Turkish Competition Authority
REKABET KURUMU

COMPETITION LAW

FOR SMEs

"Competition for all"

Department of External Relations, Training and Competition Advocacy

Ankara, February 2016

INTRODUCTION

The process of competition increases the effectiveness in markets and contributes to economic development by encouraging efficiency and technical development in production. The Competition Law plays an important role in increasing social welfare by providing a healthy competition environment. The Competition Authority has been acting with the consciousness of this important responsibility that it has undertaken since its establishment by means of both with the examinations it has conducted and its activities the aim of developing competition culture in the society.

One of the important duties the Competition Authority focuses on is promoting Competition Law and increasing competition awareness in the society, which is expressed as Competition Advocacy. The authority aims at informing the business world, academic environment and consumers about Competition Law and its practices through various instruments such as internship, education, panels and many publications it shares with the public opinion and also targets developing a social awareness about the benefits of competition.

The competition booklet we have prepared to inform our consumers about Competition Law and its practices is also a product of our Competition Advocacy activities. In preparing this publication, I'd like to acknowledge the efforts of Coordinator M. Ömür PAŞAOĞLU and Competition Expert Serap TOPALÖMER and Assistant Competition Expert Cihan BİLAÇLI, who have prepared the main text by classifying the information received from the departments and providing the necessary contributions to the Advisor of the Authority Suna Barış ÖZER who has contributed with her reviews and evaluations by revising the text and to Chief Competition Expert Neşe Nur ONUKLU who has made the final revision and reflected the current developments, last but not the least I would like to thank to all of my colleagues from the departments for their support.

We present this work to the public with the hope that it will contribute to the development of competition culture and therefore social welfare, and will be useful for all those concerned.

Prof. Dr. Ömer TORLAK

President of Competition Authority

What is Competition?

Competition can be defined as the race started by sellers in order to increase their sales of goods and services, thus to increase their profits by gaining more customers in a market. As an essential element of a market system that works effectively, competition also contributes to social justice and economic development.

Why Competition?

Low Price, High Quality: Firms must lower their prices and increase their product quality in order to survive in a competitive environment. All consumers benefit from price reductions and quality increase resulting from competition.

Freedom of Choice: A competitive environment means product range. Consumers have a chance to choose a product of a desired price or quality among many alternatives.

Technological Development: Firms have to develop their available products or produce new products in order to increase their market shares in a competitive environment. The existence of many products that make our lives easy is a result of this race between the firms.

Development in Social Welfare: Competition ensures that firms produce and invest in a way that will meet the demands and expectations of the consumer, and therefore economic sources are utilized in the best way possible. This contributes to the development of social welfare.

Increasing Competition Power: A well-functioning competitive environment at home contributes to the competition power in foreign markets. The existence of an economy that is growing with exportation and open to foreign markets is possible with the firms that are ready for an international competition.

Freedom of Enterprise: Competitive markets make it easy for new firms and technologies to enter the market. Competition is the most important assurance of the freedom of enterprise.

Favorable Environment for SMEs: In an economy dominated by monopolies and cartels, it very is difficult for small and medium-sized enterprises to carry out their activities and survive.

COMPETITION IS IN EVERY PART OF OUR LIVES…

The Competition Authority

Article 167 of the Turkish Constitution places a duty and responsibility on the state to take "measures to ensure and promote the sound, orderly functioning of the money, credit, capital, goods and services markets" and to prevent "the formation, in practice or by agreement, of monopolies and cartels in the markets".

In accordance with this duty, the Act no 4054 on the Protection of Competition (Competition Law) entered into force on December 13, 1994 in order to form a legal infrastructure to control the markets. The Competition Authority, which is in charge of enforcing the Competition Law, started to operate on November 5, 1997. The chief office of the Authority is in Ankara.

The decision making body of the Authority is the Competition Board. The Board consists of one Chairman and one Deputy Chairman, 7 members in total. The decisions of the Board can be appealed before Ankara Administrative Courts and court decisions can be appealed before the Council of State.

The Competition Authority has evaluated many applications to date and concluded 236 investigations in total from the beginning of its activities in 1997 to 2015.

The amount of fines imposed as a result of those investigations on firms that committed competition infringements is approximately 2,5 billion Turkish liras totally.

When to apply to the Competition Authority?

