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-- 2011 --

This report is submitted by Turkey to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.

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Executive Summary

1. With respect to the activities of the Turkish Competition Authority (TCA) in the year 2011, 283 files were finalized as a result of preliminary examinations, preliminary inquiries and investigations under articles 4¹ and 6² of the Act No 4054 on the Protection of Competition (The Competition Act). During the same period, the number of finalized negative clearance/exemption decisions is 54 and merger/acquisition decisions is 253.

2. The regular increase observed in the number of total finalized decisions from 1999 to 2008 showed a significant increase again in 2010 and 2011 following the decrease in 2009. As a matter of fact, number of files were 444 in 2008 and 370 in 2009, while 624 files in 2010 and 590 files in 2011 were finalized. The 68% increase seen in the number of finalized files in 2010 was found to stem largely from merger/acquisition/privatization files. The 5% decrease in the number of the finalized files in 2011 as compared to the previous year is caused by the decrease in the number of negative clearance/exemption and merger/acquisition/privatization files.

3. On the other hand, the increasing trend observed in competition violation files in the last three years was found to have continued in 2011 as well. When statistics concerning infringements of competition, which takes an important place in the activities of the TCA, are taken under examination, it can be observed that the number of finalized decisions has increased from 252 in the previous year to 283. In this context, when we take a look at the sectoral distribution of the finalized files, we can see that the sectors of petroleum-petrochemistry/petroleum products, transportation, education-liberal professions-other services, food products and beverages have taken the largest share respectively among the examinations conducted in response to competition infringements claims. At this point, it is also seen that while the number of examinations change from year to year, the sectors these examinations are concentrated in do not show a similar change in time, barring a few exceptions.

4. When we look at the sectoral distribution of finalized applications with respect to merger/acquisition/privatization files, we find that one fourth of the total number of files consisted of applications related to the energy sector in 2010, but there is a balanced distribution between four sectors in 2011. In the order of their share in the distribution, these sectors are: chemistry and chemical products³, food products and beverages, machinery-equipment manufacturing-defense industry and health-medical, precision and optical devices-medical consumables. It is seen that the TCA maintains its tendency to avoid the option of refusing authorization or banning with respect to mergers and acquisition in 2011 as well.

5. When the subject is examined in terms of negative clearance/exemption files, it is seen that a large part of the files finalized in 2011 stemmed from applications related to the petroleum, petrochemistry-petroleum products sector, as was the case in the previous year.

6. As such, and based on the data supplied above, there is a need for the establishment of cooperation mechanisms between the law-maker and the public authorities responsible for the regulation of the aforementioned sectors concerning the measures to be taken in relation to those sectors which are constantly the subject of competition violations or complaints despite the examinations conducted by the TCA and the measures taken as a result of these examinations.

¹ Article 4 prohibits anti-competitive agreements, concerted practices and decisions.

² Article 6 prohibits abuse of dominant position.

³ Except those under the Fast Moving Consumer Goods title.

7. The year 2011 has been a striking period in terms of the administrative fines imposed due to infringements of competition. This is because in this period an administrative fine of approximately TL 460 million was imposed, which corresponds to more than half of the total fines imposed by the TCA since its establishment.

8. "Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board" numbered 2010/4, which was issued in the fourth quarter of 2010 was put into effect in 2011. With the new Communiqué, it is intended to ensure legal certainty for undertakings in identifying mergers and acquisitions subject to authorization and to facilitate application and evaluation processes in line with the changing conditions.

9. For the purposes of the application of the new Communiqué, and in order to increase certainty and predictability in certain subjects, "Guidelines on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions" was issued in 2011. In the same year, for the purposes of eliminating competitive problems that may arise in merger and acquisition transactions that may be banned and in order to offer guidance to relevant undertakings on which remedies are suitable for submission to the Competition Board, "Guidelines on Remedies that are Acceptable by the TCA in Merger/Acquisition Transactions" was issued.

10. Today, in developed economies such as the EU and the USA, another important function competition authorities are charged with is to provide consultancy to governments during the preparation and/or application stages of the legal and administrative regulations which shape market structure, in order to ensure that the structure established is the one that would minimize market failures stemming from the behaviors of undertakings. Within the scope of this function, known as competition advocacy, market structure in the micro scale is shaped in accordance with the suggestions of competition authorities, which helps prevent any potential failure from occurring in the future and guarantees economic efficiency. The TCA has taken this subject under the scope of its basic policies and priorities and has provided opinions to other authorities and institutions on various subjects in 2011, as well.

