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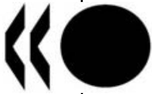

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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN TURKEY

-- 2006 --

This annual report is submitted by the Turkish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-7 June 2007.

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TURKEY

(2006)

Executive Summary

As we take a look at the activities of the Competition Authority in 2006, it seems that the decisions taken, opinions sent to the relevant public authorities and agencies, the activities aiming at fostering the competition culture, legislative changes and international developments marked by the start of EU full membership negotiations on October 3, 2005 seems to be important developments influencing this enforcement period.

From a general perspective, the number of violation cases concluded by the Competition Authority increased in 2006. Substantial part of these cases is under Article 4 of the Act No. 4054 on the Protection of Competition (hereinafter Act No. 4054) regarding agreements, concerted practices and decisions limiting competition, whereas the number of cases falling under Article 6 concerning abuse of dominant position is relatively less.

On the other hand, even though the number of merger/acquisition cases decided is less than the previous year, it is far above the average number of decisions taken since 1999. 21 out of these decisions fall under privatisation classification. However, significant part of these privatisation transactions relate to the divestiture of undertakings seized by Saving Deposit Insurance Fund (SDIF).

During this period, the Competition Authority stated opinions concerning a significant number of draft laws. Among these draft laws can be cited the draft law amending the public procurement law and public procurement contract law, the draft patent and utility model law.

In 2006, joint projects were carried out with a wide range of institutions from universities to chambers of industry and commerce and bars in order to enhance competition culture. These meetings significantly contributed to improving the existing awareness on the area of competition law and policy in different segments of the society.

1. The year 2006 was a period, when screening activities, which were the first step in full membership negotiation process, intensified in respect of not only the Competition Authority but also all other public authorities and agencies. Screening meetings related to Competition Policy chapter were completed at the end of 2005. The screening report related to this chapter was sent to Turkey in 2006. The screening report in question clearly stated that Turkey is on a satisfactory harmonisation level in respect of institutional capacity, legislation and enforcement related to antitrust rules and mergers/acquisitions, which are under the responsibility of the Competition Authority, and there are not any obstacles in this area to open negotiations on the related chapter. On the other hand, the said screening report stipulated some conditions in relation to monitoring and supervision of state aids and restructuring Turkish iron and coal industry for opening negotiations on competition policy chapter.

2. In addition to the relationships between the EU, the Competition Authority has actively participated and contributed to activities and meetings held by OECD, ICN and UNCTAD on international platform.

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

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

3. In 2005, the number of Competition Board members was decreased from 11 to 7 and quorum was redetermined by amendments in the Act No. 4054. The amendment also included a provision that election and appointment shall not be made for the memberships vacated until the number of Competition Board members is reduced to seven. Therefore, following the amendment the Competition Board took its decisions with the participation of the remaining eight members. This was regarded by the Council of State, supreme administrative court where appeal may be made against the decisions of the Competition Board, as a procedural failure and it annulled the relevant decisions. As a result, a provisional article has been inserted into the Act No. 4054 on the Protection of Competition in 2006 which provides that the Competition Board can convene and take its decisions with the participation of seven members at most. Moreover, the same provisional article empowers the Chairman of the Competition Board to decide which Competition Board member will not participate in the meetings in case the number of Competition Board members exceeds seven.

4. Fines provided in Article 16 and 17 of the Act No. 4054 have been revalued by 9,8% for the period between 1.1.2006 and 31.12.2006 via the Communiqué on the Announcement of an Increase in Administrative Fines Provided in Articles 16 and 17 of the Act No. 4054, Being Valid until 31/12/2006 (Communiqué No. 2006/1).

5. Competition Board issued Communiqué No 2006/2 on an amendment to the Communiqué No 1997/1 on the Mergers and Acquisitions calling for the Authorisation of the Competition Board and on the abolition of the Communiqués No 1997/2 and 1997/6 (Official Gazette, 9.3.2006; 26103). Communiqué No 2006/2 provides, among others, that a fine will be imposed if merger or acquisition transactions subject to authorisation are committed without the authorisation of the Competition Board and in case undertakings and associations of undertakings having legal personality are subjected to this fine, natural persons employed in managerial bodies of this legal personality will also be fined personally up to ten percent of the fine imposed. Moreover, it abolishes former Communiqués No 1997/2 and 1997/6 including provisions on compulsory notification of agreements, concerted practices and decisions limiting competition.

1.2 Other relevant measures, including new guidelines

6. The Competition Board adopted on February 2nd, 2006 Guidelines on the voluntary notification of agreements, concerted practices and decisions by associations of undertakings. These Guidelines aim to inform the undertakings and associations of undertakings regarding the newly emerged state after abolition of compulsory notification of agreements, concerted practice and decisions limiting competition and the procedure to be followed by the undertakings and association of undertakings regarding their voluntary notifications.

7. Guidelines on the explanation of Block Exemption Communiqué No 2005/4 on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector were adopted by the Competition Board on December 12th, 2006. Via the Guidelines, the Competition Board aims to explain the principles, which it will take into account while implementing the Communiqué No 2005/4, in a detailed manner in order to remove the uncertainty that might be faced by the undertakings as much as possible.

1.3 Government proposals for new legislation

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2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of

- Competition Authority

8. Following tables provide a summary of enforcement activities of the Competition Authority regarding anti-competitive agreements (Article 4), exemption (Article 5) and negative clearance (Article 8), abuse of dominant position (Article 6) and merger control (Article 7) under the Act No. 4054.

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**
Total	Opened	523	292	964	**1779**
	Concluded	494	272	941	**1707**

Table 2

Files brought to a conclusion under Articles 4 and 6 of the 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**

Table 3

Horizontal and Vertical Agreements under Article 4 of the 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
Total	225	99	10	334

Table 4

Contents of Horizontal and Vertical Agreements examined under Article 4 of the 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
Total	173	73	26	100

Table 5

Applications for exemption, negative clearance, and their results

Year	**Applications**	**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	28	7	-	2	1	3	-	1	-	-
2000	27	7	-	-	1	2	1	1	-	-
2001	21	12	3	2	5	3	4	1	-	-
2002	29	12	3	1	4	4	2	2	-	-
2003	44	12	5	6	4	3	6	5	3	-
2004	62	19	4	15	8	18	1	13	9	1
2005	45	11	1	-	7	13	4	10	3	1
2006	36	5	1	-	6	10	2	2	7	-
Total	292	85	17	26	36	56	20	35	22	2

2.1.2 Description of significant cases, including those with international implications

Autoclaved Aerated Concrete Decision Dated 30.5.2006 and No. 06–37 /477–129

9. In an anonymous complaint application that passed into the registry of the Competition Board, it was asserted that "there was an increase in selling prices of light wall block manufacturers up to 16% and this extraordinary price increase may be the result of fixing list prices by collusion". The Competition Board decided that a preliminary inquiry about the assertions would be carried out and as a result of the inquiry it was decided that an investigation would be launched on Türk Ytong, Gaziantep Ytong, Antalya Ytong, AKG, Nuh Yapı and Nuh Beton.

