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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN TURKEY

-- 2008 --

This report is submitted by the Turkish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 9 - 11 June 2009.

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Executive Summary

1. The Turkish Competition Authority (TCA) experienced a period of time during which global economic crisis began to impact the Turkish economy directly in 2008. The Turkish economy felt the crisis significantly in particular in the last quarter of 2008.

2. In terms of enforcement of competition rules, the number of decisions taken increased in 2008 compared to the previous year. While the number of merger and exemption cases increased significantly, the number of cases in the area of competition infringements (cartels, vertical restraints and abusive practices) decreased. The increasing number of exemption applications is quite striking in 2008. The main explanation for this increase comes from the introduction of 40% market share threshold in the Block Exemption Communiqué on Vertical Agreements. The agreements previously exempted lost their exempted status after the introduction of the threshold. Thus, undertakings whose agreements no longer benefited from block exemption applied for individual exemption. On the other hand, the decreasing number of competition infringements is also clearly seen in 2008. An important explanation for this decrease can be associated with the files opened in 2008 but not concluded yet.

3. The TCA attached special importance on competition advocacy in 2008. In this regard, it sent formal opinions to the requesting governmental agencies. The opinions prepared with respect to the markets such as banking, pharmaceutical, and energy including petroleum distribution are quite striking and have had significant influence on improving competitive conditions in the relevant markets. The TCA also contributed to capacity building efforts for regulatory impact assessment (by the Prime Ministry), which would institutionalize advocacy role of the TCA. In its effort, the TCA has translated the OECD competition assessment toolkit and considers introducing a guideline on the basis of this toolkit.

4. The TCA introduced a number of important secondary legislation in 2008. In this regard, the Guidelines on Definition of Relevant Market, Guidelines on Certain Subcontracting Agreements between Non-competitors, Block Exemption Communiqué in relation to the Insurance Sector, Block Exemption Communiqué on Technology Transfer Agreements were adopted and entered into force. Importantly, the Prime Ministry sent the Bill to amend the the Act No 4054 on the Protection of Competition (the Competition Act) extensively to the Parliament. While preparing the Bill, the TCA took into consideration its almost 11-year experience, relevant EU legislation, work-products of international organizations such as OECD and ICN and the recommendations of OECD Peer Review Report of 2005.

5. As part of its policy for relations with other governmental agencies, the TCA approached the Public Procurement Agency to build a cooperation framework between the two agencies. It is expected that such a cooperation framework will contribute to dealing with bid rigging effectively and making public tenders more competitive. Additionally, the TCA signed a cooperation protocol with TIKA (Turkish International Cooperation and Development Agency) to deliver technical assistance to the countries within the framework of Turkey's aid policy.

6. The TCA had a very active period of time in international relations in 2008. In this regard, the TCA actively contributed to the events/projects at multilateral platforms such as OECD, ICN and UNCTAD as well as bilateral platforms.

1. Changes to Competition Laws and Policies

1.1. Amendments in the Competition Act

7. The Competition Act was amended in January 23rd, 2008. The amendments mostly concern administrative fines to be imposed regarding violations of the Competition Act.

8. According to the amendments of 2008, the previous fixed amounts of procedural fines in Article 16 of the Competition Act were replaced by fines that would be calculated by taking into account the annual gross revenue. As a result of the amendment, undertakings, association of undertakings and members of such associations shall be imposed 0.1 % of their annual gross revenue where

- incorrect or misleading information or document is provided in exemption and negative clearance applications as well as in applications for permission to mergers and acquisitions;

- mergers and acquisitions subject to authorization are carried out without the authorization of the Competition Board,

- incomplete, incorrect or misleading information or document is provided, or information or document is not provided within the time specified or at all in respect of application of Articles 14 and 15 of the Competition Act regarding the powers granted to the TCA with respect to request for information and on-the-spot inspection,

9. Whereas undertakings, association of undertakings and members of such associations shall be imposed 0.5 % of their annual gross revenue where

- on-the-spot inspection is prevented or made difficult.

10. According to the amendment, the fines provided above can not be less than ten thousand Turkish liras (€ 5.000). The amendment also clarifies that annual gross revenue to be taken into account for calculation of these fines shall be the one which generated by the end of the fiscal year preceding the decision, or where it can not be calculated, which generated by the end of the fiscal year closest to the date of the decision.

11. Moreover, regarding the fine to be imposed when mergers and acquisitions subject to authorization are carried out without the authorization of the Competition Board, it will be imposed on each party in mergers whereas it will be imposed only on the acquirer in acquisitions.

12. The above fine valid for cases where on the spot inspection is prevented or made difficult can still be imposed in the event that on-the-spot inspection is carried out by court decision.

13. The amendment also clarifies that regarding the substantive fine to be imposed up to 10% of the annual gross revenue, the annual gross revenue shall be the one which generated by the end of the fiscal year preceding the final decision, or where it can not be calculated, which generated by the end of the fiscal year closest to the date of the final decision. Moreover, according to the amendment the executives or employees of the undertaking or the association of undertakings which are detected to have had a determining impact on the violation will be imposed fines up to 5% of the substantive fine imposed on the undertaking or association of undertakings.

14. Previous to the amendment, the Competition Board, while deciding on the substantive fine, had to take into account factors such as the existence of intent, the severity of fault, the market power of the undertaking or undertakings upon which a penalty is imposed, and the severity of potential damage. The amendment, while keeping some of these factors, also replaced certain of them and added new ones. As a result, according to the amendment, the Competition Board has to take into account factors such as the repetition and duration of violation, the market power of the undertaking or associations of undertakings, their determining impact on the occurrence of violation, whether they conform to the commitments made, whether they assist with the inspection, the gravity of the damage which has occurred or is likely to occur.

15. Another important feature of the amendment is the introduction of total immunity from the substantive fine which was not possible previously. The amendment provides that undertakings or associations of undertakings or their executives and employees which actively cooperate with the TCA for uncovering the violation of the Competition Act may be held immune from the substantive fine and the fine valid for executives or employees, or be granted reductions on these fines, taking into account the nature, effectiveness and timing of the cooperation and with the reasoning thereof clearly presented.

16. Moreover, according to the amendment the Competition Board is to decide by regulations the factors considered in the determination of the administrative fines mentioned above, conditions for immunity or reduction in the case of cooperation, as well as procedures and principles of cooperation.

17. Another important aspect of the amendment concerns periodic fines in Article 17 of the Competition Act. Previously, there were fixed amounts of periodic fines and the amendment replaced them by those fines to be calculated according to annual gross revenue. According to the amendment in cases of

- Non-compliance with the obligations provided by or commitments given with a final decision or an interim injunction decision,

- Preventing or impeding on-the-spot inspection,

- Failure to submit the requested information or the document in time in respect of the application of Articles 14 and 15 of the Competition Act regarding the powers granted to the TCA with respect to request for information and on-the-spot inspection,

18. The Competition Board shall impose administrative fines on undertakings and associations of undertakings per day which amounts to 0.05% of the annual gross revenue of the undertakings concerned, and of associations of undertakings and/or the members of such associations, which is generated by the end of the preceding financial year and where it is not possible to calculate such revenue, of the revenue which is generated by the end of the closest financial year. The amendment also mentions criteria on the starting date of the periodic fines.