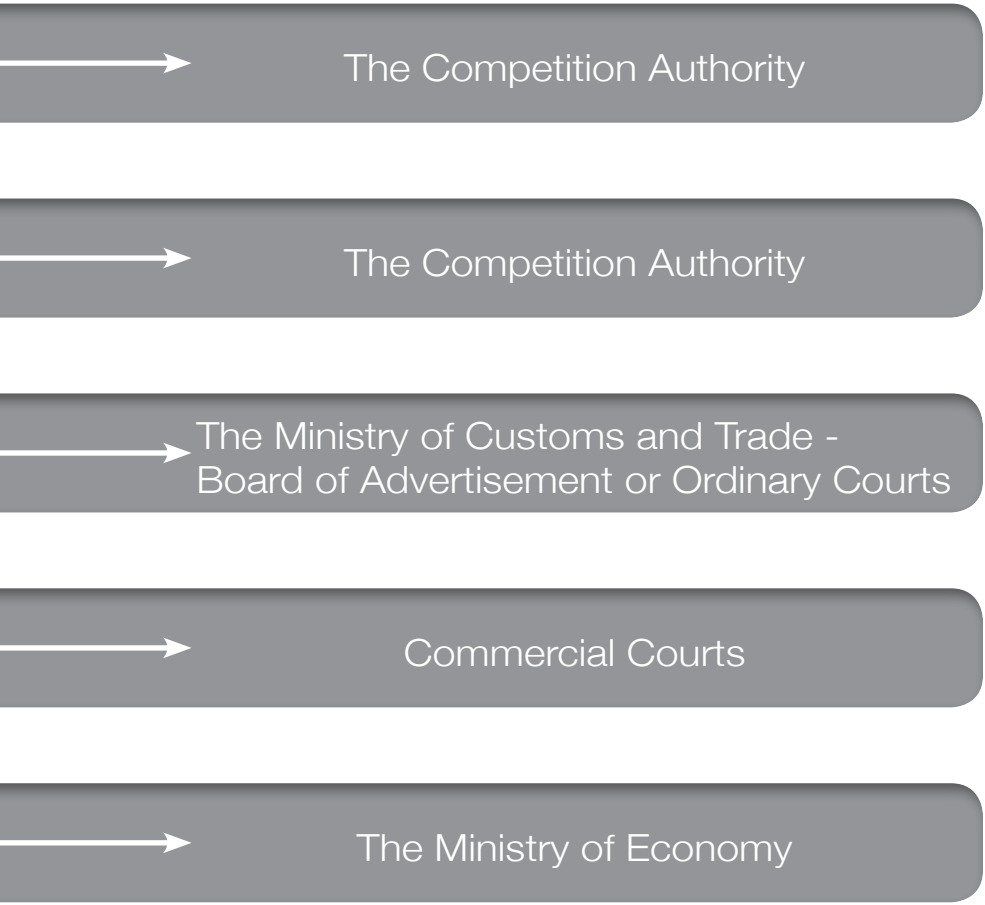
"Competitors have agreed with each other and increased the prices."

"The dominant company in the market complicates my activities."

"The companies advertise in a wrong and deceptive manner."

"My competitor denigrates my firm and products."

"Dumping is used in import products."


The Competition Authority
The Competition Authority
The Ministry of Customs and Trade -
Board of Advertisement or Ordinary Courts
Commercial Courts
The Ministry of Economy

What does the Competition Act Regulate?

There are three principal prohibitions in the Competition Act:

- Agreements, Concerted Practices and Decisions restricting Competition
- Abuse of Dominant Position
- Mergers and Acquisitions Creating a Dominant Position or Strengthening the Dominant Position

What does the Competition Authority do?

About competition infringements;

- Evaluates the complaints and information with **confidentiality**.
- Carries out the necessary **examinations** about the complaints and information.
- Initiates an **investigation** about the companies if there are serious findings about an infringement.
- If a competition infringement is determined at the end of the investigation, the Authority will impose an **administrative fine** on the companies.

About mergers and acquisitions;

- It examines the processes of mergers and acquisitions of the companies with turnovers that are over specific thresholds.
- As a result of the examination, it authorizes the transaction in question or prohibits transactions that significantly restrict competitive conditions. In some cases, the Authority may authorize the transaction concerned under certain conditions.
- It evaluates and controls the privatizations in terms of competition. It suggests the necessary measures for the establishment and protection of competition in markets.

Agreements and Practices Limiting Competition

Some agreements concluded between firms may restrict competition. These agreements can be made between the rival companies (such as two producers of the same product) and between the companies taking place at the different levels of production and distribution chain (such as the main provider- dealers). The agreements restricting competition are considered in accordance with article 4 of the Act. It is prohibited by the Act for firms to agree and carry out the following activities:

- ***Price-fixing*** (increasing and fixing the prices, determining the minimum price, removing discounts, determining the rates of discounts and profit margin, determining standard price formulas etc.)
- ***Bid rigging*** (sharing tenders, determining the winner, boycotting tenders, determining offers to be given in a tender, etc.)
- ***Market/territory/customer allocation***
- ***Determining the amount of production/sales***
- ***Complicating competing firms' activities/excluding them out of the market/ preventing new entries***

Some agreements may be permitted even if they restrict competition!

Within the scope of the Competition Act, an agreement is analyzed to see whether it has or it is possible in the future that it may have an object or effect of distorting, preventing or restricting competition. Even in the existence of such risks, in some cases different types of agreements between competitors such as R&D, cooperation, specialization, joint production or purchasing agreements may be authorized **under certain conditions.**

This exceptional authorization is called **exemption** and it is granted to the agreements fulfilling the requirements mentioned below.

If as a result of an agreement between companies;

- Economic or technological development is ensured
- Consumers may benefit from this
- Competition is not eliminated significantly or restricted duly as a result of the agreement concluded between the companies; the agreement in question may be exempted from the prohibitive provisions of the Act.