10. The fact that the undertakings operate in autoclaved aerated concrete market and the agreement between the undertakings is toward the autoclaved aerated concrete market was found to be sufficient to make an assessment on the subject matter of the file. The infringement found in the framework of the investigation was "hardcore" and "had the object of restricting competition" and there is no *de minimis* rule for the application of Article 4 of Act No. 4054; therefore it was not deemed necessary to define the product market in respect of the subject matter of the file.

11. During the investigation process, reporters considered personal organisers, meeting notes and other documents belonging to the general directors, deputy directors and marketing directors as evidence in on-the-spot inspections.

12. One of the documents obtained during the on-the-spot inspection is given below as an example. In the facsimile message from Çimentaş Gazbeton following expressions were written:

> *"For the attention of Mr. Cemil Ersan Çelik* [Çimentaş, General Director, Head of Turkish Ready Mixed Concrete Association]
>
> *In line with the quotas determined on city basis as of the end of May 2000, there occurred a difference of ~ 8000 m^3 about Ytong firm in Istanbul – Kocaeli and Sakarya. Although we were continuously in contact to resolve the difference since the beginning months, Ytong firm did not stop work and therefore the difference increased. Moreover, principally, a firm should not enter a building site which buys materials from another firm; but Ytong firm entered building sites such as;*
>
> *Akdeniz İnşaat – Ümraniye*
> *İhlas İnşaat – Armutlu/Yalova*
> *Kaan inşaat – Çatalca (Half of our existing orders was cancelled)*
> *S.S. Barışkent – Silivri (they decreased our prices)*
>
> *and they took up our work there. Therefore we need this kind of action in order to protect our existing conditions and interests of your company.*
>
> *In this action there are proposals to some firms as follows;*

Baytur İnşaat	*Gölcük*	*1100 m3*
Biat İnşaat	*Bahçeşehir*	*1300 m3*
Kar	*"Sarıgazi (We took up)*	*205"*
Özak	*"Altunizade (")*	*300"*

Atak	*“*	*250“*
Asaş	*“*	*300“*

For your information.

Yours sincerely

M. Tarkın [AKG Marmara Region Sales Manager]”

13. Some of the documents in the file contain clear expressions showing that Türk Ytong, AKG, Antalya Ytong and Gaziantep Ytong are engaged in an agreement or conformity. If the documents in question are taken into account, it is seen that Türk Ytong and AKG had a basic role in providing this conformity. In the meeting held by the high level officials of the abovementioned firms in Istanbul Swissotel, we can see that they evidently talked about the agreement among themselves, they emphasised that in relation to the Competition Board, “the agreement document” should not be given to the lower echelons having regard to monetary fines given by the Competition Board in cement and ceramic sector, and they negotiated about the scope and basic principles of the agreement. The content of the said document shows not only the agreement between the parties but also the fact that the parties were aware that the agreement would be contrary to the competition legislation and might be punished by the Competition Authority, in other words it shows that there was an intention in respect of undertakings within the meaning of Article 16 of the Act No. 4054. In the documents found in AKG, the expressions such as “*We may continue our agreement relationships with Ytong”* and *“Powerful dealership is not suitable for us. The dealer wants to take up the work when he brings. YT Agreement is an obstacle to the conformity.”* In addition, abovementioned documents which show that commercial parameters were agreed upon in detail are considered as findings that support the existence of an agreement between the parties.

14. The existence of the agreement between the parties can be seen from all of the documents included in the file. It is understood from the documents that the parties negotiated over essential commercial issues in a way that could affect their decisions which should be formed according to market conditions, and they tried to come to compromise or they came to compromise. One of these commercial issues is price together with elements that constitute price, which are expected to be formed depending on supply and demand conditions in the market. Documents included in the file indicate that parties tried to fix sale prices and elements that effect price such as discounts, sale due dates, etc, together; and to that effect they negotiated over these issues, they followed price movements of each other very closely and they gave their own price lists to the competing undertakings. It is understood that the aim of negotiations and decisions over fixing the prices and elements that constitute price irrespective of market conditions was, as seen in the documents, harmonising general price lists or fixing and following prices and sales conditions on region, city or customer basis.

15. Most of the documents included in the file show that AKG, Türk Ytong, Antalya Ytong and Gaziantep Ytong discussed each other’s production and sales amounts, usage of production capacity, national or regional market shares, and determined and followed these parameters together, and shared the geographical market on region or city basis. In these documents, it is noteworthy that abovementioned parties determined which undertaking would operate in which region, sales amount and rate; and prepared detailed lists related to the subject including all regions and cities. In some of these documents there were comparisons in the framework of the existing data and it was found that agreed figures about basic parameters such as sales amount and market share on region and city basis were largely consistent with actual sales amounts and rates; in other words the agreement between parties found a field of application.

16. It is seen in the content of the file that besides market sharing, undertakings shared customers and work; they communicated price and amount information on customer base; and in this framework they closely followed customer, order and delivery information.

17. Almost all of the documents included in the file indicate the existence of communication and coordination that affected the parties' commercial decisions; and show that high and medium level managers of the said parties frequently met, discussed and kept in touch. It is understood from the content of the file that Turkish Autoclaved Aerated Concrete Manufacturers Association (its abbreviation GÜB was used in the documents), whose headquarters is located in Ankara and of which the said undertakings are members, facilitated this communication and coordination to a large extent; and the parties discussed technical and sectoral problems as well as commercial issues toward cooperation that was restricting competition under the umbrella of GÜB. It was found that GÜB held a meeting in Istanbul Swissotel on 15.1.2004 and 20.9.2004. In fact, what makes this information meaningful is that the dates of the documents titled "Meeting" and "Meeting A-YT Sales" were 16.1.2004 and 20.9.2004 respectively. Both of the documents which implicated that anticompetitive decisions were taken, mentioned Tansu Tuğlu, who was one of the officials of Gaziantep Ytong, and İstanbul-Swissotel records confirmed that he enjoyed accommodation and other facilities in Swissotel. On the other hand, inquiry into the records of Ankara Sheraton Hotel, which was mentioned in the documents, shows that officials of AKG and Gaziantep Ytong accommodated in the hotel on the same dates.

18. The documents show that the undertakings monitored the conformity terms to control the efficiency of the agreement among themselves, followed the activities of their competitors closely to find deviations from conformity, they sometimes warned competing undertakings to prevent these deviations and tried to solve disputes among them. On the other hand, it is understood that the parties tried to develop strategies related to dealers moving from the fact that some of the deviations from the agreement were the result of uncontrolled dealers. In this context, expressions such as *"Powerful dealership is not suitable for us. The dealer wants to take up the work when he brings. YT Agreement is an obstacle. We prefer small and governed dealers."* and *"Control over the dealer could not be established. Relationship between the connection+dealer should not affect the conformity"* are noteworthy.

