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**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**English - Or. English**

## **Annual Report on Competition Policy Developments in Turkey**

**21-23 June 2017**

*This report is submitted by Turkey to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.*

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## Executive Summary

1. Overall examination of the Turkish Competition Authority's (TCA) activities shows that in 2016 a total of 324 cases were finalized. Among these cases, 83 cases concerning competition infringements were finalized following preliminary examinations, preliminary inquiries and investigations conducted under the provisions of Articles 4 and 6 of the Act No 4054 on the Protection of Competition (the Competition Act), 33 cases were negative clearance/exemption decisions based on Article 5 and 8 of the Competition Act, and 208 cases were merger/acquisition/privatization/joint venture decisions based on Article 7 of the Competition Act.

2. While the total number of final decisions displayed a downward trend in recent years, we observed an increase in the number of final decisions for 2016, where the corresponding number for 2014, 2015 and 2016 were 437, 282 and 324 respectively. This overall increase observed for 2016 is however based totally on the increase in the number of final decisions concerning merger/acquisition/privatization/joint ventures. Accordingly, the number of final decisions concerning infringements of competition<sup>1</sup> and negative clearance/exemption cases has displayed a decline this year. The number of finalized decisions for anti-competitive agreements and abuse of dominance in 2014, 2015 and 2016 was 163, 89 and 83 respectively. And, the number of final decisions about exemption/negative clearance decisions is down to 33 in 2016, from 59 in 2014 and 35 in 2015. Whereas, the number of final decisions concerning merger/acquisition/privatization/joint venture cases has increased from 158 in 2015 to 208 in 2016.

3. The percentage decrease in the number of infringements of competition and exemption/negative clearance decisions from 2015 to 2016 was 7% and 6%. These declines are quite trivial when we compare the corresponding statistics for the previous year, which were 45% and 40% respectively.

4. Regarding the infringements of competition decisions, it is observed that in 2016, 47% of these cases were related to petroleum and petrochemicals sector, transportation goods and services sector, and food, agriculture and livestock sectors. A large part of the exemption/negative clearance decisions finalized in 2016 stemmed from applications related to pharmaceuticals and health services, finance and transportation sectors. These 3 sectors accounted for almost 67% of all the clearance/exemption decisions.

5. On the other hand, the number of final decisions regarding merger/acquisition/privatization notifications has risen considerably as already mentioned above. When we look at the sectorial distribution of final decisions on merger/acquisition/privatization notifications, we find that sectors that produced most notifications in the order of their share in the distribution were: chemical products, transportation goods and services, energy, information and telecommunications and food sectors. In recent years only one merger/acquisition notification was blocked and it was in 2015, all notifications in 2016 were cleared without conditions or remedies.

6. 2016 was an active year for investigations. In 2016, TCA opened 14 investigations and concluded 20 investigations. The total amount of administrative fine

<sup>1</sup> Infringements of competition cases are anti-competitive agreements prohibited by Article 4 of the Competition Act and abuse of dominance cases prohibited by Article 6.

for these infringements of competition cases amounted to 133.7 million Turkish liras approximately.

7. As for developing competition legislation, TCA continued its intense work in 2016. The priority in terms of regulation activities were given to the amendments envisaged to be made to the Competition Act, aimed at implementing regulations parallel to the EU and developed country practices, increasing legal certainty for undertakings, decreasing red-tape, and directing TCA's resources to more severe competition infringements. The work on the "Draft Law Amending the Act on the Protection of Competition as well as some Laws and Statutory Decrees" prepared within that framework is currently under way at the Office of the Prime Minister. In addition a large number of secondary regulations were adopted by the Competition Board and put into force. Some of these concern an amendment to the legislation regulating the applications to be made to the Competition Authority under the Notification Law no 7201 and the E-Notification Regulations in order to have applicants include their electronic notification addresses as well as their physical contact and notification addresses. Among the remaining secondary regulations that came into force in 2016, we find it beneficial to emphasize the Communiqué Amending the Regulation of the Right of Access to the File and Protection of Trade Secrets (Communiqué No: 2016/2) as well as the Block Exemption Communiqué on Research and Development Agreements (Communiqué No: 2016/5) due to their significance in terms of the changes they made in practice. Currently, there is ongoing work at the TCA on a large number of secondary regulations, a significant portion of which is anticipated to be completed within 2017.