11. In order to monitor international developments related to the jurisdiction of the TCA, participation and contribution was provided for a large number of activities in foreign countries in 2011. As in the previous years, relations with the EU, OECD, ICN and UNCTAD were maintained at the same level of intensity and oral and written contributions provided in the meeting of the aforementioned organizations allowed the international assessment of the activities of the TCA. Of particular importance in terms of multi-lateral relationships, the Istanbul Conference on "Identifying the Needs of the Organization of Islamic Cooperation (OIC) Member States in the Area of Competition Law and Policy" was successfully organized in the same year, with the participation of more than 30 states. Under bilateral relations, various activities were carried out with the competition authorities of a large number of countries, especially with those which have signed a cooperation protocol with the TCA, through the exchange of information and experience, technical assistance and participation in the events organized. In addition to the existing ones, additional cooperation protocols were signed with the competition authorities of the Russian Federation, Croatia and Austria.

12. Lastly, mention must be made of some of the activities in the area of education and competition advocacy, which is deemed particularly important by the TCA. As in the previous year, in 2011 as well, the number of training programs for the Authority personnel as well as the number of events aimed at the promotion of the TCA is striking. Within this context, support was given to university courses on competition law and policy, presentations were made to lawyers at various bar associations and a comprehensive training program was provided to university students under the framework of internship programs. Also, programs addressing recent issues in competition law and economics, organized in cooperation with various universities were maintained in 2011 as well. This year, joint programs were also

organized with Bilgi, Beykent and Dokuz Eylül Universities along with the traditional symposiums organized with Erciyes and Ankara Universities.

13. As a result, when the activities of the TCA in 2011 were examined, it is seen that the work done in professional subjects and in terms of extra-professional auxiliary service activities maintained its tendency to expand both in quality and in quantity. The fact that the TCA sped up its studies to improve the legislation and ensure organizational efficiency in order to establish a competitive environment in the markets for goods and services, especially in 2011, also brings positive expectations for the future.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Decree No 661 on the Organisation and Functions of the Ministry for European Union Affairs and on Amending Some Decrees, which was put into effect after being published in the Official Gazette dated November 2, 2011 and numbered 28103

14. The last amendment of the Competition Act occurred with the Decree no 661 in November 2, 2011, which aimed to increase the efficient and harmonious functioning of TCA. The Decree no. 661 sets the Ministry of Customs and Trade as related Ministry for the TCA and authorizes the Council of Ministers to appoint the President and Deputy Chairman directly from among Competition Board Members. It also gives the President of the Competition Board the ability to directly appoint the managerial staff of the TCA without requiring the endorsement of the Board. This means the Competition Board can get on and deal with the matters of competition enforcement rather than the organizational aspects of the TCA.

1.1.2 Communiqué on the Increase of the Lower Thresholds for Administrative Fines Specified in Paragraph 1, Article 16 of the Competition Act, to be Valid Until 31/12/2012 (Communiqué No: 2012/1) which was put into effect after being published in the Official Gazette dated December 13, 2011 and numbered 28141

15. The Competition Act provides for fines in case of certain procedural violations such as provision of false and misleading information, obstruction of on-the-spot inspections, realization of mergers and acquisitions that are subject to authorization without the authorization of the Competition Board. The minimum amount of the fine is revalued each year by the Competition Board via communiqués. Communiqué No 2012/1 revalues the minimum amount of the fine for 2012.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of significant cases - Examples from decisions related to Competition Infringements

- The Decision that Turkcell's Practices regarding the Distribution Channel Violated Article 6 of the Competition Act [Decision Date and Number: 06.06.2011; 11-34/742-230]

It was alleged that Turkcell İletişim Hizmetleri A.Ş. (Turkcell) abused its dominant position in GSM services market by means of its conduct regarding the dealers in the distribution network.

Market: GSM services market and the market for wholesale and retail sales of SIM card, unit card, digital units, activation and other subscription services.

Findings: Regarding Turkcell's position in the GSM services market, its market shares were examined on the basis of the number of its subscribers and its revenue, revenue from unit card sales and SIM card sales volume by years. It was decided that Turkcell held a dominant position in GSM services market, given the legal regulations and entry barriers in the sector such as the need for high investments.

In the decision, the claim that Turkcell maintained resale prices for all undertakings in the distribution channel and the claim that Turkcell complicated its competitors' activities via abusing its dominant position in the market for wholesale and retail sales of SIM cards, unit cards, digital units, activation and other subscription services were examined.

With respect to resale price maintenance claim, sufficient evidence was not found showing that Turkcell maintained resale prices beyond announcing recommended prices and punished deviations from recommended prices.

It was also alleged that Turkcell intended to complicate its competitors' activities in the market by means of abusing its dominant position in GSM services market and distorting competitive conditions in sub-dealer channel, with which it basically did not have exclusive relations. The importance of sub-dealer channel in distributing GSM services was highlighted and assessments were made regarding Blue Point project initiated for such dealers. As the said Blue Points, parallel to the statements of Turkcell, had critical positions in the sub-dealer channel with high financial power and huge sales volume, they were granted certain advantages, which other points of sale did not have, together with a requirement that they should not offer competing GSM operators' services and sell their products. Complainants' claims that the staff wore clothes and stands were installed and decorated entirely in a way to reflect Turkcell's corporate identity in Blue Points and that they turned into single brand shops were justified by the findings of examinations made by the reporters in Blue Points and by dealers' statements.

