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**AIRLINE COMPETITION**

-- Note by Turkey --

**18-19 June 2014**

*This document reproduces a written contribution from Turkey submitted for Item IX of the 121st meeting of OECD Competition Committee on 18-19 June 2014.*

*More documents related to this discussion can be found at:  
[www.oecd.org/daf/competition/airlinecompetition.htm](http://www.oecd.org/daf/competition/airlinecompetition.htm)*

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1. The air transport in Turkey has changed dramatically since the liberalization and deregulation of the sector in 2003. In this period Turkey has become one of the fastest growing markets in the world both in domestic and international lines. In the last decade the number of domestic passengers increased more than 8 times and reached 76 million whereas international passengers reached 73 million by increasing 3 times. The new entries, especially- low-cost airlines, have created competitive pressure on the national flag carrier, Turkish Airlines, and also have fostered the competition in the sector. Thus, the positive impact of competition both in terms of services and prices led air transport services to become a normal good/service instead of a luxury one for the customers.

2. The deregulation and increasing competition level of the sector inevitably necessitated the Turkish Competition Authority (TCA) to take an active role not only by investigations but also by using its advisory authority for a more competitive and fair market structure. Especially in its early decisions after deregulation, the TCA gave priority to ensure level play field for all players. In this sense the TCA gave decisions/advisory opinions about slot allocations in domestic and international lines and about bilateral air transport agreements between Turkey and other countries. As the competitive structure of the industry increased, this has changed the composition of the TCA decisions as well. The TCA started to focus on implementation of competition rules and assessment of alliances and loyalty programs/frequent flyer programs which are the key elements of the competition in the sector.

3. *The evaluation of slot allocation system and bilateral air transport agreements under the Competition Act*<sup>1</sup> is a key decision of the TCA for ensuring level play field in the industry. In this “*ex officio*” market research, after mentioning the important role of fair slot allocation for competition, the TCA called attention to close relationship between Turkish Airlines –dominant and flag carrier airline- and The Directorate General of Civil Aviation which is in charge of slot allocations. The TCA stated that The Directorate General of Civil Aviation was depended to Turkish Airlines in terms of human resources and technical support. The TCA concluded that to ensure a more competitive market structure, the allocations of the slots should be implemented by a more independent body that can treat all airline companies equally. The TCA brought its advisory opinion to the attention of the Ministry of Transport, Maritime and Communication. In the opinion the TCA also mentioned that there were competition restricting provisions in the bilateral air transport agreements with other countries, and stated that the regulations that enable other airlines entering the market, as well as Turkish Airlines, would improve the competition in international lines. Although this is not the only reason it is possible to conclude that the opinion of the TCA affected the implementations in the market in favor of competition. The slot allocation authority was given to a more independent body and there have been some improvements in bilateral air transport agreements in favor of rival airlines. In the recent years, the rivals of the flag carrier have increased their flight destinations more than twice both in domestic and international lines.

4. Besides advisory opinions, the TCA has important cases on allegations of anticompetitive behaviors. One of the most important of these cases is *Turkish Airlines –Pegasus 1 Case*<sup>2</sup>. Pegasus is the second biggest airline company in Turkey which is based in İstanbul Sabiha Gökçen Airport. In this case Pegasus claimed that Turkish Airlines, using the advantage of accessing both to İstanbul Atatürk and Sabiha Gökçen Airports abused its dominant position in overlapping flights with Pegasus at Sabiha Gökçen Airport by selective price cuttings and predatory pricing. In its decision the TCA described the Turkish Airlines behaviors as “competition on the merits” and did not conclude a violation or any abuse of dominant position by exclusionary conduct. But, the TCA remarked some structural problems such as the employment of the President of General Directorate of State Airports Authority which is in charge of slot allocations in Turkish Airlines. However, District Administrative Court of Ankara overturned the decision

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<sup>1</sup> Decision of the TCA, dated 10.4.2008 and numbered 08-28/322-106

<sup>2</sup> Decision of the TCA, dated 30.12.2011 and numbered 11-65/1692-599

by stating insufficient examination on dominant position analysis, efficiency analysis and cost structure of the Turkish Airlines. In response to District Administrative Court's decision, the TCA took a new decision and restarted the investigation<sup>3</sup>. This investigation is expected to be an important decision on economic analysis of substitutability of the two airports in Istanbul, efficiency claims and competition on the merits in airline industry.