Moreover, if the companies have doubts that the agreement they have made contains anti-competitive provisions, they may apply to the Competition Authority and request an examination. If anti-competitive provisions are not found as a result of the examination, the agreement is granted **negative clearance certificate.**

One of Hardcore Competition Infringements: *Cartels*

Cartel is the common concept that points out agreements and/or concerted practices between competitors restricting competition such as price fixing, market allocation, restriction of supply or imposing quotas.

Cartels generally result in price increases in the market and are one of the competition infringements that have the most negative effects on consumer welfare.

Companies may decide to increase their profits together by ceasing to compete through collusive or an open agreement. The most common example for this is the cartels created by agreements that provide for price and quantity fixing and market allocation between firms. The reduction in production quantity or fixing prices at high levels as a result of the agreement will harm consumers. Guaranteeing the prices under an agreement, firms quit competing to improve product quality, variety or distribution facilities and harm consumers.

Price agreements may not always be in the form of fixing high prices at the first stage. Firms may agree to decrease the prices in the short run **to punish** those deviating from the cartel or **prevent a new entry.** However, this will also result in higher prices to the detriment of consumers in the long run because some of the competitors exit from or new competitors cannot enter to the market.

Sample Decision: East and Southeast Anatolia Cement Decision

(The decision dated 06.04.2012, no. 12-17/499-140)

In 2010, an investigation was initiated about ten cement producers operating in the East and Southeast Anatolia.

As a result of the examinations made, it was understood that the firms agreed on increasing cement prices and eventually cement prices rose in the following days.

The Board concluded in its final decision that the firms violated the Act and imposed about 50 million TL administrative fines.

Information exchange between competitors may violate the Act!

Information exchange means that competitors share the commercial information which may affect their competition strategies with each other. Of course, it does not mean that every kind of information exchange violates the Act. However, communication between competitors, especially about strategic subjects, sometimes facilitates anti-competitive agreements. If this communication includes important commercial information such as price, cost, production volume, it may lead to competition infringements. Firms may exchange information directly or through organizations where they unite such as chambers, associations or unions. The fact that the communication between competitors is made indirectly does not change its status as an infringement.

Sample Decision: Driving Courses Decision

(The Decision dated 09.12.2014, no. 14-49/877-397)

As a result of an investigation related to the driving courses for motor vehicles operating in Sakarya, it was found that the courses signed a protocol for determining the prices together.

According to the decision, the driving courses suggested that the reason of the protocol was to prevent financial problems stemming from enrolling trainees in return for below-cost fees. It was stated in the decision that engaging in anti-competitive behavior for preventing below-cost enrollments and financial problems was not a valid reason and 12 companies that committed the violation were imposed administrative fines.

Sample Decision: Enameled Winding Wire Decision

(The Decision dated 04.07.2007, no. 07-56/672-209)

Although price changes made by competitors simultaneously and at the same rate are not always sufficient to talk about a competition infringement, they are important indicators that competition is restricted in the market.

It was understood that price lists of six firms operating in the enameled winding wire sector changed at the same time and the prices of enameled winding wires with 40 different diameters in the lists were exactly the same. The firms were found to be in connection about price changes. The Board imposed about 1.7 million TL on six firms as they violated the Competition Act.

Professional organizations such as chambers, associations and unions as well as nongovernmental organizations may form a basis for competition infringements!

Firms may be organized under the umbrella of professional or nongovernmental organizations in order to reach certain objectives. Examples of such organizations are the Union of Chambers and Commodity Exchanges, Confederation of Turkish Tradesmen and Craftsmen, Turkish Pharmacists' Association Turkish Industry and Business Association and chambers of industry and trade.

Those organizations may take decisions that have economic effects on markets on behalf of their members or may form a basis for their members to take decisions in line with common objectives. The use of structures such as chambers, associations, unions, etc. that bring competitors in a sector together as **a means to share market information** that can affect decisions related to competition such as price, output and sales conditions may lead to competition infringements.

Sample Decision: Konya Association of Goldsmiths and Jewelers

(Decision dated 12.4.2012 and numbered 12-20/509-209)

An investigation was initiated to establish whether Konya Association of Goldsmiths and Jewelers violated article 4 of the Competition Act. The investigation examined whether the Association infringed competition by determining economic and commercial activity elements such as gold purchase and sale prices, repair prices as well as sales and marketing conditions outside the market and by pressuring and imposing sanctions on members deviating from fixed prices.

As a result of the investigation, it was found that Konya Association of Goldsmiths and Jewelers put restrictions on its members regarding final sale and marketing activities and imposed sanctions to those members that did not comply with those restrictions and it was decided that the Association shall be imposed administrative fines.

Competition Check List for Professional Organizations and Nongovernmental Organizations

- *Are there any provisions restricting competition in the charter of the professional organization?*
- *Do the powers of the professional organization over its members affect competition between them?*
- *Does the professional organization take decisions about sales prices and other sales conditions of its members?*
- *Does the professional organization take decisions restricting its members' activity areas?*
- *Are members encouraged to talk about issues such as prices, sales conditions, market/customer allocation etc. during the meetings?*
- *Do technical standards aiming to regulate the members' activities restrict members' commercial activities?*

"Yes" to any of the abovementioned questions shows that the professional organization may be engaged in a practice that can be qualified as a competition infringement unless there is a an explicit legal regulation on the subject .

