



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

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**ROUNDTABLE ON RESALE BELOW COST**

**-- Note by Turkey --**

*This note is submitted by the Delegation of Turkey to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.*

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## **1. Introduction**

1. Resale below cost by in particular by large stores has been an important issue claimed to be dealt with in the retailing market. In particular in line with the increasing importance of the so-called hypermarkets and/or markets chains, the issue of resale below cost has been raised by small retailers and small business owners. They not only registered complained with the Turkish Competition Authority (TCA) but also asked for a specific law which regulates the practices of the large stores. The increasing concentration in retailing market and increasing importance of market chains and large stores have kept the issue on the agenda of Turkish economy.

2. In this submission, first of all, the issue will be examined under competition law. Then a picture of the market regarding the issue will be taken on the basis of a recent study<sup>1</sup> conducted in co-sponsorship of the Turkish Competition Authority, the World Bank and the Union of Chambers and Stock Exchanges of Turkey. Thirdly, the draft bill on large stores will be discussed. Lastly, some questions thrown within the letter sent by the OECD Competition Committee will be answered.

## **2. Resale Below Cost and Turkish Competition Law**

3. Resale below cost is a pricing practice, which should be considered carefully under competition law. Unless resale below cost is practiced by a group of company by an agreement, this issue can only be evaluated as a single firm practice. For a pricing practice to be as a single firm infringement under competition law, it should be conducted by a dominant firm and importantly it should be either excessive or predatory. Unless these two conditions are met, generally pricing practices are legal under competition law. Resale below cost can only be considered in association with predatory pricing. It is necessary to tell here that if the pricing below cost is not predatory in competition economics term, then it can not be dealt with under Competition law. This general proposition represents the application under the Act on the Protection of Competition No. 4054 (Turkish competition law). In other words, the existing Turkish competition law does not allow the TCA to deal with and investigate pricing practices under below cost unless they are predatory and conducted by dominant firms.

4. The TCA has been in operation since 1997. In this process, the TCA has had to deal with many files in which below cost resale by certain local/national large stores are complained about. However, as the practices examined are not predatory and the firms are not in dominant position, the TCA rejected almost all of these complaints.

## **3. Recent Situation Regarding Resale Below Cost in the Retailing Market**

5. Recently a working paper<sup>2</sup> has been prepared with a view to seeing the role of competition policy regarding the nexus between foreign direct investment and retailing market as part of a joint project co-sponsored by the Turkish Competition Authority, the World Bank and the Union of Chambers and Stock Exchanges of Turkey. Among the issues dealt with within the paper, below cost resale is also handled. This working paper provides us with empirical data on what the market players consider about this issue. According to this working paper, below-cost reselling is a practice used by some retailers to attract the attention of consumers. For the purposes of this study, interviews were conducted by all relevant parties of retailing market. During these interviews, it is argued that below cost reselling is used as an anticompetitive practice by some large retailers. According to the study, below-cost selling seems to be quite common. It is seen that more than half of retailers have applied below-cost selling once a month. However, interestingly, it is witnessed that it is applied more frequently by small retailers rather than large retailers. Almost all retailers believe that this practice is applied by other retailers at least once a month.

The finding of the working paper is that this practice is quite common but it is not used by all retailers to eliminate their competitors.

6. According to the said study<sup>3</sup>, most of the firms (about 90 percent of retailers and suppliers) believe that below-cost selling causes unfair competition, but a large majority of them (74 percent of retailers and 84 percent of suppliers) suggest that it can not be used systematically. A small group of firms (around 30 percent) claims that below-cost selling is used to push competitors out of the market and/or makes the market more competitive. However, this practice is claimed to be harmful for suppliers likely because of the fact that suppliers in some cases are required to accept lower prices.

#### **4. Draft Bill on Large Stores**

7. Turkey does not have any law, which specifically regulates the competitive conditions in retailing market. However, as known, many European countries have specific laws in this respect. In particular, against the raising complaints by the small retailers as well as the producers, the Ministry of Trade and Industry has prepared a draft bill regarding the operations of the so-called large stores. The main idea behind this bill is to bring a control over the activities of the large stores and to attempt to protect basically the producers which are desperate against the large stores and small businesses. Up until today, there have been three versions of this draft bill. The very first draft contained an article which prohibits among other things the following practices by the large stores:

- the foreclosing of the markets by extremely low prices for the new comers,
- by applying a short term lower price policy with a to driving competitors out of the market in an expectation of a long run profit.

8. Later on this article of draft bill was revised and a new draft has been prepared. It is realized that in the new bill, there are improvements in certain issues as compared with the previous bill. Namely; among the improvements that are important for competitive conditions in retailing market, it is seen that the above mentioned article was re-formulated and the prohibitions have been excluded from the bill.

9. The TCA formed an opinion on the first version of the bill. In this opinion, it is specifically expressed that the wording of the article is very similar to the wording of competition law and therefore, competition law is most suitable instrument to deal with them. In other words, the TCA is in the opinion that the pricing practices of large stores should be dealt with only by competition law and no other pricing practice other than prohibited by this system of law should not be banned by the bill on large stores.

10. The first version contained also a requirement to get permission for the discounted sales campaign to be applied by the large stores. The current version has however a refined version of the previous requirement. In article 10 of the former bill, an obligation was imposed on large stores for discounted sales practices, with regard to receiving, before the practice, the authorization of the chambers with which they were affiliated. In the new bill, the scope is narrowed by means of stating that sales campaigns may only be held in bairams and on special days, in cases of the liquidation of commercial activities and the change of workplace, by the end of the summer and winter season, and by the end of seasons, provided that again an authorization be received.

