

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

ROUNDTABLE ON MARKET DEFINITION

-- Note by the Delegation of Turkey --

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Introduction

1. Market definition, is a sine quo non condition for effective enforcement of competition law and policy in Turkey as it is the case in almost all jurisdictions. Especially in concentration and unilateral conduct cases, defining relevant market is the very first step before examining whether a concentration or a particular conduct creates a dominant position and/or results in an abusive behavior; or whether a particular conduct of a dominant undertaking leads to an abuse. In this sense, the goal in defining a market (in both product and geographic dimensions) is to ascertain the extent to which competitors have the power to restrict the behavior of the undertakings in question, and to prevent those from behaving independently of an efficient competitive pressure.

2. Thus, relevant market definition is of particular importance for the implementation of articles 6¹ and 7² of the Act No. 4054 on the Protection of Competition (Turkish Competition Act) respectively on abuse of dominant position, and mergers³. Market definition may also be used for the application of articles 4 and 5 of Turkish Competition Act⁴.

3. In general, in competition law and policy enforcement, the concept of relevant market is somewhat different from concepts used to express a market in other areas. For that reason, the Turkish Competition Authority (the TCA) published the Guidelines on the Definition of Relevant Market⁵ (the Guidelines) to state the method used for defining a market and the criteria followed for taking a decision by the Competition Board, in order to minimize the uncertainties undertakings may face.

¹ The article 6 of Turkish Competition Act states that: “The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited”.

² The article 7 of Turkish Competition Act states that: “Merger by one or more undertakings, or acquisition by any undertaking or person from another ... with a view to creating a dominant position or strengthening its / their dominant position, which would result in significant lessening of competition in a market for goods or services within the whole or a part of the country, is illegal and prohibited.”

³ Accordingly, secondary legislation also necessitates market definition in order to make a proper analysis. For instance, article 13 of the “Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of The Competition Board (Communiqué No: 2010/4)” states that in assessing mergers and acquisitions, the structure of the relevant market, actual and potential competition among undertakings, and other issues shall be taken into account.

⁴ The article 4 of Turkish Competition Act states that: “Agreements and concerted practices between undertakings ... which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.”

⁵ The Guidelines can be reached at: <http://www.rekabet.gov.tr/dosyalar/kilavuz/kilavuz8.pdf>.

4. According to the Guidelines, a market definition for a concentration analysis which is an *ex ante* study may be different from the one made for an *ex post* analysis. Furthermore, it is possible to define market differently owing to considering changing circumstances which may affect consumer preferences, sales regions and product prices.

5. With respect to merger cases, the Guidelines also states that the first step in market definition is assessment of demand substitution effect of a proposed merger. Supply substitution may also be taken into account if it has an equivalent effect as for demand substitution. However, supply substitution is not generally taken into consideration for market definition as potential competition may not yield quick results.

6. However, in cases where the transaction in question does not seem to pose concerns for competition considering alternative market definitions in terms of both product and geography, or in case where there are crystal clear competition distorting effects for all possible alternative definitions, then it may not be necessary to make a particular market definition.

1. The tests used for defining the relevant market

7. The TCA attaches importance in the implementation of the Guidelines while conducting its relevant market analyses and emphasizes the importance of considering the notions of demand and supply substitution among products and regions.

8. The quantitative techniques used by the TCA to define relevant markets are price correlation test, shipment test (Elzinga-Hogarty test) and hypothetical monopolist test (Small but Significant Non-transitory Increase in Prices - SSNIP).

9. The price correlation test was used in defining the relevant market in *Cadbury Schweppes/Intergum*⁶ merger case. The weak correlation between prices of different types of chewing gums was considered as supportive evidence to the qualitative assessment about the relevant market definition. As a result, it was decided that the product types like “chewing gum with sugar”, “sugar-free chewing gum” and “chewing gum with sweetener” are in different relevant product markets.

10. The Elzinga-Hogarty test assesses whether significant product flows are present between two regions. In particular, the Elzinga-Hogarty test states that a certain region can constitute a distinct geographic market if a significant proportion of the consumption in that region is provided locally and a significant proportion of the production in that region is consumed locally. The TCA used this test in several cases⁷ and generally used 80 % as the threshold for what constitutes “the significant proportion”. Most of these cases were related with the cement industry.