Integration of competitive understanding and awareness into informative actions and publications made by unions, chambers or associations for their members will produce permanent results. ***The more people become aware of competition infringements the more the competitive environment will grow and the more deterrent competition law will be.***

Bid Rigging is a Hardcore Restriction of Competition!

Bid rigging occurs when firms that are expected to compete normally collude to fix prices and/or decrease the quality of goods and services. The additional profits obtained as a result of bid rigging are shared among the parties to the collusion. Mostly, competitors determine which bidder will win at the end of the tender process. Such coordination between firms in tenders is one of hardcore competition infringements and firms may be subject to heavy administrative fines.

Another area where competition infringements are very common is public tenders. If firms in public tenders

- communicate with competitors about the tender or tender elements before or during tenders,
- is in an agreement with its competitors about price, quantity, etc. related to the tender,
- allocate tenders with competitors especially when there are more than one tender,
- agree with its competitors and withdraw from the tender in favor of one or more competitors,

it means that they commit competition infringements.

Sample Decision: Bid rigging in milk tender

(Decision dated 26.05.2006 and numbered 06-36/464-126.)

The Competition Authority detected that the bidders in the tender for supplying and distributing milk to primary schools organized by the Prime Ministry Fund for the Encouragement of Social Cooperation and Solidarity rigged bids and shared the total tender amount and price equally.

As a result of such agreements, consumers will bear losses because the production amount is restricted and the prices are set at high levels. Guaranteeing the prices by an agreement, firms may also harm consumers by not improving the quality and variety of products or distribution.

Fight against Cartels and the Leniency Program

Cartels must be treated differently from other anti-competitive conduct in competition law and be imposed the heaviest fines because of the serious damages they cause to the economy. The most common sanction used against cartels is **fines**. However, the fight against cartels is not limited to the fines imposed to companies but administrative sanctions are supported with other sanctions such as imposing fines on managers who are found to have a decisive influence on a cartel and claiming damages for the losses in private law.

One of the important methods used by competition authorities in the fight against cartels is the **"leniency program"**. With the leniency program, the first firm and its employees to inform about the cartel are immune from any penal sanctions. Moreover, other firms and employees who help with the cartel investigation may benefit from reduction of fines at varying rates. Regulations regarding the leniency program were brought with the amendments to the Competition Act at the beginning of 2008. Within this scope, regarding detection of cartels **"Regulation on Active Cooperation for Detecting Cartels"** and regarding the application of fines **"Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position"** were put into effect on February 15, 2009.

Being a Party to the Cartel

- *If you determine prices and elements making up the prices (term, cost, etc.) and sales conditions together with your competitors,*
- *If you allocate markets on the basis of territory or customers,*
- *If you have a common understanding with your competitors about restricting the amount of good and/or service output,*
- *If you act jointly with your competitors to ensure that certain competitors and/or customers are excluded from the market,*
- *If you talk with and act together with your competitors about factors that may affect competition such as price, cost, etc. before or during a tender,*

you are a party to cartel.

It should be noted that cartels cause loss of reputation and necessitates the heaviest fines.

Managers and employees are responsible for a Competition Infringement as well!

In case administrative fines are imposed on undertakings or associations of undertakings which carry out the activities prohibited by articles 4,6 and 7 of the Act no 4054, an administrative fine up to five percent of the penalty imposed on the undertaking or association of undertakings shall be imposed on managers or employees of the undertaking or association of undertakings who are determined to have a decisive influence in the infringement.

Therefore it is important that executives or employees of a company or a professional association be informed about competition law and avoid from committing any actions that can violate the Act no 4054.

Sample Decision: White Meat Producers Decision

(The Decision dated 25.11.2009, no 09-57/1393-362)

Following the news published in a national journal in June 2008, an investigation was initiated about 27 firms working in the white meat industry. As a result of the examinations, it was found that the firms in question made an agreement on increasing the prices and decreasing the output.

Furthermore, it was observed that the white meat producers came together under the body of the association in the industry, conducted studies about the amount of white meat to be produced by firms in coming months and the association controlled whether the firms complied with the results of these studies.

In the final decision taken by the Board, it was concluded that the companies violated the Competition Act and the firms shall be imposed approximately 28 million TL administrative fines. In addition, an executive of a firm who was found to have a decisive effect on the violation was also imposed administrative fines. On the other hand, it was decided that an opinion shall be submitted to the association, suggesting that the association should refrain from actions that facilitate anti-competitive behavior.

Dealership and Distributorship Agreements

Agreements involving a competition infringement may not always be between competing firms doing the same or similar business. Dealership and distributorship agreements between suppliers and purchasers of a good may cover anti-competitive provisions.

