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Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development **06-Jun-2008**

English text only

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP(2008)9/20
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN TURKEY

-- 2007 --

This report is submitted by the Turkish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 11-12 June 2008.

JT03247345

English text only

Executive Summary

1. In 2007, the Turkish Competition Authority (TCA) took a total of 148 final decisions on anti-competitive agreements and abuse of dominant position and 232 mergers and acquisition under the Act no 4054 on the Protection of Competition (Competition Act)[1]. 79 of these 148 final decisions concern anti-competitive agreements, 48 deal with abuse of dominant position whereas the remaining 21 are about both anti-competitive agreements and abuse of dominant position. Number of decisions on mergers and acquisitions is 232. Concerning exemption and negative clearance, 39 decisions were taken. The numbers indicate an increasing trend in number of files concluded. The highest increase emerges in mergers and acquisitions indicating that Turkey is also affected by the recent global rise in such transactions. Number of files concluded regarding anti-competitive agreements keeps its stable rise. Therefore, caution should be exercised against the possibility of removal of evidence by the undertakings whose knowledge on competition law has been increasing year by year. Increase in number of abuse cases by 60% and that in number of cases on anti-competitive agreements and abuse by 69% is also notable.

2. Sectoral statistics obtained via examinations concluded regarding infringements of competition provide important clues on the competitive map of Turkey as well as behaviors of undertakings. It is seen that sectors where examinations are mostly carried out are transport, food products and beverages, education, sports, professional occupation and other services, health and medical products, telecommunication, post and bureau machines and computers. Apart from post and telecommunications, all these sectors have concentration levels that may be deemed to be relatively competitive markets. Two arguments may be made against this assessment: Firstly, there is a tendency to act in a collective manner in these sectors. Secondly, concentration levels or the number of undertakings in the market is not adequate to create a competitive structure.

3. It should also be underlined that certain sectors have been subject to many examinations in the last six years. These sectors are food products and beverages, transport, telecommunication, chemistry and chemical products, health and medical products and equipments. Despite the existence of many examinations in these sectors, the fact that no decrease is observed in the number of allegations and examinations initiated based on such allegations implies that it would be proper to initiate joint studies with the relevant authorities responsible to regulate these sectors in order to take certain structural measures for these sectors. The statistics on decisions where it was determined that the Competition Act was violated support this argument. As a matter of fact, main sectors where the Competition Act was violated in the last eight years are press and broadcasting, transport, telecommunication, food, cement and ready-mixed concrete. It is seen that sectors which are examined following allegations of violation of the Competition Act and those sectors where violation of the Competition Act was proved coincide. As a result, it is seen that there is a need to create a coordination mechanism between the TCA and the legislator and the public authorities responsible to regulate these sectors.

4. In 2007, the TCA attached great importance on eliminating barriers to entry created by the powerful undertakings. In this regard, a market share threshold of 40% was introduced for the scope of Block Exemption Communiqué on Vertical Restraints No 2002/2 . In this vein, the examination of markets (raki market and soft drinks market) where vertical agreements posed competitive concerns which started before the introduction of the threshold, was concluded on the basis of the market share threshold. The TCA determined that these agreements were excluded from the coverage of the Communiqué and further rejected to grant individual exemption due to existing competition concerns.

1 Law on Protection of Competition No: 4054

5. Another important activity in 2007 is the Opinions sent to various public authorities as part of advocacy powers of the TCA. These Opinions concern banking, energy market, civil aviation, professional accounting, and pharmaceuticals. Such Opinions are important as they are sent to sectors that constitute a significant place in economic activities and some of the sectors have the characteristics of network industries.

1. Changes to Competition Law and Policies

Legislative Changes:

6. In 2007, the 40% market share threshold was inserted into Block Exemption Communiqué on Vertical Agreements (Communiqué No: 2002/2) to take agreements and practices of undertakings with market power out of the scope of the block exemption. With the introduction of the threshold, the undertakings with market power will not be able to conclude vertical agreements that have the potential to foreclose the market for actual and/or potential competitors. In particular the articles in agreements on exclusivity create significant entry barrier to the market for the competitors if imposed by powerful undertaking on their customers. Via the introduction of the market share threshold, competitive conditions would be ameliorated for the rivals as well as undertakings willing to enter the market.