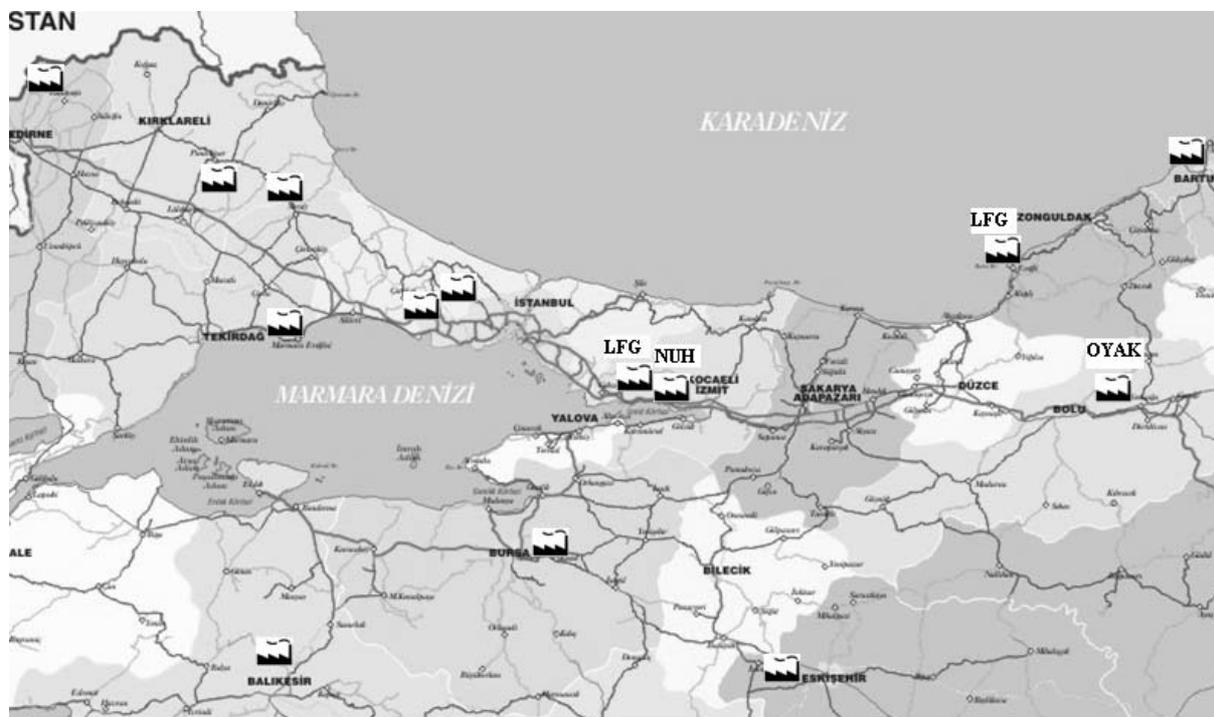
11. The TCA used SSNIP test to define the geographic market in a horizontal merger case (*Oyak Çimento-Lafarge*⁸; *Oyak Cement-Lafarge*) and sought to find the smallest market within which a “hypothetical monopolist” can raise the price of a product by 5% to 10 % for at least one year without customers switching to substitutes or without customers switching to similar products in a different location. In this case *Oyak Çimento*, a cement producer located in city of *Bolu* aimed to acquire two plants

⁶ Dated 23.08.2007, numbered 07-67/836-314.

⁷ Dates and numbers of the decisions of the Competition Board on the relevant cases are as follows: 06.12.2007, 07-89/1130-441; 22.3.2007, 07-27/252-87; 28.4.2006, 06-31/379-96; 20.12.2005, 05-86/1190-342; 20.12.2005, 05-86/1192-344; 20.12.2005, 05-86/1194-346; 20.12.2005, 05-86/1189-341; 20.12.2005, 05-86/1188-340; 20.12.2005, 05-86/1187-339; 20.12.2005, 05-86/1191-343; 28.5.2002, 02-32/367-153.

