

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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**ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO  
DETECT CARTELS**

**-- Note by Turkey --**

*This note is submitted by Turkey to the Competition Committee FOR DISCUSSION under Item X at its forthcoming meeting to be held on 30-31 October 2013.*

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## ROUNDTABLE ON EX OFFICIO CARTEL INVESTIGATIONS AND THE USE OF SCREENS TO DETECT CARTELS

### -- Note by Turkey --

1. As in all jurisdictions, fighting cartels is one of the most important priorities in Turkish Competition Authority (The TCA). Since its start of operation in 1997 till 31.12.2012, the TCA investigated a total of 189 cases 146 of which is related with anticompetitive agreements between undertakings. In the relevant period, an administrative fine totaling about TL 865 million (approximately €320 million) was imposed.

2. During the same period, the Leniency Regulation, which entered into force in 2008, was applied to 4 investigation files. As a result of the investigations in question, four separate undertakings which applied for leniency were either granted total immunity from fines, or a discount was implemented over the fines imposed.

3. Having briefly given the basic figures about its enforcement, the TCA's main approach to the cartels can be said to be mostly a reactive one. Even though it could be asserted that the Authority does not exclusively relies on reactive policy instruments, in practice the investigations are opened mostly after a complaint or a leniency application.

4. The article 9 of the Act on the Protection of Competition (the Competition Act) states that "the (Competition) Board, upon informing, complaint or the request of the Ministry or on its own initiative, establishes that articles 4, 6 and 7 of this Act are infringed, it notifies the undertaking or associations of undertakings concerned of the decision encompassing those behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement, in accordance with the provisions mentioned in section Four of this Act." This article expresses the ways the TCA takes action and clearly empowers the board to initiate an investigation ex-officio.

5. Since the leniency provisions in the jurisdiction began to be applied after the necessary legal amendments were made to the Act only since 2008, it is quite an early time to assume that leniency program failed to provide sufficient incentives for self-reporting. The basic reasons for the authority to rely primarily on reactive detection tools is the fact that the establishment of an anticompetitive agreement through conventional means is both practically easy to implement and to justify or defend the case before the courts. Proofs, which are witness testimony, meeting notes, correspondence, obtained through sudden on-the spot inspections or from lenients is generally the main source for the action.

6. Yet, the TCA also has some initiatives to include the proactive detection methods in its enforcement activities. In 2006, during one of its investigations related with the cement and ready-mix concrete market the Board decided, cement and ready-mix concrete producers would provide information their monthly capacity, production and sales figures quarterly<sup>1</sup>. The decision signifies that the TCA actually has an intention to screen the cement market. The motivation behind the decision is the fact that

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<sup>1</sup> Decision dated 19.09.2006 and numbered 06-66/889-M.

the cartel enforcement in the cement and ready-mix concrete market was getting extremely challenging as the undertakings have almost always been successful in concealing their activities. As the proactive techniques seemed to be insufficient for an efficient enforcement for this market, the TCA used its power arising from the Article 14 of the Competition Act<sup>2</sup>.

7. Secondly, several market studies were done in order to take a snapshot of some sectors which can be regarded either problematic in terms of competition or seen as strategic for a part or whole of the economic structure. Natural gas, road fuel, FMGs, pharmaceuticals, credit cards and red meat are some sectors about which market studies were done. As expected, those reports could be regarded as examples of structural screening as there are no findings related with individual firms.

8. It can be said that the proactive detection tools could also be used as a supplementary to reactive ones, as in the first one start of an investigation seems to be practically easier. Secondly, for Turkish experience it is quite an early time to reach a conclusion whether the leniency program has proved to a failure in the enforcement. Leniency program started in competition law enforcement with the entry into force of the Leniency Regulation in 2009 following an amendment in the Competition Act empowering the Competition Board to issue such a legal document regarding the terms for immunity from or reduction of fines in case of cooperation, procedures and principles in relation to cooperation.

9. The last tool used as a proactive tool is screening of press. Besides the personal interest of the case handlers, the relevant unit in the Authority is screening the media and briefs the important news, along with the news related with individual firms or sectors, to the case handlers and the management and the Board.

10. Regarding the cooperation with procurement officials a protocol was signed between Public Procurement Agency and the TCA in 2009 with a view to establish a continuing relationship and to act jointly so that a fair and sound competition environment in public procurements is established, developed and protected.

11. Within the context of the protocol, the TCA will be able to Access to the e-procurement system designed by Public Procurement Agency, and the Public Procurement Agency also will have the opportunity to directly Access to the Board decisions that are related with its scope of authority.

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<sup>2</sup> The relevant article states that: *“In carrying out the duties assigned to it by this Act, the Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings.*

*Officials of these authorities, undertakings and associations of undertakings are obliged to provide the requested information within the period to be determined by the Board.”*

The decision was challenged by some undertakings before the Council of State, however the Council of State approved the Board’s decision stating that The Competition Act gives the Competition Board the duty not only to carry out, upon application or on its own initiative, examination, inquiry and investigation about the activities and legal transactions prohibited in this Act; to take the necessary measures for terminating infringements upon establishing that the provisions provided in this Act are infringed, and to impose administrative fines on those responsible for them; but also to ensure the protection of competition by performing the necessary regulations and supervisions to this end.

So, it could be easily stated that the Competition Board’s power to demand the necessary information or data even without the existence an investigation was confirmed.