

An interview with Nurettin Kaldırımçı

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Nurettin Kaldırımçı, president of Turkey's Competition Authority, has helped transform the agency over the past five years. Faaez Samadi met him in Ankara

What is your background?

I studied business administration at the Atatürk University in Erzurum. Then I became an assistant professor in 1982, associate professor in 1987 and full professor in 1994. I worked at the Erciyes University in Kayseri as the head of the Department of Foreign Languages, and as the head of management and organisation at the Department of Business Administration of the Faculty of Economic and Administrative Sciences.

I also served as a member of Parliament (Turkish Grand National Assembly (TGNA)) for one term from 1995 to 1999. In that period, I was a member of the Plan and Budget Commission, as well as the assistant chair of the Information and Information Technologies Group at the TGNA.

How long have you been president?

I became president of Turkey's Competition Authority (TCA) in 2007.

How has competition law developed in Turkey?

Act No. 4054 on the Protection of Competition (the Competition Act) was enacted in 1994 and we began our operations in 1997. The act is in line with the European Commission's competition law. I believe our agency has been successful, considering it is a young organisation. We try to follow the practices of mature competition authorities to make our agency more advanced and to develop competition enforcement in Turkey. It has been a learning process and I'm happy to say that we are becoming a better agency with each stage of development. It's been important to us for outsiders to review our practices, and the Organisation for Economic Co-Operation and Development's (OECD) 2005 Peer Review Report on Turkey is an example of this. In addition to antitrust enforcement, the agency is also working on competition advocacy, which I believe is very important. Competition law must become part of Turkish business culture. To enhance our competition enforcement, we must work hard and we are doing so.

What are your current enforcement priorities?

Just like our fellow agencies around the world, we are focusing on cartel enforcement. But competition advocacy is also very important to us. Enforcement goes hand in hand with advocacy. Every complaint

is important, and we are trying to follow them and open investigations whenever necessary. The Competition Board, which is the decision-making body of the TCA, recently launched some sector inquiries as well. The ongoing sector inquiries concern pharmaceuticals, natural gas and retail – markets that are significant for consumers and Turkey's economy. We are also trying to enhance our capacity at the agency.

Last year, the agency appeared to focus on the banking sector over alleged cartel activity. Why is the banking sector so important to the agency?

This is a very important sector for Turkey from an economic perspective, and there are a lot of consumers and businesses who interact closely with this market. We received many consumer complaints about banking last year, and based on these we opened an investigation. The probe was seen as a success and it received a lot of press, which gave the agency a lot of prestige and a strong public image.

How has the European financial crisis affected competition law enforcement in Turkey?

The TCA has not changed its enforcement policy in the financial sectors or any others because of the financial crisis, as the Turkish economy has not been significantly affected by it.

GCR understands there is a draft law regarding amendments to Turkey's Competition Act. What is the status of this bill?

Discussions on the draft law began two years ago, but they have not finished. The bill could not be legislated in the previous legislative period. However, we recently presented the draft law to the government again and we believe that the bill will be legislated in the current legislative period, hopefully within six months. The bill is designed to make our practices more effective. There were also changes regarding the organisational structure of the TCA in November. Those changes have been made to increase the agency's effectiveness. The president will be able to appoint the managerial personnel of the agency directly, except the vice presidents and the chief legal adviser who will be appointed by the Competition Board upon the president's proposal. Until now, managerial staff were appointed by the Competition Board.

What changes are proposed in the bill?

The TCA will be empowered to go to the courts to annul administrative transactions and regulations that have anti-competitive effects. The de minimis principle will be introduced, which will mean we don't have to investigate agreements that do not substantially affect competition. The bill will also introduce the significant impediment to effective competition (SIEC) test to replace the so-called dominance test regarding mergers and acquisitions. The amendment proposes a distinct procedure for mergers raising competitive concerns to avoid the lengthy investigation procedure designed for other violations such as cartels. It is expected that the new procedure will both ensure enough time for a thorough analysis of the merger and legal certainty as to the length of the procedure. Another

important amendment is to introduce a remedy mechanism to allow the TCA not to initiate an investigation or end an existing one if the parties make credible commitments to end their competition violations. Finally, the bill aims to strengthen the TCA's powers regarding requesting information and dawn raids by giving it the power to seal the offices and devices in which relevant data is stored for three days. It will also give us more resources to carry out forensic IT analysis, which we do not have the capacity to do at the moment. The changes will allow us to use our resources more efficiently, focus more on different areas and prioritise effectively.

A new merger control amendment was introduced a year ago. What are the main changes in the amendment?

Our merger control communiqué was the first communiqué enacted by the TCA. We were in need of a change. We have already talked about the SIEC test, but our law continues to use the dominance test at the moment. Indeed, last year we improved the original merger control legislation and we have followed its impact throughout the year. Based on this, we are going to review this legislation again. In a nutshell, I can say that there has been a decrease in the number of merger filings compared to 2010. There were around 280 filings in 2010 and 250 in 2011, which is a good result. There has been a change in the merger thresholds. Previously, thresholds applied to both market share and turnover, but now we only have turnover thresholds. But we also introduced the term "affected market", and to assess the affected market, you need to calculate market share and define the relevant market anyway. So compared with the first legislation it is much better, but it still needs improvement and we are aware of this.