11. Regarding this requirement, the TCA is in the opinion that primarily, Turkish Competition Act stresses free decision-making by undertakings while defining competition. Within this framework, those practices of undertakings that shall distort or adversely affect the market conditions may be considered under the Act. This draft bill proposed to be introduced in relation to discounted sale has the likelihood of setting an obstacle to dynamic competition of the said undertakings. It should be taken natural that large stores reflect on their prices, through making discounted sale, the opportunities, and cost and efficiency

advantages obtained by them in the conditions of free market economy. Subjecting this sales strategy to authorization may harbour the risk of eliminating dynamism which is the distinctive quality of the private sector. Moreover, the fact that consumers benefit from such discounts should not be overlooked.

12. It is our opinion that if the reason for restricting discounted sales campaigns is the concern that these discounts would harm the other enterprises in the market (rather the small enterprises), and these undertakings would be pushed out of the market, it should be mentioned that this concern is irrelevant. Because, a practice to this end shall have the nature of the abuse of dominant position and shall be prohibited under article 6 of the Act No. 4054, in case of the existence of the conditions. Therefore, it is considered that discounted sales campaigns are not required to be regulated in this bill.

13. The bill has not been passed by the Parliament yet. And we expect that it is not passed by the Parliament as it contains some other restrictions over the operations of the large stores.

## **5. Answers for Some Questions**

### ***5.1 Do these prohibitions protect competitors rather than protect competition?***

14. The concentration of large stores has been a new phenomenon for the retailing market that is important for consumers. In other words, the competitive conditions of this market directly affect the money in the pocket of consumers. It is the opinion of the TCA that the first concern of the competition agencies should be to protect the competitive process and not the competitors. In line with this approach, the TCA believes that intervention into the pricing policies of the large stores should not be acceptable and should be considered as being distortive for competition. It is our belief that such interventions should be regarded as artificial and thus should not be approached with leniency. In short, the large stores should determine their overall marketing policies freely and this marketing may well contain pricing of certain goods at below cost. However this below cost selling is part of a general marketing policy and should be evaluated on the basis of general competitive conditions of the market. In this regard, it is witnessed in Turkish practice that the marketing strategy of the large stores are basically in favour of consumers and any artificial intervention into their marketing strategy may significantly harm the consumer welfare. If the idea is to protect small business. It is not the best way to intervene in the marketing strategy of the large stores and some other ways should be sought for better solution for all.

### ***5.2 Do they create administrative burdens on government and firms that are greater than the social benefits?***

15. We don't have any empirical data to support our position in this regard as Turkey does not have a law which control pricing policies of large stores. However, considering the fact that there are many goods to be able to be sold at below cost and there are a quite great number of local large stores together with the national ones, to follow up for resale below cost will really require the government to allocate a significant deal of resource in the form of money and staff. Also, the legal procedures to be followed up might be quite time consuming and it might be that the large stores may be in uncertainty with respect to their marketing strategy. Thus it is possible to consider that such a ban or control will certainly increase the administrative burden for both government and the firms.

### ***5.3 Do they create rigidities in the behaviour of firms that retard productivity growth and slow the diffusion of innovation?***

16. The retailing market is one of the sectors that is sensitive to innovations and new ideas. In other words, know-how is quite important for this market. An important requirement to keep this sensitivity higher enough is to eliminate as much as possible the rigidities faced by firms. It is our belief that any ban

or control over the pricing policies of the large stores will reflect certain rigidities for their overall marketing strategies.

**5.4 *Do they prevent or slow the displacement of less efficient retail approaches by more efficient retail approaches?***

17. As the ban or control over pricing policies of large stores is a direct intervention on marketing strategy of firms, it should be regarded as affecting the competitive conditions in the market. As the idea behind it is to protect small business, as a corollary of this motivation it is possible to state that the intervention into resale below cost will serve the preservation of less efficient firms in a manner that is in direct contrast with the heart of competition, that is survival of the fittest.

**6. Conclusion**

18. It is our belief that the market should be free from artificial intervention into the competitive dynamics. In this regard, any law which bans or control over resale below cost that might be a significant part of overall marketing strategy of the firm, should be regarded as unacceptable and should be avoided. The pricing policies should only be caught by competition act, if all conditions necessary for an infringement are met. Considering the fact that even it is not so easy to consider a pricing practice as an infringement under competition law, then it is possible to think that the practical application of such a ban will be quiet difficult. Also, it is important to keep in mind that such interventions might create unexpected other burdens for the government and firms which ultimately harm the social welfare.

19. With these considerations in mind, the TCA has reacted negatively against the provisions which attempt to regulate the pricing policies of large stores in the first version of the draft bill on large stores. Then the available version of the draft bill does not contain such a ban and it only contains a refined clause regarding the discounted sales by the large stores, we believe that the opinion of the TCA was quite effective for the removal of the said provision from the draft bill as well as the refining of the clause regarding discounted sales.

**NOTES**

1. Çelen A, Erdoğan T and Taymaz E, “Fast Moving Consumer Goods Competitive Conditions and Policies” ERC Working Papers in Economics 05/03, June 2005. <http://www.erc.metu.edu.tr/menu/series05/0503.pdf>
2. Ibid p.23-24
3. Ibid.24