8. In 2016, within the framework of competition advocacy activities, TCA have concluded and shared with the public two sector inquiries on "movie theatre services" and the "cement sector". These contributions served to reveal any competitive problems in the aforementioned sectors and to develop proactive methods to deal with these problems, and we believe that they were very important both for TCA and the undertakings operating in the relevant sector. Moreover, a sector inquiry into the hazelnut market was initiated in 2016. In addition, within the scope of competition advocacy activities, communication with the stakeholders have been maintained without interruption. The aim of this communication is to introduce competition law and policy as well as the activities of TCA to an audience as large as possible.

9. In 2016, TCA also continued its activities in the international arena. This is because, in a globalizing world, it is important for competition authorities to constantly engage in information exchange to ensure that competition law practices are established and continuously developed. Within this framework, TCA attended many international meetings, including those organized by the Organization for Economic Co-operation and Development (OECD) and the International Competition Network (ICN), in which we found the opportunity to share the activities of TCA with other participants. Furthermore, in light of its experience of almost 20 years, Competition Board also took on various tasks within the framework of the technical assistance provided to the Organization of Islamic Cooperation (OIC) member-states through the Statistical, Economic and Social Research and Training Center for Islamic Countries (SESRIC). Within this framework, Pakistani Competition Commission and the Cameroon Competition Commission members were given information on "Competition Law Policy" and the experiences of the TCA were shared. Again within the scope of the Authority's international training activities, information on various subjects were shared with the Board Members and personnel of the Turkish Republic of Northern Cyprus Competition Board.

10. Last of all, we believe it must be emphasized that TCA is very aware of the importance of human resources in order to achieve the goals it has set for itself. It is only as a result of the work of the human resource that the tasks assigned to the Authority may be carried out in an efficient and productive manner. As a result of this awareness, TCA attaches great importance to the training of its personnel. Consequently, in 2016 as in the previous years, professional staff were provided with opportunities to complete their master's degrees and to participate in various meetings abroad. As part of its continuous efforts to increase its staff's capacity, TCA has sponsored some of its case handlers' graduate degrees at the high end universities such as Harvard University and Pennsylvania State University. In addition, in-service training programs organized in 2016 contributed to the professional and cultural development of the professional staff and other personnel.

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

### 1.1. Summary of the new legislations

#### *1.1.1. Block Exemption Communiqué on Research and Development Agreements Communiqué No: 2016/5*

11. There has been significant developments in both Turkey and the European Union during the 13 years of implementation of the Block Exemption Communiqué on Research and Development Agreements, no 2003/2, which was published in the Official Gazette dated 27.8.2003 and numbered 25212, in order to set out the conditions for granting block exemption to research and development (R&D) agreements signed between undertakings from the application of the Article 4 provisions of the Act no 4054. In order to ensure that both the developments in the competition legislation of Turkey and the changes introduced by the EU Commission Communiqué dated 14.12.2010 and numbered 1217/2010 are reflected in the legislation, Communiqué no 2003/2 was reviewed in detail; as a result Communiqué no 2016/5, prepared within the framework of the studies conducted, was adopted with the Competition Board decision dated 10.02.2016 and numbered 16-04/60-RM(3), and later was put into force after its publication in the Official Gazette dated 16.03.2016 and numbered 29655.

#### *1.1.2. Notification form annexed to “Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings”*

12. An amendment made to the Notification Law no 7201 on 11.01.2011 allowed electronic notifications and the E-Notifications Regulations were put into force following their publication in the Official Gazette dated 19.01.2013 in order to address the details on this issue. In accordance with the aforementioned arrangements, in order for TCA to make electronic notifications, the legislation regulating the matters related to the applications made to TCA had to be amended to include the electronic notification addresses of the applicants, in addition to their physical contact and notification addresses. To that end, “Negative Clearance/Exemption Notification Form” was adopted and put into force with the Competition Board decision dated 21.1.2016 and numbered 16-03/58 RM (2), to be annexed to the Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings.