7. In addition to this legislative amendment, the TCA designed an action plan for the amendment of the Competition Act as well as introduction of new secondary legislation in the form of communiqués and guidelines to be more effective based on its 11 years of enforcement. It is expected that this action plan will come into force in 2008.

2. Enforcement of Competition Law and Policies

2.1. Competition Infringement

Refractory Materials Decision Dated 29.1.2007 and No. 07-10/63-19

8. The TCA initiated the investigation with the claim that nine undertakings active in the market for refractory materials violated article 4 of the Competition Act by determining the conditions of sales – mainly price – and by market sharing and concluding agreements that has both the object and effect of distorting or restricting competition, prior to the purchasing tenders for refractory materials.

9. During the investigation the following restrictive practices of the undertakings were detected and uncovered:

i. The refractory producing undertakings which participated in the tenders for purchase of refractory materials opened by producers active especially in iron and steel and cement sectors, as well as some other sectors, negotiated the bidding issues of price, volume, etc. in relation to the tender.

ii. At the end of these negotiations, the points agreed upon prior to the tender were forwarded to each other via fax and that the dates of faxes generally fell shortly prior to the tenders.

iii. The existing demand in the market for refractory materials were shared both on the basis of product groups and customers, within the framework of estimated projections, that

evaluations were made of these principles of sharing at the end of the terms, and in case of deviations from the agreement, these were tried to be compensated for in the new tenders.

iv. Plans were made to severely punish those who disobey the agreements, thus attempting to ensure that the agreements are effective.

10. Whereas there are 9 undertakings within the scope of the investigation, it is seen that the agreements related to both market sharing and restricting competition in tenders are basically concluded among 6 undertakings, and that these undertakings clearly acted with the intent of restricting competition.

11. However, it seems that two main interrelated facts which were found in the investigation process, may be treated as mitigating reasons:

12. The first one of these is that some of the undertaking involved in the anti-competitive agreements could not realize most of the coordinated conducts in practice. In other words, the planned conducts that are mentioned in the documents found during the investigations as evidence could not be properly turned into an anti-competitive practice. This leads to the conclusion that whereas the behavior was intended for "distorting and restricting competition", the agreements were not able to be put in practice "fully".

13. The second fact which is considered to be influential in the emergence of this outcome and which stems from the structure of the sector, relates to the import-export balance. According to this, it has been observed that import of refractory materials increased year by year, and that the total amount of refractories imported amounts approximately to one fourth of the domestic production. Also, given that approximately half of the local production is exported, it becomes clear that approximately one third of the domestic use of refractory materials is supplied by foreign sources. This indicates, that the sector is considerably open for foreign trade and that it would have misleading consequences to consider the sector only at a national level. Therefore, even though some of the undertakings within the scope of the investigation acted with the intent of "distorting or restricting competition", it becomes clear that the effect of the agreements made was only limited, due to the sector being considerably open for foreign trade. It is thought that this conclusion would be reinforced taking account of the magnitude of the cement, and iron and steel sectors, which the infringements are related to.

14. As a result, it was decided that while three undertakings with less involvement in the cartel agreement were imposed a minimum amount of fine, the remaining six undertakings were imposed a fine of 0,3 % (three thousandth) of their net sales in the year 2004. The mitigating factors mentioned above did significantly reduce the amount of fine imposed. was also decided that the undertakings concerned shall be informed pursuant to article 9 of the same act, of the behaviors which need to be exercised and be avoided so that the competition is restored and the state prior to the violation is preserved, and of the fact that the violation must be ended.

Bilsa Software Decision Dated 21.3.2007, Numbered 07-26/238-77

15. The TCA initiated an investigation against Bilsa Software Inc. and software companies under the body of Bilsa Group (Bilsa) in order to determine whether their practices on school software programs might be considered as an abuse of dominant position with its nature of complicating and even excluding the market activity of competitors in the market.

16. The subject of the investigation is the assertion that Bilsa applies encryption practices on school software programs, developed by Bilsa, in order to prevent access to the information contained in the mentioned programs. It is also stated that Bilsa prevents access to this information and its transfer to other

programs; therefore, schools become dependent on Bilsa, and schools wishing to use programs of the other firms cannot switch to the other firms. As a result, activities of competing software companies in the market are impeded via artificial barriers.