1.2 Proposed Amendments

19. Certain amendments in the Competition Act are planned. A bill was submitted to the Grand National Assembly of Turkey as of July 2008. Some important aspects of these amendments are as follows:

- De minimis rule – agreements, concerted practices and decisions that do not effect competition significantly will not be investigated.

- SLC test – mergers and acquisitions will be subject to significant lessening of competition test.

- Commitment mechanism – undertakings or associations of undertakings will not be subject to investigation if they commit to remove competitive concerns. Moreover, ongoing investigations may be terminated.

- Stronger advocacy powers – the TCA will be empowered to resort to courts to annul administrative transactions and regulations that produce anti-competitive impacts similar to those conduct prohibited in the Competition Act.

1.3 New Secondary Legislation

20. The Competition Board adopted two communiqués and two guidelines in 2008 which are as follows:

- Block Exemption Communiqué in relation to the Insurance Sector,
- Block Exemption Communiqué on Technology Transfer Agreements,
- Guidelines on Certain Subcontracting Agreements between Non-competitors,
- Guidelines on Definition of Relevant Market,

2. Enforcement of Competition Laws and Policies

2.1 Competition Infringement

2.1.1 Accumulator Decision, dated 20.5.2008 and numbered 08-34/456-161.

21. As a result of the preliminary examination conducted based on the letter of complaint submitted on behalf of the Tüm Akü İthalatçıları ve Üreticileri Derneği (All Battery Importers and Manufacturers Association - TÜMAKÜDER) by Chairman of the Board Mustafa Akalp, it was decided that an investigation on Aküçev Atık Akü Toplama ve Taşıma San. ve Tic. A.Ş. (Aküçev Waste Battery Collection and Transportation Industry and Trade Inc. - Aküçev), Akas Akü ve Malz. Sanayi Ltd. Şti. (Akas Battery and Materials Industry Ltd. - Akas Akü), Aslan Kurşun Sanayi ve Tic. A.Ş. (Aslan Lead Industry and Trade Inc. - Aslan Kurşun), Esan Akümülatör ve Malz. San. Tic. Koll. Şti. (Esan Battery and Materials Industry and Trade Open Company - Esan Akü), İnci Akü Sanayi ve Ticaret A.Ş. (İnci Batteries Industry and Trade Inc. - İnci Akü), Kudret Metalize Sanayi Tic. A.Ş. (Kudret Metalization Industry and Trade Inc. - Kudret Metal), Mutlu Akü ve Malz. San. A.Ş. (Mutlu Batteries and Materials Industry Inc. - Mutlu Akü), Türker İzabe ve Rafine Sanayi A.Ş. (Türker Smelting and Refinery Industry Inc. - Türker İzabe) and Yiğit Akü Malz. Sanayi Tic. A.Ş. (Yiğit Batteries Materials Industry Trade Inc. - Yiğit Akü) should be initiated, in order to determine whether Article 4 of the Competition Act was violated.

22. Within the scope of the investigation conducted, relevant market was identified as the "waste automobile batteries market" and the claims stating that Akümülatör ve Geri Kazanım Sanayicileri Derneği (Automobile Batteries and Recycling Industrialists Association - AKÜDER) and Aküçev, which was authorized by the former, completely prevented the operations of the firms whose main business is the disposal of waste batteries; that they collected waste batteries via their own dealers to provide raw materials for the recycling facilities of the association member battery manufacturers; that they fixed waste battery prices at the consumer, wholesaler, storing facility and recycling levels; and that since most recycling facilities are their members, they prevented the purchase of waste batteries by these facilities from sources other than Aküçev.

23. Competition Board, which assessed the place of Aküçev in competition law as a joint venture, found that the corporation charter of Aküçev is a cooperation agreement under Article 4 of the Competition Act, which ensures the coordination of competitive behavior and which has anti-competitive goals and effects. When the points below are taken into consideration, it becomes obvious that Aküçev has a structural risk of coordination which arises from its mere existence, and that anti-competitive goals and effects are present.

- Battery manufacturers are the most important buyer of the lead recycled from waste batteries.

- Aküçev unites, within its own structure, battery manufacturers and recycling facilities that enable the use of waste batteries as raw materials for new automobile batteries.

- Collected waste batteries are transferred to these recycling facilities which control nearly all the recycling capacity of the country (9 out of the 13 currently licensed recycling facilities are shareholders of Aküçev).

- Mutlu Akü, Yiğit Akü and İnci Akü are the three largest battery manufacturers of Turkey. These three firms generate nearly 80% of the total battery production in Turkey.

- These firms, which are the largest partners of Aküçev, also own recycling facilities (These three firms and the recycling facilities they own hold a total of 66.6% shares of Aküçev).

- Battery manufacturers which are also shareholders in Aküçev generate 80-90% of the total battery production.

24. Above issues show that structurally, i.e. by its mere existence, Aküçev poses a coordination risk and is undesirable. Beyond these, when behavioral characteristics are taken into consideration, it can be seen that competition is restricted in the recycling, automobile battery and collection markets. Namely, in relation to recyclers, waste battery purchase prices, production amounts, parties with which a commercial relationship can be established and the conditions of these relationships are determined by Aküçev, and competition between recyclers is completely eliminated.

25. It is found that coordination in waste battery market may have a spread effect on the battery market. The statement,

> "Battery prices are marked up 5%, which amount is then paid as premium to auxiliary dealers who deliver 100% of their waste. This way, waste batteries do not go to scrap dealers."

26. Included in the document titled "Declaration to be Made in the AKÜDER Board of Directors" is a good example to the potential reflection of the coordination in the waste battery market into the battery market itself.

27. Competition in the collection market, on the other hand, is prevented by completely excluding scrap dealers from the system. AKÜDER uses dealers as a collection channel, prohibits dealers' selling waste batteries to any channel other than Aküçev and prevents recyclers which are members of Aküçev from buying from scrap dealers.

28. Consequently, it was found that, under Article 4 of the Competition Act, corporation charter of Aküçev, which was established by market leader competing firms, is a cooperation agreement which enables the coordination of competitive behavior among founding parties and which has anti-competitive goals and effects.

29. Anti-competitive actions of the Akçev founding members implemented via Aküçev may be collected under three headings:

1. Price fixing in relation to waste battery prices at all stages of transfer,

2. Mandating exclusive sales of waste batteries to Aküçev through the contracts signed with regional dealers and guarantees taken from dealers,

3. Mandating exclusive purchase of waste batteries through Aküçev for the recycling facilities which are members of Aküçev.

30. During the on-the-spot inspections conducted at preliminary examination and investigation phases, documents are found which include clear statements in relation to all three violations. For instance, the e-mail sent by the Aküçev General Director to the other undertakings under investigation on 22.0.2006 states that

> "… 4. Auxiliary Dealer shall sell at 430 NTL/TON to the Regional Dealer, the Regional Dealer at 530 NTL/TON to Aküçev, Aküçev at 600NTL/TON to recycler."