Dealership and distributorship agreements involving the following conditions may constitute a competition infringement:

- Preventing the freedom of the dealer or distributor to determine the prices (the supplier dictates resale prices),
- Restrictions on territories or customers to which the dealer or the distributor will sell contract goods and products,
- Non-compete obligations on the dealer or distributor for an indefinite time or for more than five years.

Resale price maintenance is an infringement!

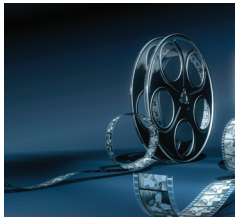
If the supplier prevents the freedom of the purchaser to set its own sale prices and determines the resale price, this constitutes a competition infringement. Suppliers set the sale price of the purchaser not only directly by including a clear provision in the contracts they make, they can also achieve the same result through indirect means. Determining the profit margin of the purchaser may be an example of this case.

Sample Decision: Determining Ticket Resale Price

(Decision dated 08.03.2007 and numbered 07-19/192-63.)

The Competition Board detected that a movie distributor dictated movie theater owners the ticket prices to be applied for the final consumer while launching the films to be shown and terminated the infringement. As a result of the decision, the firm was imposed administrative fines of approximately 153.000 TL because of its practices.

Consequently, the decision ensured potential competition between competing movie theaters and thus consumer benefits in the form of lower prices, higher quality, etc.



Abuse of Dominant Position

A firm may be in a stronger position compared to its competitors in some markets. Even, only a single firm may be operating in certain markets. Firms in such position generally have such a huge market power that they do not take into account the conduct of their competitors and customers. In other words, the firm has a dominant position. This market power may stem from resources that every business wishes to have such as technological superiority, productivity, products of good quality, knowledge and skills of human resources. Therefore, being in a dominant position is not prohibited within the scope of competition law.

As the activities of such firms may produce serious results on competitive conditions on the market, conduct by those firms to eliminate competition should be prevented.

Being in a dominant position is not prohibited within the scope of competition law. What is prohibited by the competition law is abuse of dominant position.

How does a Company Abuse Its Dominant Position?

A dominant undertaking may abuse its dominant position by means of

- Applying different price and sales conditions to the customers at the same position,
- Forcing its customer to buy another good or service with a good sold,
- Following a pricing policy under or too much above the costs,
- Restricting the supply of goods to its customers or competitors without reasonable grounds,
- Following a pricing policy that complicates competitors' activities (for instance selling a good below-cost for a long time),
- Using its financial or technological superiority in a market to complicate its competitors' activities in other markets it operates (for instance refusing to sell a product which the company holds a dominant position for its production/supply to a competitor that has to use it),

It should be noted that such conduct is forbidden within the scope of the Act and subject to administrative fines.

Sample Decision: The Dominant Company in GSM Services Market Imposed Different Conditions to Buyers in the Same Position

(The Decision dated 29.12.2005, no 05-88/1221-353)

In the relevant decision of the Competition Board, an investigation was conducted about the claims that the dominant company imposed different requirements and conditions to buyers in the same position and abused its dominant position in GSM services market in GSM mobile phone markets. The relevant decision pointed out that the Company was dominant in GSM services market and it was concluded that

- *By working exclusively with mobile phone distributors or making them dependent through the campaigns it made, it prevented the sale of distributors' devices with competing operator line*
- *It provided commercial advantages in favor of its exclusive distributors,*
- *It complicated its competitors' activities by means of exclusivity policies for activation centers and subscription points,*
- *Another company which was under the same economic entity, restricted competition against competing distributors in the mobile phone market.*

Following this decision, it became possible for GSM lines to be used in every mobile phone brand.

Mergers and Acquisitions

Companies may choose to merge with or acquire other companies in order to strengthen their position in the markets or their financial structures. This practice is quite common today and it allows companies to achieve a healthy structure, lower their costs, and improve the quality of products or services they offer, and research and develop new technologies. However, even though mergers or acquisitions may strengthen the companies, it is not possible to say that all of them would lead to pro-consumer outcomes. Some marriages between firms may lead to emergence of powerful companies which may potentially harm competition significantly. The firm which attains market power as a result of the merger or acquisition would have an opportunity to raise its prices and set the prices in the marketplace. As well, the company may lose its incentives to innovate since it no longer feels a threat from its competitors. As a result of these and similar situations, certain mergers and acquisitions could have a negative effect on consumer welfare. Consequently the control of mergers and acquisitions is important and necessary for the protection of the competitive conditions in the markets. Competition Authority may authorize or reject the transaction as a result of its examination. In certain cases the relevant transaction may be authorized subject to some conditions.

Merger or an acquisition by a company that creates a dominant position or strengthens an existing dominant position and restricts competition significantly is prohibited.

Which Mergers and Acquisitions are Subject to the Control of The Competition Authority?

A merger or acquisition is subject to the authorization of the Board if,

- Total turnovers of the transaction parties in Turkey exceed 100 million TL, and turnovers of at least two of the transaction parties in Turkey each exceed 30 million TL, or
- The acquired asset or business in acquisitions or at least one of the transaction parties in mergers has a domestic turnover exceeding 30 million TL in Turkey, and at least one of the other parties to the transaction has a global turnover exceeding 500 million TL.

