



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

**DAF/COMP/WD(2006)20
For Official Use**

ROUNDTABLE ON ENVIRONMENTAL REGULATION AND COMPETITION

-- 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 8-9 June 2006. This roundtable will take place on Friday 9 June, afternoon.

JT03209668

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

1. In the last decades, environmental issues are taken into consideration more and more not only by the governments but also by the consumers all over the world. Environmental protection is considered as one of the cornerstones of sustainable development in both developing and developed countries. Furthermore, it is necessary for the well-being of future generations. Developing countries have been concerned that domestic environmental policies in developed countries may adversely affect market access of products from developing countries. Producers in developing countries may lack the technical and financial ability to comply with the environmental regulations of industrialised nations. Environmental protection requirements are often seen as a way to move towards more environmentally sustainable production and consumption methods.

2. As is known, EU environment policy is based on the belief that high environmental standards stimulate innovation and business opportunities. To this end, Community law provides that environmental considerations must be integrated into all other Community policies. This includes European competition policy as well. Environment policy is also one of the obligations arising from Turkey's candidacy to EU membership.

3. There is no explicit relation between environmental issues and competition rules in the Act on the Protection of Competition Law no 4054 (Turkish Competition Act). However, in line with the changes concerning the impact of economic activity on the natural environment, environmental considerations are gradually becoming inevitable during the implementation of Turkish Competition Act by the Competition Board, which is the responsible body for the application of the aforementioned Act. Although there is no direct reference to environmental issues in the Act, such concerns start to take place in the secondary legislation and case analyses.

4. In today's world, undertakings are paying more attention to environmental standards to be better in the markets. However, those environmental standards which regulate the environmental characteristics of products (product standards) might act as barriers to entry. Besides, the conformity with those standards requires new technology that is seen risky and costly by undertakings. As a result of which undertakings might end up in horizontal agreements.

5. Article 4 of the Turkish Competition Act prohibits those agreements, decisions and concerted practices, which restrains, distorts or restricts competition within the relevant market. Nevertheless, certain agreements and decisions which restrict competition and therefore fall under article 4 may at the same have useful effects for ensuring an improvement in the production or distribution of products, or for contributing to the technical or economic development. Such agreements may individually or as a group be exempted from the prohibition provisions of article 4 under article 5 of the Act.

6. Within this regard, "Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector Communiqué No: 2005/4" is worth mentioning before talking about other cases. Article 5 of this secondary legislation arranges limitations which exclude agreements from the scope of group exemption. Accordingly, the exemption provided for shall not apply where the manufacturer of motor vehicles prevents the access of independent undertakings¹ to any technical information, diagnostic devices and other type of equipment, necessary software, or training required for the maintenance and repair of motor vehicles or for the implementation of environmental protection measures. In brief, this Communiqué aims to ensure that consumers would be able to get their cars repaired and serviced by independent repairers, and also safety and environmental protection be maintained.

¹ According to article 3 (v) of this Communiqué "independent undertaking" means the undertakings, special services, repair device and equipment manufacturers, independent spare part manufacturers and distributors, technical information publishers, automobile clubs, undertakings that provide road assistance, undertakings that provide testing services and undertakings that provide training, which are engaged, directly or indirectly, in the maintenance and repair of vehicles.

1. Relevant Cases Dealing with Environmental Issues

1.1 Hotel services

7. During the evaluation of the cases in the hotel services markets, the Board has come across with the Ministry of Environment and Forestry's request for an obligatory report from the undertakings which are willing to build tourism premises. According to the Environmental Effect Evaluation Regulation, based on the Environment Law no 2872 article 10, those undertakings willing to invest into tourism premises having hotel rooms in between 50 to 200 rooms are obliged to prepare "Pre-Environmental Effect Evaluation Report", whereas undertakings willing to invest into more than 200 rooms are obliged to prepare "Environmental Effect Evaluation Report". Upon the preparation of these reports, they need to be submitted for approval to the aforementioned Ministry. The Ministry decides in 10 days whether the planned activities are in line with the environmental standards and regulations. The Board, in its evaluation concerning the privatisation of Abant Bolu Hotel² and İstanbul Hilton Hotel³, decides that although such an obligation can be considered as a legal entry barrier within the relevant product market (hotels and holiday villages), from the competition law perspective it is not yet certain whether this obligation has positive or negative consequences. But, the Board decided that this is an affirmative and beneficial obligation from the environmental protection point of view. In brief, it can be concluded that environmental issues arising from other relevant laws and regulations are taken into consideration and cannot be put aside within the hotel services markets while dealing with the competition law cases.