5. *Turkish Airlines Hajj Operations*<sup>4</sup> is another case in which Turkish Airlines were allegedly abused its dominant position, by excessive pricing in its Hajj Operations between Turkey and Saudi Arabia. In its decision the TCA stated that Turkish Airlines had a dominant position in the relevant market but after a detailed cost, income and revenue analysis the TCA did not conclude any excessive pricing. However, the TCA mentioned that the bilateral air transport agreement between two countries led to a duopolistic market structure with only two flag carriers and that duopolistic structure of the market resulted in higher prices. In the following years after the decision, with the agreement of the civil aviation authorities of two countries, new competitors entered the market and thus customers enjoyed more stable prices.

6. In the same relevant market, in 2013 the TCA dealt with another and interesting case concerning "price fixing" and market sharing agreement between Saudi Airlines and Turkish Airlines. In *Turkish Airlines and Saudi Airlines pre-investigation case*<sup>5</sup> it was claimed that the two flag carrier airlines had an agreement for price fixing in hajj operations between the two countries. However, the TCA found out that price fixing was not the case but there was a market sharing agreement between the airline companies. According to an agreement found in a down raid, the market in hajj transportation was shared in 50%-50% basis between the two airline companies and at the end of the hajj season the part exceeding its 50% share was obliged to pay a 60 USD royalty fee for every exceeding passenger. Despite the explicit violation of the Article 4 of Turkish Competition Act, the agreement had an interesting feature. The royalty fee agreement that leads to market sharing in Turkey was a legal necessity according to Saudi Arabian laws. In other words, the Saudi laws force every foreign airlines operating to Saudi Arabia in hajj season to sign royalty fee agreement with Saudi Airlines. Thus, considering this legal necessity and "state action" defense, the TCA concluded not to open an investigation for the two airlines but informed Ministry of Foreign Affairs and The Directorate General of Civil Aviation about the agreement and its consequences for the Turkish market to take necessary measures with the Saudi counterparts.

7. Another decision of the TCA dealing agreements between the airline carriers is *Sunexpress/Condor case*<sup>6</sup>. In this case, Sunexpress applied for leniency program and demanded full immunity for any possible fines by stating that Sunexpress and Condor had had concerted practices in price fixing via distribution agreements in overlapping lines between Germany and Turkey. The TCA decided that the agreement between the two companies was a violation of law and fined Condor 1.5% of its turnover while giving immunity to Sunexpress.

8. Global cooperation of airlines and alliances have become one of the fundamental elements of competition in the airline industry in Turkey as well. Turkish Airlines is also a member of Star Alliance, one of the biggest alliances in the civil aviation industry. Unfortunately the TCA does not have a specific assessment for Turkish Airlines & Star Alliance cooperation directly, but in some other decisions it is possible to see attitude of the TCA towards alliances between the airlines. One of the early decisions of the TCA dealing with strategic alliances in airline industry is *Turkish Airlines/Israel Airlines/Egyptair/Royal*

<sup>3</sup> Decision of the TCA, dated 13.08.2013 and numbered 13-47/645-M

<sup>4</sup> Decision of the TCA, dated 15.4.2010 and numbered 10-31/466-172

<sup>5</sup> Decision of the TCA, dated 28.11.2013 and numbered 13-66/919-389

<sup>6</sup> Decision of the TCA, dated 27.10.2011 and numbered 11-54/1431-507

*Jordan Airlines case*<sup>7</sup>. In this case flag carrier airlines, based on the air transport agreements signed between countries, made an application for exemption for an agreement that included income and capacity sharing clauses. Despite the anticompetitive effect of the agreement on competition, the TCA granted exemption stating that the agreement would lead to more effective use of the capacity of the airlines and consumer benefit by regulating the air traffic between countries.