31. The letter sent to regional dealers on 17.6.2005 states that

> "Esteemed Regional Dealer, please find attached APAK (Control of Waste Cells and Batteries) Regulations published by the Ministry of Environment. The Guarantee in Appendix-I must be signed and sent to us in order to fulfill the obligations contained therein. … For the regular operation of the waste collection business, regional dealers are to take the guarantees contained within APPENDIX-II from their dealers. …"

32. The section titled "Waste Battery Collection and Return Guarantee" in APPENDIX-I, includes the following statement:

> "…I guarantee that, in order to fulfill my obligations under Article 12 of the APAK Regulations published by the Ministry of Environment and Forests in the Official Gazette dated 31.8.2004 and numbered 25569, I will deliver the used waste batteries corresponding to the total ampere hours I purchased from Yiğit Akü Malz. ve San. Tic. Şti. to the licensed transporter to be determined by your firm and I will pay in cash the cost of the deficit waste battery amount within the year at the deposit prices set by the Ministry."

33. Obviously, guarantees taken from dealers mandate the sales of waste batteries to Aküçev. Similarly, the contracts signed bring an obligation on the dealers not to deliver waste batteries to any organization other than Aküçev.

34. Aküçev also forces its member recycling facilities to purchase waste batteries exclusively from Aküçev. For instance, the document titled "Notes for the Aküçev Board of Directors Meeting of September 8, 2006" states that

> "…9. It has been decided that those recycling firms which are members of Aküçev and which get authorization from other sources without the knowledge of Aküçev and collect batteries shall not be given scrap batteries through Aküçev channels."

35. This and similar documents show that relevant undertakings have clearly violated Article 4 of the Competition Act.

36. In their pleas, attorneys of the parties claimed that waste batteries do not constitute goods, that the parties acted in accordance with the Regulations on the Control of Waste Cells and Batteries and became members of AKÜDER with the encouragement of the Ministry of Environment and Forests, that the conditions mentioned in Article 5 of the Competition Act were fulfilled and the parties should be granted individual exemptions. The decision states that all of these claims are groundless. In fact all things which are the subject of trade are goods for the purposes of the Competition Act. Waste batteries are subject to trade within the framework of the "Waste Management Plan" formed by AKÜDER and Aküçev. According to the "Waste Management Plan" of AKÜDER, waste batteries follow the following chain:

- customer → auxiliary dealer/service → regional dealer → licensed transporter → licensed recycling facility

37. They are transferred between parties under commercial conditions at each phase of this chain and they are included in the production process once again as battery raw materials after being recycled. Therefore, unlike other dangerous waste products, batteries are not just waste products without any commercial value the collection of which is seen as a burden by its owners any more; they are a waste product with a commercial value where the lead produced by melting them is used as raw material in many sectors, most important among them being battery manufacturing.

38. As for the claim that the relevant undertakings became members of AKÜDER with the encouragement of the Ministry of Environment and Forests, the following point must be emphasized: None of the practices found to be in violation of the Competition Act is based on a suggestion or encouragement of the APAK Regulations or of the Ministry of Environment and Forests, and no restriction on competition is necessary for the fulfillment of the obligations of the undertakings contained within the Regulations. The practices identified as violations in the decision are independent actions of the undertakings, which were not mandated by the APAK Regulations.

39. The decision also evaluates whether Aküçev Corporation Charter can be granted individual exemption and it was found that, among the conditions listed in Article 5 of the Competition Act, point c) Not eliminating competition in a significant part of the relevant market, and point d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b), were not fulfilled; therefore individual exemption may not be granted to the relevant agreement.

40. As a result of the investigation, with the Competition Board decision dated 20.05.2005 and numbered 08-34/456-161, it was decided that

1. The Corporation Charter of Aküçev Atık Akü Toplama ve Taşıma San. ve Tic. A.Ş., established by Akas Akü, Aslan Kurşun, Esan Akü, İnci Akü, Kudret Metal, Mutlu Akü, Türker İzabe and Yiğit Akü

   – was a cooperation agreement under Article 4 of the Competition Act which enables the coordination of competitive behavior among the founding parties and which had anti-competitive goals and effects,

   – The agreement, in its present state, did not fulfill the conditions contained in Article 5 of the Competition Act, therefore it was in violation of Article 4 of the same Act and individual exemption can not be granted to the relevant agreement,

2. Akas Akü, Esan Akü, İnci Akü, Kudret Metal, Mutlu Akü, Türker İzabe and Yiğit Akü and Aslan Kurşun ensured coordination via Aküçev Atık Akü Toplama ve Taşıma San. ve Tic. A.Ş. and violated Article 4 of the Competition Act by engaging in the practices which fall

   – Under the scope of subparagraph (a) of the second paragraph of Article 4 of the Competition Act, by fixing prices of waste batteries at every stage of transfer (from final seller to recycler),

   – Under the scope of subparagraph (b) of the second paragraph of Article 4 of the Competition Act, by ensuring waste batteries are not sold to any organization other than Aküçev Atık Akü Toplama ve Taşıma San. ve Tic. A.Ş., through the contracts signed with the regional dealers and the guarantees taken from the dealers,

– Under the scope of subparagraph (d) of the second paragraph of Article 4 of the Competition Act, by deciding not to give batteries via Aküçev to recycling firms which collect batteries from sources other than Aküçev Atık Akü Toplama ve Taşıma San. ve Tic. A.Ş.

41. It was also decided to impose administrative fines on the parties, in accordance with paragraph three of Article 16 of the Competition Act. Accordingly, the following administrative fines are imposed, based on the relevant undertakings' gross incomes generated by the end of the year 2006:

- 49,588.78 NTL on Akas Akü,
- 7,874,66 NTL on Aslan Kurşun,
- 53,402.74 NTL on Esan Akü,
- 2,179,261.75 NTL on İnci Akü,
- 324,896.11 NTL on Kudret Metal,
- 3,545,563.66 NTL on Mutlu Akü,
- 316,337.19 NTL on Türker İzabe,
- 1,029,232.42 NTL on Yiğit Akü.

42. When setting the amount of the fines, the Board has taken into consideration factors such as existence of intent, severity of the fault, market power of the undertaking or undertakings fined and severity of the potential damage. The reasons for imposing a smaller amount of fine on Aslan Kurşun are the following: Aslan Kurşun is not a battery manufacturer and therefore neither this system which is based on the dealerships of battery manufacturers nor any of the decisions taken in order to implement it was advantageous for Aslan Kurşun, Aslan Kurşun purchased a small amount of waste batteries from Aküçev due to the exclusive behavior of the Aküçev partners, and it did not follow the decisions taken. Recycling facilities were fined at a higher rate. Since it carried out its recycling activities under the same legal entity and within its own structure, İnci Akü was imposed a higher fine than other battery manufacturing undertakings.