## 1.2. Summary of the changes made to the existing legislations

### *1.2.1. Changes made to the “Communiqué on the Regulation of the Right of Access to the File and Protection of Trade Secrets”*

13. “Communiqué Amending the Communiqué no 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets,” prepared with an aim to make the process of accessing files more tangible and comprehensible for undertakings, was adopted with the Competition Board decision dated 14.01.2016 and numbered 16-02/43-RM(1), and was put into force after publication in the Official Gazette dated 31.01.2016 and numbered 29610.

### *1.2.2. Changes made to the “Communiqué on Mergers and Acquisitions calling for the Authorization of the Competition Board” and “Communiqué on the Application Procedure for Infringements of Competition”*

14. An amendment made to the Notification Law no 7201 on 11.01.2011 allowed electronic notifications and the E-Notifications Regulations were put into force following their publication in the Official Gazette dated 19.01.2013 in order to address the details on this issue. In accordance with the aforementioned arrangements, in order for the TCA to make electronic notifications, the legislation regulating the matters related to the applications made to TCA had to be amended to include the electronic notification addresses of the applicants, in addition to their physical contact and notification addresses. To that end, the “Communiqué Amending the Notification Form on Mergers and Acquisitions Annexed to the Communiqué on Mergers and Acquisitions calling for the Authorization of the Competition Board” and the “Communiqué Amending the Communiqué on the Application Procedure for Infringements of Competition” were adopted with the Competition Board decision dated 21.01.2016 and numbered 16-03/58 RM (2), and were put into force after publication in the Official Gazette dated 13.02.2016 and numbered 29623.

## 2. Enforcement of competition law and policies

### 2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions.

#### *2.1.1. Summary of significant cases- Examples from the decisions on anti-competitive agreements*

*İzmir Chamber of Jewellers Investigation [decision date: 27.10.2016 , decision number: 16-35/603-268]*

15. Investigation to determine whether İzmir Chamber of Jewellers violated the Competition Act by setting selling prices of gold for jewellers in İzmir and by sanctioning those who refused to comply with those prices.

16. **Relevant Market** (product; geographic): Jewellery; İzmir

17. **Findings:** On-the-spot inspections uncovered documents suggesting that the Chamber tried to maintain both buying (scrap prices) and selling prices for quarter, half, full and ata coins. Information, documents and statements clearly revealing price fixing

showed that jewellers in İzmir took rather detailed decisions on a district-by-district basis concerning product-specific prices and discount rates both in the sales of products such as bracelets, quarter, half and ata coins, and in scrap purchases, with the full knowledge of the Chamber. Documents showed that the Chamber placed certain limits on sales prices and discount rates for bracelets as well as quarter, half and ata coins. In line with the information, documents acquired and interviews conducted within the framework of the file, it was seen that the behaviour and the recommended price practices of the Chamber led to “*price fixing*” and was generally accepted and practiced by the jewellers. Certain sanctions were foreseen in case of non-compliance with the “*price fixing*” decisions taken at the meetings held under the leadership of the Chamber, and compliance with the aforementioned price fixing was monitored via representatives. In addition, even though some jewellers stated that the Chamber did not engage in conduct aimed at controlling prices during interviews, there were also many jewellers who stated that the Chamber forced jewellers to abide by the prices published. The large number of donation invoices found during on-the-spot inspections at the Chamber facilities were in support of the claims of some jewellers that the Chamber imposed fines and collected these fines under the name of donations. Investigation thereof revealed that the Chamber played a decisive role in buying and selling prices for gold. The information gathered during the investigation showed that the price fixing practice started towards the middle of 2014 and continued until August 2015.

18. **Conclusion:** It was decided that İzmir Chamber of Jewellers violated Article 4 of the Competition Act, and thereof an administrative fine was imposed on the Chamber under Article 16 of the Competition Act.