The fact that Turkcell applied sanctions to undertakings providing goods to the distributor called Smile was again considered within the framework of conducts aiming to make the sub-dealer channel exclusive.

Finally, agreements made by Turkcell with points in the distribution channel that mainly made multi brand sales were assessed within the framework of conducts for ensuring exclusivity since they included provisions preventing other operators' products and services from entering points of sales that were not exclusive.

Conclusion: It was decided that Turkcell abused its dominant position within the framework of Article 6(a) of the Competition Act through the contracts with final points of sale, uniform practices related to decoration, signboards and sales in those dealers and practices to prevent the entry of an alternative organization to sub-dealer channel and therefore would be imposed administrative fines.

In addition, in order to establish competition, it was decided according to Article 9 of the Competition Act that since contracts with final points of sale and uniform practices related to decoration, signboards and sales in those dealers were regarded as vertical agreements which did not fulfill the conditions for individual exemption within the scope of Article 5 of the Competition Act, the relevant provisions in the said contracts should be omitted, conducts such as exerting pressure orally and actually on final points of sale not to use competitors' signboards, to decorate the shops to display one operator and not to offer competitors' certain products and services should be terminated⁴.

⁴ For more information, please see: <http://www.rekabet.gov.tr/dosyalar/kararlar/karar4282.pdf>

- The Decision that Doğan Media Group (DMG) violated the Competition Act through discount systems it applied in establishing prices for advertisement sites in daily newspapers and its practices related to premiums in agreements and contracts it concluded with media planning and purchasing agencies (MPPA) [Decision Date and Number: 30.03.2011; 11-18/341-10]

It was claimed that the economic entity consisted of the companies Hürriyet Gazetecilik ve Matbaacılık A.Ş., Doğan Gazetecilik A.Ş., Bağımsız Gazeteciler Yayıncılık A.Ş., Doğan Daily News Gazetecilik ve Matbaacılık A.Ş., which operate under the body of Doğan Yayın Holding A.Ş. abused its dominant position within the framework of Article 6 of the Competition Act via the discount system it applied for the prices of advertisement sites in newspapers and premium practices in the agreements and/or contracts it made with media planning purchasing agencies.

Market: Market for advertisement sites in newspapers (daily)

Findings: With respect to dominant position analysis, firstly, market shares of DMG's and competing undertakings' newspapers were analyzed according to net sales, net sales revenues and advertisement revenues as well as time series. In addition, usage rates of DMG's and its competitors' newspapers with respect to advertisers' multiple channel choices were reviewed and it was found that Hürriyet newspaper was an essential product and DMG newspapers were essential commercial partners for advertisers. Finally, a reference was made to the findings in the Board decision about acquisition of Vatan newspaper by DMG and it was decided that DMG held a dominant position in the market for advertisement sites in daily newspapers.

First of all, the decision explains, in a detailed and comparative way, advertisement tariffs and discount systems of DMG and other undertakings with a significant size and shows comprehensively all discount practices by DMG newspapers by using both internal documents as well as information and documents obtained from MPPA and advertisers.

Covering a theory about discount systems, the decision analyzes the said discount systems with respect to many criteria in order to find whether DMG newspapers' discount systems and practices were designed for market foreclosure and excluding competitors from the relevant market and had such potential. Within this framework, it was found that :

- Discount systems and practices by DMG newspapers covered a large part of the market
- DMG was an essential commercial partner with respect to advertisers using printed media, which strengthened loyalty inducing effects and exclusionary potential of its retrospective discounts
- DMG chose to continue to apply the discount systems with exclusionary potential without eliminating their loyalty inducing and exclusionary features but by way of making them unclear
- The number of advertisers working exclusively with DMG newspapers was considerable
- DMG used (not) working with competitors as an important variable for the amount of discount to be made
- Discount targets fixed for different discount types related to DGM newspapers were close to demands by most of DMG's customers and were designed to cover those demands and increase loyalty inducing potential
- The cumulative effect of the discount system by DMG could spread to dramatic levels independently from market features due to each discount rate included in that system and the system had potential to increase switching costs for the customers and loyalty inducing effects

- Although discount types included (shorter) reference periods and could be applied on a campaign basis, they generally covered an adequately long reference period such as one year and were adequately clear
- DMG was aware of the portfolio power it had and used that power as a marketing strategy
- In this sense the portfolio power had potential to ensuring loyalty/exclusion
- The printed media sector was liable to contract and loyalty inducing discount systems had exclusionary effects in contracting markets
- It was not possible to talk about efficiency gains for DMG discount systems.