17. For the purposes of the investigation, the relevant product market is defined within the framework of points stated in the Decision as "school software programs". These programs are designed to meet all the technical and administrative demands of schools and generally defined as computer package programs. Geographical market is defined as "the boundaries of the Turkish Republic" because the products which are the subjects of practices that are the subject matter of the complaint are sold and marketed all over Turkey.

18. Bilsa argued that encryption practices could be explained on the grounds that it had to secure the safety of data belonging to the schools with which it made agreements. Besides this, it made it possible to access to these data when the schools demanded to do so. Bilsa also referred to the intellectual property rights and related legislation. The TCA rejected these pleas, as it was clear that Bilsa prevented access to the data of the schools even after the agreements had expired. Also taken into consideration were the documents attained during the investigations and the content of the legislation related to intellectual property rights. As a result of the investigation, the TCA has decided;

- that Bilsa Yazılım A.Ş. and the companies under the body of Bilsa Group violated Article 6 of the Competition Act by carrying out practices aiming to distort competition in the school software market via making use of their technological and commercial advantages in the said market where they enjoyed a dominant position,
- an administrative fine which amounts to 3% of its total annual gross income gained at the end of the year 2005 be imposed,
- that Bilsa Yazılım A,Ş. and the software companies under the body of Bilsa Group would take the necessary measures to provide the schools whose agreements had expired with the data belonging to those schools in an unencrypted, correct, understandable, reliable and accurate way, in case the schools in question requested so.

19. Thanks to the decision, Bilsa, which enjoys a dominant position in the school software market, has been prohibited from abusing its dominant position by creating an artificial barrier to the entry of new undertakings to the relevant market and carrying out activities that prevent schools from buying and using the school software program they wish, and artificial barriers created by the dominant firm, most of whose behavior in the relevant market has important effects, have been removed.

2.2. Concentrations

Intergum Food Decision Dated 23.8.2007, Numbered 07-67/836-314

20. The transaction of acquisition by Greencastle Drinks Limited under the control of Cadbury Schweppes Plc (Cadbury Schweppes) that engages in the worldwide production and marketing of confectioneries, chocolates, chewing gums, beverages and that operates in Turkey in chocolate, confectionery and chewing gum sectors via Kent Gıda Maddeleri Sanayi ve Ticaret A.Ş. (Kent Food Stuff Industry and Trade Inc.) (Kent), of the control of Intergum Gıda San. ve Tic. A.Ş. (Intergum Food Industry and Trade Inc.) (Intergum as a whole) that operates in the area of chewing gum production and distribution, from the members of Amram family forms the subject of the relevant decision of the TCA.

21. The relevant product market was divided into three separate segments as "sugary chewing gum", "sweetened chewing gum" and "sugar-free chewing gum". However, effect of the transaction on

competitive conditions in the chewing gum market that was the sum of these relevant product markets was also analyzed.

22. In all defined markets apart from the sugar-free chewing gum market, the most important competitor of Kent and Intergum is Perfetti Van Mele (Perfetti). And in the sugar-free chewing gum market, the market share difference of Intergum with Ülker that is its closest follower in respect of market share as of the first three months of 2006 and 2007 other than Kent is very high even before the transaction. Perfetti that would have the position of the most important competitor of Kent in chewing gum has no appreciable activity in the sugar-free chewing gum market.

23. With regard to the acquisition transaction, many criteria such as market shares of the parties and their competitors, investment costs and brand power, advertisement expenditures, availability rates, barrier to distribution channel entry, portfolio power, purchasing power, cost analysis and real price movements have been examined. As a result of this examination, the opinion reached was that Kent's assuming a dominant position in sweetened and sugar-free chewing gum would not be in question, but with the acquisition transaction, it would assume a dominant position in the sugar-free chewing gum market and it would result in a significant decrease of competition in this market.