*Computer and Console Gaming Software Investigation [decision date: 07.11.2016, decision number: 16-37/628-279]*

19. Investigation to determine whether Aral Oyun Konsol ve Aksesuar Ticaret A.Ş. (Aral) colluded with main game retailers (Bimeks Bilgi İşlem ve Dış Tic. A.Ş. (Bimeks) , Doğan Müzik Kitap Mağazacılık Pazarlama A.Ş.(DR), Teknosa İç ve Dış. Tic. A.Ş. (Teknosa) and Vatan Bilgisayar San. ve Tic. A.Ş. (Vatan)) for those computer and console games. The investigation later expanded to consumer electronics on Bimeks, Teknosa, Vatan, LG Electronics Tic. A.Ş. (LG), MS İstanbul İç ve Dış Tic. Ltd. Şti. (MS), Türk Philips Ticaret A.Ş. (Philips), Vestel Ticaret A.Ş. (Vestel) in order to determine whether these undertakings violated Article 4 of the Competition Act, Gold Teknoloji Marketleri San. ve Tic. A.Ş. (Gold) and Kliksa İç ve Dış Tic. A.Ş. (Kliksa) also included in this investigation at a later time.

20. **Relevant Market** (product, geographic): Not defined

21. **Findings:** On-the-spot inspections uncovered documents from 2011 to 2015 between Aral and some retailers selling computer and console games, concerning increasing (or maintaining) the prices of certain computer and console games. These documents were analysed to see whether the relationship each retailer had with Aral indicated an arrangement aiming to increase retail sales prices in the market for computer and console games. After the examination of documents, it was concluded that Aral made individual agreements with DR, Vatan, Teknosa, Kliksa and Gold to restrict price competition in the market for computer and console games. On the other hand, no findings were discovered suggesting that competing retailers shared competition sensitive information through their common provider, Aral, such as their future prices.

22. On the other hand, examination of the documents acquired in the consumer electronics market showed that the goal of the alleged practices for which Teknosa and MS, explicitly demanding an intervention to rivals' prices, and LG, responding positively to that demand, was to set the prices for LG products out of the market and to restrict price competition. It was concluded that LG was individually in collusion with Teknosa and MS to maintain retail prices. Investigation in the market also revealed that Vestel and Philips engaged in retail price maintenance in their distribution system.

23. **Conclusion:** It was decided that Aral violated article 4 of the Competition Act by concluding agreements with DR, Vatan, Teknosa, Kliksa and Gold to fix retail prices in the computer and console games market; LG, by concluding agreements with MS and Teknosa to fix retail prices in the consumer electronics market and Vestel and Philips, by fixing resale prices of undertakings in their distribution system in the consumer electronics market. The aforementioned undertakings were imposed administrative fines under article 16 of the Competition Act. The alleged infringements in the consumer electronics market towards Vatan and Bimeks were rejected due to insufficient evidence.

*Aegean Region Cement Investigation [decision date: 14.01.2016, decision number: 16-02/44-14]*

24. Investigation to determine whether cement producers operating in the Aegean Region violated the Competition Act by collusively raising cement prices and allocating certain locations and customers.

25. **Relevant Market** (product; geographic): Grey cement; Aegean Region [consisting of İzmir, Aydın, Muğla, Manisa, Denizli, Burdur, Uşak and Isparta provinces]

26. **Findings:** The investigation assessed whether the conducts of the alleged undertakings during the period from January-March 2013 to October-December 2014 and the performance data of the market had any similarities to those in the markets where competition was prevented, distorted or restricted. This assessment was done by comparing the January 2009-January 2013 period, which can be taken as a reference for normal market conditions, with the period from January-March 2013 to October-December 2014. As a result of the above comparisons, it was determined that the price increases in the period from January-March 2013 to October-December 2014 were significantly higher than those in the January 2009-January 2013 period, and that these increases could not be explained through rational and reasonable justifications such as increases in costs or demand. Besides, it was also observed that price increases significantly higher than cost increases were also reflected in the profit margins of the undertakings under investigation and that there were large increases in the rates of return of the undertakings. It was determined that the undertakings under investigation made changes in the regions to which they were selling as well as in their sales concentrations to these regions after January-March 2013, with undertakings increasing their sales made to the province they were based in and its neighbourhood.