19. In the light of the information and documents mentioned above, it was decided that AKG, Gaziantep Ytong, Türk Ytong and Antalya Ytong were engaged in an agreement which was restrictive of competition within the meaning of Article 4 of the Act No. 4054. It was found that the infringement started in 2000 and continued for 5 years, taking into consideration that the documents included in the file covered years 2000 – 2004.

20. On the other hand, it is concluded from the collected evidence that AKG and Türk Ytong had a leading role in the infringement. AKG was founded in 2002; therefore it was deemed liable for the infringement since 2002, which was taken into consideration as an extenuation. Moreover, most of the documents related to the infringement were with AKG, AKG frequently monitored the issues about conformity, followed the activities of competing undertakings in order to control the efficiency of the agreement; and these facts were also taken into account for the discretion of penalty. Gaziantep Ytong admitted the existence of the agreement and contributed in respect of structural links between Autoclaved Aerated Concrete Manufacturers and Türk Ytong in order to terminate the infringement, which was deemed as an extenuation.

21. In the content of the file, Nuh companies were mentioned in seven documents. In these documents, it is seen that the officials of other autoclaved aerated concrete manufacturers aimed to negotiate over domestic and foreign sales amounts or reach to an agreement; on the other hand, no clear evidence was found that showed Nuh Yapı or Nuh Beton was engaged in such entity. However it was stated in the document that *"Regional coordinators will take the necessary actions against aggressive*

behaviour of Nuh Yapı and Nuh Çimento" and "there should be three firms instead of two firms for balance in the market, maybe Nuh should enter the market as the third firm for balance", which strengthen the opinion that Nuh Yapı was not a party of the agreement between other undertakings. What is more important than these findings is that Nuh Yapı and Nuh Beton were not mentioned in the detailed lists related to geographical market sharing between the parties and other documents that indicated that the undertakings were engaged in an agreement, found in the content of the file. On the other hand, Nuh Beton was included in the investigation because at the preliminary inquiry stage, there was information stating that it operates in the sector; however, at the investigation stage it was understood that the said firm was active in the sector for a limited time and exited from the autoclaved aerated concrete market after 1999-2000 and not operating in the sector at that time and from Nuh Group, only Nuh Yapı was operating. Facilities of Nuh Yapı in Çorlu and Isparta, which were in operation until 2000, were transferred and Nuh Yapı continues its operations only in the facility in Hereke; in other words it substantially restricted its activities in autoclaved aerated concrete market; and this fact was also taken into account in this context.

22. At the end of the investigation, it was decided that;

1. AKG, Türk Ytong, Antalya Ytong and Gaziantep Ytong were engaged in activities and agreements that are under the scope of Article 4 subparagraphs (a), (b) and (c) of the Act No. 4054,

2. Although the infringement covers a period of five years, AKG would be deemed liable since 15.4.2002;

3. Türk Ytong holds the control of Antalya Ytong and they are economically integrated; therefore they are considered as one undertaking;

4. For the determination of administrative fine, the fact that AKG and Türk Ytong played active and leading roles was deemed as an aggravating circumstance; and the fact that Gaziantep Ytong admitted the existence of the agreement and contributed in respect of structural links between Autoclaved Aerated Concrete Manufacturers and Türk Ytong in order to terminate the infringement was deemed as an extenuation;

   – AKG shall be imposed at discretion 816,718 YTL administrative fine, which was 3% of the net sales in 2004, according to Article 16(2) of the Act No. 4054;

   – Türk Ytong shall be imposed, at discretion, 1,127,051 YTL administrative fine, which was 3% of the net sales of Türk Ytong and Antalya Ytong in 2004, according to Article 16(2) of the Act No. 4054;

   – Gaziantep Ytong shall be imposed 224,185 YTL administrative fine, which was 2% of the net sales in 2004, according to Article 16(2) of the Act No. 4054;

5. It should be notified to the parties that Articles of Incorporation of Gaziantep Ytong and the License Agreement between Gaziantep Ytong and Ytong International Gmbh should be amended in a way that provisions that may serve to price fixing, market sharing and commercial information exchange would be abolished, according to Article 9(1) of the Act No. 4054;

6. There was not an infringement under the scope of Article 4 of the Act No. 4054 as there was not any clear evidence showing that Nuh Yapı and Nuh Beton were engaged in an agreement or activity that was restrictive of competition with other undertakings.

Sized Import Coal Decision No. 06-55/712-202, dated 25.7.2006

23. The Competition Authority decided to examine the coal market upon the complaints regarding sharp increases in coal prices. As a result of the preliminary investigations, it was found out that the sharp increase in domestic retail prices had resulted from the systematic increases in the prices of imported coal. During the preliminary investigation, it was seen that the price increases were associated with the price fixing by different undertakings some of which did not have any operational branches within the boundaries of Turkey. During this investigation, the Competition Authority faced difficulties in terms of procedural issues at every stage in particular regarding the companies not located in Turkey.

24. As a result of the preliminary inquiry conducted in the sector, an investigation was initiated on the affiliated companies of Krutrade AG (Krutrade), Mir Trade AG (Mir Trade) and Glencore International AG (Glencore International), namely, Glencore İstanbul Madencilik Ticaret A.Ş. (Glencore İstanbul) and Minerkom Mineral ve Katı Yakıtlar Tic. A.Ş. (Minerkom).

25. When the investigation was initiated, Mir Trade AG did not have any operation unit in Turkey. Its base was in Switzerland. However, during the investigation phase, it was noticed that it opened an operation unit in Turkey.

26. In terms of the subject matter of the investigation, two relevant product markets have been defined as "imported sized coal market" (this type of coal is used at homes for the purpose of heating and their size differs between 18-120 mm) and "imported steam coal market". Imported sized coal and steam coals are brought to the closest ports to the consumption region by sea and after being nationalised at these ports they are transported to the consumer. Taking into account the fact that the relevant products are being distributed and sold throughout the country, relevant geographical market was established as the territory of the Republic of Turkey.

27. Krutrade AG had an office in Turkey, however upon the initiation of the investigation they closed it down. Krutrade AG is based in Austria. While Glencore International AG is based in Switzerland, its subsidiaries are based in Turkey.

28. During the investigation process of the sized import coal market case, the Competition Authority faced difficulties in terms of procedural issues in every stage in particular regarding the companies not located in Turkey: the Mir Trade AG of Switzerland and Krutrade AG of Austria.