43. The above decision also mandates that the aforementioned companies terminate those actions which fall under Article 4 of the Competition Act and not fix prices of waste batteries within this framework, that auxiliary and regional dealers be able to sell their waste batteries to licensed collectors if there is demand, that the necessary amendments be made in the "AKÜDER Waste Management Plan" and in all the contracts signed within the framework of this plan and these be documented to the Competition Board within 60 days following the notification of the reasoned decision, that relevant companies avoid anti-competitive activities during this period, that operation area of Aküçev Atık Toplama ve Taşıma San. ve Tic. A.Ş. established within its founding charter be amended or the companies legal existence be terminated, and that transactions related thereto be completed within 60 days after the notification of the reasoned decision and documented to the Competition Board. The relevant parties have fulfilled these obligations within the periods mentioned and informed the Board.

2.1.2 Garanti Bank/YKM Tourism Travel Agency Decision, dated 28.2.2008 and numbered 08-19/196-66

44. In the application submitted by The Association of Turkish Travel Agencies (TÜRSAB), it was stated that Garanti Bank concluded an exclusivity agreement with YKM Turizm Seyahat Acentası (YKM Tourism Travel Agency) on promotional sales of domestic and international flight tickets of Turkish Airlines (THY) via Shop&Miles, which is one of the credit cards of Garanti Bank, and within the framework of this agreement only the said agency could make sales of THY tickets at a discounted price, and it was claimed that Garanti Bank refused the requests by other agencies with an equal position to make agreements covering the same conditions without any rational reason and therefore the Competition Act was violated.

45. The practice that is the subject of the complaint is the promotional sales of THY domestic and international flight tickets via Shop&Miles, which is one of the credit cards of Garanti Bank. Within this framework the relevant product market is "market for credit cards that provide promotions for airline transport at a discounted price." Taking into account that the activities are carried out throughout the country, the geographic market is "Turkey".

46. Garanti Bank's practice that is the subject of the preliminary inquiry and complaint was evaluated within the framework of Article 4 and particularly subparagraph (e) of the said Article as well as Article 6 on "Abuse of Dominant Position" of the Competition Act.

47. Article 4 of the Competition Act regulates the cases where different conditions are applied to persons with equal positions for equal rights, obligations and acts, except for exclusive dealing. In the case in question, one party is the bank and the other party is the agency. The party that sells the tickets at a discounted price is the agency. The position of the bank here is limited to the use of the credit card. Therefore, the bank can be said to make discrimination against other agencies with an equal position when it concludes an agreement with only one agency, At this point, documents obtained during on-the-spot investigation were evaluated.

48. It is understood from the letter by Garanti Bank dated 07.11.2007, which was written as a response to the letter by TÜRSAB to Garanti Bank, dated 02.11.2007, Garanti Bank did not have any intention to provide exclusivity to any of the undertakings operating in the market. As it is stated in the explanations of Garanti Bank officials, the main object of the practice in question was to calculate customer feedback exactly. In fact, this point was clearly stated in the correspondence between the complainant party TÜRSAB, and the complained party, Garanti Bank, and Garanti bank officials declared that in case the said "promotion" was successful, they would cooperate with all TÜRSAB member agencies that met the required conditions.

49. Moreover, as it is understood from the information in the file, the complained activity was terminated on 15.11.2007 as a result of the reactions from other undertakings, although it had been planned to continue between 01.11.2007 and 31.12.2007. A practice of an actor in the sector was prevented by other actors of the sector as it was regarded as anticompetitive. In another words, the competition in the sector was reestablished by the actors of the sector even if it was accepted that there was an infringement. Therefore, the complained activity, whose object was regarded not to be anticompetitive, had limited anticompetitive effects because it was carried out during a very short time.

50. There are a lot of undertakings operating in the "market for credit cards that provide promotions for airline transport at a discounted price". Those undertakings can be listed as follows: Garanti Bank, İş Bankası, Yapı ve Kredi Bankası, Türkiye Ekonomi Bankası, Denizbank, Akbank, Finansbank and Citibank. Among those, Garanti Bank, Akbank and Denizbank have credit cards that have mile programs

which provides tickets free of charge (Garanti Bank: Shop&Miles, Akbank WingsCard, Denizbank: Miles&More). According to sector information, the number of customers who follow mile programs of airline companies for free airline tickets is about 700 thousand. Garanti Bank is the first undertaking that started to operate in the relevant market. Moreover, Garanti Bank has cooperation with Turkish Airlines with respect to providing flight tickets. While determining the market share in the relevant market, usage rates as well as the number of card users should be taken into account. In fact, it is thought that the usage rate of Shop&Miles is higher compared to other credit cards, as Garanti Bank is the first undertaking to operate in the market and it has a close relationship with a "flag carrier", Turkish Airlines. Therefore, considering the fact that Turkish Airlines has market share over 50% in air transport in Turkey, Garanti Bank is "the leader" in respect of market share in the said sector.

51. Although market share is one of the most important criteria in establishing the dominant position, it is not sufficient alone to find that an undertaking holds a dominant position. It is stated clearly in the Competition Act that in order for an undertaking to be regarded as dominant, it should have power to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of its competitors and customers. In the case in question, the practice was terminated after 14 days because of reactions from other actors of the market, in other words, of customer/mediator agencies. It is not possible to say that the undertaking, which operates in a sector where competition was reestablished by its dynamics in a short time, holds a dominant position although it has a higher market share.

52. As a result of the preliminary inquiry, it was found that the agreement concluded between Garanti Bank and YKM Turizm did not have an anticompetitive object and the 14-day campaign had a limited effect on other agencies. Moreover, it was decided that Garanti Bank, which did not have power to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of its competitors and customers, did not hold dominant position in the relevant product market. Therefore, it was concluded that it was not necessary to make transactions under the Competition Act.

2.2 Mergers and Acquisitions

2.2.1 Decision on Acquisition by Doğan Gazetecilik A.Ş. of the full control of Bağımsız Gazeteciler Yayıncılık A.Ş. and Kemer Yayıncılık ve Gazetecilik A.Ş., dated 10.3.2008 and No. 08-23/237-75

53. The Competition Board conditionally approved the acquisition by Doğan Gazetecilik A.Ş. (Doğan Newspaper Business Inc.) of the full control of Bağımsız Gazeteciler Yayıncılık A.Ş. (Bağımsız Gazeteciler) (Bağımsız Gazeteciler Publishing Inc.) and Kemer Yayıncılık ve Gazetecilik A.Ş. (Kemer Yayıncılık) (Kemer Publishing and Newspaper Business Inc.) (and therefore of Vatan Gazetesi [Vatan Newspaper]) by its decision dated 10.3.2008 and No. 08-23/237-75. The parties of the transaction are real persons who are partners of Doğan Gazetecilik and Bağımsız Gazeteciler and Kemer Yayıncılık. Doğan Gazetecilik publishes daily national newspapers, Milliyet, Posta, Radikal and Fanatik. Doğan Group, which controls Doğan Gazetecilik, publishes daily newspapers Hürriyet, Fanatik Basket, Referans and Turkish Daily News. In addition, Doğan Group operates in sectors of publishing periodicals and books. Doğan Group has also activities in visual media, newspaper distribution, electronics, internet service providing and music.