27. In light of the market structure/performance and behaviour together with the communications between the parties, it was concluded that the undertakings under investigation engaged in concerted practices prohibited by Article 4 of the Competition Act, by collusively allocating regions and raising prices during the period from January-March 2013 to October-December 2014, which was also supported by the results of the analyses.



28. **Conclusion:** It was decided that cement producers in the Aegean Region violated Article 4 of the Competition Act by allocating regions and raising prices through their concerted actions, and thereof administrative fines were imposed on the undertakings concerned under Article 16 of the Act.

### 2.1.2. Summary of significant cases- Examples from the decisions on abuse of dominance

*Türk Telekom Facility Sharing Investigation [decision date: 09.06.2016, decision number: 16-20/326-146]*

29. Investigation to determine whether Türk Telekomünikasyon A.Ş. (Türk Telekom) abused its dominant position by delaying, complicating and/or obstructing the facility sharing applications made by Vodafone Net İletişim Hizmetleri A.Ş. concerning the ports it had to open in order to use the fiber optic infrastructure for which it acquired the right of usage by winning the tender initiated by Türkiye Elektrik İletim A.Ş. in 2013.

30. **Relevant Market (product; geographic):** “Physical infrastructure elements such as pipes, channels, compartments, manholes, poles/towers, and unlit fiber”, “Physical infrastructure market”; Turkey

31. **Findings:** The investigation assessed the position of Türk Telekom and other operators in the market, the barriers to entry and growth in the market and the negotiation power of alternative operators in comparison to Türk Telekom, as a result of which it was determined that Türk Telekom held dominant position in both relevant market of “physical infrastructure elements such as pipes, channels, compartments, manholes, poles and towers, and unlit fiber” and in the market for “physical infrastructure,” which had the characteristics of a downstream market within the framework of the file.

32. The analyses revealed that Türk Telekom engaged in conduct and behaviour to complicate the activities of its rivals, resulting in a “refusal to deal”. These included the following: “estimating long ground study durations”, “asking high fees for ground studies”, “asking high monthly maintenance and operation fees”, “forcing those operators who purchased the facility sharing service from Türk Telekom to also purchase maintenance and operation services from Türk Telekom”, “entitling Türk Telekom to make unilateral changes to the facility sharing contract”, “assessment of further requests by those operators who purchased the facility sharing service from Türk Telekom other than capacity increase (such as switching, disassembly, etc.) as new requests”, “Türk Telekom requiring a contract to consider facility sharing requests”, “lack of a service level obligation in the contract signed between Superonline and Türk Telekom”, “failure to comply the Information and Communication Technologies Authority decisions outlining the duration for the operationalization the facility and instead including a provision in the contract stating that the facility to be shared would be made operational based on a work plan to be prepared”, “refusal of facility sharing requests on the grounds that ground studies could not be completed since the manhole was lost, since a car had parked on the manhole and since the manhole was filled with water and/or soil”.

33. **Conclusion:** It was decided that Türk Telekom violated Article 6 of the Competition Act and thereof an administrative fine was imposed on the undertaking under article 16 of the Act. Furthermore, opinion letters were sent to the Ministry of Transport, Maritime Affairs and Communication, Information and Communication Technologies Authority concerning the negative effects of reporting partial routes within the scope of the facility sharing service on the facility sharing process.

*Yemek Sepeti Investigation [decision date: 09.06.2016, decision number: 16-20/347-156]*

34. Investigation to determine whether Yemek Sepeti Elektronik İletişim Tanıtım Pazarlama Gıda Sanayi ve Ticaret A.Ş. (Yemek Sepeti) abused its dominant position by preventing advertisements of competing platforms, offering promotions to restaurants for refusing to work with competing platforms, removing member businesses from the system if the member business offered discounts and promotions to their users at their own websites, setting very high commission rates and through the *Joker*<sup>2</sup> application.

