the activities of the rival operator in the market and will create problems for all operators that plan to enter the market and cause them to be excluded from the market. Moreover, in addition to the distributors, Turkcell has caused the dealers (final sale points) of those distributors to work exclusively with itself either through agreements including exclusivity or in the absence of agreement with exclusivity clauses through other ways such as advertisement and signboard support that lead dealers (final sales points) to work only with Turkcell. As a result of such a distribution network, mobile phones of certain brand in these dealers (final sale points) could only be sold with Turkcell line and not with that of competing operators, the activities of competing operators becomes harder because mobile phone distributors and their dealers (final sale points) are forced to prefer working with Turkcell whose market share is quite high and this results in elimination of consumer's choice. Therefore, the Board regards that Turkcell's working on an exclusive basis with the dealers (final sale points) complicates the activities of the rival operator as well as competing parties' entry into the market.

22. There are some other decisions of the Board dealing with network of exclusive agreements the effects of which are worsened due to market externalities and that can be seen as barriers to market entry stemming from strategic behaviours of the undertakings.

23. One such a decision[17] deals with exclusive agreements in the market of credit cards that allow shopping in instalments. Benkar, the dominant undertaking, has a system including a card that allows consumers to shop and pay in instalments in member stores. This system is called as "web" by Benkar and it includes stores into its web by concluding exclusive agreements with them. According to the agreement, the store will not be a part of another system using a similar card and any store that wants to be a member has to terminate its membership to another similar system. Benkar's system has the widest store network and a high number of card holders and therefore it benefits from network externalities[18] to a great extent. The Board ruled that exclusivity employed by Benkar formed a serious barrier to entry in the market and it would be hard for the undertakings that would newly enter the market to find stores or store chains to be a part of their system. This, the Board says, will narrow the alternative of the undertakings to newly enter the market to be able to find members to include into their systems and plays a role to increase the structural entry barriers caused by the current situation of the market.

24. In *Yemek Sepeti,*[19] the Board examines the exclusive agreements between an undertaking (Yemek Sepeti) that provides an online platform bringing customers and many restaurants that have package service together. Consumers can order through web site of Yemek Sepeti and restaurants can receive the orders and then send the food to the consumer through their package service. Low cost of constructing web sites and consumers' cost of research and choice, tendency of innovation and speedy growth in e-commerce markets are factors that ease market entry to online package service market and therefore there are no significant entry barriers under normal conditions that affect competition negatively to a great

extent. However, vertical agreements are one reason for entry barriers. Yemek Sepeti concludes agreements with restaurants and prohibits restaurants to receive orders through a website other than that of Yemek Sepeti. The restaurants that have agreements with Yemek Sepeti have certain advantages compared to other restaurants. They have consumer awareness and brand image, a package service, a certain food quality, a location where internet is widely used and a package service quality to be able to deliver the food hot. The Board has ruled that tying restaurants via such agreements not only established an important entry barrier for the potential internet sites to enter the market but also complicated the activities of the existing rival internet sites operating in the market. Network effects is seen as one of the factors that has strengthened prospective negative results of such exclusive agreements on the level of competition in the market. 50,000 users of Yemek Sepeti and branded restaurants strengthen its position. The consumer that will order over internet will prefer to be a member of the internet sites that have such restaurants as members and order through this site. The internet sites, members and transaction volume of which increase this way, will transfer more orders to member restaurants and increase its power on restaurants' side in parallel. The new entrants or the existing restaurants that operate in the market but can not work with branded restaurants will not be able to increase their members and transaction volumes in parallel because they can not work with branded restaurants and in turn they will be unsuccessful to convince restaurants to work with themselves because they can not increase their members. Although the agreements have no compensation clause if restaurants infringe the agreement by becoming members to other similar internet sites, this does not weaken the exclusivity clause due to network effects. If the restaurant infringes the agreement, Yemek Sepeti can terminate the agreement unilaterally and the restaurant will no longer get the orders from its web site. Having aware of this, the restaurant will wish to get as much order as it gets from Yemek Sepeti. However, it will be hard for a new entrant to include branded restaurants to its system and achieve the same size with that of Yemek Sepeti in the short term and therefore it will be meaningless for the restaurant to work with a new web site. Yemek Sepeti has included restaurants that constitute 13% of its turnover in İstanbul. It has concluded exclusive agreements with restaurants that constitute 50% of its turnover in the past, however they are no longer in force due to expiry of their duration. However, it wants to sign new agreements with all restaurants it works with including exclusivity clauses and it thinks that all restaurants have to work with one undertaking having such a web site. The Board considers that the system that depends on working with all restaurants on an exclusive basis will abolish competition in a significant part of the market when the market power of Yemek Sepeti, network effects caused by the structure of the market and entry barriers that will be caused by exclusive agreements are taken into account.