54. Newspapers can be classified depending on their content, distribution and period. Newspapers can be classified with respect to their content as political newspapers including economy and sport news, and thematic newspapers covering only subjects on economy, sport or entertainment; with respect to their distribution they can be classified as national newspapers delivered throughout Turkey and local newspapers delivered to particular regions; with respect to their period they can be classified as daily,

weekly, fortnightly and monthly. Vatan Gazetesi is a daily newspaper that is distributed throughout Turkey and that covers political, sports and economy news. As a result, the relevant market is the market for daily national political newspapers and the relevant geographic market is Turkey.

55. As a result of the transaction, the control of Vatan Gazetesi would be transferred from Bağımsız Gazeteciler to Doğan Gazetecilik and within this framework it is an acquisition under the scope of the Communiqué No. 1997/1. The transaction requires the approval of the Competition Board as the market share of the parties exceeds the thresholds laid down in the said Communiqué.

56. The decision analyzed whether the transfer of Vatan Gazetesi to Doğan Group might restrict competition significantly in the market by strengthening the dominant position of Doğan Group.

57. The market share of Doğan Group would increase significantly with respect to net sales and advertisement revenue after the transaction. Moreover, it would be possible that market share would reach much higher levels with respect to both net sales and advertisement revenue due to the synergy and portfolio effects to be obtained by the inclusion of Vatan Gazetesi into the body of Doğan Group.

58. Although it did not seem possible that Doğan Group would increase the prices of newspapers, competition in the advertising sector would be restricted and bargaining power of Doğan Group against advertisers would increase, taking into account that a new newspaper would be added to the portfolio of Doğan Group and advertising sites would be marketed together. It was also considered in the evaluation that Vatan Gazetesi has an established brand and reader community/profile and Milliyet and Radikal, which have reader profilers similar to Vatan Gazetesi are also under the body of Doğan Group. Besides, advertisers may transfer some of their advertisements they give to Vatan Gazetesi to Doğan Group because of alternative channels (newspaper, television, magazines, internet, etc.) and wide range of media it has.

59. As a result of the abovementioned facts, it was concluded that Doğan Group would meet the criteria laid down in Article 7 related to holding a dominant position and strengthening the dominant position after the transaction.

60. In addition, the transaction was analyzed within the framework of failing firm defense, taking into consideration the financial conditions of Bağımsız Gazeteciler. The transaction was authorized within the framework of failing firm defense on the following grounds:

- In case the transaction was not authorized, Bağımsız Gazeteciler would go bankrupt.
- There were no alternative buyers, domestic or foreign, instead of Doğan Group.
- Vatan Gazetesi brand, which was the main asset of Bağımsız Gazeteciler, would inevitably be excluded out of the market in the absence of the transaction.
- Anticompetitive effects of the transaction would still arise even if the transaction was not authorized.
- In case the transaction was not authorized, some of the readers and customers (advertisers) of Vatan Gazetesi would turn to channels of Doğan Group and as a result, Doğan Group would strengthen its dominant position.

61. Within the framework of the decision, Doğan Group shall transfer Vatan Gazetesi to persons apart from undertakings directly or indirectly controlled by it within 2 years as of the authorization of the transaction. In case this is not possible, Doğan Group shall not use brand and concession right of Vatan

Gazetesi in any periodical publication during three years as of the date when the transfer should be realized.

2.2.2 Acquisition of the control of Huntsman Corporation (Huntsman) by Hexion Specialty Chemicals, Inc. (Hexion), dated 27.6.2008 and No. 08-41/554-207

62. The file contained the notification to the Competition Board related to the authorization request regarding the acquisition by Hexion Specialty Chemicals, Inc.(Hexion) of the control of Huntsman Corporation (Huntsman).

63. The relevant product markets were determined as "liquid epoxy resins", "solid epoxy resins", "hardeners", "catalyst/accelerators", "reactive thinners", "ready-mix systems for construction business", "ready-mix systems for electrical applications", "water-based resins", "epoxy novolac resins", triglycidlyisocyanurate", "tpu", "mdi", "polyols", "titanium dioxide products", "amines", "ethylenamines", "polyetheramines", "morpholines", "surfactant", "dmapa", "polyurethane amine catalysts", and "textile chemicals markets" and the relevant geographic market was "the borders of the Republic of Turkey".

64. As a result of the transfer to be realized according to Merger Plan and Contract concluded between the parties, Huntsman would be under the control of Hexion, therefore, the transaction is an acquisition as per Article 2(1)(b) of the Communiqué No. 1997/1.

65. It was seen that with respect to markets for titanium dioxide products and textile chemicals, the turnover threshold laid down in Article 4 of the Communiqué No. 1997/1 was exceeded and with respect to markets for ready-mix systems for electrical applications, ready-mix systems for construction business, morpholines and DMAPA, the market share threshold of 25% was exceeded. Thus, the transaction was subject to the approval of the TCA.

66. In markets for ready-mix systems for construction business, morpholines, titanium dioxide products, DMAPA and textile chemicals, where thresholds are exceeded, Hexion or Apollo Group, which holds Hexion, does not operate. Consequently, the said acquisition would not create concentration in the mentioned markets. However, Hexion's market share would reach extremely high levels in ready-mix systems for electrical applications. In the file, although Apollo Group argued that there were not any barriers to entry in the market for epoxy resins, it declared that it would take measures to eliminate the concerns of competition authorities resulting from the concentration in the said market. It is understood that Apollo Group is planning to divest great part of its business related to epoxy resins and ready-mix systems. In the file, it was stated that Apollo Group bought consultancy services from an investment bank, KeyBanc, in order to sell facilities in Duisburg-Germany and Argo-Illinois-USA belonging to Hexion; Norco High Performance Resin Unit in Lousiana-USA, Ready-Mixture Products and Application Development R&D Facilities in Duisburg-Germany and Houston-Texas-USA, and is searching for suitable buyers.

67. At this point, before Huntsman is acquired, in case the said divestiture is completed, Hexion would not have any shares in the market for ready-mixed systems for electrical applications in Turkey. In this case, concentration in the market for ready-mixed systems for electrical applications may be possible after the transfer of Huntsman to Hexion only if the mentioned facilities are sold to an undertaking operating in Turkey. At this point, the divestiture may be a subject of another file. With respect to the acquisition in question, it was decided that the transaction shall be approved on condition that every line of business, production facility, R&D facility, brand, license and know-how shall be transferred to third persons, who are not related to the parties of the transaction, as soon as possible, so that the market share of the party of the transaction, whose market share is the higher, shall not be exceeded in the market for ready-mix systems for electrical applications in Turkey, where competition may be significantly decreased

and the undertaking concerned may hold a dominant position, and the Competition Board shall be informed accordingly.

