

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

**Working Party No. 2 on Competition and Regulation**

**COMPETITION CONCERNS IN PORTS AND PORT SERVICES**

-- Turkey --

**27 June 2011**

*The attached document is submitted to Working Party No.2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on the 27 June 2011.*

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1. In Turkey there are 165 ports and quays and a vast majority of them are owned and managed by private enterprises. Independently of the ownership of the port, the supervision and the regulation of ports are under the control of various public authorities. However, there is not a central body or an independent regulatory commission which is specialized only in ports.

2. Ports play an important role in the foreign trade of Turkey as nearly 85-90 % of it is carried out through ports. Therefore, competitive and efficient ports are crucial for the whole Turkish economy.

3. The main competitive concern about the ports is the risk of abuse of dominant position via refusal to deal, excessive pricing, tying etc. However, in order to determine whether there is a violation of the Competition Act<sup>1</sup> it is vitally important to determine the relevant product and the geographic market.

4. In the context of ports, relevant product market is defined by taking into consideration the type of freight which is handled in the port and the type of vessel which anchor in the port. If the port services are only available for the cruise tourism, it is accepted that the relevant product market is “cruise oriented port services”.

5. In the decisions about the acquisition of Bodrum port, the Competition Board, the decision making body of the Turkish Competition Authority (TCA), defined relevant product market as the “cruise oriented port services” since the Bodrum port provided services only to the cruise ships.<sup>2</sup> With the same approach mentioned above the Competition Board defined relevant product market as the “dry bulk cargo-liquid bulk cargo and container handling services” in the decisions concerning the acquisitions of TCDD<sup>3</sup> Samsun, TCDD İskenderun, TCDD İzmir, TCDD Mersin and Ortadoğu Antalya ports<sup>4</sup>.

6. On the other hand, the substitution possibilities are taken into consideration while defining the relevant product market in the decisions of the Competition Board. Especially in ferry services, it is examined whether highways can be an alternative or not to the ferry shipping. However, because of the high oil prices, traffic and the condition of the highways, they can not make competitive pressure on ferry services and therefore highways are not considered as a substitute to the ports especially for the long-distance transportation.<sup>5</sup>

7. While determining the geographic market, the Competition Board takes two factors into consideration. The first factor is the hinterland of the port (the geographic regions which are served by the port) which is also called as the “static element” whereas the second factor is the catchment areas known as the “dynamic element”.

8. Regarding the first element, in its opinion<sup>6</sup> and final decisions<sup>7</sup> about the privatization of TCDD İskenderun port, TCDD Mersin port and TCDD Samsun port, the Competition Board determined

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<sup>1</sup> Act No. 4054 on the Protection of Competition.

<sup>2</sup> Date and number of the decision of the Competition Board is as follows: 15.12.2008; 08-71/1150-447.

<sup>3</sup> State Railway Company, General Directorate of the State Railway Administration of Turkey.

<sup>4</sup> Dates and numbers of the decisions of the Competition Board are as follows: *TCDD Samsun port* (12.06.2008; 08-39/514-189), *TCDD İskenderun port* (20.10.2005; 05-70/967-261 and 02.12.2010; 10-75/1538-592), *TCDD İzmir port* (05.06.2007; 07-47/507-182), *TCDD Mersin port* (15.09.2005; 05-58/855-231) and *Ortadoğu Antalya port* (08.07.2010; 10-49/922-325).

<sup>5</sup> Date and number of the decision of the Competition Board is as follows: 09.01.2003; 03-03/25-7.

<sup>6</sup> Opinion of the Competition Board is dated 06.05.2005 and numbered 05-31/376-M and available through: <http://www.rekabet.gov.tr/dosyalar/gorusler/gorus93.pdf>. See also the contribution of Turkey

geographic markets according to the hinterlands of these ports since these ports generally served the geographic regions around them which were connected to these ports with highways and railways.

9. In terms of the second element, which is the catchment areas, the size, the potential and the competitive power of the port with respect to other transit and hub ports are considered. The most significant criteria necessary for a port to be considered as a hub port are the depth of the water, the number and the size of quays of the port. As a result of their potential of being hub-ports, İzmir and Mersin ports are determined to belong to the same geographic market although they mostly serve different hinterlands.

10. In Turkey, it is generally accepted that a market share equivalent to or above 50 % is a significant indicator of dominance. This presumption is also valid for maritime and port services. However, the characteristics of the services, which are provided by the port, might change the market power analysis because different services require different investments, water depth and back space size. Although existence of one or two quays is adequate to operate in terms of liquid bulk cargo and dry bulk cargo handling services, container handling services require more water depth, longer and wider quays and costly equipment. Therefore, while high market share of a port, which handles only bulk cargo and dry bulk cargo, is not considered as an accurate sign of dominance, the assessment can be different for a port that provides container handling services. Since the container handling services require higher investment, potential competition is low for these services and high market shares are considered as the sign of dominance.