25. In *Efpa/Tuborg*[20], the Board, in the beer market characterised by excess capacity, legal prohibitions of advertisement on TV, radio and other public broadcasting instruments, unimportant level of imports, need for a well-known brand to be able to operate, prohibited exclusive agreements concluded between either one of the two beer producers whose total market share is around 99% and on trade (horeca channel) and off-trade sale points (retailers such as shops, and supermarkets where beer is sold in packaged form). The network of exclusive agreements forecloses around 47% of on trade market and around 20% of off-trade market in terms of volume and this has been regarded as complicating the activities of rival undertakings' entry into the market. Moreover, the Board prohibited the two undertaking to prevent retailers such as markets to put rival beers into the freezers that they provided to the retailers.

26. In various Board decisions concerning agreements between cigarette producers and sale points to put cigarette stands to the exclusion of those of rival cigarette producers, the Board has consistently opposed such agreements and required the undertakings to remove such clauses and enable the sale points to be able to put similar stands from rival producers. The Board, in one of its such decisions[21], considers that efficiency of new entrants and those already operating in the market with small market shares can be damaged as a result of agreements including stand exclusivity when merged with effects brought by a tight oligopolistic market, such agreements, if allowed, will create important disadvantages for the existing firms with small market share and those undertakings to newly enter the market where advertisement is prohibited and such stands provide a rare sale point presentation for the undertakings. When the length of

the agreements is taken into account, the undertakings to newly enter the market will find it difficult to put their stands to the sale points and the network effect of similar exclusive agreements will effect the competition in the market negatively. At the end, the Board regards such agreements having a nature that will be able to create barrier to market entry.[22]

27. Moreover, in *Frito Lay*, the Board has regarded practices by the dominant firm in salty snack market to apply exclusivity to the exclusion of rival products in sale points in a market where a dynamic costly distribution network (stands should be kept clean and regular by frequent visits) is required due to features of the products in question (products have a nature that go sour rapidly and that have short usage life of 3-4 months). The cost of establishing such a distribution network is regarded as entry barrier to the market. In this decision, promotional work that increases brand image and awareness are considered as creating barrier to entry. Moreover, that the market is dominated by an international firm with a strong financial position, entry requires high cost, the market has a quasi-duopoly nature are also considered as entry barriers. The turnover coming from sale points with small space have very significant place in the sales of the undertakings in the market and therefore they are very important for them. Their small space makes most of them to work only with one or two undertakings and this complicates the activities of potential rivals to have a place in the market. Therefore, practices of Frito Lay, the dominant firm in the market, to ensure exclusivity in the sale points are seen as producing drawbacks and creating entry barriers not only for the existing firms but also for the new entry. Such exclusivity is considered as artificial entry barriers in a market that already has various entry barriers.[23]

