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WASTE MANAGEMENT SERVICES

-- Turkey --

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Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

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ROUNDTABLE ON WASTE MANAGEMENT SERVICES

– Turkey –

1. Introduction

1. In the last decades, environmental regulations gain importance not only for the governments but also for the consumers. Environmental regulations call for solutions of environmental problems by assigning responsibilities to various actors in the society ranging from final consumers to firms and to the state. Starting from the early 90's, environmental regulations have become an important policy area for Turkey. Accordingly, many regulations have come into force to ensure successful waste management practices. This contribution aims to give an insight on the current situation in municipal solid waste (MSW) management in Turkey and Turkish Competition Authority's (The TCA) practice in the waste management sector.

2. Municipal Waste Management in Turkey

2. MSW collected in 2010 is 25 million tons and MSW per capita is 416 kg¹. According to Turkish Statistical Institute, 43,5 % of the MSW were dumped into dumpsites and 54,4 % is disposed in sanitary landfills, 0,8 % treated in compost facilities and 1,3 % disposed by other methods. Compared to 2008 data, MSW dumped in dumpsites decreased by 13,2% and MSW treated in disposal and recovery facilities increased by 25,6 %.²

3. For the management of MSW, the Metropolitan Municipality Law no. 5216 (dated 10.7.2004) and the Municipality Law no. 5393 (dated 3.7.2005) give the sole responsibility on the municipalities. Their responsibilities include collection, transportation, separation, recycling, disposal and storage of MSW. Regulations allow municipalities to assign other parties to carry out one or more of MSW management responsibilities. MSW management projects have been implemented by several municipalities and cooperation among neighboring municipalities have been realized since 2003.³

4. In 2008, Regulation on General Principles of Waste Management introduced regulated fees to be paid to the relevant municipality by subscribers who benefit from the waste management facilities of the municipality. Municipalities should be able to cover the expenditure of infrastructure services through the fees collected from households. Since 2008, municipalities have been preparing waste management plans which show how, when and in which way MSW will be treated. These plans should be approved by the Ministry of Environment and Urbanization (MEU) and the amount of approved waste management plans have reached 283 in 2011.⁴ In recent years mainly the metropolitan municipalities constructed their own

¹ Turkish Statistical Institute, <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=10750>

² Turkish Statistical Institute, <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=13134>

³ European Environment Agency, Municipal waste management in Turkey, s. 8.

⁴ Ibid, s.9.

waste management facilities and some of the municipalities contracted private undertakings to collect and treat MSW.

5. Private enterprises have to get license from the MEU in order to operate in waste management sector. According to the MEU, the number of licensed collection, separation and recycling facilities is rapidly increasing. Number of licensed facilities has increased to 562 in 2012 compared to 28 in 2003.⁵ In 2012, 252 firms got license for non-hazardous waste collection and separation.

6. In terms of recycling of MSW, no accurate data is available, however it is known that the most frequent way of MSW disposal is by landfilling and the other methods like composting, incineration or recycling are not quite common.⁶ Recycling rates are very low and recycling of MSW is still a sort of green field which is open for development in Turkey. “By-Law on Control of Packaging Waste” which came into force in 2004 and was revised in 2011 aims to decrease the generation of packaging waste and also to increase the rate of recycled packaging waste. Recycling targets are determined by this by-law and authorized institutions and suppliers who are not member of an authorized institution are obliged to recycle the predetermined amount of packaging waste and document this to the MEU. There has been a dramatic increase in the amount of operators registered to the system since 2003 and the amount reached 15.192 registered operator in 2012.⁷ The Regulation on Incineration of Waste came into force in 2010 even though the incineration of solid waste has not been used commonly to dispose MSW.

3. The TCA’s Practice in Waste Management Sector

7. As stated above, the MEU is the responsible public agency for drafting and implementing environmental regulations. The waste management sector is still in development stage and cooperation among the MEU and the TCA is important for the development of an effective waste management sector. During the past few years the MEU Waste Management Directorate has asked for TCA’s opinion before a new environmental regulation came into force and the TCA’s opinions and concerns have been reflected to the relevant regulations. The regulations and the practices adopted by the MEU directly affect the market formation and competitive structure in waste management sector and the TCA’s involvement in the formation of regulation is considered as an important step towards an effective waste management sector. The list of the regulations the TCA opined is given below.

Name of the MEU Regulation

<i>Date</i>	<i>Name of the MEU Regulation</i>
2013	Draft Regulation on the Control of Electrical and Electronic Equipment Waste
2012	Draft Regulation on the Control of Waste Oil
2011	Draft Amendment on Regulation on Recovery of Non-Hazardous and Inert Waste
2010	Draft Amendment on Regulation on the Control of Packaging Waste
2009	Draft Regulation on End of Life Vehicles

8. Another dimension of environmental regulations that is in the scope of the TCA’s practice is authorized entities. Since environmental regulations are based on the producer responsibility principle, individual producers have collectively organized to determine the least costly ways to meet their

⁵ Ibid, s. 6.

⁶ Turkish Courts of Accounts, Waste Management Report, 2010, s. 28.

