



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

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**ROUNDTABLE ON EVALUATION OF THE ACTIONS AND RESOURCES
OF COMPETITION AUTHORITIES**

-- Note by Turkey --

This note is submitted by the Turkish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting (1-2 June 2005).

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EVALUATION OF ACTIVITY OF THE TURKISH COMPETITION BOARD

1. This paper aims to provide information on the work carried out by the Turkish Competition Authority as a contribution to roundtable of the actions and resources of competition authorities.

2. First of all, one of the duties of the Turkish Competition Board (the Board), the decision making body of the Turkish Competition Authority (the Authority), imposed by the Act on the Protection of Competition No. 4054 (the Act) is to issue an annual report on its works, and the situation and developments in its field of study. The Board, via annual reports, regularly communicates to the public relevant information on its enforcement activities in the form of infringement of competition, exemptions, negative clearances, mergers and acquisitions, statistical information, legislative preparations, opinions for legislation and privatisations; international relations; symposiums, panels and conferences; publications; and educational activities. Such reports also include general assessments regarding the works of the Authority; competition policy; and prospective works of the Board. Such reports are good media for those interested to be familiar with the enforcement activities conducted by the Board and the developments in the field of competition. They are an important aspect of the accountability of the Board who, via such reports, tries to prove that the resources allocated are spent to achieve the desired results.

3. Moreover, the effectiveness of the Act has been consistently assessed by taking into account the experience derived from its enforcement since 1997 by the Authority. The professional staff combine their experience gained while handling cases. This experience has led to detection of some weaknesses of the Act and to the proposal for changes in some of the articles of the Act accordingly. For instance, it was seen that judicial review of Board decisions had led to significant difficulties in the process of collecting fines imposed by the Board. Under Article 55 of the Act as originally enacted, fines were not required to be paid until judicial review proceedings were complete, and the passage of several years during the pendency of appeals meant that inflation eroded the weight of the fine assessed. A 2003 amendment to Article 55 addressed the problem by specifying that fines must be paid within thirty days of the Board's order, whether or not an appeal is taken. In late 2004, the requirement was modified to extend the payment period from thirty to ninety days due to allow the undertakings to raise necessary money to pay the fines. Another change was related to on-the-spot-inspections carried out by the professional staff to find out the necessary evidence. The problem that emerged with respect to on-the-spot inspections was that penalties for prevention of such inspections by the undertakings were not strong to deter the undertakings that could simply prefer to pay the daily penalty until they could remove the relevant documents. The article concerning on-the-spot-inspections was amended as proposed to perform the inspection with the decision of a criminal magistrate. One more change deserves to be mentioned is the removal of provision enabling the Board to keep 25% of the fines collected as income due to the criticisms that such a clause would create conflict of interest.

4. Another point to mention while evaluating the effectiveness of the implementation of the Act is the developments in European Competition law that is of peculiar importance due to the relationship between Turkey and the EU and the commitments of Turkey for the European Union membership. These developments together with the experience of the Authority staff raised the necessity to prepare some further proposals for amendment in the Act. These proposals include the elimination of the compulsory notification requirement for anti-competitive agreements, concerted practices and decisions in line with the

new understanding of the European Commission and adoption of a leniency programme (reduction in fines for those informing against the cartels) which is the most efficient and speediest way to unearth a cartel.

5. So far, the internal evaluation of the enforcement record from the points of experience and the reference EU competition law was mentioned. Another evaluation method employed so far is external contribution by OECD. Turkey's competition policy legislation and enforcement record were subjected to examination within the framework of peer review by the OECD. First was the report named "The Role of Competition Policy in Regulatory Reform" prepared for the OECD Review of Regulatory Reform in Turkey published in November 2002 and finally the report of "Peer Review of Competition Law and Policy of Turkey" discussed in Global Competition Forum in February 2005. These reports are highly valuable because they are prepared by experts after having consulted third parties such as practitioners, academics, business associations' members, governmental officials working for various governmental agencies in addition to the officials of the Authority. Recommendations highlight the points to be taken into account to better the enforcement record and therefore they are paid great attention by the Authority while evaluating the enforcement of the Act. Moreover, some of the recommendations in those reports overlapped the findings by the Authority's own experience. For instance, report of 2002 described some shortcomings of the Act, as the Authority were already aware for some time, as the weakness of the administrative sanctions in easing investigations, deterrence of fines imposed and the share, 25% of fines imposed which was accrued into the budget of the Authority. Moreover, the recommendations of the peer review report of 2005 were also regarded as highly educative in terms of what the Authority should do to increase the effectiveness of its enforcement record. It also has overlapping items with the internal works of the Authority regarding items that require change such as the issue of leniency, revised standard for mergers and modification of merger control deadlines, increase in maximum fines for violations other than substantive infringements, elimination of mandatory notification of agreements, establishment of a procedure for the settlement of cases by consent, increase in the numbers and expertise of TCA lawyers and enlarging the Authority's industrial organisation competence. The findings of both reports are encouraging for the Authority because they praise its working. The peer review report summarises its findings as well as those of the previous report as part of regulatory reform of 2002 as "*The previous Report found that the Turkish Competition Authority ("TCA") had made a good start since it began operations in late 1997. The agency has continued to make excellent progress since 2002, and has developed a reputation as one of Turkey's most effective and best administered agencies. It has pursued its mission with energy, imagination, and integrity and has won respect and support from leaders in the business community. Most importantly, it has played a critically important role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms.*"

6. Apart from such evaluations, the State Supervision Council¹ (the Council), also carried out examinations in the Authority and produced a report in 2002. The Council aimed to supervise the works and transactions of the Authority for the years 1999-2000 and 2001 including but not limited to its enforcement duties, its incomes and expenditures and methods of expenditures, reorganisation of the Authority to make its services efficient and the necessary changes in the Act that must be realised. With respect to enforcement, the report urged the Authority to conduct researches in the sectors of the economy,

¹ State Supervisory Council is attached to the Office of the Presidency of the Republic with the purpose of performing and furthering the regular and efficient functioning of the administration and its observance of law. It is empowered to conduct upon the request of the President of the Republic all inquiries, investigations and inspections of all public bodies and organisations, all enterprises in which those public bodies and organisations share more than half of the capital, public professional organisations, employers' associations and labour unions at all levels, and public benefit associations and foundations. Here it is important to state that State Supervisory Council is a different institution from the Council of State which is the appeal Court for the Authority's decisions.

increase cooperation between sectoral regulators and the Authority to avoid contradicting decisions, shorten the periods to publish reasoned decisions, to clarify the standing of the public undertakings that are granted monopolies and exclusive rights vis-à-vis the Act, to change the Act to empower the Authority to deal with abuse of market power falling short of dominance, to change the Act to abolish the handicaps of long judicial review process by collecting fines despite judicial review, to restructure the filing system to define, classify and protect the trade secrets to avoid their disclosure, to reorganise its structure to provide services in efficient and quality manner, to establish real cooperation between the Office of Legal Counsel and the technical departments and to establish the necessary mechanism to avoid the extravagant expenditures. Utmost care was paid to realise the conclusions of the report in general and those regarding publication of the decisions promptly, change of collection of fines during judicial review in particular.