29. Competition Authority can directly notify any decision and/or any other relevant documents to the undertakings located in Turkey. However, when it comes to the undertakings located in other countries, the Competition Authority has no authority and therefore it can not notify directly. In this case, being aware of the limits of its jurisdiction, the Competition Authority tried to notify the decision initiating the investigation as well as the investigation report to the undertakings located outside Turkey via the *Ministry of Foreign Affairs (MFA).*

30. In practice, the decision by the Competition Authority initiating the investigation could not be notified to Mir Trade and therefore the undertaking's 1st written defence could not be received. However, during the investigation phase, it was found that Mir Trade opened an office in Turkey and investigation report was notified to the said office and its written defence could be received.

31. With regard to Krutrade AG, the decision initiating the investigation was notified to its office in Turkey. However, following the initiation of the investigation, Krutrade AG closed its office in Turkey. The investigation report could not be notified to Krutrade AG located in Austria. Thus, its written defence could not be received and importantly the investigation process could not be completed about Krutrade AG.

32. The decision initiating the investigation could not be notified to Mir Trade AG, whereas the investigation report could not be notified to Krutrade AG.

33. The whole notification process, as mentioned above, was executed via MFA. The MFA in its response letter stated the following with respect to the procedural aspects.

- That the investigation conducted by the Bern Embassy concerning the aforementioned two Switzerland firms determined that Mir Trade was included in the records as a private post and courier firm; that at the address registered to that firm a Russian firm named Korowo Intevest AG was also registered and the telephones registered to Mir Trade were answered by "Korowo Invest AG"; also that the address of the Mir Trade company was also in the records as the address of Austria-based firm Krutrade but that Krutrade went into liquidation in Switzerland last month.

- The investigation report completed by the Investigation Committee was notified to Glencore İstanbul and Minerkom. However, because of the fact that the representative office of Krutrade in İstanbul was closed, the Ministry of Foreign Affairs was requested to undertake the necessary attempts concerning the procedures of the notification that must be made to the relevant undertaking.

34. When the reason for failure to notify these official documents to the said undertakings is examined, it is seen that the communication of official documents related to competition issues is not directly covered by any international convention either at multilateral or bilateral level.[1]

35. In the meantime, the Competition Authority tried to cooperate with the relevant parties on the basis of substantive provisions found in its international agreements. Therefore, after submitting the necessary information, the Competition Authority mentioned initially the section on competition rules of the Association Council Decision No 1/95 in general in its letter sent to the MFA. Then the Competition Authority added that the provision on the adoption of implementing rules could not been realised so far and mentioned the Article 43 of the Association Council Decision No 1/95 in particular. The Competition Authority was of the opinion that although the implementing rules regarding Association Council Decision No 1/95 were not adopted yet, rights granted by Article 43 could still be used. As a result, Turkish Competition Authority asked the European Commission and Competition Authority of Austria to take the necessary measures against these undertakings within their jurisdiction and carry out on the spot inspections and send the information and documents concerning Turkish market to be obtained during on the spot inspections to the Turkish Competition Authority. Turkish Competition Authority, in line with Article 43/1, provided information and important evidence about the nature of anticompetitive activities.

36. In the same request, articles 17 and 23 of the free trade agreement between Turkey and EFTA states were also cited to have the cooperation of Switzerland. It was mentioned that Article 17 of the free trade agreement was about competition rules and prohibited activities restricting competition which affected trade between Turkey and Switzerland. Thus it enabled any party to take safeguard measures that were determined in Article 23 if one party established any prohibited activities that were carried out in the jurisdiction of the other. Competition Authority further pointed out that first paragraph of Article 23 envisaged consultation between the parties to solve the matter before applying any safeguard measures. As a result, Turkish Competition Authority, in conformity with the Article 23, asked the Competition

[1] Nevertheless, there is no necessity to go into details of whether either the Hague Convention or any other multilateral or bilateral convention to which Turkey, Switzerland and Austria are party covers competition issues. The fact that matters is the existing turmoil regarding the notification of official documents of the Turkish Competition Authority.

Authority of Switzerland to take the relevant measures against the undertakings within the jurisdiction of Switzerland the activities of which affected competition in the Turkish market negatively and conduct on the spot inspections and send the information and documents concerning Turkish market to be obtained during on the spot inspections to the Turkish Competition Authority. Turkish Competition Authority also submitted relevant information and evidence to EFTA authorities and Competition Authority of Switzerland.[2]

37. Finally, the overall experience of Turkey in this process was not so encouraging. European Commission officials informed that they could not share any information and documents about the firms and their activities with any country that is out of the scope of the jurisdiction of the European Commission due to principle of professional secrecy and that Article 43 did not foresee this type of cooperation and thus they could not share information and documents even if an Association Council Decision had been adopted in line with Article 37 of the Association Council Decision No 1/95. Moreover, the Commission officials, in their reply, accepted the justification of such a request, however they argued that such requests caused great sensitivity and discussions, the law firms were well-equipped and aggressive, therefore the Commission had to have strong legal bases, they also faced similar situations in their similar requests and could not obtain information from third countries, trade secrets, insiders as the source of the information and other legal barriers complicated the matters worse. [3]

38. Austrian Federal Competition Authority officials replied that it would be better to handle the matter at Community level rather than at national level and that wording of Article 43 reflected that the parties to the agreement were the Community and Turkey, but not the EU member states or their competition authorities, therefore Association Council Decision did not form a sufficient legal basis for the request of the Turkish Competition Authority.

39. Officials of the Competition Authority of Switzerland replied that on the spot inspections could be carried out when there were signs that anti-monopoly rules in Switzerland were violated, therefore they could not initiate any process against the firms that violated anti-monopoly rules in Turkey and permission of the relevant parties was necessary to send information and documents belonging to Swiss firms. Moreover, they told that they were always open to informal cooperation and would examine the file and it would be possible to initiate legal proceedings if they found any sign that the firms carried out any conduct prohibited in Switzerland. Finally, they told that EFTA process did not have any effect in such cases in practice.[4]

40. Despite all these difficulties, the investigation was carried on. From the gathered information and documents, it is understood that:

- The undertakings importing coal to Turkey has separated the country into geographical regions on the basis of ports such as Black Sea, Marmara, Gemlik, İzmir and İskenderun and established which undertaking or undertakings would make sized coal sales in these regions and at what amounts.

- That it was also established which exporter would sell how much to which importer.

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2 Turkish Competition Authority's contribution to the OECD Questionnaire concerning the CRPs RTAs, 2005.

3 Ibid.

4 Ibid.

- That Krutrade AG and Glencore AG's affiliated companies Glencore İstanbul and Minerkom are in a cooperation which limits competition in the market; that the important parameters of the coal trade indicated a continuous sharing of information between undertakings; that the aforementioned undertakings have controlled big importers and occasionally tried to control the sized coal market in cooperation with some of these companies.

- That the cooperation which aimed at eliminating the competitive pressure and controlling the trade volume was reinforced by exchange of goods between Krutrade and Glencore AG; that the matter of Glencore AG's affiliated company Minerkom A.Ş.'s buying goods from Krutrade had a dimension that went beyond a simple commercial exchange and served to control the Krutrade coal that entered into Turkey; that in a document a Krutrade official stated that they were ready to supply goods to Minerkom A.Ş.; that Krutrade requested regular goods purchases and to be allowed to control stock areas from Minerkom A.Ş..

