



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

**DAF/COMP/WP3/WD(2007)32  
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**Working Party No. 3 on Co-operation and Enforcement**

**PUBLIC PROCUREMENT - THE ROLE OF COMPETITION AUTHORITIES IN PROMOTING  
COMPETITION**

**-- Turkey --**

**5 June 2007**

*To be held on 5 June at the OECD, Tour Europe, 33 Place des Corolles, 92049 Paris la Défense Cedex, starting at 10am.*

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**JT03227737**

## **PUBLIC PROCUREMENT - THE ROLE OF ANTITRUST AGENCIES IN PROMOTING COMPETITION**

### **Turkey**

1. Turkish Competition Authority has a role to advocate competition as part of its activities regulated in the Act No 4054 on the Protection of Competition (the Competition Act). One of the occasions that it may carry out its advocacy role may be upon its findings during its enforcements activities. This may be exemplified by reference to one decision<sup>1</sup> related to public procurement which has been taken following an investigation concerning decisions and practices by Turkish Pharmacists' Association (TEB) and related chambers of pharmacists to fix discount rates while selling medicines to governmental and private authorities and establishments.

2. TEB is a public professional organisation established by law and it, like other professional organisations, has its roots in the Turkish Constitution.<sup>2</sup> According to the law establishing TEB, TEB can conclude agreements such as protocols with the relevant public and private authorities and establishments on behalf of pharmacists. It should be mentioned that decisions of TEB and such protocols are binding on the pharmacists according to the law establishing TEB and TEB monitors whether pharmacists comply with the decisions and imposes fines on those failing to comply. However, it should be mentioned that in case no such protocol exists, conditions of sale can be determined by the pharmacies and the relevant authorities and establishments independently of TEB.

3. As TEB represents the pharmacists and has a legal authority to sign agreements with public as well as private authorities and establishments, it signs a protocol with the Ministry of Finance representing various governmental authorities each year whereby conditions of sale of medicines to employees of the public authorities and establishments are regulated. The discount rate for medicines had been fixed in the protocol at 5% in 2001 whereas it decreased to 2,5% in 2002 and 2003 meaning that pharmacists had to make a discount of the fixed rate over the value of the prescription.

4. Competition Board, in this case, imposed fines on TEB due to its decisions and practices fixing discount rates. It should be mentioned that the Competition Board could impose fines in this case as TEB tried to extend the practice of fixing the discount rates to be followed by pharmacists regarding their sale of medicines within the context of procurement by public (and private) authorities and establishments that were not subject to the above-mentioned protocol.

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1 *TEB*, 4.11.2004, 04-70/1012-247.

2 According to Turkish Constitution; "*Public professional organisations and their higher organisations are public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public ...*"

5. However, the Competition Board, being aware of the negative effects of the Protocol on competition in the public procurement of medicines, has decided to send its Opinion including its findings on regulations and practices affecting competitive conditions for the sale of medicines to the Ministry of Finance and Ministry of Health as part of its advocacy role.

6. The Opinion sent has, among others, the following explanations:

- First of all, it should be mentioned that the protocol signed by the Ministry of Finance on behalf of various governmental authorities is not devoid of any beneficial effects as it would, otherwise, be burdensome for various authorities having an organisational structure scattered all over the country to negotiate with thousands of pharmacists the terms of procurement of medicines. However, it is also obvious that fixing the discount rates prevents competition among pharmacists and increases the financial burden on the public authorities caused by procurement of medicines. In fact, during the investigation by the Competition Board, it was seen that various authorities and establishments outside the scope of the Protocol could secure discount rates reaching as high as 20% by prompting competition among pharmacists and as a result they could decrease their financial burden.
- The Opinion, as a result, recommends that it would be more competitive and cost effective if the Protocol determines a minimum rate of discount and enables the relevant authorities to consider higher discount rates that might be offered by the pharmacists. The Opinion argues that this could guarantee not only the payment with a pre-determined rate of discount but also a higher rate of discount depending on competitive conditions in various regions in the country as can be seen from examples observed during the investigation.

7. Following this Opinion, another Opinion has been sent to the Ministry of Finance upon a communiqué issued by it which has foreseen that instead of a single fixed discount rate to be applied by all pharmacists, the pharmacists should apply different fixed discount rates (of 3%, 3,5%, 4% and 4,5%) depending on their sales revenue. The Opinion mentions that categorising the pharmacists into 4 groups and fixing the discount rate for each group bring different alternatives for the public authorities who undertake the payment albeit in a limited range. However, the Opinion mentions that this system is not compatible with the previous Opinion and the new system also prevents competition among pharmacists regarding the procurement of medicines by public authorities and establishments. As a result, the Opinion reiterates the findings and recommendations of the previous one in this respect. As a final remark, it can be mentioned that although the system of categorisation of pharmacists into four groups with different discount rates is not as competitive as the one recommended by the Turkish Competition Authority, it, nevertheless, provides alternatives for the relevant authorities and establishments who can direct their employees to pharmacists who offer the highest discount rate cited in the communiqué of the Ministry of Finance.