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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****USING MARKET STUDIES TO TACKLE EMERGING COMPETITION
ISSUES – Contribution from Turkey****- Session IV -**

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This contribution is submitted by Turkey under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

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

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Using market studies to tackle emerging competition issues

- Contribution from Turkey –

1. Turkish Competition Authority (TCA) regularly conducts market studies/sectoral inquiries in order to better understand the competition dynamics of the markets that it deems important. As of 2020, TCA has concluded 14 market studies “Fair Organization – 2019”, “Hazelnut – 2018”, “Television Broadcasting - 2017”, “Cement - 2016”, “Cinema Services - 2016”, “Electricity (Wholesale and Retail) Sector - 2015”, “Motor Vehicles - 2014”, “Pharmaceutical - 2013”, “Natural Gas - 2012”, “Fast Moving Consumer Goods - 2012”, “Meat - 2011”, “Driving Schools - 2010”, “Bank Cards - 2009”, and “Road Fuel - 2008” markets¹.
2. Currently, TCA is conducting five market studies in these topics/sectors: “Digitalization and Competition Policy”, “Electricity”, “Fast Moving Consumer Goods”, “Agriculture” and “E-Platforms”. Before providing information about the current market studies, it would be better to provide some information about the two market studies published after 2017.

1. Hazelnut Sector

3. In its meeting on 03.11.2016, Turkish Competition Authority’s Board (Competition Board) decided to open an inquiry into the hazelnut sector in order to find structural problems and how to solve them within the context of the law on competition. The problems of this sector identified in the report were productivity, problems related to licensed warehouse activities, problems caused by regional differences in productions, storage conditions of hazelnut, the diseases affecting hazelnut trees and legislative problems (such as estimating and announcing hazelnut yields). For this inquiry, interviews were conducted with the Ministry of Agriculture and Forestry, Ministry of Trade, Union of Chambers and Commodity Exchanges of Turkey, Union of Turkish Agricultural Chambers, chambers of commerce and commodity exchanges for the provinces, as well as numerous undertakings and associations of undertakings operating at every level of the sector.

2. Fair Organization Sector

4. In its meeting on 06.04.2017, Competition Board decided to open an inquiry into the fair organization sector in order to contribute to eliminating competitive problems and in the long run establish a competitive structure that will improve consumer welfare and national fair business and thus international competitiveness of Turkey. In the final report, it was stated that;

¹ You can find all of the market studies conducted by the TCA through this link:

<http://rekabet.gov.tr/tr/Sayfa/Yayinlar/sektor-raporlari?sayfa=1>

- fair area operators enjoy a high market power due to the lack of fair areas,
- the structure of Fairs Committee and Fair Sector Council, in which representatives of some fair area operators were members, was determining competitors activities,
- insufficiency of sectoral regulations and inspections were a problem as they not provide an opportunity to form an approach that focuses on the quantity of fairs, and
- there were some failures in obtaining complete and accurate information about the sector as these failures eliminate transparency in the market and complicate sectoral analysis as well as relevant development efforts.

5. As stated above, TCA Board regularly conducts market researches in markets that it sees problems to identify the competitive problems in sectors and offers solutions to improve the structure to a more competitive one. However, the problems that the Competition Board identifies are not always the same to open an inquiry. For example in “Fast Moving Consumer Goods - FMCG” inquiry was initiated in 2017 because the market structure of FMCG sector had substantially changed after the 2012 FMCG Market Inquiry and “Agriculture” sector inquiry was initiated mostly due to the fact that the Competition Board received numerous complaints which suggested that final sales prices of agricultural products are caused by the anti-competitive agreements in the sector.

6. The most important stage in tackling these problems in the first place is the identification of the problem. This is where the Competition Board uses sector inquiries as an important tool to include all stakeholders of the sector in the process. When deciding on a sector inquiry, the factors taken into account include flexibility, transparency and participation, legal framework and procedural economy. In parallel with the dynamism of today’s business world, the emerging problems are rapidly changing, and intervention with conventional tools may be impossible or inappropriate. In that context, the relative flexibility of sector inquiry in terms of content, time constraints and methods have made the selection of this tool unavoidable.

7. Secondly, the launching a sector inquiry is a participatory and transparent process wherein the Authority would be able to let all stakeholders take part in the identification and solution of the problems, with sector inquiry emerging as the best tool to meet all these demands. Sector inquiries are not simply composed of the meetings, information requests or similar information-gathering techniques used during the process, but through workshops and conclusion reports that ensure the full participation of all concerned at the end of the inquiry.

8. In addition, the legal powers and authorizations for the utilization of the chosen tool as well as the current workload of the Competition Authority may be counted among the factors considered.

9. The first strength of a sector inquiry is that it is more proactive compared to legal regulation. While competition law regulations mainly focus on practices that eliminate or decrease competition, sector inquiry can empower existing competition by means of measures. Second, standard competition law inquiries focus on generally the conduct of undertakings concerned whereas a market study is designed in a wider manner to cover the whole market/all characteristics, which allows analyzing different factors such as structural problems, potential competition, entry barriers, innovation and consumer behavior as a whole. Third, the outcome of a sector inquiry is a reference for the legislator and/or other authorities related to the market. Lastly, contrary to standard competition law inquiries, the

measures taken as a result of a market study are designed in a wider manner to cover the whole market.

10. As mentioned above, the most important aspects of sector inquiries are their flexibility, transparency and expediency. On the other hand, they have the following drawbacks:

- It is legally controversial whether sector inquiries can be used as an intervention tool, or even whether they have a place under the Act no 4054 on the Protection of Competition;
- Sector inquiries cannot result in the application of sanctions as they cannot go beyond recommendation;
- Sector inquiries lead to legal uncertainties for the undertakings since the rules of the process are not clearly defined;
- Sector inquiries may potentially lead to conflict of authority since they may go outside the jurisdiction of competition agencies;
- Some of the stakeholders may not actively/sufficiently participate to the inquiry, as it is not an investigation;
- The teams conducting the inquiry are chosen among the personnel who carry out the enforcement activities and this sometimes leads to some difficulties especially when inquiries are performed simultaneously with enforcement actions, which do have deadlines.

11. Sector inquiries may be seen as a suitable tool if there are no other authorities or public institutions charged with the subject and if there is no action plan for the solution of the problem prepared by legislative or executive bodies in the short term.

12. Also, sector inquiry is considered as an important tool in markets where traditional competition law tools' capability is questionable and/or technical knowledge peculiar to the market is needed. For example competition in digital platforms, which continue to develop and transform with the increase in internet usage, is shaped not only by undertakings' practices but also by factors such as structural problems, consumer behavior and legal regulations. This is also true for "Agriculture" market study as traditional competition law tools such as preliminary inquiries or investigations in this sector could not generate the desired results. Therefore, it is important to address these problems from a wider perspective.

13. We think that the conclusions of the sector inquiries may need to be more than simple recommendations in order to increase the benefits. Sector inquiries may offer opportunities for intervention with competition law tools and alternative solutions to eliminate structural problems and challenges that might result in anticompetitive effects. It may be possible to increase the efficiency of the process by exchanging information with the public institutions operating in the relevant sector or by conducting joint inquiries where necessary.

14. Additionally, sector inquiries must not become tools for the authority to reach outside of its jurisdiction. Especially in the identification of novel competition problems, cooperation with other policy-makers must be emphasized, and it should not be forgotten that legislative bodies may be in a better position to see the whole problem and sometimes bring solutions to it.

15. Lastly, the use of internal and/or external consulting on legal and economic issues, especially economic analysis, will also help the effectiveness of the report.