28. Brand image/awareness and advertisement expenditures, distribution systems and availability rates, portfolio power have been regarded as elements that can create entry barriers in some Board decisions. In *Ülker*[24], the Board considers that Ülker that has been operating in the market for 59 years has an important brand image for consumers. The Board takes into account research reports in which the consumers have been asked brands that they recall first and according to such reports the position of Ülker is on the fourth among top 10 in general and first with respect to biscuit, chocolate and chocolate products and confectionary. The Board considers that brand awareness and image of Ülker nationwide distinguish the undertaking owning this trademark from other small-scale undertakings and create a significant entry barrier for those to newly enter the market. The Board considers advertisements and promotions as one of the most important elements to establish brand image and awareness and to increase sales and believes that the undertakings such as Ülker that allocate a high share for advertisements and promotions in their budgets obtain significant advantage over the existing or potential rivals.[25] Brand image and brand loyalty has also been examined under the heading of entry barriers in *Coca Cola*[26]. The Board takes into account the billion-dollar brand value of Coca Cola and Pepsi brands[27], high brand image of any product sold in the market with *The Coca-Cola Company* logo, reseller's view of Coca Cola as a must stock due to its high brand awareness and loyalty at international level that grants bargaining power in agreements with the retailers regarding terms of sale, place in the shelves and promotion places. The brand loyalty can direct a customer who cannot find it to go to another sale point. Moreover, in the same decision, advertisement expenditures are seen as one of the most efficient tools to trigger brand image.[28] The Board takes into account the total advertisement expenditures of the Coca Cola Turkey and the support to Coca Cola Turkey by the brand owner (the Coca Cola Company) which brings it to an advantageous position against local companies. As a result, Coca Cola Company and Pepsi have superiority over their local rivals in establishing brand image and loyalty that have determining effect in selling soft drinks. In *Coca Cola*, financial power of the brand owner is also examined under the heading of entry barrier.[29] Economic support obtained by bottlers from brand owners is taken into account by the Board and seen as an important element that brings the bottler to a strong position against the rivals.

29. However, brand power of a famous raki brand that is Yeni Rakı has not been regarded as a barrier to entry because the product in question is homogenous and therefore the brand power is not as

strong as supposed and it is possible for any undertaking to gain a meaningful market share via efficient sale and marketing activity.[30]

30. In *Ülker*, developed distribution systems, like the one Ülker has, that provide important strategic advantage to existing firms against those to newly enter the market are seen among the signs showing market power. Ülker's products have high availability rates in almost every market. The differences in availability rates are signs showing important advantage related to entry into retail sale points. Most of the Ülker's products are accepted as "must stocks" and they are available in small scale sale points and only one or two of brands of other firms can be found in such sale points. Therefore, Ülker group's brand image and awareness, significant amount of advertisement expenditures caused by financial power, strong distribution systems and high availability rates[31] provide the undertaking with great advantages against both existing firms and potential rivals. Moreover, Ülker Group has obtained important advantages with its secondary trademark when the consumers opted for cheap products following the economic crisis. Ülker Group's wide portfolio in food sector distinguishes the Group from other undertakings. The Group's activities in many fields of food sector bring bargaining power against the buyers and results in benefiting from economies of scope. Such a portfolio power may give the undertaking the ability to opt for exclusionary practices and tying agreements when the size effect is taken into account. In *Coca Cola*, a wide and efficient distribution network enabling high rate of availability of the products, high cost of setting up such a network that brings economies of scope and scale due to distribution of all product range within the same distribution network and the agreements including exclusivity clause with the small sale points and the prohibition to put rival products into the freezers[32] provided by Coca Cola Turkey are deemed to create serious barrier to market entry. In industrial ice cream market, requirement for a high-cost distribution system called as cold chain caused by nature of the product has been regarded as an important barrier to market entry.[33] Especially that the ownership of freezers in the sale points belongs to the producers makes it almost impossible for the firms to newly enter the industrial ice cream market without incurring significant cost. In *PMSA*, the Board says for an undertaking's entry to the cigarette market, it is necessary to establish an efficient distribution network. In a market where advertisement is prohibited, because it is necessary to establish a special distribution network rather than an ordinary one, cost of setting up a distribution network increases. Moreover, placing stands in the sale points with high sales volume is an important cost element for an undertaking to newly enter the market. In *Cement* decision, distribution system is also examined under entry barriers. Especially bagged cement is sold via a distribution system. The distribution system that requires distributors to buy all requirements from a single seller makes it necessary for new cement producers to set up a new distribution network. Moreover, consumers of cement are very scattered over a wide area and this increases the number of distributors to be set up.