35. **Relevant Market** (product; geographic): Online food ordering platform services; “in cities where Yemek Sepeti is active”, “Turkey”

36. **Findings:** During the investigation, the most favoured customer (MFC) clause was examined in detail since it was found that this clause Yemek Sepeti used for member businesses could lead to restrictive effects on competition. The MFC clause included in the contracts of Yemek Sepeti, which was found to hold dominant position in the relevant market, prohibited restaurants from engaging in any practices which might disadvantage Yemek Sepeti in terms of prices, products, campaigns, promotions and menus either at their own facilities or through any channels (such as their own call centers or call center services they procured from third parties) and on competing platforms offering online food ordering services, and required that such practices be offered at least on the same conditions as those offered at Yemek Sepeti. These conditions were found to serve as a barrier to member businesses providing more affordable prices or promotions that would disadvantage Yemek Sepeti on any competing platforms. If Yemek Sepeti discovered such practices, it either temporarily suspended the membership of the member restaurant or demanded the removal of discounts and promotions offered at the competing platforms. It was found that Yemek Sepeti interpreted the MFC clause broadly to encompass more than just prices and made it mandatory for menu contents, region and limits of delivery, payment methods, discounts and promotions to be the same as those in its own platform as well. It was determined that Yemek Sepeti employed a punishment mechanism against those restaurants which it decided did not comply with these conditions, including temporarily removing them from the platform and terminating their contracts. The evaluations conducted established that the MFC practices of Yemek Sepeti lead to the deterrence and exclusion of existing and potential competitors. In addition, it was found that in many provinces consumers did not have any alternatives to Yemek Sepeti for ordering food online and where alternatives did exist, the consumers were deprived of different/better terms because of these practices. So, it was concluded that the practices of Yemek Sepeti based on MFC clause had the characteristics of a violation within the meaning of abuse of dominant position in the relevant market.

37. **Conclusion:** It was decided that Yemek Sepeti violated Article 6 of the Competition Act, and thereof an administrative fine was imposed on the undertaking under Article 16 of the Act. Furthermore, YEMEK SEPETİ was ordered to amend its contracts with restaurants.

<sup>2</sup> The concept referring to the contractual discount which requires Yemek Sepeti member businesses to offer certain rates of discounts to Yemek Sepeti users at certain times of the day.

### 2.1.3. Summary of significant cases- Example from the decisions on exemption and negative clearance

*Corrugated Board Manufacturers Association Exemption Examination [decision date: 16.03.2016, decision number: 16-10/162-72]*

38. The examination to deal with the negative clearance/exemption request application of the Corrugated Board Manufacturers Association (OMÜD) for the paper price index OMÜD is planning to distribute to its members on a monthly basis. The application explained the plan, which involves compiling the publicly announced written or oral list prices for three different categories of corrugated cardboard (test liner, fluting and craft liner) which comprise the cost items of the undertakings operating in the corrugated board market, indexing these prices by an independent expert, and monthly publication of the index in question by OMÜD.

39. **Relevant Market** (product; geographic): “Corrugated board box”, “corrugated board paper”; Turkey

40. **Findings:** The assessment revealed that even though the notified action could lead to a more transparent market as well as to the coordination of competitive behaviour by paper providers. Because the information to be exchanged within the framework of the index would be strategic in nature, the index would include up-to-date data, paper prices were not truly public, and the information exchange would be done on a frequent basis. Within this framework, it was concluded that the index could lead to restrictive effects on competition and it was concluded that a negative clearance certificate should not be issued. Subsequently, an individual exemption evaluation was conducted.

41. For individual exemption to be granted the cumulative conditions set forth in the Article 5 of the Competition Act should be satisfied. The individual exemption assessment for the case led to the following conclusions: With respect to the condition calling for “ensuring new developments and improvements, or economic or technical development in the provision of services,” in light of the fact that customers accessed paper prices indirectly since they were not buyers of paper, the index practice would only be beneficial for customers and would not lead to concrete benefits for paper providers and corrugated board manufacturers. With respect to the condition calling for “benefitting the consumer,” final consumers were not likely to benefit from the notified index since-contrary to the claims-the index would not introduce concrete benefits such as price discounts or the improvement of the product quality for the consumers. With respect to the condition calling for “not eliminating competition in a significant part of the relevant market” publishing pricing changes in the index might allow corrugated board manufacturers, which have largely similar cost structures, to set their prices not in line with the market conditions but according to the index itself and might serve as a signal to hike prices. Since price lists which serve as the basis of the index are not really public, the index might also risk paper manufacturers setting their prices in accordance with the index as well. Paper manufacturers which would provide their price lists to OMÜD for the index (16 undertakings) would reflect only part of the existing paper industry (37 undertakings) and a failure to ensure broad participation in the index would lead to a limited number of paper providers actively setting the index price, raising some suspicions concerning the objectivity of the index itself. In consideration of all of these issues together, the third condition for exemption has not been fulfilled. With respect to the condition calling for “not limiting competition more than necessary for achieving the goals set out in sub-paragraphs (a) and (b) [the first two conditions mentioned above]” it