24. Kent committed that in case the TCA would not certainly grant authorization for the transaction in this form of it, it would unbundle Nazar brand in the sugar-free chewing gum market from its other businesses and dispose of it. As required by the commitment, Kent would indefinitely transfer the license of Nazar brand that ranked the third in the sugar-free chewing gum market, and provide the licensee with the information (including technical know-how) necessary for the competitiveness of the brand. For purposes of the fulfilment of the commitment, written bids would be offered to chewing gum and sugary manufacture producers, and investment in relation to Nazar brand would be maintained until providing a license. And the realization of license transfer would be subject to the approval of the TCA.

25. As required by the commitment submitted to the TCA, an independent supervisory expert would be appointed for supervising transactions in relation to the license transfer of Nazar brand. The expert who shall report to the TCA about developments would be liable for fulfilling the instructions given by the TCA and in turn, Kent would demonstrate to the expert until the license of the brand is transferred that the brand is managed independently in a manner separate from its own businesses, the investment policy as to the brand continues and it does not harm the brand. If the TCA decides that the expert does not fulfil its obligations fully and properly, it shall always have the right to ask for the appointment of a new supervisory expert.

26. In the commitment, only the transfer of the license of Nazar brand has been provided for. Such brand transfer also involves the transfer of information necessary for designs such as the packaging belonging to the brand and so forth and for production, but it does not involve the transfer of instruments used in production. Due to the technical difficulty that production bands used for Nazar be separated from the system employed for the production of the other brands, Kent proposed that the competitive problem likely to form in the sugar-free chewing gum market be overcame by the transfer of brand.

27. The commitment assumed by the parties was found sufficient to clear the competitive concerns and therefore the TCA permitted the transaction.

2.3. Exemption (Withdrawal Decisions)

Mey İçki Decision Dated 10.09.2007, Numbered 07-70/863-326

28. After the transfer of Tekel's alcoholic beverages division to Mey İçki Sanayi ve Ticaret A.Ş. (Mey Beverages Industry and Trade Corp.) through privatization, upon several complaints concerning the restriction of competition in the market by Mey İçki, an examination was started on whether the exemption granted to the purchasing agreements between the undertaking and final points of sale, which were found to be under the scope of the exemption of Block Exemption Communiqué No. 2002/2 on Vertical Agreements (Communiqué No. 2002/2) with the TCA's decision dated 19.11.2004, should be withdrawn due to the exclusivity clauses included therein. As a result of this examination, the TCA decided to open an examination to determine whether the exemption concerning the purchasing agreements with the exclusivity clauses signed between Mey İçki and final points of sale should be withdrawn in accordance with Articles 5 and 13 of the Competition Act, as well as Article 6 of the Communiqué No. 2002/2. Consequently, after the examination was conducted and the opinions of the parties were gathered, the TCA;

- determined that the agreements under examination prohibited the points of sale as parties to the agreement from selling and advertising competing products that are in the same category with the products of Mey İçki, established separate quotas for products in different categories, granted various advantages to the points of sale such as discounts, free products, etc. on the condition that the terms of the contract are observed and the set quotas were fulfilled within the contract period;

- particularly emphasized that beer was different from other alcoholic beverages in terms of its intended use and the substitutability of raki was low both on the supply- and the demand-sides, and identified the relevant market within the borders of the Republic of Turkey as "raki sold in the household channel" and "raki sold in the on-premises consumption channel";

- established that the market share of Mey İçki was steadily on a high level despite the new entries since 2004, that the raki market had high entry barriers due to the brand power of Mey İçki and the must-have characteristics of its products as well as due to its portfolio power and the fact that it benefits from the advantages of scale economies, that neither its competitors nor its consumers can substantially restrict its ability to set the economic parameters of the raki market and that consequently, Mey İçki held a dominant position within the raki market;

- stated that the opinions submitted by Mey İçki claimed that raki and wine were substitutes for each other and the relevant market was misidentified, that the market was in still its formation process, that the elements of dominant position were mistakenly established, that the conditions of Article 5 of the Competition Act were fulfilled;

- established that, since the vertical agreements under examination drawn by Mey İçki which had a market share of …% left the scope of Article 2 of the Communiqué No. 2002/2 due to market share threshold, these were not caught by the block exemption in the current situation;

- concluded that agreements that were the subject of the examination and that could not meet the conditions listed in Article 5 of the Competition Act shall not be granted exemption due to the exclusivity clauses they include.