- That Krutrade AG and Glencore AG officials frequently came together, held meetings and were in a reciprocal information exchange for taking commercial decisions.

- That as per numerous documents in the file, the aforementioned undertakings aimed not to compete with each other and to control the market in cooperation; that these two undertakings tried to maintain the prices at a certain level by controlling the coal trade volume in the market.

- That this strategic cooperation aimed at maintaining high prices and therefore profit margins was based on controlling the actors in the market and the trade volume; that market studies, following the shipments arriving at ports and customs, supervision of importer depots, monitoring the mining areas, stocks, shipments and ship routes of the competitors have emerged as important instruments of this strategy.

- That there was a close relationship between the studies of Krutrade on environmental standards and the control of stock areas of importers and agents; that both activities served an important strategy; that this strategy was based on preventing entry into the market of foreign-origin coals other than Russian coal and thereby maintaining the high price levels.

41. As a result of these assessments, it is understood that, from the beginning of 2003 to the beginning of 2005, Krutrade and Glencore AG and their affiliated companies tried to engage and/or engaged, in summary, in practices of price maintenance, control of amount of supply, complicating the operations of the competitors in the market and the undertakings in the downstream market, making entry into market difficult in the supplier level of the import lump coal market.

42. As a result of these assessments, it was decided:

1. That there was not sufficient evidence to show that Mir Trade AG was in a competition-limiting cooperation within the scope of Article 4 of Act No. 4054 on the Protection of Competition in the import sized coal market together with Krutrade AG, Glencore İstanbul and Minerkom Mineral.

2. Krutrade AG, Glencore İstanbul and Minerkom Mineral ve Katı Yakıtlar Tic. A.Ş. were in a competition-limiting cooperation within the scope of Article 4 of the Act No 4054 on the Protection of Competition in the import sized coal market,

- That even though the decision of the Competition Board on initiating an investigation was notified to Krutrade AG, the investigation report could not be notified and therefore the company's pleas could not be received, so there was no grounds to make a final decision on this undertaking; that nonetheless the Competition Board would follow up on the notification of the investigation report to the aforementioned company and on receiving its pleas; that after its pleas are received the relevant file on this undertaking would be taken into consideration and the final decision would be made,

- That with relation to Glencore İstanbul Madencilikand Minerkom Mineral which were in an economic union, in accordance with paragraph 2 of Article 16 of the Act, an administrative fine of 1% of their gross revenue of the year 2003 would be imposed at discretion and separately, to the amount of 20.269,24 YTL for Glencore İstanbul and 823.194,91 YTL for Minerkom Mineral.

Milk Decision Dated 26.7.2006 and No. 06-56/714-204

43. Upon the notification petition stating that milk enterprises operating in Konya and/or Isparta provinces of Turkey fixed the prices for raw milk purchases, stopped raw milk purchases during certain periods, and milk enterprises and collectors shared regions on village basis; an investigation was carried out about 31 undertakings, 26 of which were milk enterprises and 5 of which were milk collectors.

44. Three different infringements were found during the investigation: (i) 24 undertakings, which had members in Konya Milk and Dairy Products Manufacturers Association (KOSSİMAD), violated Article 4(a) of the Act No. 4054 through agreeing among themselves and determined, outside the market, the price for purchasing raw milk, which is used in manufacturing, from the producer (ii) abovementioned 24 undertakings, which had members in KOSSİAD, violated Article 4(c) of the Act No. 4054 through stopping raw milk purchases during certain periods and (iii) 31 undertakings subject to investigation violated Article 4(b) of the Act No. 4054 through sharing regions on town basis in Şarkikaraağaç and/or Konya.

45. The main evidence indicating the mentioned infringement is KOSSİMAD Regulation, decisions of KOSSİMAD Board of Directors, and some letters.

46. In their defence, the undertakings emphasised that KOSSİMAD Regulation and decisions of KOSSİMAD Board of Directors, which were used as evidence, were not put into effect, it was not possible for all of the manufacturers in Konya to apply the same prices by agreement and in fact raw milk was purchased on different prices in practice.

47. According to Article 4 of the Act No. 4054 "agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services" are illegal. In the article there is no difference between practices having the "object" or "effect" of restricting competition. The fact that undertakings behave in order to restrict competition is sufficient for the realisation of the infringement.

48. After this finding, in the decision in question, it was also stated that there was not an assertion that all of the undertakings applied the same prices in other words they fixed "a single price". Accordingly, it should not be expected that undertakings which have different market powers; different payment conditions and which buy milk with varying percentages of fat, would purchase at a single price. The asserted infringement in the file was about the provisions in KOSSİMAD Regulation toward fixing the purchase prices of raw milk and the decisions taken in meetings to that effect. Therefore, different

purchasing prices among undertakings, even between undertakings and their producers do not prevent the competition infringement. On the other hand, fixing prices of raw milk and stopping raw milk purchases were not put into effect fully and these activities were only attempts; withdrawing membership was not imposed as a sanction; and necessary amendments were made in the Regulation according to the Act No. 4054. These points were taken into account as an extenuation while determining the amount of fine in the decision.

49. The three different infringements were assessed in respect of exemption in the decision. Accordingly, requirements in Article 5 of the Act No. 4054 were not met in respect of fixing raw milk prices and stopping raw milk purchases; therefore it was concluded that exemption was not possible for those infringements.

50. However, the Competition Board decided that infringement through sharing regions on village basis could be granted exemption. The decision is the first decision that gives exemption to region sharing between competing undertakings. In this decision it was concluded, related to the issue in terms of Article 5 of the Act No. 4054, that: Recently, despite the sharing attempts, there are a lot of collectors who collect milk by going door to door in villages in Şarkikaraağaç and Konya. Through this method, even if milk is collected twice a day, it is difficult to improve the quality of the milk. Thanks to central collection and cooperativisation, the quality of milk in western cities is much better than Şarkikaraağaç and Konya. In order to improve quality, milk produced should be put into cooling tanks shortly after it is extracted. It is not possible to argue that the most suitable way to improve the quality of raw milk is village sharing. However such sharing made by the undertakings subject to investigation would make improvements in a limited way in the region that is known for lack of quality. Therefore, exemption requirement in Article 5(a) is met thanks to the improvements realised through village sharing. However it is true that village sharing cannot improve the quality of milk permanently as long as practice of going door to door continues.

51. It is clear that consumers would directly benefit from the improvement in the quality of raw milk. Therefore the requirement in Article 5(b) of the Act is also met.