⁸ Dated 18.11.2009, numbered 09-56/1338-341.

of its rival undertaking *Lafarge*. One of these target plants was located in city of *Izmit* which is 151 km to the east of city of *Bolu*. The other plant of *Lafarge* is located in city of *Ereğli* which is 159 km to the northwest of city *Bolu* and is a part of city of *Zonguldak*.



12. As a prior step to implement the SSNIP test, the own and cross demand elasticities of the products of these producers have been estimated econometrically. Then, the hypothetical monopolist test has been implemented separately for three regions using the estimated demand elasticities and predicted average costs of the plants.

13. While implementing the SSNIP test, an initial region that would be subjected to SSNIP test was chosen for each of the three merging plants. Since the acquirer *OYAK Çimento*'s plant was located in city of *Bolu*, the initial region included city of *Bolu* and the city situated immediately to the west of it, city of *Düzce*, where there does not exist a cement producer. Similarly, for *Lafarge* plant, which is located in city of *Izmit*, cities of *Izmit* and *Sakarya* (the city located immediately to east of city of *Izmit*) are included in the initial region to be tested. Therefore, the two cities which are located between the merging plants without having any cement producers in their own territory, namely cities of *Düzce* and *Sakarya*, have been considered in the hinterland of one or the other of the merging plants. The initial region for the third merging plant located in city of *Ereğli* is chosen as the whole city of *Zonguldak* which also includes city of *Ereğli*. Then, profits of the hypothetical monopolists operating in those initial regions were calculated before and after 10% price increase. The price increases were applied to all products that the hypothetical monopolists produce. The SSNIP for every three hypothetical monopolist resulted in increase in profits. This result suggested that the initial regions described above constitute relevant geographic markets for every three merging plant.

14. On the other hand, in some cases it is necessary to take into consideration some certain characteristics of the market. The TCA pays special attention to the market when that market shows some characteristics of two-sided markets or when there is a product differentiation in the market or relevant parties are vertically integrated undertakings.

2. Two sided markets

15. The TCA, in its definition of a two sided platform business, relies on the existence of two distinct groups of customers for the product, indirect network effects between these customers groups and an intermediary internalizing the externalities created by one group for the other, as suggested in literature⁹. In that vein, several platform businesses were identified by the TCA¹⁰. In the previous decisions, the TCA identified online meal order service, television broadcasting, newspaper publishing and credit card businesses as having two distinct but interconnected customer groups and the business transaction between these groups constitute a network effect which can be utilized by the intermediaries in those cases.

16. When defining relevant market in two-sided platform businesses, several characteristics should be taken into consideration and analyses should be made accordingly. An example to this situation can be seen in the *Dogan Yayın Holding (DYH-Dogan Publishing Company)* decision¹¹. In this decision, the TCA found that the actions taken by DYH violated article 6 of Turkish Competition Act. The concern in the case is the methods that were adopted by DYH, who used the advertisement income channel which is a critical feature for the rivals to hold on to the newspaper publishing business. Through fidelity discounts to those who use DYH's advertising channel (namely advertisers), DYH put pressure on advertisers to use DYH's newspapers for their advertisements and this course of action was regarded as restriction of competition.

17. As it is known, newspapers have some characteristics, such as the distribution channel (nationwide, regional), content (political, sports, magazine) and period (daily, weekly and others), that differentiate these products from its counterparts. Although these features are very important and distinctive for the demand side of the business (for both readers and advertisers), the TCA considered them inter-related and non-homogeneous customer preferences led them to make heterogeneous decisions. For example, when an automobile producer intends to advertise its brand-new automobile, it mostly prefers several advertising channels to meet his expectations. This strategy includes preferring more than one newspaper's advertising space¹² and different types of newspapers (political, economics, sports etc.). Similarly, it is possible for this market to say that newspaper producers provide more than one feature in

⁹ EVANS, D. S. (2003), "The Antitrust Economics of Two Sided Markets", Yale Journal on Regulation, Vol. 20.