⁷ European Environment Agency, Municipal Waste Management in Turkey, s. 6.

responsibilities with regard to the waste management operations. The European Commission recognizes these organizations as “comprehensive systems” in which all concerned producers participate⁸. Environmental regulations in Turkey are also based on the principle of producer responsibility. Accordingly, in various industries in Turkey, similar entities are formed and they are defined as “authorized bodies/entities”, under which the concerned producers pool and share their responsibilities with respect to the environmental regulations⁹.

9. Recently, in different sectors authorized entities are formed and applied for individual exemption from the application of Article 4 of the Act no. 4054 on the Protection of Competition (the Competition Act)¹⁰. Although the establishment of these organizations is based on the requirements of environmental regulations, competition authorities should be vigilant about the activities and decisions of the producer organizations. It is argued that these organizations may easily turn into platforms for anti-competitive conduct among the participating firms because they rely on the cooperation between producers, which are in fact competitors in the product market.

10. ÇEVKO and TURKÇEV are authorized entities in packaging waste management. There are also authorized entities in end of life tires management and waste electrical and electronic equipment management. To give an insight of the TCA’s approach towards authorized entities, Lasder decision of the TCA is elaborated.

4. Tire Industrialists Association (Lasder) Decision of the Competition Board¹¹

11. Lasder, the authorized entity in terms of collection and recovery of end of life tires, applied for an exemption for its end of life tires management plan. Lasder was founded by eight large tire manufacturers/importers and the total market share of the Lasder members was about 60% at the time of the decision. According to the Regulation on the Control of End of Life Tires, tire manufacturers have the responsibility of collecting a certain amount of end of life tires, delivering them to recovery facilities and documenting these activities to the MEU. Lasder’s main aim is to fulfill this responsibility on behalf of its members. According to the management plan, Lasder is to determine a fee to be collected from the new tire purchasers, make exclusive agreements with the collectors and limit their ability to sell end of life tires to recovery facilities. The TCA considered exclusivity arrangements and limiting collectors’ ability to sell the waste as restricting competition in the collection of end of tire markets. The fee which would be determined by the Lasder members and be part of the new tire price was another concern for the TCA since determination of the fee would increase the risk of collusion among Lasder members.

12. In general, collective waste management systems could be more efficient than individual systems due to high fixed costs and economies of scale. In Lasder case, dealing with end of life tires collectively instead of individually is regarded as an efficiency enhancing option since Lasder would prevent duplication of fixed costs. As Lasder was set up as a non-profit making organization, the cost reductions would be reflected to the fee collected from new tire purchasers. The environmental considerations were also taken into account to evaluate the benefit to consumers. In Turkey the number of end of life tires collected and recovered is far less than the amount targeted by the MEU in the relevant regulation. This is

⁸ European Commission, “Concerning Issues of Competition in Waste Management Systems” DG Competition Paper 2005, p.6, <http://ec.europa.eu/competition/antitrust/others/waste.pdf>

⁹ These organizations are called authorized entities since the relevant Ministry officially recognizes them as bodies performing duties related to waste management operations on behalf of their member producers. In fact, they are established and managed solely by private sector agents, mainly by producers.

¹⁰ Article 4 of the Act on Protecting Competition prohibits agreements and concerted practices or decisions of associations of undertakings which are by object or effect restricting competition.

¹¹ Competition Board Decision no 10-67/1422-538, 27.10.2010

obviously detrimental for environment and for all consumers. The market for end of life tires has not developed yet and collective system like Lasder would help the development of an efficient market.

13. Lasder consists of eight tire manufacturer/exporter and there were 68 more manufacturer/exporter in the tire market at the time the decision was taken. Although the remaining manufacturers/exporters are small-scale undertakings, they still constitute about 40% of the tire market. Accordingly, they could be an alternative customer to collectors and alternative end of life tire supplier to the recovery facilities. Five years of exclusivity for the collectors is taken as necessary for the collectors to get enough return for their initial investments.

14. Considering the end of life tire fee, the TCA concluded that the amount to be charged from the new tire purchasers is about 0,6 to 0,7% the new tire price. Lasder specified that price or cost of new tires would not be shared between the members because the fee is calculated on the basis of end of life tires management costs. In addition, the fee would not be incorporated in the selling price of new tires and would be shown as a separate item in the invoice. The TCA decided that these points resolve the concerns about a possible collusion to increase new tire prices.

15. Taking account the above mentioned considerations, the TCA granted exemption to Lasder for a five year period. The exemption was granted for five years because the demand structure of end of life tires is expected to change and the market is expected to develop.

5. Conclusion

16. Although environmental regulations are rapidly harmonized in line with the necessities and market conditions, the ones for waste management sector have not completed its development. There is still place for development for waste markets and waste management services. During this process, the TCA's cooperation with the MEU, the responsible public agency for environmental regulations creates positive outcomes in terms of formation of regulations. Since the formation of collective systems is essential for development of efficient waste management, some restrictive trade practices such as exclusivity arrangements could be exempted even if the authorized entity has high market shares. The TCA adopts a non-interventionist approach towards authorized entities' practices in order not to impede the development of waste management markets.