52. According to Article 5(c) of the Act, competition should not be prevented in a substantial part of the market. The possibility of decreasing competition between milk collectors and dairies as a result of sharing villages is low. In fact, a lot of collectors still go to villages and producers are free to give their milk to the collector they wish. Therefore it was decided that this requirement was also met.

53. According to the last requirement for exemption, competition should not be restricted more than necessary. It is true that competition is restricted to some extent through sharing villages. However this is necessary to improve the quality of milk. Moreover, competition is more restricted by more optimal ways to improve the quality of milk (cooperativisation of villages, central collection, wholesale of milk through tenders) than sharing villages. It is believed that current problem in Turkey's raw milk market is not the scarcity or plentitude of milk. The main problem to be solved is that the quality of the raw milk produced is much lower than it should be. In the light of these assessments, in the decision, undertakings were given exemption in respect of the infringement related to sharing villages.

54. In conclusion, in the said decision, it was concluded that undertakings which had members in KOSSİMAD, shall be imposed fine according to Article16(2) of the Act No. 4054 and the amount of fine was determined to be 0.5% of the gross income incurred at the end of 2004.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws;

55. Following statistics are available regarding mergers and acquisitions handled by the Competition Authority.

Table 6

Number of merger and acquisition files concluded

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

TABLE 7

Results of merger and acquisition files resolved

Year	Authorisation	Conditional Authorisation	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
TOTAL	**579**	**41**	**3**	**318**

2.2.2 Summary of significant cases.

Board Decision dated 29.12.2006 and numbered 06-96/1225-370 In Respect of the Authorisation Transaction as to Acquisition Transaction, by a joint venture entitled THY DoCo Catering Services Inc. set up between THY and DoCo, of Aircraft Services Inc. (USAŞ) Assets Used in Intra-Aircraft Catering Services and Personnel Employed in Intra-Aircraft Catering Services

56. With the transaction which is the subject of notification, USAŞ assets used in intra-aircraft catering services and personnel employed in intra-aircraft catering services shall be transferred to the Joint Venture. Those assets to be transferred in accordance with the agreement encompass tangible assets, customer contracts, leasing contracts and know-how and do not encompass commercial activities that are not intra-aircraft including airport restaurants, passenger halls and laundry services.

57. The transaction in question is a transaction for which an authorisation is required to be taken from the Competition Board under the Communiqué No. 1997/1.

58. The relevant product markets in respect of the subject of file are as follows:

- Intra-Aircraft Catering Services:

59. In airlines, intra-aircraft catering services range from snacks to hot and cold meals. Also, services offered present a diversity in long and short-distance flights, first class, business and economy class flights. Intra-aircraft catering services contain not only the sale of foods and beverages to airline companies but also some additional services including the delivery of foods and beverages to airplanes, the loading and unloading of these products to and from airplanes, the collection and unloading of garbage and wastes, the preparation of foods and the ways of serving foods. Airplane companies prefer to receive such services from a single service organisation rather than from different companies. Therefore, while determining the relevant product market, it is possible to define a single product market for these services offered.

60. In the transaction examined, the relevant product market has been determined as “the market for intra-aircraft catering services” such that it also encompasses the processes provided above.

- Air Transport:

61. Another relevant product market likely to be affected by the transaction is “the market for airline passenger transportation” which is a lower market of catering services.

62. USAŞ is in the position of a leader in the market for intra-aircraft catering services with a high market share (its share in the geographical markets is between 50%-100%) maintained by it for a long time. That it is the supplier of THY realising about 50% of purchases in the market has a major role in it. And the market share of its closest competitor Sancak Aviation Services Inc. (Sancak) has been reported to be 18,4%. According to the information that takes place in the Notification Form, the other two catering companies Akyol Food Tourism Construction Petroleum Trade Co. Ltd. (Akyol) and Beştepe Food Security Cleaning Construction Tourism Industry Trade Co. Ltd. (Beştepe) operating in Samsun and Kayseri have newly entered the market.

63. USAŞ has enough production facility area in airports other than Atatürk Airport. Even though there exists the possibility to set up a production facility outside an airport, setting up the production facility inside an airport is more advantageous.

64. In article 3 of the Act No. 4054, dominant position has been defined as “it expresses the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers.” The most important indicators in an analysis of dominant position are regarded as the market share, barriers to market entry, the buyer power and the number of the other enterprises in the market. In the transaction which is the subject of notification, the overall market share of USAŞ has been reported to be 81,6 % and that of Sancak to be 18,4%. There have been no new market entries for long years and two undertakings operated in the market, and Eurest which was the third firm in the sector was acquired by

USAŞ. And the firms Akyol and Beştepe which commenced serving in the recent years started operating in Samsun and Kayseri airports where USAŞ had no facility.

65. Besides securing the conditions sought for and paying some fees to DHMİ (State Airports Authority) in order to obtain a catering licence in entering the market for intra-aircraft catering, it is also required to possess a particular know-how. And that the minimum efficient scale required for production in the catering market is above the capacities of small airline companies complicates that airline companies resort to full vertical integration (that they also offer the catering service themselves). Also, due to the fact that performing the production at an airport can be more advantageous than performing it outside and bringing to an airport and carrying to an airplane, high leasing fees and physical space constraints at airports may as well complicate potential entries.

66. We may list the major reasons for a few number of firms to operate in the Turkish market for intra-aircraft catering service as its requirement for know-how, scale economies and long-term exclusivity agreements (particularly with THY).

67. Even though barriers to market entry for the catering market are relatively not high, they can be important in terms of large airports in particular.

68. However, that THY has a large share like 66% in the customer portfolio of USAŞ and that THY as a purchaser forms about 50% of the total purchases in the market indicate that THY has an important purchasing power and constitutes an element of competitive pressure in the market. For this reason, in the current situation, it is difficult for USAŞ to affect the market parameters unilaterally.

69. On the other side, in those applications entered in the records of the Competition Authority with the date 13.12.2006 and numbers 8535, 8536, 8537 and 8538, it is mentioned that as a result of the acquisition, by THY-DoCo Catering Services Inc. where THY is a partner, of all assets of USAŞ found in 9 airports, concerning intra-aircraft catering, costs of one of the most important items forming the costs of competing airlines would increase or access to such item would become impossible, that there were considerable legal and de facto barriers to entry in the market, that it was extremely controversial whether Sancak would be able to meet demands to be addressed to it given the existing capacity and service opportunities, and that competitive conditions lacking in the market would further worsen since this transaction would, in the market for airline catering services, also eliminate the possibility of reaching the largest customer of this market, and it is requested from the Competition Board that it does not authorise the acquisition transaction which is the subject of complaint.