The decision concluded that the discount system was designed and applied by DMG in such a way that it had potential to induce loyalty and exclude competitors, reflected DMG's intent to stabilize its existing dominant position in the market or exclude its competitors/foreclose the market and in this way strengthening its dominant position. Besides, it was highly likely that the said discount systems would have anticompetitive exclusionary and foreclosure effects, and such anticompetitive exclusion/foreclosure potential was contrary to Article 6 of the Competition Act. Similar analyses were made with respect to agreements between DMG and MPPA's and the same results were achieved.

The decision also examined whether DMG discount systems' potential loyalty inducing and exclusionary effects turned into directly exclusionary effects. Within this framework, the performance of Habertürk Newspaper, which entered into the market in the examination period was analyzed. It was concluded that DMG's discounts that were included in the tariffs or that had been in the tariffs before but applied de facto although they did not exist any more and additional discounts did not have direct exclusionary effects in the relevant market.

Similar analyses were made with respect to agreements between DMG and MPPA's and the same results were achieved.

Conclusion: It was decided that DMG held a dominant position in the relevant market and abused its dominant position within the framework of Article 6 of the Competition Act via discount system it applied for the prices of advertisement sites in newspapers and premium practices in the agreements and/or contracts it made with MPPA's. Consequently DMG was imposed administrative fines.

Moreover, it was also decided that DMG should avoid practices which created or might create the same results as the practices that were deemed as a violation⁵.

- The Decision that Automotive Firms violated Article 4 of the Competition Act [Decision Date and Number: 18.04.2011; 11-24/464-139

Documents obtained under the scope of a previous preliminary inquiry raised concerns that certain undertakings operating in motor vehicles market might have violated Article 4 of the Competition Act by means of information exchange and negotiations related to future objectives, stocks, sales volume, price and sales strategy through meetings and communicating via e-mail, telephone, etc., especially after changes that affected the sector in general such as the reduction of special consumption tax and Euro exchange rate fluctuations. As a result, the Board initiated an examination ex officio.

Market: New passenger cars and light commercial vehicles

⁵ For more information, please see: <http://www.rekabet.gov.tr/dosyalar/kararlar/karar4350.pdf>

Findings: The first preliminary inquiry, which was the basis of the investigation, was initiated in response to the claim that automotive companies increased prices and restricted the supply of goods by acting jointly after special consumption tax (SCT) was reduced. An investigation was not deemed necessary as there was not sufficient evidence of an infringement during the period when SCT was reduced. However, during the preliminary inquiry, certain documents showing coordination among competitors were obtained; thus, a second preliminary inquiry was initiated ex officio and as a result, it was decided that an investigation would be opened. Evidence showing that an agreement was made during the period of reduction in SCT was also found in the investigation process, thus the dates when a reduction was made to SCT were included in the period of infringement.

According to the documents obtained, undertakings made negotiations about price policies at times when an economic parameter affecting the whole sector changed (for instance changes in exchange rates or reduction in SCT). Moreover, undertakings held many meetings about objectives, stocks and sales strategies. Depending on the fact that the main aim of those meetings was to eliminate the risk occurring due to competitors' unpredictable behavior, the decision regarded meetings related to objectives, stocks and sales strategies as the complementary of communications about price policies.

It was found that negotiations about competition sensitive information started in 2006 among four undertakings and continued with the participation of most of the other players in the sector in 2008 and 2009. Therefore, it was stated that the term of the infringement was more than one year regarding certain undertakings.

Factors such as participation to meetings where future strategies were discussed with competitors, disclosure of future policies on issues like price, sales strategy, etc. to competitors in such meetings or communicating through bilateral discussions on such issues, increasing prices after meetings and period of participating to the infringement were taken into account for determining the basic fine.

Conclusion: 15 undertakings which were found to infringe Article 4(a) of the Competition Act were imposed administrative fines⁶.

2.2 *Mergers and acquisitions:*

2.2.1 *Summary of significant cases*

- *The Decision Concerning the Acquisition of Mey İçki Ticaret A.Ş. by Diageo Plc [Decision Date and Number: 17.08.2011; 11-45/1043-356]*

Within the framework of the final examination, it was examined whether Diageo plc's (Diageo) establishment of sole control over Mey İçki Sanayi ve Ticaret A.Ş. (Mey İçki) through the acquisition of the shares previously held by Mey S.a.r.l. and Eurasia Beverages S.a.r.l in the latter undertaking should be authorized under Article 7 of the Competition Act.

Market: "Raki," "vodka," "gin," "liquor" and "whiskey" market.