2.3 Competition Advocacy

2.3.1 Opinion on Liquid Fuel Sector

68. In accordance with the decision taken by the Competition Board based on the news covered by the media indicating that, regarding the pricing of liquid fuel prices, there may be some practices in violation of the Competition Act, and the applications made to the TCA in this regard, together with the findings of the "Liquid Fuel Sector Report" dated 2.6.2008 drafted at the end of a previous examination aiming at the evaluation of this sector within the context of competition law; a preliminary inquiry has been conducted covering Türkiye Petrol Rafinerileri A.S. (Tüpraş) and the five largest distribution companies (Petrol Ofisi A.S., Shell&Turcas Petrol A.Ş., BP Petrolleri A.Ş., Opet Petrolcülük A.Ş., Total Oil Türkiye A.Ş.). The decision dated 24.07.2008 and numbered 08-47/653-250, taken after the discussion of the Preliminary Inquiry Report at the Board, concluded that; information and documents relating to pricing only can not be the basis of conviction for violation of the Competition Act and thus there is no need for an investigation; however, when considered together with the findings included in the "Liquid Fuel Sector Report," which was simultaneously discussed, there are serious structural barriers to competition in the liquid fuel sector and the sector does not present a competitive outlook.

69. The conclusion of the Liquid Fuel Sector Report, which was reviewed during the Competition Board Meeting dated 24.07.2008 and numbered 08-47/654-M, can be summarized as follows;

70. "The examination was initiated mainly based on the competitive problems arising from vertical agreements at the level of distribution/dealership; however, making an evaluation just on the basis of vertical agreements at this level, without considering the sector as a whole, would bring about misleading results. Given the point reached in product standardization in the liquid fuel sector, "price" has become the most important matter for competition. Therefore, in order to make an objective evaluation of the problems in vertical agreements, they need to be considered in the context of the effect of the "vertical integration" on horizontal competition in the sector. Worldwide changes both in crude oil and end product prices have brought about results having data value for Turkey, due to its dependency on imports. However, after the initiation of the free pricing regime as of 1.1.2005, distribution companies, which are also dominant in retail pricing to a great extent, formed a pricing strategy aimed at gaining opportunity profits by applying the Tüpraş price at one time and applying the international prices, directly, at another time, within the framework of a model similar to "OFM (Automatic Pricing Mechanism)" applied by Tüpraş. The pricing strategy, which is generally directed by large distribution companies, can be claimed to be a "concerted practice" and the undertakings may be sanctioned. However, this would not be an appropriate course of action at this stage from the point of creating lasting competition. This is because there are serious structural barriers which facilitate the fact that undertakings do not follow a competitive pricing strategy and therefore these barriers need to be eliminated first. Within this framework:

1. Even though there is no trend towards vertical integration within the sector, at the level of distribution-dealership, the Law No. 5015 created a model which restricts vertical integration by limiting the amount of sales made by distribution companies through the dealers they operate themselves. However, given the financial advantages of vertical integration, this model, which results in the "separation" of distribution and retail sales profits, turns out not to be an effective model from the point of creating "price competition". Therefore, the 15% limit should be revised taking into account the average in the EU-member countries and the relevant provision of the Law No. 5015 should be amended accordingly.

2. However, encouraging distribution companies towards vertical integration is not possible simply by bringing the 15% limit up. In fact, presently, distribution companies do not even use the vertical integration opportunity at the level of 15% because retail points of sales can be controlled by distribution companies via contracts such as "usufruct and rental contracts contained as a restrictive covenant in the title deed," in other words, an alternative "vertical integration model" within the meaning of competition law comes out of these contracts. Given the prevalence of usufruct contracts in the sector, the vertical integration ratio at the level of distribution/dealership is close to 100%.

3. This outlook indicates a strictly integrated vertical structure when compared to the averages in the EU-member countries. Through these contracts, the exemption limit granted to non-compete provisions that are up to five years, by the Block Exemption Communiqué on Vertical Agreements No. 2002/2, is exceeded as well. Therefore, contracts such as usufruct and rental contracts contained as a restrictive covenant in the title deed, should be deemed as "non-compete provision" from the perspective of "competition law," no matter what their private law content and principles are. Non-compete provisions which exceed five years through such contracts and similar means, or contracts that bring about this result, should not be permitted.

4. In the majority of the EU-member countries, this problem has been solved long time ago through regulations relating to vertical agreements. Within the context of the contracts with dealers signed by REPSOL, a distribution company established in Spain which became a union member relatively late, a similar problem came before the EU Commission again. The Commission made its evaluation and arrived at a conclusion based on the point of "non-compete provision" without going into the content and principles of the said contracts under private law. In this regard, the EU practice, too, sets a good example for Turkey.

5. On the other hand, the strict structure created by contracts such as usufruct, and rental contracts contained as a restrictive covenant in the title deed, constitutes a serious barrier to entry into the distribution market. Even though there were forty seven distribution companies licensed by EMRA (Energy Market Regulatory Authority) as of the drafting date of the report, about 90 % of the market was dominated just by five of the undertakings and this remained unchanged for a considerably long period of time. Thus, one of the most important problems in the liquid fuel products sector is the oligopolistic market structure and this structure should absolutely be changed to ensure lasting competition.

6. Due to the fact that there are de facto and legal barriers to establish new dealerships, especially in residential areas, the issue of "who" will hold the control of the current points of sale for liquid fuel "for which duration" is of primary importance for the market entry and market shares of the distribution companies. Therefore, taking a step further than the EU practice, competition legislation relating to vertical contracts should be used as a tool in favor of small distribution companies. In this scope, the duration of contracts such as usufruct and rental contracts can be limited to five years, while at the same time, small distribution companies with a market share of less than 5% can be allowed to enter into contracts with a longer duration.

7. This system introduced by the Law No. 5015 in regard to the distribution/dealership relationship is based on "exclusive distribution/exclusive purchasing" relationship, and during the contract, non-compete provision can be imposed (for a maximum period of five years). However, without independent dealerships, a structure where distribution companies are compelled to apply competitive pricing cannot not be achieved under fast-changing market conditions. With the Law No. 5015, a backward step was taken from the independent dealership system, which existed before 2004, on grounds of the problem of illegal liquid fuel, which existed in that period.

8. As of today, the problem of illegal liquid fuel has been solved to a great extent through the national marker practice and oversights by EMRA, which has been stated in the reports of the associations of undertakings established by the distribution companies themselves. Given the fact that independent dealerships have not existed in the market for the last three to four years approximately, due to the legislation, if the problem of illegal liquid fuel is still going on despite the national marker practice, it is evident that this is not related to independent dealerships. Therefore, the relevant articles of the Law No. 5015 should be amended, and, in addition to the dealerships that are contractually limited in duration, independent dealerships should also be integrated into the system.

9. Provisions contained in the dealership contracts as to the imposition of a "minimum sales limit" first give the impression that they may create competitive pressure on dealers to increase their sales; however in practice, they are used against the dealers that wish to end the dealership relationship and that fail to realize the sales volume envisaged in the contracts, by forcing them to enter into a contract again, through indemnification claims. This broadens the scope of the "non-compete provision" contained in the dealership contract, in a de facto manner. Therefore, it should be assessed in the same way as those cases that cause the non-compete provision to have an indefinite duration, and thus exemption should not be granted.