A transaction that is subject to authorization cannot become legally valid without the authorization of the Board. The turnover thresholds mentioned above can be amended by the Competition Board if necessary.

It should be noted that if mergers and acquisitions subject to authorization are not notified to the Board, the Board shall impose administrative fines on the parties and may prohibit the transaction if it deems necessary.

Sample Decision: Marina Acquisition

(The Decision dated 09.07.2015, no 15-29/421-118) The acquisition by the Company of all of the shares of two marina and slipway business was subject to a final examination.

At the end of the examination, it was decided that the acquisition in question shall not be authorized in accordance with Article 7 of the Act no 4054 because the Company would obtain a dominant position in the relevant market defined in terms of a different marina and therefore lessen competition significantly in the market.

Privatizations

In the most general sense, privatizations may be described as those policies and practices of the government in which companies under the direct or indirect control of the public are transferred to the private sector.

Competition Act covers all companies, without regard to whether they are owned publicly or privately. As a natural consequence of this fact, transfer of public companies to the private sector is examined and monitored by the Competition Authority, just like other mergers and acquisitions.

Competition legislation concerning the privatization and acquisition transactions implemented by the Privatization Administration or other public institutions involve a two-stage assessment process. The first of

these is the pre-notification process. The Competition Board examines the consequences of such a privatization on the relevant market and the post-privatization status of any legal and actual privileges held by the company to be privatized. The Board presents to the relevant public administration its suggestions for ensuring a more competitive structure in the market concerned. The tender specifications for the privatization in question are prepared in light of the opinion of the Competition Board. The second stage is the authorization stage. Following the conclusion of the tender process, Competition Board examines each file on the bidders separately and grants authorization if the situation is acceptable in terms of the competitive market structure.

Sample Decision: Saltworks Privatization

(The Decision dated 15.05.2003, no 03-32/396-M)

In response to the pre-notification submitted by the Privatization Administration concerning the privatization of the saltworks owned by the Salt Enterprises of TEKEL as a whole, the Competition Board expressed the opinion that the three saltworks in question should be sold to separate companies.

The relevant decision took into consideration the fact that a large part of the raw salt demand of Turkey was fulfilled by 3 lake saltworks situated by the Tuz Lake and pointed out that transferring the ownership of all of these saltworks to a single company would significantly impede competition in the raw salt market. In line with this opinion, the privatization was implemented not as a block but separately and lake saltworks were acquired by 3 separate firms. Thus, a public monopoly was not transformed into a private monopoly, which was a significant contribution to the formation of a competitive market.

Developing Competition and Competition Culture: COMPETITION ADVOCACY

In order to protect competition, the Competition Authority conducts examinations and investigations, imposes administrative sanctions and imposes fines on those violating competition. However, another important task of the Competition Authority is to help develop competition and spread competition culture at the social level. For that purpose, the Authority conducts various activities which may be grouped under the heading of "competition advocacy". These activities may be summarized within two categories.

1. **Cooperation and Communication with Public Institutions:** On request or on its own initiative, the Authority may submit opinions to public institutions or authorities which function as competition assessments and point out public interventions that may negatively affect competition. Such opinions submitted to competent authorities are not limited to legislation work, but may also involve public disposals such as privatizations and public tenders. Protocols signed with various public institutions in order to institutionalize cooperation with public administrations are among other concrete examples of these efforts.

2. **Cooperation and Communication with Civil Society:** Organizing seminars, conferences and other training activities aimed at informing the public may be listed among the Authority's efforts of improving competition culture. Most of these activities are held in cooperation with non-governmental organizations and universities. The

Competition Authority makes contributions to the development of a competition culture through its publications, as well. The Expert Thesis written by the professional staff on the front line, Annual Competition Reports and Competition Letters, Competition Law Compliance Program Guide, Competition Manual and the Competition Glossary are examples of such publications. The Authority also encourages and publishes in-house or external academic and professional studies aimed at enriching the competition literature. In order to ensure better understanding of the theoretical and practical basis of competition law by all stakeholders, the decisions of the Competition Board and other works assumed by the Authority are shared with the public. The website of the Authority is being developed to ensure that our stakeholders can easily follow Board decisions and the Authority's activities.

Protecting and developing competition is a social duty!

To date, many companies, professional institutions and non-governmental organizations have been the subject of Competition Board examinations and investigations, and severe administrative fines were imposed on those which infringed competition.

Imposing fines and sanctions are an important tool given to the Authority by the act to protect and improve the competitive structure. However, there is another way which may be easier to adopt for everybody, and that is preventing infringements of competition before they happen and nipping competition problems at the bud.

In the institutionalization process of the competitive system, there are important roles to play by all citizens, public institutions, companies and nongovernmental organizations. Consumers who are knowledgeable on competition legislation and practices and sensitive to infringements of competition will contribute to the establishment of a competitive structure just as much as the decisions and practices of the Competition Authority.

Frequently Asked Questions

How Can I Inform the Competition Authority of Infringements of Competition?