Findings: With its decision dated 08.07.2010 and numbered 10-49/900-314, Competition Board conditionally authorized, under Article 7 of the Competition Act, the acquisition (Burgaz Transaction) of Burgaz Alkollü İçecekler Ticari ve İktisadi Bütünlüğü (Burgaz Alcoholic Beverages Economic Entity - Burgaz) by Mey İçki from the Savings Deposit Insurance Fund (SDIF), provided that some amendments and additional conditions are applied to the

⁶ For more information, please see: <http://www.rekabet.gov.tr/dosyalar/kararlar/karar4173.pdf>

commitments dated 25.06.2010 and numbered 4949, presented to the Board by Mey İki. Before this process was complete, on 2.3.2011, an application was made concerning the acquisition of Mey İki by Diageo (Diageo Transaction). This situation caused an uncertainty in the ongoing commitment process in the Burgaz Transaction, since the assets to be held by Mey İki, the future buyer and, consequently, the market conditions were not yet finalized. On the other hand, an alternative presented to the Board in the Diageo transaction provided that in case the assets could not be sold to a third party, Burgaz should stay under the ownership of TPG, which also contributed to the uncertainty. The acquisition of Burgaz by Antalya Alkollü İecekler San ve Tic. A.Ş. (Antalya), which was a suitable buyer in accordance with the commitments of Mey İki, was authorized with the Board decision dated 06.07.2011 and numbered 11-41/865-M. After the conclusion of this process, it has become possible to make a sound assessment concerning the Diageo Transaction.

As known, alcoholic beverages are basically subject to a separation into two groups: fermented beverages and distilled beverages. Accordingly, beer and wine are in the first group, while raki, cognac/brandy, whiskey, rum, tequila, gin, vodka and liquors are in the distilled beverages group. As in the aforementioned Burgaz Transaction, relevant product market were defined in this file as well, after an examination of product characteristics, production processes, consumer preferences, demand and pricing changes, and within this context, after consideration of Diageo's operation in the whiskey market, relevant product markets were determined as "raki," "vodka," "gin," "liquor" and "whiskey".

During the evaluation process of the Diageo Transaction, two commitment documents were submitted to the TCA, the first on 06.07.2011 and the second on 13.07.2011, concerning certain competition problems the transaction might cause in the gin and liquor markets. The first of these commitments pledged to divest Mey İki's "Saga" brand in the gin market within a certain period and to ensure that Diageo's "Archer's," "Safari" and "Sheridans" brands in the liquor market were distributed by third parties under certain conditions; the second commitment, on the other hand, added a curtailment of the divestiture periods specified for the gin market in the first commitment and pledged that Diageo's "Gilbey's" brand in the gin market would also be distributed by third parties. In relation to the liquor market, a curtailment was stipulated concerning some periods specified in the previous commitment. Since these commitments were found to be insufficient to eliminate any potential competition problems that might arise following the transaction in the gin and liquor markets, with the Competition Board decision dated 03.08.2011 and numbered 11-44/985-M, a decision was made for the notified transaction to be taken under final examination under paragraph 1, Article 10 of the Act.

A new commitment document was submitted by the parties on 04.08.2011. Within the framework of this commitment, the parties pledged to sell and transfer the "Maestro" brand of Mey İki together with all intellectual property rights (brand, logo) as well as all tangible and intangible assets, permits and licenses granted by administrative authorities (Maestro Assets) within the period specified in the commitment, following the conclusion of the transaction, in order to eliminate any competitive concerns related to the gin market; while they pledged to sell and transfer the "Hare" brand of Mey İki together with all intellectual property rights (brand, logo) as well as all tangible and intangible assets, permits and licenses granted by administrative authorities (Hare Assets) within the period specified in the commitment, following the conclusion of the transaction, in order to eliminate any competitive concerns related to the liquor market. Also, in accordance with the commitments submitted, if requested by the suitable buyer, the sale of the Maestro and Hare Assets would be concluded with the divestiture of the Bilecik Production Facilities, which are where the vodka, gin and liquor products of Mey İki are currently being produced.

In the Board meeting of 17.08.2011, these commitments submitted in relation to the transaction under examination were accepted together with certain additional obligations and the transaction was authorized with the decision numbered 11-45/1043-356, subject to the aforementioned conditions and obligations.

Conclusion: It was decided that by the acquisition of Mey İçki, which holds dominant position in the gin market, Diageo would strengthen the dominant position in this market and would gain dominant position within the liquor market, which would lead to a significant decrease in competition, and therefore the transaction should not be authorized; however, provided that the "Maestro Assets" in the gin market and "Hare Assets" in the liquor market, together with the Bilecik Production Facility if requested by the suitable buyer, were divested within the prescribed period, the transaction could be authorized⁷.

- The Decision concerning the merger of the Mars Sinema and AFM Sinema chains [Decision Date and Number: 17.11.2011; 11-57/1473-539]

An application was made for the authorization of the acquisition, by Mars Sinema Turizm ve Sportif Tesisler İşletmeciliği A.Ş., of the majority shares of AFM Uluslararası Film Prodüksiyon Ticaret ve Sanayi A.Ş. and the transfer of 50% of the shares of Spark Entertainment Ltd. Şti., which holds control over Mars Sinema, to Esas Holding A.Ş., which holds sole control over AFM; this application which concerns the merger of two leading movie theater chains of Turkey, Mars Sinema and AFM theaters, was taken under final examination.

Market: Movie theater services, multiplex movie theater services and traditional/shopping mall movie theater services.