9. On the other hand a more comprehensive assessment of alliances can be found in *Air France, KLM, Northwest and Delta Airlines Transatlantic Joint Venture exemption case*<sup>8</sup>. The joint venture agreement that affected Turkish market via İstanbul-Atlanta and İstanbul-New York and other transit lines, included cooperation clauses such as code and capacity sharing, joint venture flights, frequent flyer program sharing, joint purchasing and marketing operations. In its decision, describing the flight schedules and frequencies as the basic products of airline companies, the TCA mentioned the efficiency gains and cost benefits of alliances resulting from network expansion and economies of scope as a result of extensive service network. The TCA also claimed that the airline alliances reflect these economic gains to consumers by increasing the frequency of the flights, ensuring better/wider service network and by making it possible to combine frequent flyer program rewards from different airline companies in a wider flight network. As a result of this evaluation and considering Turkish Airlines' higher market share in the overlapping lines, the TCA concluded that the joint venture agreement would foster the competition and granted exemption. Thus, it seems possible to say that as Turkey has a growing air transport market, the TCA mostly focuses on the efficiency gains and positive effects on consumer welfare of airline alliances.

10. Finally, the loyalty programs or frequent flyer programs of the airline companies have also been subjected to some TCA decisions. It is widely discussed that in markets such as the airline market where repeated purchases are common, switching costs caused by frequent flyer loyalty programs may be substantial and raises competition concerns. In Turkish air transport market, it should firstly be expressed that all major airline companies have frequent flyer programs. However, probably because of satisfactory increase in the passenger numbers of all airline companies and increase in the market share of the rivals of dominant firm, the loyalty effect of these programs have not been carried to the TCA agenda up to the present. In spite of that, the airline companies in Turkey generally establishes a cooperation with a bank and create and issue a co-branded credit card which enables the customers to combine credit card rewards with frequent flyer program rewards. As cooperation agreements included exclusive supply obligation for airline companies and non-compete clause for the banks, they were subjected to exemption examinations<sup>9</sup>. In the latest *Turkish Airlines Garanti Bank exemption case*<sup>10</sup>, the TCA examined the cooperation that included exclusive supply obligation for Turkish Airlines to Garanti Bank in issuing a co-branded credit card that operates with Turkish Airlines' frequent flyer program. The TCA stated that because of Turkish Airlines' dominant position in the upstream market, exclusive supply obligation would raise some competitive concerns such as distortion of competition between air miles rewarding credit cards and frequent flyer programs. However, the TCA mentioned that there were considerable factors counterbalancing these competition concerns. First of all increasing competitiveness of the rivals of Turkish Airlines in the upstream market and different co-branded credit card agreements between banks and different airlines was considered as a sign of a market open to competition. In the credit card market, on the other hand, there were innovative and competitive products that enabled customers to take

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<sup>7</sup> Decision of the TCA, dated 13.2.2001 and numbered 01-08/73-21

<sup>8</sup> Decision of the TCA, dated 11.6.2008 and numbered 09-27/577-137

<sup>9</sup> Pegasus Card Case: decision of the TCA, dated 5.6.2008 and numbered 08-37/497-178; Turkish Airlines Garanti Bank Miles and Smiles Card Case 1: decision of the TCA, dated 9.9.2009 and numbered 09-41/994-251

<sup>10</sup> Turkish Airlines Garanti Bank Miles and Smiles Card Case 2: Decision of the TCA, dated : 01.11.2012 and numbered 12-53/1511-529

advantage of mile rewards without using co-branded cards. Thus, based on this rationale the TCA granted exemption to cooperation agreement.

11. In an overall assessment it can be concluded that, the TCA has attached great importance to ensure level playfield in the Turkish air transport market without compromising the implementation of the competition rules and has had a positive approach to benefits on consumer welfare and efficiency gains of alliances and loyalty programs of airlines in a growing market.