1.2 Coal Sector

8. The Board also dealt with the environmental issues, while examining the anti-competitive practices in the coal sector in the city of Diyarbakır⁴. In order to prevent air pollution, the Provincial Environment Board of the Diyarbakır Municipality orders a control mechanism. This mechanism foresees the prevention of the transfer of the coal to Diyarbakır which is not up to standards. According to this mechanism, the coal transferred to Diyarbakır is collected at the coal distribution centre before sold to consumers. At this centre, undertakings are obliged to show their authorisation certificates from the Municipality. In addition to this authorisation certificate, the Municipality also foresees obligatory membership to "Diyarbakır Coal Procurement and Distribution Cooperative". Although the Competition Board accepted the first part of the mechanism as obligatory from the environmental protection point of view in its decision, it considers the obligatory membership to a cooperative as an entry barrier that could restrict competition by leading into price agreements among its members, thus informed the Diyarbakır Municipality and the Governorship for the abolition of such practice.

1.3 LPG Distribution

9. The Board, in one of its recent decisions, continues appreciating environmental matters. This recent case is an individual exemption evaluation in the LPG distribution market. In generic terms, LPG distribution market composes of the storage activity since storage can not be separated from the distribution of the LPG. In this case⁵ three competitors are willing to form a JV which will be serving them in the management of the construction of the ship connection buoy system, interim storages and pumping mechanism in Karaagac Bay of İzmir. This JV will continue managing the operation of the whole mechanism upon the completion of the construction process. As mentioned above under the Turkish

² Board Decision no 99-56/611-388 (b) dated 9.12.1999.

³ Board Decision no 5-53/812-222 dated 1.9.2005.

⁴ Board Decision no 05-07/59-26 dated 3.2.2005.

⁵ Decision no 06-31/380-97 dated 28.4.2006.

Competition Act, agreements restricting competition can be exempted from the prohibition of Article 4, if beneficial effects caused are greater than the harmful effects. In order for such an exemption to be granted, the simultaneous existence of four conditions listed in the article 5 is obligatory. First of all, the agreement or concerted practice or decisions of an association of undertakings limiting competition should ensure new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services. Under the evaluation of this item, the Board decides that when economies of scale are taken into consideration, construction of a single terminal instead of three would be affirmative not only for the cost advantages it creates but also for the environmental effects it produces. The opinion from the Under secretariat of Navigation supports the Board's decision under the umbrella of environmental considerations too. Accordingly, construction of more than one terminal would be inconvenient for the security of the environment under the current circumstances.

1.4 Conclusion

10. Competition policy has to consider the environmental effects during its evaluation in the market. It is truism to argue that environmental consequences are reflected mainly in the form of horizontal agreements among undertakings. Every kind of horizontal agreement is seen as illegal if it prohibits, restricts or limits competition within the market under Turkish Competition Law. However, they can be exempted individually or as a group upon the satisfaction of certain criteria. Moreover, some legal environmental obligations can be seen as market barriers to entry. But from the competition law perspective it is not yet certain whether those obligations has positive or negative consequences. The point lies in the fact that whether those obligations have affirmative effects upon the natural environment and to what extent affect the market behaviour of undertakings.

11. The implementation of Turkish Competition Act by the Competition Board tries to reflect this understanding in its various decisions. The Board, bearing in mind the importance of environmental considerations, the impact of economic activity on this matter and the awareness of the business community, aims to establish the link in between environmental issues and competition policy.