was decided that the competition would be restricted more than necessary due to the fact that the index included up-to-date (monthly) data, information exchange would be done frequently (monthly), the information to be exchanged under the index was not truly public, and OMÜD would directly request all production capacity and sales amount figures for the previous year from paper providers to present to the independent expert in order to calculate their weight in the index.

42. **Conclusion:** It was decided that individual exemption could not be granted to the index under consideration.

## 2.2. Mergers and Acquisitions

### 2.2.1. Summary of significant cases- Example from the decisions on merger/acquisitions

*Group Maritim Final Examination [decision date: 11.05.2016, decision number: 16-16/267-118]*

43. The examination to deal with notification concerning the acquisition of 100% of the shares of Grup Maritim TCB (GMTCB), S.L. by APM Terminals B.V. (APMT). The notification foresaw the transfer of full control over GMTCB and its sole affiliate in Turkey TCE EGE to APMT following the acquisition of the aforementioned shares by APMT.

44. **Relevant Market** (product; geographic): Container handling services market; İzmir

45. **Findings:** GMTCB is a terminal operator working internationally and operates at the Aliğa Port Authority via a Turkish affiliate. APTM is also one of the largest terminal operators in the world. In this respect, the acquisition in question was between two terminal operators. The notified transaction was essentially an international integrated merger transaction, the scope of which includes GMTCB's Turkey operations. GMTCB is operating in Turkey via its sole affiliate TCE EGE. In that sense, it was found appropriate that the notified transaction be evaluated over TCE EGE.

46. The final examination made assessments concerning the potential competition in the market in relation to each development expected in the market, as well as into the vertical and horizontal effects the implementation of the transaction would create. The assessment concluded that the transaction between APMT and GMTCB involving the transfer of the TCE EGE Port would not result in the creation or strengthening of a dominant position thereby in a significant decrease in competition, due to various reasons, including the existence of players such as the TCDD Port and the Nempont Port in the relevant market, the ongoing construction of the Çandarlı Port which is expected to have high market power, and the buyer power held by the players in the downstream marine transportation market.

47. **Conclusion:** It was decided that the notified transaction would not result in the creation or strengthening of a dominant position and thus in a significant decrease in competition as prohibited in Article 7 of the Competition Act, thereof the transaction was cleared.

## 2.3. Opinions

48. TCA has provided various opinions concerning implementation or amendments in legislation in 2015, in accordance with articles 27(g) and 30(f) of the Competition Act<sup>3</sup>. However, TCA does not want to disclose these opinions. The total number of opinion requests in 2015 was 23. Out of 23 opinion requests, 13 of them were about a specific sector and the rest were general opinion requests. 3 of the sectoral requests were for energy and land, air, seaway and railway vehicles sector, and 2 of them were for waste management and improvement sector.

## 3. Resources of the TCA

### 3.1. Resources overall (current numbers and change over previous years)

#### 3.1.1. Annual budget (in TL and USD)

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

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

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

51. The spending budget of the TCA in year 2016 was 78 million TL, approximately 26.5 million USD<sup>4</sup>.

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

#### 3.1.2. Number of employees

- Non-administrative competition staff: 132
- All staff combined: 344

<sup>3</sup> Article 27(g) empowers the Competition Board to opine, directly or upon the request of the Ministry of Customs and Trade, concerning the amendments to be made to the legislation with regard to the competition law whereas Article 30(f) empowers the Presidency of the TCA to opine about decisions to be taken as to the competition policy, and the relevant legislation.