All individuals and organizations may file their complaints with the Competition Authority with regard to practices which they believe involve infringements of competition. Applications made in the form of information are taken into consideration as well.

The principle is to submit applications to the Authority in writing. Applications may be send by post, or they may be submitted to the Authority in person. Applications may also be filed via other methods such as e-mail, fax and phone. Such applications shall be treated as information.

In order for the application to be processed within a short period, it is helpful that detailed information as well as any documents concerning the subject of complaint be submitted to the Authority. There are no costs incurred as charges or under any other name during any complaints or applications filed with the Competition Authority.

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What are the elements that must be included in the application petition to initiate an examination in accordance with my complaint?

In order for the application to be processed, the application in writing must include the following points in addition to an examination request:

- In applications filed by natural persons, the name and surname, citizenship number, address and signature of the applicant,
- In applications filed by legal persons, commercial title/business name,

address, authorized signatures list, and the signatures of those who have the authority to represent and bind the legal person

- In applications filed via representatives, the original document authorizing the representative or a duly authenticated copy thereof, the address of the representative and the natural or legal person represented, and the signature of the representative.

The Authority may initiate proceedings on its own initiative concerning applications which do not meet the requirements listed above but which it deems to be of a serious nature. In principle, no action should be taken in relation to applications which carry the formal requirements listed above, but which consist purely of abstract statements claiming that an infringement exists, which are not based on concrete information and/or documents, and which are found to have failed to establish its claims in a serious and sufficient manner.

Legal action may be taken concerning those who intentionally supply false or misleading information in their applications to the Authority.

Can I request confidentiality for my complaint/information application?

In the application, the applicant may request to stay anonymous. In such a case, the identity information of the relevant party or any other information which may lead to the disclosure of its identity will not be included in any of the correspondence made.

I have submitted my complaint to the Competition Authority. What is going to happen now?

Information or complaints entered into the Authority records are assessed by rapporteurs. Those found to be baseless are explicitly rejected by the Competition Board or, if they do not receive a response within 60 days, the complaint is deemed to be rejected implicitly. A preliminary inquiry or investigation is launched for those applications which are found to fall under the Act and deemed to be serious by the Competition Board. Once the Board decides to conduct a preliminary inquiry, rapporteurs are tasked and those in charge prepare and present the preliminary inquiry report to the Board within the period specified in the legislation. The Board evaluates the report within the period specified in the legislation and decides either not to initiate an investigation and reject the application, or to launch an investigation. If it decides to launch an investigation, a

6-month investigation process is initiated. Where necessary, the Board may extend the period of investigation for a term specified in the legislation. At the end of this process during which the investigation report is prepared and the written-oral pleas of the parties are submitted, the Competition Board takes its final decision. The decision is published on the website at www.rekabet.gov.tr first in summary and later as a reasoned decision, and it is also notified to the parties.

Can I appeal Competition Board decisions before courts?

Board decisions may be challenged before administrative courts. Administrative court decisions can be appealed before the Council of State.

I suffered damages as a result of a prevention, distortion or restriction of competition. What can I do?

If you think that you were harmed as a result of an infringement of competition, the first thing you should do is to submit an application to the Competition Authority. If, as a result of the examination and investigation conducted, the Competition Board concludes that a competition violation has occurred, you can demand damages from the infringing companies by filing a suit before commercial courts in accordance with articles 57 and 58 of the Competition Act, based on the relevant Board decision.

Do the Authority and the Board have the power to request information? What are the limits of this power?

According to article 14 of the Act no 4054, in carrying out the duties assigned to it by the Act, the Board may request any information it deems necessary from all public institutions and organizations, companies, professional organizations and nongovernmental organizations. Those concerned are obliged to provide the requested information within the period to be determined by the Board. According to article 16 of the Act no 4054, administrative fines are imposed in case false or misleading information or documentation is provided, or in case information or document is not provided at all or within the determined period of time.

Can a complaint involve unfair competition practices?

No. As known, all abuses of the right to compete through misleading or dishonest practices are characterized as “unfair competition”. For

instance, disparaging the products or activities of its competitors or others, giving false information concerning their ethical or financial situations, giving false or misleading information concerning its own products and activities, acting as if holding certain awards or certificates in order to affect consumer choice, trying to benefit from the fame of others by creating confusion concerning identifying names and marks such as trademarks, business names, logos and product packaging established in the market by others, acquiring, using or disclosing trade secrets of others without a justification are some of the most frequent unfair competition practices.

In such cases, applying to the Competition Authority will not lead to a solution. Problems related to this area should be addressed to Arbitration Committees for Consumer Problems, to the Ministry of Customs and Trade, and to judicial justice.

Does the Competition Authority deal with complaints related to advertisements?

Misleading consumers or creating unfair competition by advertisements is not under the scope of the Act No. 4054. Those are fundamentally assessed under the Code of Commerce and the Act No. 4077 on the Protection of Consumers and related legislation. Within this framework, complaints regarding advertisements should be submitted to judicial organs such as courts as well as to Arbitration Committees for Consumers and the Advertisement Board of the Ministry of Customs and Trade.