¹⁰ In its *Yemek Sepeti* decision (dated 20.9.2004, numbered 04-60/869-206), the TCA described an intermediary (a platform) which was defined as "online meal order service" and the presence of network effects was explained by the fact that more restaurants would be willing to register in the relevant internet portal, the higher the number of customers using that portal. In the same direction, the more customers would be willing to use the portal, the higher the number of registered restaurants.

Other platform businesses were labeled as being two sided by the TCA. In the *Star TV* decision (dated 25.10.2005, numbered 05-73/984-272), "nationwide television broadcasting businesses", and in the *Vatan Newspaper* decision (dated 10.3.2008, numbered 08-23/237-75), "nationwide daily political newspaper publishing business" were analyzed as two-sided platform business having two interdependent customer groups: advertisers and viewers in the first case, and advertisers and readers in the second.

The TCA also identified credit card market as being two sided platform business in its *World Credit Card Program Cooperation Agreement between Yapı ve Kredi Bank and Anadolubank* decision (dated 14.8.2008, numbered 08-50/727-286) having two distinct customer groups, namely cardholders and merchants.

¹¹ Dated 30.03.2011, numbered 11-18/341-103.

¹² Although this strategy depends on the advertising budget of the undertaking, it is possible to say that the higher the budget limit of advertising the more the advertising channels to be included in one's advertising channel portfolio.

their products or in their product lines. Consequently, in this case, relevant market was defined as “(daily) newspaper advertising space”.

3. Product differentiation

18. There are several ways of differentiating a product in terms of form, feature, performance, quality, durability, reliability, style and service. In this sense, the TCA considers product differentiation as an important element of defining the relevant market. In its decision on *acquisition of Burgaz by Mey İcki*¹³, the TCA made a comprehensive analysis of the products that is in the Burgaz’s and Mey İcki’s product line. These products include alcoholic drinks such as raki¹⁴, vodka, gin, liqueur and whiskey. The TCA first questioned the differences between alcoholic drinks, then tried to define the segmentation by quality comparing them with each other and taking preferences of the consumers into consideration. In this regard, the TCA examined the progress of alcoholic drinks’ prices, compared the movements of demand to each alcoholic drink and tried to suggest a significant indicator whether these products can be substituted. Consequently, TCA decided that each of the alcoholic drinks (raki, vodka, gin, liqueur) constitutes separate product markets. The significance of this case is the TCA’s view towards differentiated products and its distinctive definition of relevant product market for alcoholic drinks. In its previous *Burgaz-Mey İcki*¹⁵ decision, the TCA preferred not to define relevant product market considering the fact that defining a relevant product market wouldn’t make any difference while evaluating the transaction. However, it should be noted that in this case, raki was distinctly separated from other alcoholic drinks.

4. Vertical integration

19. In some instances, the vertical integration issue may raise some questions whether market definition plays a central role in the case. Cement industry is a good example in this regard. In its *Antalya Cimento-Hazır Beton (Antalya Cement-Ready Mixed Concrete)* decision¹⁶, the TCA investigated cement and ready mixed concrete producers. The allegations included price fixing practices of four cement producers who were also producers of ready mixed concrete. What makes this case special is the ambiguity of defining the relevant market where the producers were alleged to fix prices. The main reason that leads to the ambiguousness is the positions of vertically integrated cement producers which can balance or transfer the (allegedly additional) profit margins to both cement or/and ready mixed concrete products. In its decision, the TCA defined both cement and ready mixed concrete markets as the relevant product markets, and investigated both cement and ready mixed concrete price/cost movements through a substantial series of periods. On the other hand, while relevant geographic market was “Isparta, Burdur and Antalya region” for cement production, the TCA didn’t consider it necessary to define a relevant geographic market for ready mixed concrete market.

¹³ Dated 8.7.2010, numbered 10-49/900-314.

¹⁴ A traditional Turkish drink containing high volume of alcohol.

¹⁵ Dated 18.11.2009, numbered 09-56/1325-331.

¹⁶ Dated 31.3.2011, numbered 11-20/378-117.