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ROUNDTABLE ON TWO-SIDED MARKETS

-- Note by the Delegation of Turkey --

This note is submitted by the Delegation of Turkey to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 9 - 11 June 2009.

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TWO SIDED MARKETS

-- Contribution from Turkey --

1. Two sided markets are generally considered to act as a common ground that brings two sides of the market together. However, this definition is not restrictive enough and may lead to some markets being inaccurately defined as two sided. The Turkish Competition Authority (TCA), in its definition of a two-sided platform business, relies on the existence of two distinct groups of customers for the product, indirect network effects between these customer groups and an intermediary internalizing the externalities created by one group for the other, as suggested in literature¹. For example, in its *Yemek Sepeti* decision², an internet portal providing “online meal order service” was described as an intermediary (a platform) between the customers and the restaurants that provide takeaway service. The presence of network effects was explained by the fact that the more restaurants would be willing to register in the relevant internet portal, the higher the number of customers using that portal. In the same way, the more customers would be willing to use the portal, the higher the number of registered restaurants. Based on this assessment, online meal order service was acknowledged as a two-sided platform business.

2. In line with this approach, several other platform businesses were identified by the TCA in several other decisions. In the *Star TV* decision³, “nationwide television broadcasting business”, and in the *Vatan Newspaper* decision⁴, “nationwide daily political newspaper publishing business” were analysed as two-sided platform businesses having two interdependent customer groups: advertisers and viewers in the first case, and advertisers and readers in the second. In the TCA’s decision concerning the *World Credit Card Program Cooperation Agreement between Yapı ve Kredi Bank and Anadolubank*⁵, “credit card market” was defined as a two-sided market having two distinct customer groups, namely cardholders and merchants, with interconnected demands. Therefore, in this decision, a payment system such as credit cards was interpreted as a two-sided platform.

3. When defining the relevant market in two-sided markets, the TCA takes both sides of the market into account. One such decision was concerned with the allegation of *a concerted practice between several media groups to jointly determine the prices of their political newspapers (Hürriyet, Milliyet, Sabah) and sports papers (Fanatik, Tarafstar-Fotomaç)*⁶. In this decision, newspapers were first classified according to their contents and their publication periods. Afterwards, it was questioned whether these different classes of newspapers were substitutable with each other in the view of customer groups, readers and advertisers alike. In the end, it was concluded that demand substitution for nationwide daily political newspapers and nationwide sports papers did not exist on either the reader side or on the advertiser side, hence the relevant

¹ EVANS, D. S. (2003), “The Antitrust Economics of Two Sided Markets” Yale Journal on Regulation, Vol. 20.

² Dated 20.9.2004 and numbered 04-60/869-206.

³ Dated 25.10.2005 and numbered 05-73/984-272.

⁴ Dated 10.3.2008 and numbered 08-23/237-75.

⁵ Dated 14.8.2008 and numbered 08-50/727-286.

⁶ Dated 17.7.2000 and numbered 00-26/291-161.

product market was defined accordingly as two separate product markets; “market for nationwide daily political newspapers” and “market for nationwide sports papers”.

4. Another example of a decision in which the relevant product market was defined according to analyses on both sides of the market is the *Yemek Sepeti* decision mentioned above. In this decision, it was first assessed whether the restaurants considered online meal order service provided by Yemek Sepeti’s website substitutable by other methods of receiving orders, for example receiving orders by telephone or setting up their own websites to get online meal orders. Having concluded that this was not the case, the TCA examined the issue from the customer perspective and decided that online meal order service constituted a separate relevant market in the view of the customers as well. Based on this assessment, “online meal order service market” was defined as the relevant product market.

5. Likewise, the TCA adopts a methodology that takes both sides of the market into account in its examination of issues that arise in an antitrust matter. The *Yemek Sepeti* decision provides an example in this respect as well. In this case, the TCA was concerned with the exclusive agreements between the relevant undertaking (Yemek Sepeti) and the restaurants for registration to its internet portal, which were also part of Yemek Sepeti’s plan to set up a more extensive exclusive system.

6. At the time of the investigation, the TCA determined that both the agreements that had been signed so far and the ones that Yemek Sepeti was planning to sign with new customers, individually qualified for block exemption. On the other hand, it underlined that buyers (restaurants) signing an exclusive agreement with the supplier upstream (Yemek Sepeti) no longer had the opportunity to make deals with other suppliers in the market or the potential ones that would enter the market and therefore, in case such agreements covered a significant part of the relevant market, concerns relating to foreclosure of the market would arise. Further on, the TCA mentioned Article 6 of the Block Exemption Communiqué on Vertical Agreements (Communiqué No: 2002/2) which provides for the revocation of an exemption granted to an agreement by the Communiqué in case it is established that the relevant agreement has effects incompatible with the conditions stated in Article 5⁷ of the Act on the Protection of Competition (The Competition Act). Accordingly, the TCA decided to analyse whether the exclusive system that Yemek Sepeti was planning to set up would qualify for an exemption under Article 5 of the Competition Act. In this case, while weighing the anticompetitive effects of such a system against the benefits that might be achieved, the TCA examined the market power of Yemek Sepeti from various angles. To that end, market shares of Yemek Sepeti and its rivals, the first mover advantage of Yemek Sepeti, several advantages related to Yemek Sepeti’s restaurant base (such as brand image of its restaurants), the sunk costs related to marketing and advertising that rivals would have to incur to attract customers to their own websites, the extent of barriers to market entry, the immaturity of the market which necessitated a stricter approach against foreclosure were all among the factors that were evaluated. However, as far as two-sided markets are concerned, the case is most significant in that it provides an example of how the TCA approaches the issue of market foreclosure in a two-sided market.

