

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

**ROUNDTABLE ON COMPETITION AND PAYMENT SYSTEMS**

**-- Note by the Delegation of Turkey --**

*This note is submitted by the delegation of Turkey to the Competition Committee FOR DISCUSSION under Item VI at its forthcoming meeting to be held on 24-25 October 2012.*

**JT03328147**

**Complete document available on OLIS in its original format**

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

## ROUNDTABLE ON COMPETITION AND PAYMENT SYSTEMS

### -- Note by Turkey --

1. The share of credit card transactions has significantly increased in payment systems in all over the world and in Turkey. Since cheques and debit cards are not commonly used in Turkey, credit cards have gained increasing importance. On the other hand, in recent years, payment cards -credit cards in particular- which have two sided market feature; clearing commissions that enable income transfer between parties and justifications for government interventions in this field are generally being discussed in literature and increasing numbers of competition authorities have directed their attentions to the issue. The interest of Turkish Competition Authority (the TCA) to the subject dates back to the early ages of the authority, and in recent years this interest has focused on Interbank Card Centre practices.

#### 1. Benkar Decisions

2. The first decision related with online payment systems is Benkar-Fiba joint venture decision<sup>1</sup> and Benkar Investigation decision<sup>2</sup>. In 1998, Benkar Consumer Financing and Card Services (Benkar) was the first undertaking in Turkey to launch the shopping cards system named "Advantage Card" which allows consumers to shop and pay in installments in member stores. Benkar, being the dominant undertaking, was dealing with the exclusive agreements in the market of credit cards that enable consumers to shop and pay in installments in the stores where the Advantage Card was valid. This case was initiated via the request of the parties concerning the authorization of the joint venture to be established between Benkar and Fiba Bank in the field of consumer banking and financial services. Mergers and acquisitions were dealt within the framework of Article 7 of the Act on the Protection of Competition (The Competition Act) and the Communiqué No 1997/1 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board which was in force at the time. The Article 7 of the Competition Act prohibits those mergers, acquisitions and joint ventures that create a dominant position or strengthen an existing dominance as a result of which competition is significantly lessened. The relevant market was defined as "credit cards availing payment in installments". Having examined the market shares and entry barriers, the TCA concluded that Benkar benefited from its incumbent firm position in the relevant market, thus attained a quite high market share.

3. According to the exclusive agreement, when a store becomes a part of the Benkar system, that store could no more be a part of another system that provides similar services. Benkar had the widest store network then, especially among fashion stores. Thus, such an exclusive system was benefiting from the network externalities to a great extent. In addition to that, those member stores (most of which were either small or medium sized shops working on their behalf on a local basis) or store chains (which were relatively bigger enterprises working nation wide) were prevented from having membership agreements with banks that offered a similar system on better terms. Therefore, not only the store and store chains, but also consumers were suffering from such an exclusive system. The advantage arising from having a widest network was helping Benkar to enforce an obligatory term not to become a member of any other card

---

<sup>1</sup> Decision dated 18.09.2001 and numbered 01-44/433-111.

<sup>2</sup> Decision dated 15.08.2003 and numbered 03-57/671-304.

systems. The TCA regarded this term as an entry barrier and decided to authorize the joint venture transaction, to which Benkar was a party, on the condition that the “exclusivity to one party” clause imposed by Benkar on members should be removed.

4. However, Benkar continued the exclusionary practices, so the TCA initiated an investigation. During the investigation process, Benkar was sold to HSBC Bank. At the end of the investigation, all such practices were decided to be preventing competition in the relevant market and were prohibited. At the same time, with the entry of several new banks to the market a more competitive environment was created.

## 2. **BKM I Decision**<sup>3</sup>

5. Other comprehensive assessments about online payment systems were made in Interbank Card Centre (BKM) decisions. In the first case upon the complaint of Turkish Union of Employers of Gasoline Dealers and Gas Companies (TABGIS), the TCA initiated an investigation against BKM in order to determine whether there is an infringement of competition through fixing clearing commission rate by the banks under the body of BKM. In the investigation process, BKM requested an exemption<sup>4</sup> for its practice of fixing the clearing commission rate, and as a result, assessment for exemption was included in the investigation proceedings.