10. The minimum sales amount of 60.000 tons imposed for the continuation of the licenses of distribution companies does "clearly" create an entry barrier and should be eliminated. However, taking into account that there are many small undertakings in the distribution sector and competition in the sector is dependent on the growth of these undertakings in a sense, a similar practice may also exert competitive pressure on small distribution companies to merge and grow. In fact the legislation, too, aims that liquid fuel distribution is carried out by companies that are above a certain scale and are institutionalized. Therefore, a structure with a threshold can be formed, without involving any license annulment, but compelling small companies to merge.

11. With the Provisional Article 3 of the Law No. 5015, sale of liquid fuel to sea vehicles without private consumption tax has been turned into a trade activity special to "distribution" companies. This constitutes a significant limitation on the commercial activities of the companies with bunker licenses, and their dealers. This legal arrangement, which was worked out to prevent illegal trade through the recommercialization of liquid fuel bought without private consumption tax, has proved to be far from serving the said purpose. This is because bringing limitations on those who make first-hand liquid fuel sales to sea vehicles is not an effective way for the prevention of resale and illegal trade, but it actually negatively affects competition and therefore should be abolished.

12. Dealership activity carried out without station is peculiar more to small distribution companies. "White product" sales of these dealers have an important place in their total sales and therefore prohibition imposed on the white product sales of such dealers, which do not have stations, brings about results directly against the favor of small distribution companies. These sales carried out by dealers without stations, most of which can be considered as whole sale, create serious competitive pressure in the market, and the limitation imposed negatively affects competition and thus be abolished.

13. The Law No. 5015 states that refineries can have distribution companies, and thus allows the formation of a structure vertically integrated with the distribution level. However, on grounds that "Tüpraş has a dominant position" it has been regulated that refineries cannot discriminate between distribution companies. However, within the scope of the developments in the Turkish liquid fuel market, new refinery investments are on the agenda. Therefore, in order for the

applications made to EMRA to be finalized rapidly and for purposes of reinforcing competition against Tüpraş, regulation concerning discrimination should be limited to "dominant refineries" and thus refineries that will newly enter the market should be given the ability to form their own distribution channels and apply competitive pricing.

14. The arrangements concerning the required physical distance between the liquid fuel stations that are to be newly established have generally been attributed to security reasons; however, given the fact that this limitation applies to stations that are on the same direction, and there are differences such as the distinction of within/outside the city, this practice does not have objective grounds resulting from security reasons; on the contrary, this issue was raised with a view to prevent competition between dealers. Even though the number of liquid fuel stations are said to be relatively high in Turkey, there is not a specific number in this respect which applies to all countries, and the number of stations required for every country will be resolved in the most rational manner within the market conditions, and therefore these limitations should be abolished.

15. The 45% restriction contained in the Law No. 5015 concerning the market shares of distribution companies is basically unnecessary as well, and considering the present shares of the companies in the distribution market, this level is not expected to be exceeded in the short run, except for transfer transactions. Where this becomes the case due to a transfer transaction, Article 7 of the Competition Act can be enforced for the same purpose. Apart from that, within the framework of free market economy and competition rules, growth of undertakings through efficient market operations should not be prevented and therefore the said restriction should be removed from the Act.

16. In the energy market, the concept of eligible consumer is based on the understanding that, generally, network-based transportation vehicles are used and competitive pressure is created by those undertakings that have an advantageous position regarding these transportation vehicles, due to their ability to choose between the sources of supply. However, the liquid fuel products sector cannot be wholly included in the definition of network economy and thus free circulation of goods and services between all of the suppliers and customers should be the "norm". The approach of providing a certain extent of freedom by using such criteria as eligible consumer, conversely, brings about restrictive outcomes in the liquid fuel sector. Therefore, restrictions contained under the Law No. 5015 concerning eligible consumers, together with the other buying/selling restrictions, should be abolished.

71. As a matter of fact, during the drafting process of the Law No. 5015, a significant amount of the points mentioned above were also outlined in the TCA's opinion submitted to the Ministry of Energy and Natural Resources as of 07.07.2003. Despite this, the said opinion of the TCA was not duly taken into account during the preparation of the Law. Presently, we have arrived at a point where a competitive environment has not been achieved and complaints relating to the sector have increased. In such an environment, even though the option of applying sanctions under the Competition Act is always open, the said structural measures should be taken in order to attain a lasting solution.

72. What needs to be stated at this point is that, as a result of the preliminary inquiry, it has been found that, the claim "that the prices applied by the distribution companies and the price movements in the market are the same", as implied by the news covered by the media, does not fully reflect the reality, and that there are small but significant differences between the prices applied by the distributors and between the price movements in the market. On the other hand, the conditions applied in the whole sales as well as the promotions in the sector also show that distribution companies are engaged in a "certain degree of" competition. However, despite all these, it is observed that the level of competition within the sector is not satisfactory and especially distribution companies avoid engaging in price-based competition. According to

the data obtained within the framework of both the preliminary inquiry and sector inquiry, there are two points indicating at an outlook far from a competitive market in liquid fuel pricing.

73. First, even though it is acceptable to a certain extent that taxes are an important factor in high liquid fuel prices, the liquid fuel prices in Turkey are high in terms of non-tax prices as well, compared to the neighboring markets. Even the storage prices tend to be higher than the retail sales prices in Europe. Second, international prices follow a volatile trend and in the period after 01.01.2005, during which a pricing system similar to automatic pricing mechanism was applied by Tüpraş, price reductions were not reflected to market with the same sensitivity as price increases. At times, the distribution companies reflected price reductions with delay or partially, or at other times did not reflect them at all.

74. As is known, Article 10 paragraph 14 of the Petroleum Market Law includes the following provision; "… in the case that risks arising from agreements and activities aimed at or may result in hindering, disrupting or restricting the competitive environment and delivery in the petroleum market, the Authority [EMRA] shall be authorized to determine base and/or ceiling price(s) and take necessary measures to apply on regional or national basis in all phases of activities not exceeding two months in each time". This provision points at the concepts of "abuse of dominant position" and "anticompetitive agreements and concerted practices" contained in the Competition Act. It is seen that, where the said violations "produce effects that distort the market order", the Energy Market Regulatory Authority (EMRA) is granted regulatory powers in relation to prices.

75. In the evaluation made on the information and documents that were obtained during the preliminary inquiry and were summarized above, sufficient grounds have not been found to prove that the parallelism between the pricing of the distribution companies is the result of an agreement in violation of the Competition Act or to claim presumption of concerted practice. However, when the findings in the Liquid Fuel Sector Report, and the rigidity and relative highness of the prices are collectively considered, it is not possible to conclude that a competitive structure has been formed in the sector, which is the aim of both the competition legislation and the petroleum market legislation.

