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ECONOMIC ANALYSIS IN MERGER INVESTIGATIONS – Contribution from Turkey

- Session III -

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More documentation related to this discussion can be found at: oe.cd/mergerinv.

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Economic Analysis in Merger Investigations

- Contribution from Turkey –

1. Introduction

1. Competition law is an area where law and economics intersect. Moreover, the role and influence of economic analysis and economists in this particular area has been substantially growing, especially in the last two decades. In line with this global trend, The Turkish Competition Authority (TCA) has been increasingly building its capacity on advanced economic analysis tools and using these methods in its decision-making processes more frequently.¹
2. In this contribution, the legislative background of Turkish merger control regime, organizational structure regarding economic analysis within the TCA, involvement of economists in merger cases and finally the economic analysis toolbox used by the TCA in those cases will be briefly explained.

2. The merger control regime in Turkey in a nutshell

3. Turkey's merger control regime is similar with that of the EU from a substantive point of view. According to the Article 7 of 'the Act No: 4054 on the Protection of Competition' (the Competition Act) mergers and acquisitions which would result in a significant lessening of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position, are prohibited.
4. As a rule, a mandatory pre-merger notification system is employed. 'The Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board' lays down the rules for these pre-notifications. The Competition Board has also issued several guidelines on mergers, covering matters such as assessment of horizontal and non-horizontal mergers, remedies that are acceptable by the TCA on merger cases and the concept of control.
5. The "preliminary examination", which is the first step for a merger review needs to be done in 15 days from a complete notification² and the Board has to decide whether to clear the transaction or open a "final examination", which is the in-depth review phase, in no longer than 30 days from the same date. Depending on the circumstances of a particular case, this phase may take up to one year before the Board makes a final decision.
6. In any merger case, the Board can either unconditionally clear the merger, approve the merger subject to remedies, or, prohibit the merger if no remedies to the competition

¹ The TCA also encourages undertakings to submit their own economic analyses during competition law cases including merger investigations. For this purpose, the TCA has recently published 'The Handbook of Economic Analyses Used in Turkish Competition Board Decisions'. English version of the publication is available at: <http://www.rekabet.gov.tr/Dosya/geneldosya/thehandbookofeconomicanalysesusedinturkishcompetitionboarddecisions-pdf>

² This refers the completion of the relevant information that are requested from the notifying parties and, if considered necessary, third parties, as well.

concerns have been proposed by the merging parties or the proposed remedies were not deemed to be suitable to eliminate the concerns.

3. Organizational structure of economic expertise

7. Economic Analysis and Research Department (EARD) is the special unit within the TCA, which has the major role to conduct advanced economic analyses that are needed in investigations. The EARD has eight economists including the department head herself and a statistician with a master's degree in economics. These economists receive continuing vocational training on competition economics, statistics and econometrics.

8. The TCA has also a good number of competition experts -the professional staff working as case handlers under six Supervision and Enforcement Departments (SEDs), with the duty to carry out all kind of competition law cases on behalf of the Board- with an economics background. For the time being, around 25% of all competition experts have a major in economics, some of who have graduate degrees from esteemed universities in Turkey, Europe and the United States.

4. Economists' involvement in merger Cases

9. Since every SEDs have a number of case handlers with economics background, in the vast majority of all merger cases, at least an economist takes part in case teams. However, economists working at the EARD typically involve in cases during final examination phase.

10. The president of the TCA tasks the EARD to prepare an economic analysis report generally upon request of case teams or when the Board considers it necessary to have the assessment of the EARD on a particular case. In some exceptional cases, economists working at the EARD may also be assigned directly in case teams as case handlers, since majority of this staff have also the competition expert title.

11. The economists from the EARD normally conduct advanced economic analysis methods that are needed in cases. Nevertheless, involvement of this staff is not limited to use of those methods. Upon the assignment, economists working at SEDs and the EARD take part in all stages of a merger case, starting from meeting with parties and designing request for information letters (RFIs) to conducting qualitative and quantitative analyses. It should be noted that, the TCA believes that a particular attention is needed to carefully design the RFIs to receive high quality data, which is crucial for a robust analysis ground, regardless of the analysis concerned is qualitative or quantitative.

5. Quantitative analysis methods in use and selection criteria

12. A merger case typically involves delineation of relevant markets, assessment of potential anti-competitive effects with taking into account the efficiency claims by parties and evaluation of suitability of the remedies proposed to eliminate competition concerns. A range of quantitative analysis tools have been proposed in guidelines of competition authorities around the world, and in the literature as well, to tackle these tasks.

13. For the purpose of market definition, the TCA generally uses hypothetical monopolist test, several price co-movement tests such as price correlations, causality,

stationarity and co-integration tests, along with usual qualitative analyses. In some older cases, the Elzinga-Hogarty test based on shipment data was also used.

14. The TCA also uses a variety of methods on the assessment of potential unilateral effects, from simple HHI and price concentration analysis to upward pricing pressure (UPP) tests. In some exceptional cases, merger simulation techniques were also used.

15. The TCA believes that competitive analyses in each merger case should be carefully selected and conducted on a case-by-case basis. Complexity of the case, availability of high quality and variety data and time constraints are main drivers for the selection. For instance sophisticated techniques like merger simulation necessitate robust estimations of own and cross price demand elasticities which require both merging parties' and their competitors' suitable data for such an analysis, which is not easy to have in many cases.

16. For a final remark under this topic, the TCA believes that any kind of quantitative analysis should be regarded as complementary to and evaluated together with carefully conducted qualitative analyses revealing market realities.

6. The use of surveys and external economic experts in merger investigations

17. The TCA has not used external survey providers in merger cases to conduct consumer surveys. However, in most of the merger cases that are taken to in-depth review, the RFIs sent to customers include carefully designed survey questions to reveal demand side substitution patterns within the relevant market. The TCA believes that, information gathered by a well-planned survey on actual demand behaviors and stated preferences of customers is highly valuable for merger investigations. It should be noted that economists take a great deal of part in designation of these surveys. The TCA may also consider ready-made market surveys, surveys submitted by notifying parties or received upon RFIs from third parties.

18. The same mainly applies for outsourcing economic expertise. The quantitative analyses that has been used in merger cases so far has been conducted by in-house staff of the TCA and no outside economists have been commissioned, although there is no legal or financial barrier for outsourcing.³

³ The TCA has made use of survey providers and external experts in several market inquiries.