31. In *Ülker*, portfolio power is defined to mean that total market power caused by trademark portfolio exceeds sum of market power of each component of the portfolio. Ülker group has a wide portfolio in terms of horizontal and vertical meaning. It operates in many markets such as margarine, dairy products, flour, starch and glucose, non-alcoholic drinks in addition to relevant markets. Ülker group can provide almost all products that a small shop wants to have. That some of the main raw materials that constitute products in the relevant markets (biscuit, cake and chocolate and confectionery) are obtained from companies within Ülker group enables the undertaking to benefit from economies of scope. Ülker group also has market power through deep portfolio and secondary trademarks. Portfolio power is also examined under the entry barriers in *Coca Cola* and seen to prevent the undertakings to enter the market and the existing ones to be present efficiently in the final sale points. The wide range of products enables the undertaking to arrange terms of sale in a way such as quota discounts applicable to whole of the portfolio that the customer can make high volume purchases.

32. According to *National Roaming*[34] decision, the requirement to obtain a license for entry to GSM services market, as the frequency band is a scarce resource, constitutes the legal barrier to entry; the

large amounts of license fees and the large amounts of investment required for building GSM networks constitute the economic barriers to market entry. In the GSM infrastructure services market, two undertakings were operating, namely, Turkcell and Telsim, having reached 90 percent coverage area at that time. Two other undertakings (IS-TIM and Aycell), having recently obtained licenses and thus newly entering the GSM services market at that time, obviously had not entered the GSM infrastructure market, as they did not have networks covering the entire territory of Turkey at that time. A coverage sufficient to be able to compete in the GSM services market could not be achieved by IS-TIM at the time of the investigation due to geographical and topographical difficulties, legal restrictions, natural monopoly circumstances, formation of bottlenecks, need for public support for building the facilities, technological limitations, and economic limitations that could be grouped under the headings of technical difficulties, legal difficulties and economic difficulties and as a result it could not register subscribers and realize investments with revenues coming from these subscribers because Turkcell and Telsim already have coverage of entire Turkey. Accordingly, the Board regarded that the infrastructures of Turkcell and Telsim as "essential facilities" until IS-TIM might achieve a sufficient coverage area. Therefore, the Board ruled that incumbent operators' (Turkcell and Telsim) setting access prices far above their costs resulting in an artificial rise in rival's costs created a serious barrier to entry of newly arriving operators IS-TIM and Aycell. Unfavourable impact of network externalities, including impact of negative economies of scale in consumption[35] plays important role in laying reasons to determine the existence of essential facilities.

33. In *Ice Cream*, very low level of ice cream consumption (1 lt per capita) in the last 5 years is seen as an important barrier to market entry. No entry of a firm that brings competitive pressure on the dominant firm in the last 5 years and the continuance of the high concentration level in the market where there exist a dominant undertaking[36] are seen as other elements constituting barrier to market entry in *Ice Cream.* Similarly, consumption at low levels, in other words limited demand, is regarded as entry barriers and as a result the market does not have a structure that is suitable for many undertakings to operate in *Frito Lay*[37]. That 96% of the market is shared by five undertakings one of which is dominant with a market share over 60% is regarded as a barrier to market entry by the Board in *Unilever's Acquisition of Best Foods*.[38]

34. Finally, among legal barriers to entry that the Board faced so far can be listed as legal monopoly for sale of coal in Ankara granted to an undertaking of Ankara municipality[39]; permission necessary to establish and operate intercity bus terminal[40]; legal prohibition on advertisement and promotion of cigarette and other tobacco products, legal requirement for the undertakings that will produce cigarettes to build an integrated new-technology facility with a certain capacity[41]; legal requirement for an undertaking planning to produce sugar to obtain quota.[42]

## 3. Evaluation and Conclusion

35. The TCA has been aware of the importance of dealing with barriers to entry since its establishment. This awareness has been based on two lines of thinking.

36. On the one hand, the TCA has used the analysis of whether entry barriers exist or not in order to decide for a dominant position. As known, this analysis is a crucial element in abuse of dominance decisions and therefore it is needed to have extreme care on correct analysis. In other words, the examination of entry barriers is the first step in the analysis of dominance cases. A reckless practice by the competition authorities might result in a misleading holding and decision. Thus, the practice of defining entry barriers in practical cases should be associated with certain accepted principles based on economics. When examined closely the practice of the TCA in this regard, it is possible to argue that the TCA has attached necessary care in analyzing entry barriers when deciding about an abuse of dominant position. The examination of above-mentioned decisions of the TCA clearly shows how the TCA is careful in analyzing the existence of barrier to entry in order to hold for a dominant position.