76. In countries where competition legislation is relatively new, a common cause for failing to establish lasting competition and thus the "distortion of the market order" is the structural" barriers resulting from legislation, not just the agreements or concerted practices that are subject to sanctions. During our competition law enforcement of more ten years, this phenomenon has been encountered in almost every sector without exception. There have been many initiatives by the TCA in various sectors towards the elimination of such structural barriers, apart from ending the violations themselves.

77. According to the evaluations made within the framework of the findings contained in the Liquid Fuel Sector Report, many serious structural barriers to competition have been found to exist in this sector as well. While undertakings compete in a limited area, they also avoid price competition thanks to the advantages created by these structural barriers. Even though, in such a case, presumption of concerted practice can be resorted to within the framework of competition law based on the rigidity in pricing and relatively high prices, establishing lasting competition in the market will not be possible just by sanctioning undertakings, unless the said structural barriers are removed. Therefore, at this stage, these barriers should firstly be removed, and the regulatory powers should be used to this end within due time.

78. To sum up, the information and documents at hand are not deemed sufficient to conclude that the Competition Act has been violated. However, this does not mean that the undertakings within the sector operate in a wholly competitive setting. Regulatory powers entrusted to EMRA are considered to be necessary in such a case as well, and they should be used until a competitive structure is ensured.

2.4 Statistical Information

Table 1

Applications and Files Concluded

Year	Status of File	Infringements of Competition	Exemption/ Negative Clearance	Merger/ Acquisition/ Joint Venture/ Privatization	Other	TOTAL
1999	Opened	41	28	77		146
	Concluded	11	13	68		92
2000	Opened	43	27	102		172
	Concluded	40	11	100		151
2001	Opened	44	21	81		146
	Concluded	40	27	86		153
2002	Opened	55	29	110		194
	Concluded	53	26	103		182
2003	Opened	70	44	113		227
	Concluded	54	36	106		196
2004	Opened	78	62	118		258
	Concluded	91	76	122		289
2005	Opened	84	45	164		293
	Concluded	97	50	170		317
2006	Opened	108	36	199		343
	Concluded	108	33	186		327
2007	Opened	131	34	238		403
	Concluded	148	39	232		419
2008	Opened	166	65	249		480
	Concluded	132	57	255	8	452
TOTAL	**Opened**	820	391	1451		**2662**
	Concluded	774	368	1428	**8**	**2578**

Table 2

Files Brought to a Conclusion under Articles 4 and 6 of the Competition Act

Year	Article 4[1]	Article 6[2]	Mixed (4 and 6)	Article 7[3]	TOTAL
1999	4	6	1	-	11
2000	14	12	14	-	40
2001	17	14	9	-	40
2002	23	19	11	-	53
2003	26	18	10	-	54
2004	49	26	16	-	91
2005	55	34	8	-	97
2006	65	30	13	-	108
2007	79	48	21	-	148
2008	67	38	25	2	132

Table 3

Horizontal and Vertical Agreements under Article 4 of the Competition Act

Year	Horizontal	Vertical	Mixed (H&V)	TOTAL
1999	3	2	-	5
2000	16	11	1	28
2001	18	8	-	26
2002	28	5	1	34
2003	26	9	1	36
2004	42	22	1	65
2005	47	15	1	63
2006	45	28	5	78
2007	67	27	6	100
2008	51	37	4	92
TOTAL	**343**	**164**	**20**	**527**

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

2 Article 6 deals with abuse of dominant position.

3 Article 7 deals with mergers and acquisitions. The files concern complaints concerning acquisitions.

Table 4

Year	Files of Negative Clearance			Files of Exemption							
	Files Concluded			Files Concluded							
	Files Granted Negative Clearance	Files Granted Conditional Negative Clearance	Files Denied Negative Clearance	Files Granted Exemption	Those Files Where Exemption Was Not Given/Correction Was Asked For	Files Within the Scope of Block Exemption	Files Granted Conditional Exemption		Files Denied Exemption	Files Where Exemption Has Been Withdrawn	Those Files Where Individual and Block Exemption Were Assessed Together
							Files Granted Conditional Individual Exemption	Files Within the Scope of Conditional Block Exemption			
1999	7	-	2	1		3	-	1	-	-	
2000	7	-	-	1		2	1	1	-	-	
2001	12	3	2	5		3	4	1	-	-	
2002	12	3	1	4		4	2	2	-	-	
2003	12	5	6	4		3	6	5	3	-	
2004	19	4	15	8		18	1	13	9	1	
2005	11	1	-	7		13	4	10	3	1	
2006	5	1	-	6		10	2	2	7	-	
2007	8	2	-	10		5	6	4	2	2	
2008	4	1	-	26	4	5	9	2	-	2	4
TOTAL	**97**	**20**	**26**	**72**	**4**	**66**	**35**	**41**	**24**	**6**	**4**

Applications for Exemption, Negative Clearance, and Their ResultsTable 5

Number of Merger and Acquisition Files Brought to a Conclusion

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Merger	5	13	6	14	7	7	5	4	6	3
Acquisition	56	70	73	83	76	88	122	138	193	208
Joint Venture	5	11	7	6	9	8	8	23	22	20
Privatization	2	6	-	-	14	19	35	21	11	24
TOTAL	**68**	**100**	**86**	**103**	**106**	**122**	**170**	**186**	**232**	**255**

Table 6

Results of Merger and Acquisition Files Resolved

Year	Authorization	Conditional Authorization	Rejection	Out of Scope- Below Threshold
1999	23	1	-	44
2000	49	2	2	47
2001	39	2	-	45
2002	65	-	-	38
2003	77	2	-	27
2004	86	3	-	33
2005	130	6	1	33
2006	110	25	-	51
2007	171	17	-	44
2008	175	22	-	57
TOTAL	**925**	**80**	**3**	**419**

3. Resources of the Competition Authority

79. As of 2008, annual budget of the TCA is TL 19,747,526.29 YTL (approx. USD 12,694,475). The number of the professional staff[4] is 107 (Economists: 33, Lawyers: 11, other: 63) whereas total number of the staff is 322.

4. Summaries of or references to new reports and studies on competition policy issues

80. The TCA published Competition Journals (a quarterly publication) in 2008. These Journals contain articles on competition issues as well as information on the decisions of the TCA and the Council of State, the supreme administrative court, in the preceding period.

[4] The term "professional staff" includes only assistant experts on competition and competition experts. They deal with enforcement against anticompetitive practices, merger control and competition advocacy.

81. The TCA published a book which contained the presentations and speeches delivered at the Symposium titled "The Role of Competition Policy and Practices in Reaching Macroeconomic Objectives" on the occasion of the 11th Anniversary of its foundation. Moreover, the TCA also published a book on the "Sixth Annual Symposium on Recent Developments in Competition Law" held in Kayseri in 2008.

82. Finally, the TCA published a book titled "Practices in the European Union and Turkey related to the Regulation of International Roaming Service" and a master's degree thesis titled "Fight against Cartels in US, EU and Turkish Competition Laws."