When defining the market, the increasing trend of theaters in shopping malls and multiplex theaters as a result of the competitive advantage provided by the multiple theaters to theater operators and the change in the moviegoers' profile to someone who goes to a theater complex that is seen as integrated with the shopping mall and chooses one movie among many to see have been taken into account, as well as other issues such as the difference in quality and ticket prices between traditional movie theaters and shopping mall theaters.

Findings: In terms of concentration analysis, the focus was put on market shares, concentration ratios and the position of the players within the market. Nationwide market shares and ticket sales income for the undertakings with respect to location, screens and seat numbers were calculated. Market share and HHI change ratio figures in Turkey and in the provinces of Ankara, İstanbul, İzmir and Antalya where the concentration took place were also calculated in terms of overall income and ticket sales. It was found that the total market shares of the parties to the transaction tended to be high and stable, with Mars Sinema and AFM reaching a market share of 50-56% in terms of total income after the transaction and the share of the following competing business about 3-6%; in this context, it was found that the gap between the largest and the second largest players within the market increased after the merger. In addition, projects planned by undertakings operating within the market, including Mars Sinema and AFM - the parties to the merger - until the end of 2016 were taken into consideration in order to evaluate the entry conditions to the market. Market shares of theater operators were examined in terms of the distinction between shopping mall theaters and traditional/independent movie theaters as well as in terms of the distinction between those with 5 and more screens and 7 and more screens as a result of which Mars Sinema and AFM were found to be mandatory trade partners for producers and distributors.

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For more information, please see: <http://www.rekabet.gov.tr/dosyalar/kararlar/karar4314.pdf>

The decision states that, within the production chain existing in the sector which consists of the production, distribution and release stages, and in consideration of various issues such as the existence of peak and off seasons in the sector, the high number of content and the near lack of a separation between theaters in terms of themes, audience and similar criteria, and the fact that the market shares of distributors did not present a concentration level similar to Mars Sinema and AFM's total market share, after the merger Mars Sinema and AFM would hold buyer's power over producers and distributors.

As a result of its econometric calculations conducted for micro markets defined in those provinces where concentration would take place, it was estimated that ticket prices could increase in some markets in Ankara and İstanbul following the notified transaction. It was determined that while theater operators which own theater chains and which have ensured a certain standard of service might be preferred by shopping mall operators due to their brand value, there were no barriers to entry to the market in terms of constructing a movie theater.

In consideration of the fact that the commitments package consisting of 10 theaters presented by the parties of the transaction under the scope of the second written plea would decrease the market shares to some extent and the possibility that new players might enter the market with the growth expected in the shopping mall market, it was decided that the competitive concerns identified before the commitments were eliminated with the commitments package presented. In addition, the decision concludes that, within the framework of the transaction, ensuring the divestiture of the theaters included in the commitments package to a suitable buyer within a period of 9 months following the effective date of the commitments and protecting of economic maintainability, marketability and competitiveness of all assets to be divested were mandatory for Mars Sinema and AFM, while all other provisions concerning the implementation were obligations.

Conclusion: The merger in question was authorized after a commitment was given to divest 10 theaters owned by Mars Sinema and AFM, and it's emphasized that the authorization granted would be deemed invalid in case the commitments undertaken were not fulfilled within the prescribed period of time. In addition, it was decided that parties to the transaction should annually notify to the TCA average ticket prices and the changes in average ticket prices on the basis of the location for a period of five years, and that information required for the analysis of the ticket prices in question should be requested from the undertakings in the relevant market⁸.

2.3 *Opinions*

16. This section includes examples from the opinions submitted to various authorities and organizations concerning implementation or amendments in legislation in 2011, in accordance with articles 27(g) and 30(f) of the Competition Act⁹. Opinions submitted in accordance with the Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the TCA in order for Acquisitions via Privatization to Become Legally Valid, no 1998/4, concerning acquisitions via privatization which are subject to pre-notification are included in this section, as well.

⁸ For more information, please see: <http://www.rekabet.gov.tr/dosyalar/kararlar/karar4572.pdf>

⁹ Article 27(g) empowers the Competition Board to opine, directly or upon the request of the Ministry of Customs and Trade, concerning the amendments to be made to the legislation with regard to the competition law whereas Article 30(f) empowers the Presidency of the TCA to opine about decisions to be taken as to the competition policy, and the relevant legislation.

2.3.1 *Opinion concerning the Privatization of Highways*

17. A pre-notification was made to the TCA on 26.10.2007 by the Privatization Administration concerning the privatization of certain highways, freeways, bridges and link roads maintained, repaired and operated by the Directorate General for Highways together with highway service facilities, maintenance-operation and toll-collecting facilities, production units for other goods and services and other assets situated thereon, in a single package via the transfer of operation rights method for 25 years following the date of the actual transfer.