37. On the other hand, the TCA has considered the issue of how to minimize the entry barriers, which in particular result from the practices of undertakings. It should be accepted that dealing with barriers to entry is one of the most important duties for the competition authorities. Even it is possible to think that the fight against barriers to entry is as important as cartel prosecution task for competition agencies. This proposition has mainly become an important guiding principle for the TCA. The market openness is strongly advocated by competition agencies via fight against entry barriers. This market openness is important for levelling playing field for all players within the market. The TCA has attempted to eliminate the artificial barriers resulting from the practices of the undertakings in a significant number of cases.

38. In particular, the exclusivity practices either through written agreement or de facto actions, are of target entry barriers to be dealt with by the TCA. There are significant number of cases dealt with by the TCA in this context. The main philosophy behind all these decisions has been the strive for keeping the markets free from artificial entry barriers. In particular, the sui-generis circumstances of Turkey has dictated the TCA to attach importance on this strive. In this regard, maybe the most important feature of Turkey is associated with the fact that Turkey is a quite big country with geographic regions, which differ each other significantly in economic development terms. Thus, even this fact puts a significant hurdle for the firms to enter into the markets. This hurdle is further aggravated by the artificial barriers to entry created by the early comers of the market. In this regard, recently we witness the process of withdrawing the benefit of block exemption for the exclusivity clauses within the vertical agreements by the "Communiqué 2002/2 on Vertical Agreements". *Yemek Sepeti* was the first decision in this respect. This decision has been followed by *Frito Lay* and *Efpa/Tuborg* decisions. These decisions represent important developments within the process in which the TCA has fought against artificial entry barriers. Importantly, the process is going on and will cover other markets in which such exclusivity practices foreclose the markets for new entry.

39. With regard to legal entry barriers, the TCA has been aware of the fact that their existence should be associated with a certain justification. However, the TCA has also believed that the expected benefit from such legal barriers to entry should be proportionate to the harm resulting from lack of competition. In this regard, BELKO decision shows that the TCA believing that the legal privilege which is an entry barrier is abused and exploited by the relevant public undertaking, has requested the relevant public agency which had granted the privilege, to remove this entry barriers. In other words, the investigation showed that legal entry barrier was not needed to achieve the expected public benefit.

## NOTES

1. 20.7.2001, 01-35/347-95.
2. Upon the enactment of the Act No. 4673, the task of issuing certificate of authorization to the operators is undertaken by the Telecommunication Authority.
3. 26.12.2002, 02-81/940-387.
4. 23.10.2003, 03-69/834-364.
5. The definition and the examples are almost repeated in *Frito Lay (4.5.2004,* 04-32/377-95*).* Moreover, they are also mentioned in another decision, *Efpa* (date 6.11.2003, 03-71/867-371) albeit in a truncated way.
6. 2.12.2004, 04-77/1108-277.
7. Capacity utilization rates of the 5 firms in the market for the last 7 years are taken into account in the decision. The rates for the final year are 56, 52, 77 and 51.
8. 18.4.2000, 00-14/135-67.
9. 11.7.2002, 02-43/504-209.
10. 23.10.2003, 03-69/834-364.
11. 02.05.2000, 00-16/160-82
12. The customers want certain standard features in some active products such as hub, switch, router and the manufacturers manufacture according to those standards and this decreases the importance of patents and licences for market entry.
13. 17.07.2000, 00-26/292-162.
14. These findings were repeated in another decision of the same year (14.12.2000, 00-49/529-291).
15. 03.11.2000, 00-43/464-254.
16. The definition for network externalities in the decision is as follows: "Network externalities mean the benefit gained by each consumer in the network market (cable – cable-free phone, fax, e-mail networks etc.) from the participation of other consumers in the market." Therefore, a person who wished to be a GSM subscriber in GSM services market will want to be a part of the GSM network, namely the widest network, which has the highest number of subscribers in order to maximize its benefits.
17. *Benkar*, 18.9.2001, 01-44/433-111.
18. The efficiency of the system depends on number of the consumers in the system and extensiveness of stores. It will be rational for the consumer to choose the card having the widest store network and for the store to choose the card having largest number of card holders.
19. 20.9.2004, 04-60/869-206 .
20. 22.4.2005, 05-27/317-80.
21. *JTI*, 28.5.2002, 02-32/368-154.
22. The Board also opposed clauses that encourage the sale point to put only the stand of one of the cigarette producers because they could lead to actual exclusivity. See *PMSA*, 12.6.2003, 03-42/464-203.