29. Taking into account the points stated above, it was decided that product purchase agreements drawn between Mey İçki with a dominant position in the raki market, and final points of sale shall not benefit from the block exemption in terms of market share under Article 2 of the Communiqué No. 2002/2.

Though the examination on raki market had started before the introduction of the market share threshold in the Communiqué No. 2002/2, it was concluded in the aftermath of the market share threshold and the TCA just determined that the agreements in question were automatically excluded from the benefit of block exemption system due to high market share. However having said this, the TCA further decided that the said agreements and practices that are based on these agreements or which lead to de facto exclusivity such as free products, discounts and changes in service frequency have effects that are incompatible with the conditions of exemption listed in Article 5 of the Competition Act as they include an obligation not to sell competing products, therefore the said agreements and/or practices shall not be granted individual exemption either.

30. In the decision, it was also stated that in order for agreements and practices to comply with the law, the undertaking shall be liable to change its sale system to meet the requirements of the decision as of the date when the reasoned decision is received and the said changes shall be completed within the framework of temporary Article 2 of the Communiqué No. 2002/2, amended by the Communiqué No. 2007/2 until 1 July 2008 at the latest.

31. Thanks to this decision of the TCA , entry to the raki market will be facilitated, entrepreneurs will be encouraged and consumers shall benefit from increased choices and competitive prices.

Coca-Cola Decision Dated 10.09.2007, Numbered 07-70/864-327

32. The TCA started an examination on its own initiative on 13.05.2004 about agreements which were concluded between Coca-Cola Satış ve Dağıtım A.Ş. and distributors and final points of sale that sell its products, and which prohibited sales, at final points of sale, of products competing with the products distributed by Coca-Cola. Commodatum contracts for refrigerators that prohibit usage of refrigerators, given to a final point of sale, for competing products were also examined within the same scope.

33. Whether the relevant market was defined as cola beverages or carbonated beverages would not change the results, therefore the examination was carried out on carbonated beverages market. In the examination, markets were separated in terms of other commercial drinks distributed by Coca Cola such as bottled water, fruit juice – nectar, juice drinks, ice tea, sports drinks and energy drinks. Channels were classified as supermarket channel (retail sale points wider than 100m2), traditional channel (retail sale points smaller than 100m2) and on-premise consumption channel.

34. Those agreements which were within the scope of the block exemption granted to vertical agreements under the Communiqué No. 2002/2, fell out of the scope of the block exemption during the examination, after the introduction of a 40% market share threshold in the block exemption system by the Communiqué No. 2007/2. In other words, Coca Cola can no longer benefit from the block exemption due its market share, which is above 40%, in the relevant market.

35. Within the framework of the findings and evaluations during the examination, taking into account the factors such as Coca-Cola's high market share, its brand awareness, its power resulting from its portfolio which is inclusive of must-have products, its ability to attain a high level of availability due to its widespread distribution network and thus its ability to act independently from its competitors and customers, it has been decided that Coca-Cola has a dominant position.

36. In the scope of the examination, those agreements are also evaluated for the benefit of individual exemption. Thus, in order to analyze the effects of the said exclusivity contracts and the commodatum contracts for refrigerators, a market research was conducted, by the application of face to face interviews with over 800 hundred final points of sale. Based on this research and the information gathered from the

undertakings, it has been concluded that the exclusivity clauses included in the contracts of Coca-Cola, which has a dominant position, eliminated competition in a substantial part of the relevant market. It is also not possible for the exclusivity clause in the contract to lead to any improvements in the distribution of goods in a way which would benefit consumers. Therefore, because the exemption conditions specified under Article 5 of the Competition Act was not satisfied, a grant of individual exemption to those contracts was not deemed possible. It has been decided that Coca-Cola's exclusivity practices as well as practices such as providing the sales points with exclusivity, or with an advantage on the condition of buying a certain amount as a proportion of the previous year's sales, should be stopped.

37. At the end of the examination and the conducted market research, it has been established that the prohibition under the commodatum contracts for refrigerators not to place the rival product in the refrigerators, leads to *de facto* exclusivity. To prevent this, it has been decided that rival products shall be allowed to be placed inside of up to 20 % of the refrigerators Coca-Cola gave to the sales points.