<sup>4</sup> The exchange rate at the beginning of 2016 was used.

### **3.2. Human resources (person-years) applied to: Enforcement against anticompetitive practices, Merger review and enforcement; Advocacy efforts.**

53. TCA was not structured as to assign staff with respect to competition enforcement activities. Rather the staff is divided into five main enforcement departments which are assigned sectoral areas. Any merger filings or antitrust infringement complaints regarding a sector are delivered to the head of the department assigned to that sector. Then the department head distributes cases to competition NAC staff for analysis. There is also NAC Staff employed in External Relations, Training and Competition Advocacy; Information Management, Strategy Development and Decisions Departments.

### **3.3. Period covered by the above information: 2016**

## Annex: Statistical Information for the Year 2016

### Table 1. Files Concluded

Year	Anti-competitive Agreements (Art.4) and Abuse of Dominance (Art.6)	Exemption/Negative Clearance	Merger/Acquisition/Joint Venture/Privatization	Total
2014	163	59	215	437
2015	89	35	158	282
2016	83	33	208	324

### Table 2. Files Concluded Under the Scope of Articles 4 and 6 of the Competition Act

5	Article 4	Article 6	Mixed (4 and 6)	Total
2014	91	48	24	163
2015	41	29	19	89
2016	41	29	13	83

### Table 3. Horizontal and Vertical Agreements Examined under the Scope of Article 4 of the Competition Act

Year	Horizontal	Vertical	Together (H/V)	Total
2014	65	48	2	115
2015	32	28	-	60
2016	26	28	-	54

**Table 4. Results of the Applications Regarding Exemption and Negative Clearance**

Concluded Negative Clearance Files			Concluded Exemption Files							
Applications that are granted Negative Clearance	Applications that are granted Negative Clearance with Conditions	Applications that are not Granted Negative Clearance	Cases including Agreements that are granted individual exemption	Cases including Agreements that are not Granted Exemption and Required Corrections	Cases including Agreements that are Under The Scope of Block Exemption	Cases including Agreements that are Granted Individual Exemption with Conditions	Cases including Agreements that are under the scope of Block Exemption after conditions	Cases including Agreements that are not granted exemption	Cases including Agreements from which exemption was withdrawn	Cases including Agreements where individual and block exemption were evaluated together
2014	14	-	30	-	4	7	-	2	-	-
2015	6	-	18	-	6	1	-	3	-	-
2016	8	-	10	-	2	4	-	3	-	3

**Table 5. Number of Merger and Acquisition Decisions**

Year	Merger	Acquisition	Joint Venture	Privatization	Total
2014	4	130	63	18	215
2015	1	124	25	8	158
2016	7	160	32	9	208

**Table 6. Results of Merger and Acquisition Notifications**

Year	Cleared	Cleared Under Conditions	Blocked	Out of scope (not satisfying the thresholds)
2014	169	3	-	43
2015	132	3	1	22
2016	177	-	-	30



**Table 7. Fines Imposed\*\* (TL)**

	Year	Anti-competitive Agreements and Abuse of Dominance	Merger/Acquisition	Other	Exemption/Negative Clearance	Total
Fines related to substance	2014	468.233.986				468.233.986
	2015	-				-
	2016	186.435.909				186.435.909
Fines imposed on executives	2014	-				-
	2015	-				-
	2016	-				-
False or misleading information in an application	2014	-			352.664	352.664
	2015	-			-	-
	2016	-			-	-
False or misleading information given during on the spot inspections	2014	15.226		-		15.226
	2015	-		33.500		33.500
	2016	7.551.954		-		7.551.954
Finalizing a transaction without permission of the Competition Board/Failure to notify within due date	2014		30.452			30.452
	2015		-			-
	2016		31.236			31.236
Incompliance with the decision of the Competition Board related to Article 9	2014					-
	2015					-
	2016					-
Hindrances on the spot inspection	2014	-				-
	2015	-				-
	2016	-				-

\*\* The table does not reflect new fines in the files annulled by the Council of State, the high administrative court.