23. The Board considers the proportion of the sale points where only products of Frito Lay is sold and thinks it high in a concentrated sector. However, the proportion is missing in decision due to confidentiality provisions of the Act on the Protection of Competition.

24. 9.6.2003, 03-40/436-187.

25. In food sector, in terms of value of advertisements, Ülker Group is the first among those that place advertisements on TV with a rate of 16% as of October 2004. See *Ülker/ÖSM*, 2.6.2005, 05-38/487-116.

26. 23.1.2004, 04-07/75-18.

27. In another decision, *Coca Cola/Efes Pilsen*, 19.10.2004, 04-66/951-229, the Board states that the undertakings willing to enter markets where there are undertakings with high brand value encounter significant entry barrier.

28. In *Coca Cola/Efes Pilsen*, the Board comes to the conclusion that existence of high advertisement expenditures has created barrier to market entry in the market for gaseous drinks.

29. In *Coca Cola/Efes Pilsen*, according to financial power criterion, an undertaking having financial power has the ability to decide and act more easily in the market due to its capital, equity assets and other financial resources it use and the ease to reach financial markets. The Board says that rivals cannot show the courage to enter a market easily where there is an undertaking having such a financial power. In *Ülker/ÖSM*, 2.6.2005, 05-38/487-116 financial power of Ülker is also cited under entry barriers.

30. Privatisation of TEKEL (TEKEL Alcoholic Beverages Industry and Trade Inc), 15.12.2003, 03-79/965-396.

31. Ülker's availability rates are %94 for biscuit, %81 for cake, %97 for chocolate, %73 for candy in March 2002 - March 2003. The biggest rival's rates are 85% for biscuit and 77% for cake. Availability rate shows how many of 100 retail sale points sell the relevant product.

32. Number of freezers is taken into account in the decision, however the number is missing due to confidentiality reasons.

33. *Ice Cream*, 26.12.2002, 02-81/940-387.

34. 9.6.2003, 03 - 40 / 432-186.

35. Where the value that the consumer attributes to a product increases in proportion to the number of other customers using the same product, economies of scale in consumption, also referred to as network externalities, is said to exist. This effect emerges in a very direct way especially where the product serves to users' communicating or interacting with each other. Such is the state of affairs in networks of cable and mobile telephony and the value that a consumer attributes to the product increases as the number of people that he or she can reach by using the network increases.

36. The market share of the dominant firm is missing due to confidentiality reasons in the decision.

37. 4.5.2004, 04-32/377-95.

38. 16.11.2000, 00-45/475-260.

39. Belko, 6.4.2001, 01-17/150-39. In this decision the Board provides the following explanations: *"The theory of "contestable markets" that appears to be widely accepted recently suggests that market strength in the form of capacity for price manipulation would be out of the question in markets where there is little or no barriers to entry. This state of affairs is also valid for monopolistic markets where the barriers to entry are not significant in any way. The key point in all this is the degree of barriers to entry. Barriers to market entry could have legal and/or economic sources in the wider sense of those terms. The theory at the same time suggests that in the long run there would be no barriers to entry at all, economic or otherwise, except for legal restrictions. In that context, those markets where the barriers to entry are protected by means of licenses, patents, etc., are markets that are protected in the absolute sense."*

40. *İZOTAŞ,* 5.6.2001, 01-26/256-72.

41. PMSA, 12.6.2003, 03-42/464-203.

42. *Türk Şeker/Pan Tohum,* 1.4.2004, 04-23/250-54.