38. However, permission to place rival products in to the refrigerators shall be limited to the following:

a) In the traditional channel, points of sale that have no alcohol-free commercial drink refrigerator directly accessible by the consumers other than the refrigerator belonging to Coca-Cola;
b) In the on-premise consumption channel, points of sale that have no alcohol-free commercial drink refrigerator where there are no health-related drawbacks of storing drinks, other than the refrigerator belonging to Coca-Cola.

39. Furthermore, products of those undertakings which, compared to Coca-Cola, have substantial market power in any of the commercial drink markets (with a market power exceeding 50 % or exceeding twice that of Coca-Cola's share), as well as products which are rival to the products recently launched by Coca-Cola in categories where it did not have any products before (for a period of two years) have been excluded from the permission of placement within the refrigerators.

40. Finally, exclusivity clauses included in the agreements concluded with on-premise points of consumption, on the condition of not exceeding two years following the tender, as well as those included by the sponsorship agreements concluded on the condition of not exceeding 60 days in a year, have been excluded from the prohibition on this practice. This decision regarding the market for carbonated drinks is expected to open the way for market entries, as well as to increase consumer benefit through widened choice and competitive prices.

2.4. Competition Advocacy

Opinion about the Draft Implementing Regulation on Debit Cards and Credit Cards

41. The Draft Implementing Regulation on Debit Cards and Credit Cards prepared by Banking Regulation and Supervisory Agency (BRSA) with regard to the enactment of regulations provided by the Debit Cards and Credit Cards Act was sent to our Authority (TCA) and our opinion was requested.

42. When the draft implementing regulation is analyzed, it is apparent that the draft implementing regulation is prepared depending on Article 29 of the Debit Cards and Credit Cards Act. Therefore, first of all, opinion of our Authority submitted for the said Act should be recalled. The main point of the opinion prepared for this Act is the suggestions about credit card exchange and set-off system. These suggestions can be summarized as follows:

- *not restricting membership conditions for institutions that will carry out exchange transactions*
- *addition of the absolute power of BRSA to regulate the exchange commission that affects competition to the Law, and*
- *abolishing the prohibition on additional payment, which is enforced as a legal regulation in credit card functioning.*

43. The suggestions listed above were not adopted when the draft became a law. However, Article 29 was added to Debit Cards and Credit Cards Act and it became possible to realize these suggestions. According to Article 29 *"Exchange of information or documents for monitoring, evaluating, controlling the risk positions of card holders and customer services or exchange and set-off transactions related to debts and payables occurring due to the use of credit cards shall be carried out by card issuing institutions within the framework of agreements signed among themselves or via companies formed by at least five card issuing institutions. ... The procedure and principles about functioning of these companies, membership requirements, and issues related to their monitoring and supervision shall be regulated by BRSA via an implementing regulation, taking the opinion of the Central Bank of the Republic of Turkey."*

44. The considerations of the TCA that are expressed in the suggestions listed above are also present in the opinion given in respect of the draft implementing regulation whose preparation is provided for in Article 29. The opinions about the said draft are as follows:

45. First of all, it is seen that practices related to information exchange and service costs between issuing and acquiring banks under the body of Interbank Card Center (BKM) are not sufficiently regulated under the implementing regulation. Article 27 of the draft only provides that information *exchange, exchange and set-off transactions shall be carried out by companies which are established by at least five card issuing institutions.* There are not any regulations about membership and operation requirements or monitoring and supervision for these companies. On the other hand, it is possible that issues such as barriers to entry, membership requirements, determining the exchange commission rate and supervision of these practices may be the subject of another regulation. In this case, informing that another regulation will be made would be appropriate in terms of legal certainty.

46. According to the Draft Implementing Regulation, at least five card issuing companies are required for establishing a company similar to BKM, which may create an entry barrier. BKM currently has a monopoly position and network effects in the market supports its position. In addition to those conditions in the market, providing for additional requirements related to the establishment of companies that can carry out exchange transactions creates barriers to enter the market and institutions that wish to enter the credit card market has to be a member of BKM. Another evaluation is that there are not any regulations to solve certain problematic aspects. For instance, the membership requirements are not transparent and membership costs are expensive and banks with higher market shares are more active in BKM Management Board. As a result, the Draft Implementing Regulation should prevent exchange and set-off institutions such as BKM from creating entry barriers via membership requirements.

