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COMPETITION COMMITTEE**

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Working Party No. 2 on Competition and Regulation

IMPROVING COMPETITION IN REAL ESTATE TRANSACTIONS

-- Turkey --

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The attached document is submitted by the delegation of Turkey to the Working Party No. 2 of the Competition Committee FOR DISCUSSION under Item III of the agenda at its forthcoming meeting on 19 February 2007.

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1. In the Turkish legal system, there is no specific legislation which regulates real estate agencies. According to Turkish Commercial Code, the institutions that are established to take part in real-estate activities are considered as “trading houses” and the ones who are in charge of managing these enterprises are called “merchants”. In 1997, real-estate agencies are also included among “tradesmen” and “craftsmen” by a legal legislation. Following the enactment of this decision, “Real-estate Professional Chambers” having a public corporate status have started being established in various provinces of the country since 1999.

2. Therefore, under the Turkish legislation real-estate agencies can be found in two forms. Accordingly, they are either **merchant real-estate agencies** or **tradesmen real-estate agencies**.

3. “Merchant real-estate agencies” are members of Chamber of Commerce, thus subject to relevant legislation¹ regulating Chambers of Commerce in Turkey and there is no such legislation that allows them to determine fixed or minimum price tariffs, while “tradesmen real-estate agencies” can become members of Professional Chambers and subject to rules governed for them. According to article 135 of the Turkish Constitution, public professional chambers and their higher organisations are:

“...public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public; their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision.”

4. Article 62 of the “Act no 5362 on the Vocational Organizations of Craftsmen and Tradesmen” dated 07.06.2005 grants to the Chambers with which tradesmen and craftsmen are affiliated the right to publish price tariffs for goods and services produced by these tradesmen and craftsmen. With this provision, the right to determine price tariffs of tradesmen and craftsmen is explicitly granted to the Chambers and the Unions with which the Chambers are affiliated. The same article also foresees that those prices show the **maximum limits** to be placed. In fact, this subject concerning “maximum prices” is added to the Act as result of the Turkish Competition Authority’s (TCA) opinion that was sent during the preparation stage on the draft law on the Vocational Organizations of Craftsmen and Tradesmen in 2004. On 09.08.2004, the Ministry of Industry and Trade stated that the works were completed, for redrafting and adapting to today's conditions the Tradesmen and Craftsmen Act No. 507 which had entered into force in 1964 and which was realized not to respond to today's conditions (*“The Act No. 507”*), and it requested that the opinion of our Authority about the “Act on the Vocational Organizations of Craftsmen and Tradesmen” be notified. In the Act No.507, there was no such reference to whether those prices are maximum, minimum or fixed. Nevertheless, the reference as to the prices being “maximum” was regulated via a secondary legislation.

5. Although there is an open reference to maximum prices via secondary legislation in the past, sometimes this might end up perceived by tradesmen and craftsmen as fixed prices to which compliance is compulsory in different sectors such as in the bread market. Therefore, this addition in the form of open reference to maximum prices in the Act is accepted to serve this misconception in a positive way. Thus, it is considered as a successful example of competition advocacy activities of the TCA. However, until now

¹ The Act no 5174 on the Union of Chambers and Commodity Exchanges of Turkey dated 18.05.2004. Union of Chambers and Commodity Exchanges of Turkey (TOBB) is the highest legal entity in Turkey representing the private sector. Currently, TOBB has 364 members in the form of local chambers of commerce, industry, commerce and industry, maritime commerce and commodity exchanges.

no such practice from the competition law perspective is experienced in the real-estate transactions that are subject to any form of inquiry.

6. Another legislation that deserves mentioning in this area is the “Compulsory Standard Communiqué for Real-estate Agencies” issued by the Ministry of Industry and Trade in 2003, and came into force in 2004. This communiqué regulates in general, rules on “tradesmen real-estate agency” services, management of the business house, the specificities of the environment where real-estate services are provided, and the peculiarities of the employees. In brief, this secondary legislation tries to maintain a minimum standard that are expected to be followed by all those parties that take part in such activities. However, these rules should not lead to misunderstandings; as those rules are general rules that aim to maintain a minimum standard in the eyes of the consumers and for the benefit of the profession and are not deemed to be excessive.

7. One important provision of this communiqué from the competition law and policy enforcement is about “price tariffs”. Accordingly, services provided by real-estate agencies are based on the maximum price tariffs determined by their affiliated Professional Chambers. Besides, the same provision puts forward that the percentage of the commission rates together with the condition that the display of various estates will be free of charge and this issue of “no fees will be charged” issue will be hang up at a place that can be seen by everyone in the trading house.

8. In this regard, it would also be timely to mention the draft law on “Real-estate Counseling”. Within its competition advocacy role, the TCA sent its opinion to the said draft law especially with respect to Article 16(1) of the draft law. This article reads as follows: “*the prices for the services provided by real-estate agencies are determined according to Act no 5174 on the Union of Chambers and Commodity Exchanges of Turkey and Act no 5362 on the Vocational Organizations of Craftsmen and Tradesmen*”. As discussed above, Act no 5174 and Act no 5362 give the right to determine the maximum prices. Nevertheless, the TCA in its opinion stated that such wording might lead to misunderstandings as in practice such provisions might turn into fixed prices. That’s why the exclusion of such wording from the draft law was suggested.

9. Within this context, it can be said that rules concerning real-estate transactions do not prevent the operation of low-cost agents or sales-by-owner. There are no professional or governmental rules which restrict the ability of the agents to offer low-cost services. In addition to that, there are no rules or regulations that make it difficult for individuals to sell their own homes. Furthermore, entry rules do not limit the number of real-estate agencies that could perform the necessary transactions. They make a choice in between being a merchant or a tradesman to operate as a real-estate agency.

10. To summarize, the rules governing the real-estate transactions are general in nature and aim at maintaining an acceptable standard in the eyes of the consumers. From the competition law and policy perspective, this market has not experienced a serious competition restriction so far. It is also worth mentioning that, within its competition advocacy role; the TCA follows the sector closely and works together with the relevant actors in close contact, which are in charge of the regulations in this sector.