70. In the light of all information and assessments provided above, the transaction may have important effects on the market for intra-aircraft catering. Primarily THY is in the position of a leading undertaking which has a significant market power in domestic and international lines transportation. And USAŞ holds a market share of about 82% in the market for catering services. It is provided for that USAŞ transfers its existing assets, know-how and customer portfolio to the joint venture to be newly set up and exits the market. Since THY is an important purchaser in the market, the transaction may have the effect of foreclosing the largest customer of the market to the existing and potential competitors in the upper market (customer foreclosure). However, in case the condition that THY continues to make its catering service purchases in competitive conditions be realised, which is provided for by a Competition Board Decision in relation to an application for authorisation as to setting up the joint venture entitled THY DoCo Catering Services Inc., set up between THY and DoCo, a likely customer foreclosure effect that may occur in the relevant market after the transaction can be prevented and hence, creating a dominant position or strengthening an existing dominant position via the transaction which is the subject of notification that may significantly reduce competition in the relevant market can be hindered.

71. On the other hand, although the acquisition transaction which is the subject of notification takes place in the market for catering services, it may also affect the market for airline transportation which is a lower market, due to its vertical effects. It is required that the joint venture avoids practices that may lead to discrimination among THY and the other airline companies so that competition in the market for airline passenger transportation is not adversely affected by means of creating "an effect of increasing costs of competitors" because of the market conditions to form after the transaction which is the subject of notification. Along these lines, the transaction which was the subject of notification has been authorised on condition that the Joint Venture avoided behaviour that might lead to discriminative practices among THY and the other airline companies, for purposes of preventing the creation or strengthening of a dominant position resulting in a significant decrease of competition.

72. Furthermore, limiting the duration of the prohibition on competition to be imposed on USAŞ with the article 7.1. of Asset Transfer Agreement between USAŞ and THY DoCo Catering Services Inc. to 2 years has also been introduced as a requisite condition for authorisation.

Board Decision In Respect of the Privatisation of Antalya Port dated 09.10.2006 and numbered 06-72/951-273

73. The subject of the file is related to authorising the transaction that 99% share of Antalya Port be transferred to either of Mediterranean Inc. and IC İçtaş which are the highest bidders in the tender opened by TMSF (Savings Deposit Insurance Fund).

74. Since as a result of the notified transaction the control of Antalya Port would change hands, the transaction is an acquisition within the meaning of article 2 of the Communiqué No. 1997/1, and the acquisition transaction is subject to authorisation in accordance with article 4 of the Communiqué referred to as the market shares of the port were 100% in dry bulk, 51,67% in liquid bulk, 79,24% in general cargo and 100% in container handling.

75. How competition in the market would be affected with regard to the transaction which was the subject of notification has been separately examined in terms of cargo and passenger ports. Because, Global Investment which is one of the partners of Mediterranean Inc. that is one of the likely parties to the acquisition is already in the position of the larger partner of Kuşadası Port that is the largest cruiser port of Turkey.

76. When an assessment has been made as to dry bulk and liquid bulk, general cargo, container handling services, the opinion concluded was that the transaction which was the subject of notification would not give rise to any drawbacks, taking into consideration that Antalya Port was not among the important ports of Turkey and that Mediterranean Enterprises Inc. (Mediterranean Inc.) and IC İçtaş Airport Investment Operation and Trade Inc. (IC İçtaş) that were the highest bidders in the tender did not have operations in the relevant service markets.

77. And the second and more important issue to be assessed under the file in relation to Antalya Port is the likely effects that may occur in the cruiser port operation business in case the Port be acquired by the highest bidder Mediterranean Inc. In Turkey, there are still 6 major cruiser ports, being İstanbul, İzmir, Kuşadası, Antalya, Alanya and Marmaris. Although besides these ports, Fethiye, Dikili and, with its existing wharf, Bodrum Ports are also referred to as cruiser ports, they do not remarkably possess a market as medium and large-size cruiser ships cannot berth due to the fact that their quay length is inadequate. As of 2005, Antalya Port ranks the last among the Turkish cruiser ports, with a market share of 4,23% in terms of the number of berthing ships, and 4,01% in terms of the number of passengers. On the contrary, Kuşadası Port operated by Aegean Port Enterprises Inc. where Global Investment which is one of the partners of Mediterranean Inc. is the larger shareholder appears at the forefront as the most important port

in the market with a market share of 46,62% in terms of the number of ships and 37,80% in terms of the number of passengers.

78. Concentration rates are needed to be known in order to be able to see the market effect of the acquisition transaction. Concentration rate is chiefly measured by employing two methods. The first of them is the so-called CR4 method where market shares of the first four firms are taken as the basis. And the second is the HHI index which is calculated by adding the squares of market shares of all undertakings involved in the market. In this manner, market shares of firms are weighted by means of multiplying by themselves, and while firms with a high market share increase the index more, the index impact of firms with a low share turns out to be lower. HHI, as different from a four-firm concentration rate (CR4), ensures that one is informed not only about the situation of the four largest firms but also about the remaining part of the market, and at the same time emphasises the importance of large firms in the market by attaching more weight to shares of them.

79. In the HHI test, both the post-merger concentration rate that formed in the market and the increase that occurred in the concentration rate due to the merger are taken into consideration. Assessment is made under the following framework:

80. **Post-merger HHI < 1000:** Those markets below this threshold are regarded as not concentrated, and it is considered that mergers to occur in markets of this status do not bear competition-hindering effects.

81. **Post-merger HHI between 1000 and 1800:** Those markets that take place within this range are regarded as concentrated to a medium extent, an increase less than 100 units that occurs in the HHI (Δ) is regarded as having the nature of not limiting competition.

82. **Post-merger HHI > 1800:** Those markets above this threshold are regarded as concentrated to a high extent. If post-merger increase to occur in the index in markets concentrated to that extent is more than 100 units, it is regarded that the merger would yield an effect of creating or strengthening market power.

83. In the calculation made by employing market share data 2005 as regards the subject of examination, the HHI index value has been determined as 3005 prior to the transaction. Such value points out a highly concentrated market structure. Given the fact that the rate of change in the HHI (Δ) is 394 and that this figure is well above 100 which is the envisaged rate of change (should an increase to occur in the index for the value in question be more than 100 units, it is regarded that the merger would yield an effect of creating or strengthening market power), making an assessment on the special conditions of the transaction and market bears great importance.

84. First, it would be beneficial to put forward the characteristics of Antalya Port as a cruiser port. From among a total of 9 wharfs of the port, those quays no. 8 and 9 with a depth of 9.20 m and a length of 170 and 140 m have been allocated for cruiser ships. It was expressed by an official of Antalya Port that because the depth of quays of passenger ships was not sufficient, cruiser ships arriving at Antalya Port were generally small ships with a capacity of 1500 people and those cruiser ships for 2500-3000 people could not come to the port. Also, it was mentioned that it was possible to deepen the port by means of combing the sea but the cost of investments in question was quite high. On the other hand, that the length of quay of Antalya Port is 140-170 m limits the capacity of the port to receive ships (In Kuşadası Port which already has the nature of being the largest cruiser port of Turkey, the lengths of quay are between 183 to 264 m). Dikili Port which has a quay length of 132 m and Çeşme Port which has that of 160 m like Antalya Port are the other ports where large cruiser ships cannot berth and which therefore could not gain weight in cruiser tourism. On the other side, that the quays in question take place in between areas used by

the Soil Products Office (TMO) and the Coast Guard Command would physically restrict expansion works to be performed at the port aimed at cruiser ships.