47. In order for the Draft Implementing Regulation on Debit Cards and Credit Cards to be consistent with competition law, exchange commission formula should be added to Article 27, the items that form the base of this formula should be stated and provisions on how banks would submit the data about these items and how the accurateness of these data would be supervised should be laid down. Considering the importance of exchange commission rate in card payment system, it would be beneficial if this rate is determined by BRSA and it is not given to the initiatives of institutions located under the body of a card payment institution because exchange commission revenue is an important item for banks. These revenues are used for giving certain advantages (prize, point, bonus, etc) to card holders and promoting the use of cards. Credit cards are encouraged by card systems at the expense of cash and debit cards whose costs are lower. In fact, credit card is a more expensive way of payment for stores. One of the most important

barriers in front of a competitive and well-functioning system is the fact that BKM Management Board determines the exchange commission without being subject to public supervision. In case exchange commission level is left to the discretion of banks without any regulations, banks which gain high revenues from credit card activities would determine the exchange commission in a way that would increase the use of this instrument as much as possible and prevent the improvement of other payment instruments such as cash and debit cards.

Opinion Concerning the Bill on the Establishment and Duties of the Turkey Pharmaceuticals and Medical Equipments Institution

48. The opinion of the TCA has been requested, concerning the "Draft Bill on the Establishment and Duties of the Turkey Pharmaceuticals and Medical Equipments Institution," prepared by the Ministry of Health. The draft bill was examined in terms of the Competition law legislation and the following points were deemed important.

49. The draft envisions the establishment of Turkey Pharmaceuticals and Medical Equipments Institution (the Institution), to make and monitor all regulations in order to regulate the production, import, export, launch, planning, distribution, putting into service and use of pharmaceuticals, special products, substances subject to international and national control, active and excipient substances for the production of pharmaceuticals, cosmetics and medical equipment as well as in order to ensure their transmission to the society in a safe, effective, high-quality and standards-compliant manner, with a view to protect and improve human and animal healthcare. The draft also establishes the provisions concerning the Institution's authorities, duties, responsibilities, operation procedures and principles, and personnel as well as the regulations concerning its incomes and expenditures.

50. Article 3, paragraph (s) titled "The Definition, Duties and Authority of the Institution" grants the Institution the authority to determine pharmaceutical prices. Currently, Article 39 of the "Act no. 6197 on Pharmacists and Pharmacies," states that a tariff shall be announced by the Ministry of Health and Social Aid in order to determine pharmaceutical prices and in case of prices higher than those in the tariff, the penalty listed in Article 44 of the same Act shall be imposed. Also, within the opinion letter prepared by our Authority concerning the "Draft Bill Amending the Act no. 6197 on Pharmacists and Pharmacies" which is in the process of enactment, this point is specifically mentioned. The letter emphasizes the fact that the tariff to be determined must establish maximum prices instead of a single price and that this issue is closely related to the function of creation and protection of competition, which is under the jurisdiction of the TCA. It is thought that price competition among pharmacies is possible without exceeding a maximum value set by the Ministry, but that this area would be completely closed to competition in case of a single price practice.

51. Pharmaceutical and Medical Preparations Act no 1262, Article 11(a) of the "Statutory Decree no. 181 on the Organization and Duties of the Ministry of Health", "Cabinet Decree no 2004/68781, dated 6.2.2004, on the Pricing of Human Medical Products," "Cabinet Decree on the Prices of Medical and Pharmaceutical Preparations, Galenic Preparations and Codex Ampoules Manufactured in Turkey" and Deontology Regulation all have similar provisions. At this point, the amendments made to Article 12 of the Deontology Regulation by the Decree no. 7/7521 become very important. The first paragraph of the previous version of the Article was similar to this Draft: "The pharmacist owning the pharmacy may not sell the medical preparations or magistral formulas at a price or tariff value other than those determined by the Ministry of Health and Social Aid." However, with the amendment made intentionally to Article 12, a maximum price practice instead of a single price one was adopted, which is similar to the current provision of Article 39 of the Act no. 6197. Within this framework, it is obvious that with the maximum price practice, the current goal is both to protect public health and to decrease the pharmaceutical expenditures

of the state through competition, by making it possible for the consumers to buy pharmaceuticals at prices lower than those stated in the tariffs. It is thought that the same point must also be taken into consideration during the preparation of the Draft discussed in this letter of opinion.