Has it helped free up resources for antitrust enforcement?

It does mean we can use some of our staff in other areas of competition enforcement. We have no concrete evidence of what gains have been made in other divisions, but we are following this closely.

Is private antitrust litigation growing in Turkey?

This is a complex area of competition law in Turkey and it's difficult to say that private antitrust litigation is growing. We believe it is important, but so far there have not been any cases resolved before the courts. There is no specific procedure regarding private antitrust litigation in Turkey. Reasons for this include a lack of knowledge regarding competition law among individuals, market players and judges, the perception that the TCA is the exclusive authority in competition matters, and high litigation costs. However, private antitrust litigation has been advancing over the last decade and there are pending actions for damages before the courts. The TCA attaches great emphasis to the implementation of private law sanctions and is trying to increase awareness.

How effective has the agency's leniency programme been?

The leniency programme came into force in February 2009, and the number of applications increased last year, as our enforcement record is improving. I believe the number of applications will continue to

increase. As of December 2011, we have received seven applications in six cases. In five of those, we granted full immunity. But our leniency programme is not limited to the first applicant, we can also grant fine reductions for other companies who apply.

Do you think this has encouraged more companies to apply?

Yes. I believe there are two criteria for a successful leniency programme. First, people need to know about it in the business community. But more important are the sanctions issued by the authority for anti-competitive practices. If you have adequate sanctions they act as a deterrent, and this goes hand in hand with knowledge of the programme to increase leniency applications. But there is also a cultural difficulty with leniency in Turkey. Turkish markets can be small, and as a leniency applicant, your competitors know you are talking about them to the agency. This can affect your future business with them.

Do you think the increasing presence of international companies will change this cultural perception of leniency?

It could change things. The world is changing and so is Turkey. The world is becoming a smaller place, so this could well change, but it's hard to speculate.

How great a role does the central government play in competition policy and oversight of the agency?

The TCA has administrative and financial autonomy, and it fulfils its duties as an independent agency. According to our Competition Act, "no organ, authority or person can give commands or directives to influence the final decisions of the TCA". Consequently, the government has never influenced any of our decisions and has never told us what to do. Central government has also been sensitive to the TCA's requests. Although the draft bill has not yet been passed, this is only a priority issue for the government. It has always tried to assist us rather than impede us. I would also like to underline that the TCA's autonomy was noted in the OECD's report as well as in the European Commission's Progress Reports. As to the oversight, the TCA's decisions are subject to judicial review by the Council of State, which is the high administrative court. Therefore, no political intervention is possible to amend a decision taken by the Competition Board.

But recent amendments have given the Ministry of Customs and Trade, which the agency reports to, greater influence in appointing Competition Board members and the president.

These changes occurred in November. According to these changes, the Council of Ministers can now appoint the president of the agency (ie, chairman) and the deputy chairman of the Competition Board among the members of the Competition Board. Also, the ministry can now nominate three candidates to the Competition Board, one of which must be chosen from within the TCA. These changes were made to increase the agency's effectiveness by cutting down on the bureaucracy around appointing members. Also, within the agency, the president can now directly appoint managerial staff without

requiring the endorsement of the Competition Board, as it was previously. This means the Competition Board can get on and deal with matters of competition enforcement rather than the organisational aspects of the agency.

What effect would accession to the EU have on Turkey's competition law and the TCA?

I believe that when Turkey becomes a full member of the EU, it will have a positive effect on our competition law. It will strengthen the TCA by letting us work more closely with the European Commission. For example, we would be part of the European Competition Network (ECN). We would be able to sit with our European colleagues and discuss competition law matters and exchange ideas. It's currently not easy for us to deal with cross-border infringements involving EU countries. We do have a Customs Union, but it is not sufficient to deal with cross border infringements. We continue to discuss international cooperation at several forums including the International Competition Network (ICN). But at the ECN there is a system that we would be part of and it would undoubtedly help strengthen the TCA.

What international relationships does the agency have with other agencies or organisations?

The TCA has very strong relations with other international agencies and organisations. We hosted the 9th Annual ICN Conference in Istanbul in 2010, which more than 500 delegates attended. This also reflected our work within the ICN, and at the time we were chairing the ICN's Competition Policy Implementation Working Group. We also hosted the 5th United Nations Conference on Trade and Development (UNCTAD) in Antalya in 2005. This was the first-ever UN conference dedicated to competition law to be held outside Geneva. We also attend the OECD's meetings, and last year started a new competition project with the Organisation of Islamic Cooperation – the second largest international organisation after the UN. We also have nine memorandums of understanding with foreign agencies, which are working well. So we are trying hard to be active internationally and learn from the experiences of other authorities.

What are you most proud of so far during your time as TCA president?

That's a difficult question to answer! I think one of the things I'm most proud of is that the Council of State is now substantially endorsing what we are doing, which is a great thing. In the beginning, we had a lot of difficulties with the Council of State regarding our procedures, but now this has changed and they are approving our work. Additionally, public awareness of competition law has increased significantly, and it's the same with businesses. They are now implementing compliance programmes and educating their staff about competition law. I should also add that we have a lot of high-quality young staff at the agency. They are open-minded, always looking to take the initiative, and I am very proud of them.