6. BKM was a joint stock company carrying out clearing transactions between banks within the card payment system. In card transactions, BKM’s Board of Directors determined the clearing commission rate paid by the acquiring bank to the issuing bank. Issuing banks were those which market credit cards and distributed them to customers; while acquiring banks were those which provided point of sale (POS) terminals for member stores by means of making agreements with these stores in return for a certain amount of commission (member store commission). Clearing commission obtained by issuing banks from acquiring banks were reflected on acquiring banks as cost and acquiring banks reflected this cost to member stores as member store commission. Clearing commission rate was charged in equal amount by all of the banks. Essentially, clearing commission was a service cost reflected first by the issuing bank to the acquiring bank and then by the acquiring bank to the member store; therefore it can be regarded as a price of the service paid the member stores.

7. In his plea, BKM argued that the practice of fixing clearing commission rates was not contrary to the Competition Act and that each of the items constituting the fixed clearing commission rate was an element of cost for the issuing banks. In this frame, it was stated that BKM was in need of a centralized clearing commission rate. In addition, payment guarantee provided by issuing bank included fraud risk, so this guarantee against fraud was also needed to be priced. Besides, funding costs resulting from the period between transaction date and payment date were creating another cost figure for the issuing banks.

8. During the investigation process, it was established that clearing commission fixes a part of the costs and the income of issuing and acquiring banks; determining a common clearing commission rate among banks impeded competition at issuing and acquiring levels; issuing banks could not follow an

---

<sup>3</sup> Decision dated 01.07.2005 and numbered 05-43/602-153.

<sup>4</sup> Article 4 of the Competition Act aims at preventing the distortion or restriction of competition directly or indirectly in a particular market for goods or services by agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings; whereas, Article 5 empowers the TCA to issue both individual and block exemptions on the basis of the certain criteria. Accordingly, those agreements, concerted practices, and the decisions of associations of undertakings that prevent or distort competition can be exempted on an individual basis or through block exemptions on the condition that certain specific criteria are satisfied. Thus, the TCA can grant individual or block exemptions, when the relevant criteria are met.

individual pricing policy for the services they provided for acquiring banks and that clearing commission which was the base price for member store commission was an important element of cost for member stores. In this frame, it was concluded that BKM was fixing clearing commission rates within the context of Company's Main Agreement; a practice which had a nature of a decision of an association of undertakings and which was regarded as a practice contrary to the Competition Act.

9. In the assessment of exemption, it was evaluated that fixing the clearing commission rate through mutual agreements between banks included in the system required a lot of agreements and was not practical, so it was stated that the practice of fixing the rate could be granted exemption provided that a cost-based approach for the calculation of the fee was adopted. Moreover, in the investigation stage, BKM was required to have a consultancy firm making a clearing commission formulation study in order to employ a more objective method for the calculation. For the exemption assessment, the TCA considered also this on this study and stated that certain cost items in the formula presented by the consultancy firm needed to be adjusted in order to grant exemption to the practice.

10. In this framework, the TCA concluded that, fixing a common clearing commission by BKM meant a decision of an association of undertakings which was contrary to Article 4 of the Competition Act. It was also stated that in order for this practice to be granted exemption, the overnight interest rate determined by the Central Bank of Turkey must be taken as a basis in the formula applied by BKM for the calculation of funding cost and sunk cost should not be taken into consideration as an operational costs item. By his decision, the TCA not only presented a comprehensive assessment of credit card markets but also showed his approach to the two sided markets. On the one hand the TCA is searching for a clearing commission which makes all the parties get fair benefits from system and bear the cost, on the other hand he took steps for the creation of an audit mechanism of the market by other government agencies and initiated the termination of legal barriers for a competitive market structure.

### **3. BKM II Decision<sup>5</sup>**

11. After individual exemption period that was granted by *BKM I Decision* was over, BKM applied for another exemption in 2007. In the assessment the TCA asked for the opinion of banks that were members of BKM, of consumer associations, of chambers of commerce and of related regulatory authorities (mainly the Central Bank of Turkey and Banking Regulation and Supervision Agency) whether there was any regulation or investigatory process for clearing commission or not. In their responses, the Central Bank of Turkey stated that he did not have the power to regulate the clearing commissions whereas Banking Regulation and Supervision Agency stated that the supervision of the clearing commissions was made by him through the "Regulation on Bank Cards and Credit Cards"; and mentioned that this authorization would be used in coordination with the Central Bank of Turkey if there arises a need. It was stated in the decision that during the 2 year exemption period that was granted by the previous decision, BKM did not do any work on data reliability, however certain control mechanisms were utilized in the acquisition of data and data that deviated from the average were not included in the formula calculations. Also, the decision stated that BKM believed this responsibility would be given to the Banking Regulation and Supervision Agency, and pointed out that if an audit of the data forwarded by the banks was demanded, it would be more appropriate if this was conducted by the firms which carry out financial audits of the banks.