2.5. Statistical Information

Table 1

APPLICATIONS AND FILES CONCLUDED

Year	Status of File	Infringements of Competition	Exemption/ Negative Clearance	Merger/ Acquisition	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**
Total	Opened	654	326	1202	**2182**
	Concluded	642	311	1173	**2126**

Table 2

FILES BROUGHT TO A CONCLUSION UNDER ARTICLES 4 AND 6 OF THE COMPETITION ACT

Year	Article 4	Article 6	Mixed (4 and 6)	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**

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	27	5	77
2007	67	27	6	100
Total	**292**	**127**	**16**	**435**

Table 4

CONTENTS OF HORIZONTAL AND VERTICAL AGREEMENTS EXAMINED UNDER ARTICLE 4 OF THE COMPETITION ACT

Year	Files of Horizontal Agreements		Files of Vertical Agreements	
	Agreement-Concerted Practice	Decision of Association of Undertakings	Resale Price Maintenance (RPM)	Files Outside the Scope of RPM
1999	3	-	1	2
2000	12	5	2	11
2001	9	10	2	7
2002	20	10	-	6
2003	19	10	3	8
2004	35	11	2	22
2005	35	17	3	15
2006	40	10	13	29
2007	52	27	7	31
Total	225	100	33	131

Table 5

APPLICATIONS FOR EXEMPTION, NEGATIVE CLEARANCE, AND THEIR RESULTS

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	Files Within the Scope of Block Exemption	Files Granted Conditional Exemption		Files Denied Exemption	Files Where Exemption Has Been Withdrawn
						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
Total	93	19	26	46	61	26	39	24	4

Table 6

NUMBER OF MERGER AND ACQUISITION FILES CONCLUDED

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

Table 7

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
TOTAL	750	59	3	362

3. Resources of competition authorities

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

3.1.1 Annual budget (in your currency and USD):

19.945.489 YTL (15.110.218 $)[2]

3.1.2 Number of employees (person-years)[3]:

Management: 17

Professional Staff (economist: 33 lawyers: 12 and other professions: 66): 111[4]

Other staff: 193

Total: 321

3.2 Human resources (person-years) applied to:

- Enforcement against anticompetitive practices;
- Abuse of dominant position
- Merger review and enforcement;
- Advocacy efforts.

All tasks mentioned above are carried out by competition experts and assistant experts.

3.3 Period covered by the above information:

52. Above information covers 2007.

2 The amount transferred to the Ministry of Finance is not included.

3 An entry examination was initiated to hire a new group of assistant competition experts in 2007. As they are planned to start in 2008, they are not included in the list.

4 Professional staff is the main staff that deals with cases. The figures given under this heading cover only economist, lawyers and other professions hired as professional staff under the Articles 35 and 36 of the Competition Act.

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

53. The TCA published four Competition Journals (a quarterly publication) in 2007. These Journals contain articles on recent competition issues as well as detailed information on the activities of the TCA in the preceding period.

54. The TCA published a book which contained the presentations and speeches delivered at the Symposium with the occasion of the 10th Anniversary of its foundation. During the Symposium, the ten-year experience of the TCA was discussed in detail and importantly important recommendations were delivered by the invited speakers as well as participants.

55. Additionally, the results of the project on competition policy and investment climate with a focus on fast moving consumables, air transport, telecommunication market and energy market in coordination with World Bank and TOBB (Union of Chambers, Commodity Exchanges of Turkey) was published in Turkish and English. This project has deeply analyzed these markets with a view to understanding how competition policy can contribute to investment climate. During the publication process, the TCA cooperated with TEPAV, a research foundation set by TOBB.

56. Lastly, in particular considering the importance of water sector under the so-called global warming circumstances, the TCA published a book[5] on competition and regulation in network water industry. The study addresses the forthcoming water scarcity and brings some proposals such as adopting private sector participation models, enhancing competition in the market by unbundling, common carriage etc and setting up an efficient regulatory system so as to alleviate the possible negative outcomes.

5 By Bülent Gokdemir, competition expert at the TCA.