18. In the Board Opinion it is concluded that the transaction concerning the privatization of certain highways and bridges as well as facilities situated thereon which are under the responsibility of and are maintained, repaired and operated by the Directorate General for Highways, in a single package, via the transfer of operating rights method for 25 years following the date of the actual transfer was subject to pre-notification since the turnover thresholds specified in Article 3 of the Communiqué no 1998/4 were exceeded. The transaction includes: Edirne-Istanbul-Ankara Highway, Pozantı-Tarsus-Mersin Highway, Tarsus-Adana-Gaziantep Highway, Toprakkale-İskenderun Highway, İzmir-Çeşme Highway, İzmir-Aydın Highway, Gaziantep-Şanlıurfa Highway, İzmir, Ankara and Fatih Sultan Mehmet Bridge Freeways, Boğaziçi and Fatih Sultan Mehmet Bridges and all link roads thereof, together with any service facilities, maintenance and operation facilities, toll-collection facilities, production units for other goods and services, and other assets situated thereon.

19. It was stated that highways connecting various points to each other could not be deemed to compete with each other and unbundling these routes was not likely to create direct competition between highway operator undertakings; therefore there was no objection to the acquisition of the units to be transferred by a single undertaking, and at this stage there was no reason to introduce any conditions for the buying undertakings.

20. On the other hand, it was stated that there would be no objections to the acquisition of Boğaziçi and Fatih Sultan Mehmet bridges by a single undertaking.

21. In terms of prevention of the monopoly that seems inevitable in the highway operating business from fully or partly leaking into the operation of service facilities situated on highways and of protection of the level of competition within the market for operation of service facilities, the existence of the "succession rule," the fact that prices to be implemented in highway service facilities would be valid after the approval of the Directorate General for Highways, and the fact that operation rights for highway service facilities would expire at different times were taken into account and it was concluded that there was no competitive concerns concerning the subject, and therefore there was no need for introducing any conditions or limitation on potential buyers at this stage.

22. Lastly, in relation to the privatization that is the subject of the notification, it was decided that in case any violations and drawbacks concerning the relevant articles of the Competition Act are identified in the assessment to be conducted under Article 5 of the Communiqué no 1998/5 after the potential buyers are determined, the Competition Board might introduce conditions and obligations concerning the acquisition or might not authorize the acquisition; therefore, this point should be specified in the tender specifications in order to ensure that undertaking/undertakings to participate in the tender is/are notified.

2.3.2 *Opinion concerning the Privatization of the State Railways İzmir Cruise Port*

23. Privatization Administration made a pre-notification in accordance with Article 4 of the Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the TCA in order for Acquisitions via Privatization to Become Legally Valid,

no 1998/4 concerning the privatization of the section of the State Railways İzmir Port that was restructured as a cruise port via the transfer of operating rights method.

24. The insufficient investment in the Port as a result of delays in the privatization process and the subsequent switching to other ports by customers, the economic crisis that emerged during the tender process, and the high likelihood that investors would fail to meet their bids in case the Port was put out to tender in its current condition were among the issues which played a significant role in the decision of the High Board of Privatization, dated 25.10.2010, concerning the restructuring and privatization of the İzmir Port as Cruise Port and Cargo Port. It was stated by the Privatization Administration a tender for the Cruise Port was planned as a priority, and within this framework a Competition Board Opinion was rendered concerning the privatization of the İzmir Cruise Port via the transfer of operating rights method.

25. The Board decided that, in order to establish a sound competitive environment within the relevant market following the privatization, the tender specifications should include regulations to ensure that the undertaking which holds the operating rights for the Egeports Kuşadası Port or the group which holds control over this undertaking should not be able to acquire operating rights over the section of the State Railways İzmir Port that was restructured as a cruise port, either on its own or via another undertaking it controls.

2.3.3 *Opinion concerning the Draft Regulation on the Qualifications for Environment Measurement and Analysis Laboratories*

26. The opinion of the TCA was requested concerning the Draft Regulation on the Qualifications for Environment Measurement and Analysis Laboratories, prepared by the Ministry of Environment and Urban Planning.

27. In response to the request received, the Authority opinion submitted to the relevant Ministry on 18.10.2011 stated that some articles of the draft regulations included provisions which would significantly decrease efficiency in the relevant market and would have a more restricting effect on competition than the required for the targeted goals.

28. It was noted that Article 17 of the draft regulation, titled Cooperation between Laboratories, could lead to undertakings choosing to act in cooperation instead of acquiring the qualifications to analyze new parameters, and that this situation could cause efficiency losses in the long term. In addition, it was also emphasized that potential practices to share analysis parameters between undertakings through long-term cooperation agreements could facilitate market allocations, which are among the severe violations covered under Article 4 of the Competition Act. Consequently, it was suggested that care should be taken to ensure that agreements signed are of limited duration with short/reasonable terms when granting Ministry approval to potential cooperation agreements.