11. The pressure of potential competition may also change the approach of the Competition Board about the same issue. In the first opinion<sup>8</sup> of the Competition Board about the privatization process of TCDD Mersin port and TCDD Iskenderun port, the Competition Board considered inter-port competition concerns and opined that the enterprise which would acquire the TCCD Mersin port should not acquire the TCDD Iskenderun port since both ports were in the same geographic market and the market share of TCDD Mersin port was high in different segments especially in container handling services. After the completion of privatization process, TCDD Mersin port was acquired by PSA-Akfen Joint Venture. However, acquisition transaction involving TCDD Iskenderun port could not be completed since the Council of State<sup>9</sup> annulled the decision of the Competition Board. After the annulment, Privatization High Council (PHC) requested opinion of the Competition Board regarding privatization of Iskenderun port one more time. This time the Competition Board took into account the new port investment projects planned by public and private sectors and did not require a condition to ensure inter-port competition.<sup>10</sup> However, the TCA recommended PHC to put a requirement in the tender specifications for the successful bidder to make investment in container handling in order to develop the capacity of the port and enable competition between TCDD Iskenderun port and Mersin port.

12. Because of the high entry barriers to the market especially in terms of legal procedures, it is possible that a port may be dominant in the market and may carry out practices that constitute abuse of a dominant position. However, there has been limited number of cases involving abuse of a dominant position since the port services were provided by the public until recently and the prices were regulated.

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(DAF/COMP/GF/WD(2006)32) submitted to the Roundtable on Concessions held during Global Forum on Competition of 8–9 February 2006.

<sup>7</sup> See the decisions of the Competition Board in footnote 4.

<sup>8</sup> See the Opinion in footnote 6.

<sup>9</sup> The high administrative court against the decisions of the Competition Board.

<sup>10</sup> Opinion of the Competition Board is dated 18.3.2010 and available through: <http://www.rekabet.gov.tr/dosyalar/gorusler/gorus138.pdf>.

13. Although there were complaints about various ports involving allegations of abuse of a dominant position in the form of excessive pricing and refusal to deal, the Competition Board did not find any infringement of the Competition Act. There are only two decisions on abuse of dominance in the form of cross-subsidy. In one of them, the Competition Board concluded that Turkish Maritime Organization Inc. (TDİ) abused its dominant position by applying excessive price in the ferry services market on the line of Eskihisar-Topçular and it used its excessive profit to exclude their small-scaled competitors operating between the two sides of the Dardanelles.<sup>11</sup>

14. In order to enable competition in ports and prevent emergence of a dominant position after privatization of public ports, the Competition Board tried to enforce two kinds of remedies: “structural remedies” which are used to reestablish competition especially in the privatization process and the “behavioral remedies” that are used to ensure that port operators behave competitively.

15. In the context of structural remedies there are four options: i) constructing new quays in order to enable inter-port competition, ii) transferring operational rights of current quays to different enterprises in order to introduce intra-port competition, iii) enabling intra-terminal competition via distributing terminal services rights to different enterprises and finally iv) making short term agreements about the transfer of operating rights in order to sustain competition in terms of entering the market.

16. The Competition Board tried to adopt structural remedies while evaluating the privatization of İzmir and Mersin ports operated by TCDD. During the privatization process of Mersin and İzmir ports, the Competition Board recommended that the quays within the above-mentioned ports should be divided into different packages to ensure transfer to two different enterprises in order to enable intra-port competition.<sup>12</sup>

17. However, PHC argued that the separation of quays suggested in the opinion of the Competition Board was not feasible because of economic and technical reasons since the ports did not have sufficiently big quays that would allow two different enterprises to offer port services efficiently.

18. Alternatively PHC brought some behavioral remedies in order to prevent the abuse of dominance of the Mersin Port’s operator via abusive pricing and discriminatory behaviors. PHC put a provision in the agreement for the transfer of the operational rights of the port in order to prevent discrimination between the shipment and freight owners, which are in the same position. Moreover, in the same agreement, it had been stipulated to freeze the existing prices that were imposed during the privatization process for three years in order to prevent excessive pricing.

19. In another opinion of the Competition Board regarding the privatization of TCDD Samsun port, taking into consideration of Samsun port’s capacity in terms of ro-ro services, it was suggested that operational rights of the port should not be transferred to a firm that was operating in the market for ro-ro services, in order to prevent a vertical integration that could be potentially harmful for competition.<sup>13</sup>

20. As mentioned above, since the biggest ports of Turkey were state owned until quite recently, there has been limited number of antitrust violations and therefore there have been few investigations by the TCA concerning ports. After the start of the privatization process the TCA played a proactive role and tried to build up a competitive port sector. While doing this, first of all the TCA paid strict attention to define geographic markets and tried to prevent concentration in the same geographic market and to enable

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<sup>11</sup> *TDİ*, dated 24.06.2010 and numbered 10-45/801-264.

<sup>12</sup> See the Opinion in footnote 6.

<sup>13</sup> Opinion of the Competition Board is dated 12.6.2008 and available through <http://www.rekabet.gov.tr/dosyalar/kararlar/karar2488.pdf>

inter-port competition. In addition, the TCA tried to adopt some structural remedies to prevent monopolization and vertical integration and aimed to improve the competitive capacity of the ports. Although the privatization of the ports has been realized very recently and there is still a long way to go, there is limited number of complaints involving the ports in terms of antitrust violations. This may be considered as a sign of the effective privatization process and the proactive role of the TCA. However, there is still no independent port authority to regulate and supervise the sector. Thus, it is possible to experience antitrust violations especially in terms of abuse of a dominant position.