How can I know whether an agreement I conclude violates competition?

If you doubt that an agreement you conclude includes anti-competitive provisions, you should make an application to the Authority. Upon application, the Board shall assess the agreement and give a negative clearance certificate to the agreement if it does not include anti-competitive provisions. Negative clearance means that the agreement in question does not violate the Competition Act. On the other hand, certain types of agreements may be granted exemption from the prohibition of Article 4 even if they involve some provisions restricting competition.

Does the Competition Act prohibit all agreements between firms?

No. For an agreement to be covered by the Competition Act, it must be concluded between two companies at minimum. In other words,

agreements signed between two companies controlled by the same group are not prohibited in the Act. As a second criteria, it is examined whether the agreement has the distortion, prevention or restriction of competition as its object or effect, or whether it carries a potential to have such effects in the future. Even if these criteria exist, various types of agreements between competitors, such as R&D, cooperation, specialization, joint production and joint purchase agreements may be exempted from the prohibition of article 4 under certain conditions.

What is the maximum limit for administrative fines imposed by the Competition Authority?

Those who engage in conduct prohibited by articles 4, 6 and 7 of the Act no 4054 are imposed administrative fines up to ten per cent of the gross income of the companies and professional associations or of the members of such associations to be fined, as generated until the end of the previous financial year, or, in case the former cannot be calculated, until the end of the financial year that is closest to the final decision date, as determined by the Competition Board.

In case administrative fines are imposed on companies or on professional associations, managers or employees of the company or professional association who were found to have played a decisive role in the infringement are also imposed administrative fines up to five per cent of the fine imposed on the company or professional association.

My competitor sells at low prices and distorts the market; can the Competition Authority intervene?

Competition contributes to social welfare through, for instance, higher quality goods and services for lower prices. Accordingly, the most basic indication of a well-functioning competition is a price-war between competing companies. Thus, if competitors sell their products at low prices, this would not disturb the market, but instead help establish a competitive market. However, it should be noted that any attempt by a dominant company to foreclose its competitors via extremely low prices may constitute an infringement.

Is the Competition Act applicable to public companies?

Yes. Public companies are also covered by the Competition Act. However, the Competition Act is not applied to those practices which are based

on administrative and legal arrangements such as laws, regulations and communiqués. On the other hand, if the Competition Board believes that the relevant legislation is restricting competition, it can submit its suggestions on the subject to the relevant authorities in the form of a Board opinion.

What is on-the-spot inspection? What is the scope of the on-the-spot inspection power of the Authority experts and what sanctions are imposed in case of prevention/obstruction of on-the-spot inspections?

In accordance with article 15 of the Act no 4054, when carrying out the tasks entrusted by the same Act, the Board may conduct inspections at companies and professional associations if it deems necessary. Inspections are conducted by the professional staff tasked by the Board. To this end

- Books and all types of documents of companies or professional associations may be examined, copies of them may be taken if necessary;
- Written or oral explanations may be requested;
- Companies may be subjected to on-site inspections of all types of properties.

Those concerned are obligated to provide copies of the information, documents, books and other instruments.

In case on-the-spot inspections are prevented or in case there is a possibility of prevention, on-the-spot inspection is conducted with a decision of a justice of the peace. In addition, according to article 16 of the act no 4054, in case of prevention or obstruction of on-the-spot inspections, companies and professional associations or the members of such associations are fined at **five per thousand** of their gross revenue generated by the end of the financial year preceding the date of decision, or, if this cannot be calculated, generated by the end of the financial year closest to the date of decision as determined by the Board. Administrative fines shall still be imposed even if on-the-spot inspection is later conducted by court decision.

How are mergers and acquisitions notified to the Competition Authority?

Article 10 of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board No: 2010/4

regulates the notification of mergers and acquisitions. The notification is made jointly by the parties or by any one of the parties or by the authorized representatives thereof, with the Notification Form attached to the Communiqué. The notification form, which must include all the required information completely and accurately, and the documents attached thereto are submitted to the Authority with one hard copy and one electronic copy. In case there are duplicates among the documents, their conformity with the originals must be certified. Any changes in the information submitted must be notified before a decision is taken by the Board. This is because administrative fines are imposed on those who include false or misleading information in the Notification Form.

How to avoid infringements of competition? What is Competition Law Compliance Program?

It is only possible to avoid competition infringements by first understanding what infringements of competition involve and by increasing awareness about which practices distort competition in the market and thus constitute a competition infringement. Within this framework, it would be useful to give basic training courses to the managers and employees of undertakings about competition law and the relevant legislation.

To this end, Competition Law Compliance Programs implemented in many countries by companies in order to raise awareness in companies or professional associations about competition rules provide benefits as important instruments. Compliance programs can be defined as the practices or the set of corporate regulations and rules that enable companies or professional associations to monitor themselves in terms of competition law.

"Competition Law Compliance Program" is prepared by the Competition Authority with the aim of guiding companies and professional associations in preparing their own compliance programs and includes answers to possible questions about compliance programs. The document in question is available at www.rekabet.gov.tr.

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