



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

**DAF/COMP/WD(2007)60  
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**ROUNDTABLE ON DYNAMIC EFFICIENCIES IN MERGER ANALYSIS**

**-- Note by Turkey --**

*This note is submitted by the Turkish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 6-7 June 2007.*

**JT03227644**

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1. Rules on merger control in Turkey are regulated in the Act No 4054 on the Protection of Competition (the Competition Act) and Communiqué on the Mergers and Acquisitions Calling for the Authorization of the Competition Board (Communiqué No 1997/1).<sup>1</sup> These constitute the basic legislation on merger control. The basic aim of merger control rules is to avoid creation or strengthening of dominance that decreases competition significantly in any market for goods or services in Turkey. Therefore, dominance test delineates the basic framework for merger review.

2. According to the Communiqué No 1997/1, “... *the structure of the relevant market, and the need to maintain and develop effective competition within the country in respect of actual and potential competition of undertakings based in or outside the country, ...the market position of the undertakings concerned, their economic and financial powers, their alternatives for finding suppliers and users, their opportunities for being able to access sources of supply or for entering into markets; any legal or other barriers to market entry; supply and demand trends for the relevant goods and services, interests of intermediaries and end consumers, developments in the technical and economic process, which are not in the form a barrier to competition and ensure advantages to a consumer, and the other factors ...*” are to be taken into consideration while assessing mergers.<sup>2</sup>

3. That efficiency considerations are to be taken into account during the assessment is obvious from the wording of the phrase “... *developments in the technical and economic process, which are not in the form a barrier to competition and ensure advantages to a consumer ...*”. Moreover, it is obvious that efficiency considerations are only one of the factors that are considered during the overall assessment of the mergers. The wording overtly requires that efficiencies should not constitute barriers to entry and consumers should receive advantages.

4. To exemplify the attitude of the Turkish Competition Authority (TCA), some sample decisions may be taken into consideration.

5. It is explicitly stated by the TCA in one of its decision<sup>3</sup> concerning acquisition of intellectual property rights regarding some data network products that where the market shares indicate a dominant position both in pre-merger and post-merger market setting, market shares alone are not adequate enough to determine the existence of dominance although they are being an important indicator of dominance and therefore all the characteristics of the market should be examined.

6. In line with this premise, among some other factors taken into account in this case where market shares indicate dominance are the dynamic aspects of the market in question such as rapid growth in the market attracting new entry, prediction of continuation of this growth at increasing rates, significant new developments experienced recently in the field of information technologies, efforts by producers of traditional audio equipments to offer wide range of services and reflect the cost savings to their customers,

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<sup>1</sup> According to Communiqué 1997/1, it is compulsory to take the authorization from the Competition Board in case the combined market share of the parties exceeds 25% in the relevant product market or, even though it does not exceed this rate, their total turnover exceeds YTL twenty-five million. Privatization transactions are subject to Communiqué numbered 1998/4 on the Procedures and Principles to be pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid. However, provisions of Communiqué No 1997/1 are also applicable to acquisitions via privatization transactions provided that they are not contrary to Communiqué No 1998/4.

<sup>2</sup> It should be noted that the criteria to assess mergers are not exhaustive and they are complemented by evaluations in the case law of the Turkish Competition Authority.

<sup>3</sup> *IBM/Cisco*, 2.5.2000; 00-16/160-82.

customers' benefiting from innovative practices such as services provided over multi-service networks and internet, great amount of investment in computer network technology by suppliers of telephone equipments in the form of internal research and developments as well as mergers, global competition and the expectation of increase in global competition via mergers by big suppliers of telecommunications equipments worldwide.

7. Emphasis on the new developments in the market, investments and past and potential mergers by global players designates the interest of the TCA in the likely future developments and prospective course of the market since the TCA openly mentioned that the acquiring party was expected to lose market power in the future vis-à-vis big players. Moreover, the TCA did not consider that nature of the market characterised by high technology constituted entry barrier as innovations in this market were mainly realised by small players. As a result of such considerations, the transaction was cleared implying that high market shares reaching as high as 70,5% may need to be backed by some other evidence in especially such dynamic markets.

8. In another decision<sup>4</sup>, the TCA took into account that the parties could create important efficiencies in terms of research and development studies and investment as a result of which development of secure cards (such as bank cards and GSM cards) suitable for new fields of application could be ensured and costs might be decreased. The parties aimed to combine their existing customers, information units and capital to be ready for the new applications and technological changes expected in the market and to be able to carry out innovative business ventures and investments in the newly developing segments of the market. The TCA, in addition to recent new entry and price reductions, considered the facts that the market was tipping in favour of the cards with microprocessors and therefore technological developments and novelties gained importance, software and product development works caused the undertakings incur important costs and the producers had to carry out intense research and development studies and investment and ensure product variety in order to cope with competition. As a result, the transaction involving two of the four biggest undertakings that would take the first place in the market was cleared.

9. Another case<sup>5</sup> regarding an acquisition transaction involving various machines used by package producers, the TCA decided that it would be misleading to take into account only the market shares to find existence of a dominant position as there were significant fluctuations in market shares over the years. Moreover, the market was characterised with technological developments requiring the market players to accommodate to these developments and bring technical innovation. The TCA also considered customers' statements that large number of manufacturers of the relevant machines owning similar technological capabilities existed, that they could purchase relevant machines under more advantageous conditions following the acquisition as competition among manufacturers would increase in terms of technological innovations which had the primary impact in selling the machines in question.

10. A final sample decision<sup>6</sup> may be granted regarding electricity distribution equipments. In this case, the parties' aim to benefit from synergies in the fields of research and development, production and marketing to be created by their complementary activities was taken into consideration by the TCA among other factors such as competitive and dynamic nature of the market, and absence of entry barriers. Moreover, it was also considered that the consumers would benefit from technical and economic developments that would arise.

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<sup>4</sup> *Gemplus/Exalto*, 11.5.2006; 06-33/410-107.

<sup>5</sup> *Valmet/Bobst*; 30.12.2003; 03-84/1020-408.

<sup>6</sup> *Legrand/Schneider*, 8.10.2001; 01-48/486-121.

11. It can therefore be concluded that efficiencies in general and dynamic efficiencies in particular are to be taken into account in the overall appraisal of mergers and acquisitions in Turkey that aims to prevent creation or strengthening of dominance that decreases competition significantly in the market and advantages for the consumer are also required from such efficiencies.