29. As well, it was stated that intervening with the price setting capabilities of undertakings with Article 23 of the Draft Regulations, titled Minimum Price Tariffs, was a provision which unduly restricted competition and should be removed from the draft. It was emphasized that if a regulation on prices had to be made, it would be more appropriate to implement this in the form of recommended or reference prices lists.

3. The role of the TCA in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

30. In addition to the developments mentioned above, a protocol was signed between the Information and Communication Technologies Authority and the TCA in 2011, aimed at ensuring mutual cooperation, information and opinion exchange, and coordination for the purposes of establishing, developing and

protecting a free and healthy competitive environment in electronic communications market; this protocol is in addition to the one signed between the Public Procurement Authority and the TCA in 2009, the aim of which was to ensure joint action in order to establish, develop and protect a fair and healthy competitive environment in public procurements. Efforts for signing a similar protocol with the Energy Market Regulatory Authority are ongoing.

4. Resources of the TCA

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget (in TL and USD):

31. Revenues of the TCA are determined by the Competition Act as follows in Article 39. According to this article, revenues of the TCA set up the budget of the TCA, and they are made up of the following items of revenues:

- The subsidy to be allocated in the budget of the Ministry of Customs and Trade,
- Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the remaining portion in case of capital increase,
- Publication and other revenues.

32. Revenues belonging to the TCA are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank.

33. The revenue of the TCA in year 2011 is TL 45,559,369.27; approximately USD 25 million.

34. Moreover, although it is provided for in Article 39 of the Competition Act, there has not been a subsidy in the budget of the Ministry of Customs and Trade and the TCA has not taken any aid from the general budget transfer scheme since its establishment in 1997.

4.1.2 Number of employees (person-years):

- Professional staff: 115
- All staff combined: 328

4.2 Human resources (person-years) applied to:

35. The professional staff is responsible for the following activities:

- Enforcement against anticompetitive practices;
- Merger review and enforcement;
- Advocacy efforts.

4.3 Period covered by the above information

- 2011

ANNEX: STATISTICAL INFORMATION FOR THE YEAR 2011

Table 1. Files Concluded

Year	Infringements of competition	Exemption/Negative Clearance	Merger/Acquisition/ Joint Venture/Privatization	Total
2010	252	96	276	624
2011	293	54	253	590

Table 2. Files Concluded under the scope of Articles 4 and 6 of the Competition Act

Year	Article 4	Article 6	Mixed (4 and 6)	TOTAL
2010	99	111	38	248
2011	158	95	30	283

Table 3.¹⁰ Horizontal and Vertical Agreements under the Scope of Article 4 of the Competition Act

Year	Horizontal	Vertical	Mixed (H/V)	TOTAL
2010	11	59	67	137
2011	108	75	5	188

¹⁰ These statistics also include files covering assessments under both Article 4 and Article 6.

Table 4.¹¹ Applications for Exemption and Negative Clearance and Results

	Negative Clearance Files Concluded Files			Exemption Files Concluded Files							
	Files granted negative clearance	Files granted conditional negative clearance	Files not granted negative clearance	Files granted individual exemption	Files not granted exemption and requested corrections	Files under the scope of block exemption	Files granted conditional individual exemption	Files under the scope of conditional block exemption	Files not granted exemption	Files where exemption is withdrawn	Files where individual and block exemption is evaluated together
2010	9	1	-	23	-	41	13	1	3	-	4
2011	9	-	-	21	-	6	6	1	8	-	3*
Total	18	1	-	44	-	47	19	2	11	-	7

* In two decisions, the exemptions were granted with conditions.

Table 5. Number of Merger and Acquisition Files concluded

Year	Merger	Acquisition	Joint Venture	Privatization	TOTAL
2010	3	202	5	66	276
2011	3	168	68	14	253

¹¹ One exemption file was concluded as “not needed to be revoked” and not included to the table.

Table 6. Results of the Merger and Acquisition Files finalized

Year	Approval	Conditional approval	Rejection	Out of scope-under the threshold
2010	177	9	-	89
2011	191	4	-	58
Total	368	13	-	147

Table 7. Fines (TL)*

	Year	Total	Infringements	Merger/ Acquisition	Exemption/ Negative clearance
Fines related to substance	2010	39,401,476	39,401,476		
	2011	459,508,920	459,508,920		
Fines imposed on executives	2010				
	2011				
False or misleading information in the application	2010	47,120		47,120	
	2011				
False or misleading information during on the spot inspection	2010	11,446	11,446		
	2011	12,327	12,327		
Realizing the transaction without permission of the Competition Board/Failure to notify within due date	2010	213,835		213,835	
	2010	1,698		1,698	
Incompliance with the decision of the Competition Board related to Article 9	2009				
	2010				
	2010				
Hindrances of on the spot inspection	2010				
	2011	859,518	859,518		

* The table does not reflect new fines in the files annulled by the Council of State, the high administrative court against decisions of the Competition Board, and taken again by the Competition Board and takes into account the subparagraphs of Articles of the Competition Act amended by the Act dated 23.01.2008 and numbered 5728.