12. The decision stated that, in terms of granting an exemption to the interchange commission at this stage, in order to ensure the lowest possible harm to the consumers and member stores, an obligation must be introduced to announce to the public the currently applied interchange commission rates on the BKM website.

---

<sup>5</sup> Decision dated 17.01.2008 and numbered 08-06/63-20.

13. The decision also mentioned that in case data reliability can be ensured through public or independent audits, it might be possible to grant an indefinite exemption.

14. In the decision, it was also explained that according to the information in the file there were high concentration rates in both the issuer and the acquirer markets, and that market shares of the first 6-7 banks might well be in excess of 90 per cent.

15. The decision concluded that setting a joint interchange commission might be granted an individual exemption until April 2009, provided certain conditions were met. The conditions for granting an exemption were as follows: in the formula applied by BKM, when calculating the number of funding days used in the funding costs section, payments days must be calculated as 10 days at a maximum, and the total rate resulting from the formula must be published on the website of BKM.

#### **4. BKM III Decision<sup>6</sup>**

16. As a result of BKM's application to the TCA on February 2009 requesting an indefinite exemption for setting joint interchange commission rates for credit cards, an exemption examination was conducted and the relevant exemption decision was taken. The application of BKM also requested authorization for using Central Bank of Turkey overnight lending interest rates instead of overnight borrowing interest rates in the calculation of interchange commission rates and for reflecting Visa and Mastercard transaction fees in the interchange commission rates.

17. The decision stated that in case interest rates were adjusted as requested, funding costs would increase by 0.19 points, which would mean a hypothetical increase of 140 million TL in interchange costs for the year 2008; consequently, any request that could lead to an upward change in interchange rates should be assessed carefully. In this context, base interest rates must be: i) realistic, ii) consistent, and iii) determined in a deep capital market. As a result of the assessments conducted within this framework, it was stated in the decision that daily interest rates established in the Istanbul Stock Exchange repo-reverse repo market would be suitable for use in the calculation of the funding costs.

18. In assessing whether Visa and Mastercard logo costs should be added to the interchange calculation, mention was made of the criteria related to the cost items which should be included in the interchange commission, which were listed as follows: i) costs should belong to the card issuer bank, and ii) member businesses should benefit from the relevant cost. It was stated that the existence of Visa or Mastercard logo for the transactions made by domestic customers was not among the key conditions for the functioning of the system and therefore, it was concluded that logo fees paid to Visa or MasterCard for transactions made by domestic customers did not fulfill the aforementioned requirement of benefiting member businesses. However, it was also stated that, with respect to networks that had not yet achieved a certain size, such practices to increase the costs for one side in favor of the other might be deemed reasonable.

19. The decision also stated that the approach of public regulations to interchange commissions was gradually getting stricter worldwide. Particularly interesting were the statements in the decision that discussed the regulatory role of the TCA in this area, pointing out the public regulation responsibilities of other regulatory authorities in the sector and following an overview of the various state practices in the world. As a result, it was decided that an individual exemption might be granted to setting joint interchange commission rates for 3 years, provided that certain conditions were fulfilled. These conditions were laid out as the calculation of the interest rates used in the funding costs section of the formula applied by the BKM based on the daily interest rates established in the Istanbul Stock Exchange repo-reverse repo

---

<sup>6</sup> Dated 19.8.2009 and numbered 09-36/905-217

market; on the other hand, it was stated that these conditions would not be considered to be fulfilled in case overnight lending interest rates instead of overnight borrowing interest rates were used in funding costs, or in case Visa/MasterCard logo costs were included in the interchange commission formula. In addition, it was also decided that BKM officials should reorganize independent auditing procedures to ensure data reliability and to standardize calculations between banks by covering those banks holding at least 80% of the market (calculated according to the not-on-us transaction turnovers of issuer banks), and should certify these procedures within 3 months; further, data provided for the formula should go under regular independent audits each year within the framework of the new independent audits and the relevant independent audit reports should be forwarded to the TCA.