85. Another reason Antalya Port could not appear on the forefront in the field of cruiser tourism is seen as the farness of the port to popular routes. Large cruiser ships that include the East Mediterranean in their courses mainly prefer to stop at ports of Greece and the Turkish ports in the Aegean Sea such as Kuşadası, İzmir, Marmaris. Passage of ships to Antalya side prolongs the course, and it is not preferred by passengers of cruisers as daytime voyage in the open sea does not allow any sight-seeing. For this reason, Antalya Port is mainly preferred by passengers of cruiser ships who fly to Antalya and make short East Mediterranean trips to Lebanon, Egypt, Israel, Greek Cypriot Side (home port). Therefore, the nature of cruiser tourism for Antalya bears a somewhat different nature than is for Kuşadası, İzmir, Marmaris and İstanbul in tours covering Greece and Italy which take place on close and popular courses of the East Mediterranean.

86. Another important issue taken into consideration in assessment is that cruiser lines are quite flexible while determining a place to stop by. In other words, taking into consideration that in the event that operators of cruiser lines encounter certain adversities at a port they stop by, they are able, with a simple change of course, to make another port with suitable conditions the port to stop by; it is assessed that market shares in this sector shall vary largely over the course of time. That the market share of İzmir Port by the number of passengers rose from 0,63% in 2003 to 8,67% in 2005, or that the market share of Antalya Port by the number of ships fell from 11,99% in 2003 to 4,23% also has the nature of upholding this assessment. Besides them, for purposes of serving cruiser ships which are increasingly qualified as a rising value in tourism, new cruiser ports are being constructed in our country. As to Kepez Port which is located in Çanakkale and started operating just 6 months ago, Bodrum Port whose construction in Bodrum is underway and which is planned to be opened in 2007, and a cruiser port planned to be constructed in Antalya Lara, each is assessed to be strong competitors to cruiser ports already operating. In the event that these ports attract cruiser lines that determined Turkey as a place to stop by via both the lowness of port service fees, service quality and the other advantages secured by them, it is envisaged that serious changes may take place in the market shares given above as to the year 2005.

87. However, it is required to mention that as regards cruiser ships, Antalya Port is under a competitive pressure particularly stemming from Alanya Wharf. According to 2004 data in the city of Antalya, the Middle East Antalya Port with 54.117 passengers and a market share of 40,43% ranks the second following Antalya Wharf with 70.000 passengers and a market share of 52,30%. Furthermore, it was expressed by a Middle East Antalya Port official that until August 2006, 30 navigations were scheduled by cruiser ships for Antalya Port and 90 for Alanya Wharf.

88. Within such framework, it has been concluded by the Competition Board that in case Antalya Port be acquired by the highest bidder Mediterranean Inc. and the total market share reached 50,85%, a drawback would not form in the context of Article 7 of the Act No. 4054 under information as to cruiser services and characteristics of the port; the acquisition of Antalya Port by IC İçtaş would also not create a drawback due to the fact that the second highest bidder IC İçtaş did not have any operations in respect of cruiser services.

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

89. Act No. 4054 empowers the Competition Authority to opine, directly or upon the request of the Ministry, concerning the amendments to be made to the legislation with regard to the competition law Moreover, the Competition Authority is also given the authority to opine about decisions to be taken as to the competition policy, and the relevant legislation. As part of these advocacy powers, various opinions

have been forwarded in 2006 to relevant governmental authorities regarding draft bills or draft laws or draft implementing regulations regarding patents and utility models, public procurement, civil judgements, pharmacists, and licences in the petroleum market. Moreover, it also sends opinions to some industry associations as part of its advocacy role such as the one sent in 2006 to a petroleum industry association.

90. Two of these opinions will be summarised by citing some of the most important views expressed and recommendations made by the Competition Authority.

91. In its opinion on draft law regarding patents and utility models, the Competition Authority appreciated the adoption of the principle of international exhaustion by the draft law instead of the principle of national exhaustion in the current decree law as the principle of international exhaustion is compatible with the essence of the Act No. 4054 as well as with the approach of the Competition Board so far. Moreover, in addition to other situations in the draft law where compulsory licences might be granted by courts or the Council of Ministers, the Competition Authority recommended that a provision be inserted into the draft law enabling the Competition Board to require the rightholder to provide compulsory licences where it is necessary to protect competition in the market.

92. Regarding the opinion by the Competition Authority on draft bill to amend the law on pharmacists and pharmacies, the Competition Authority opposed to and recommended the removal of the provision aiming to bring a limit on the number of pharmacies based on the number of population. The Competition Authority mentioned that building barriers to market entry via such a limit would not produce a public benefit and would only increase the profitability of the existing pharmacies. Moreover, the Competition Authority also opposed a provision in the draft bill that regulates sale of certain products other than human medication such as baby food and veterinary medication exclusively in pharmacies arguing that their sale only by the pharmacies was not compulsory for public health. It was argued that this provision restricted competition more than necessary and would disable consumers to find such products at cheaper prices at more points of sale. Another provision contested by the Competition Authority was the one enabling the Ministry of Health to fix retail prices of the medicines. The Competition Authority favoured the existing provision setting price ceiling and allowing the pharmacies to compete below that price and it advocated that the provision should be removed from the draft bill.

4. Resources of Competition Authorities

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

4.1.1 Annual budget (in your currency and USD)

Annual budget of the Competition Authority is 16 125 579,83 YTL (approximately USD 12 000 000)

4.1.2 Number of employees (person-years)

- economists; 32
- lawyers; 20
- other professionals[5]; 74

[5] Other professionals are composed of those graduated from Management, International Relations, Political Sciences and Management/Industrial Engineers Departments of the faculties. According to Article 35 of the Competition Act, the following qualifications are sought for enabling appointment as assistant experts on competition "To be a graduate of at least four-year higher education from faculties of law, economics, political sciences, management, economic and administrative sciences, or from management engineering or

- support staff; 195
- all staff combined; 321.

4.2 Human resources (person-years) applied to

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

93. All tasks mentioned in a, b and c are carried out by competition experts and assistant experts total number of whom is 103.

4.3 Period covered by the above information:

94. Above information covers 2006.

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

Annual Report by the Competition Authority, 2006, available in Turkish at www.rekabet.gov.tr

Symposium on Recent Developments on Competition Law, held in Erciyes University on April 7, 2006, available in Turkish and English.

industrial engineering departments, or of higher education institutions abroad which are deemed equivalent to them". Therefore, professional staff is not only composed of lawyers and/or economists.