⁷ According to Article 5 of the Competition Act, the Competition Board may decide to exempt agreements, concerted practices between undertakings and decisions of associations of undertakings from application of provisions of Article 4 (which renders agreements, concerted practices and decisions of associations having the object or the effect of preventing, distorting or restricting competition illegal) in case the conditions cited in Article 5 are fulfilled. These conditions are as follows:

- a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,
- b) Benefitting the consumer from the above-mentioned,
- c) Not eliminating competition in a significant part of the relevant market,
- d) Not limiting competition more than what is compulsory for achieving the goals set out in (a) and (b).

7. In this decision, the TCA regarded the network effects between the two sides of the market as a factor intensifying the anticompetitive impact of exclusive agreements. The TCA first stated that having a high number of customers as users, and restaurants with brand image as members, of its website strengthened Yemek Sepeti's position in the market. It was further contemplated that the customers willing to give orders via internet would opt for the websites with a restaurant portfolio of high brand image like that of Yemek Sepeti. The websites expanding user and transaction volume in this way would be able to direct more orders to the restaurants and consequently strengthen their position on the restaurant side of the market. The current or potential rivals of Yemek Sepeti on the other hand, being unable to achieve such a portfolio as a result of exclusive agreements signed by Yemek Sepeti, would not manage to attract users, which in turn would lessen their chances of making deals with reputable restaurants. Based on these assessments, the TCA concluded that Yemek Sepeti's exclusive agreements violated Article 4⁸ of the Competition Act and therefore provided that the block exemption that Yemek Sepeti's exclusive system had benefited at the time be revoked.

8. As regards the analysis of a merger in a two-sided market, the *Vatan Newspaper* decision⁹ is informative of the TCA's approach. This case was concerned with the takeover of Bağımsız Gazeteciler Yayıncılık A.Ş. and Kemer Yayıncılık ve Gazetecilik A.Ş. (publishers of the Vatan Newspaper) by another media group Doğan Gazetecilik A.Ş. (Doğan Group).

9. In this case, the TCA underlined the two-sided character of the "nationwide daily political newspaper market" by stating that the potential customers of a newspaper publisher are not only readers but also advertisers as well. Hence, in order to determine possible competition concerns that could arise post merger, the Herfindahl-Hirschman Index (HHI) levels were calculated on the basis of both net sales of newspapers and the revenues from advertisements. In the said case, in terms of net sales, the HHI level and the change in the HHI level (delta) amounted to 1676 and 294 respectively. In terms of the revenues from advertisements, the figures were 3984 for the HHI level and 506 for the delta. Therefore, the TCA, citing the approach of the European Commission found in *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*¹⁰ and that of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) in the *Horizontal Merger Guidelines*¹¹, pointed out that the HHI levels indicated a high risk concentration level when based on the revenues from advertisements and a medium risk concentration when based on net sales. It was also mentioned that, with the takeover of the Vatan Newspaper, the Doğan Group would benefit from portfolio and synergy effects which would probably result in even higher market shares for the group.

10. As is known, the HHI Index is a commonly used measure to assess the degree of competitiveness of the market and the ability of the firm in question to increase prices post merger. On the other hand, it is asserted that this approach must be used with special care when multi-sided platforms are involved and that the pricing analysis must consider not only all sides of the market but their interactions as well¹². Consistent with this approach, having considered both sides of the market in the measurement of the HHI levels, the TCA, proceeded to analyse the interactions between the two sides of the market so as to determine the pricing level and pricing structures.

⁸ See footnote 7.

⁹ See footnote 4.

¹⁰ OJ C 31, 5.2.2004, p. 5–18.

¹¹ Issued on 2 April 1992.

¹² See footnote 1.

11. Given the fact that the demand for most of the newspapers published by the Doğan Group was price elastic, the TCA was of the view that an increase in the prices of newspapers published by the Doğan Group would distract customers away from the group's newspapers which in turn would lead to a decline in the customer volume on the other side of the market, namely, advertiser volume and a loss in the revenues from advertisements. Therefore, the TCA regarded an increase in the price of newspapers post merger improbable. As regards the advertiser side, the TCA first mentioned that the takeover of the Vatan Newspaper by the Doğan Group would indisputably strengthen the position of the group vis-à-vis the advertisers since the Vatan Newspaper possessed an established brand name and reader mass/profile and that the takeover of this newspaper would not only broaden the group's portfolio but also enable the group to match the leading newspaper of its closest rival, the Sabah Group. Afterwards, the TCA took into account the group's opportunity to conduct tying practices (such as providing advertisement space in one newspaper upon the condition that advertisement space in another group paper is also purchased) or to provide discounts in its sale of advertisement space on the condition of exclusivity. The probability of an anticompetitive impact occurring on the advertiser side of the market due to the portfolio effect of having a new newspaper was also investigated thoroughly taking other country examples and the views of the advertisers and the rivals into account. As a result of these analyses, it was decided that it was not possible to assume existence of buyer power on the part of the advertisers. Potential competition, the vertically integrated structure of the newspaper publishing business of the Doğan Group and its supporting activities in radio and TV broadcasting were other issues dealt with in the course of the analysis. Based on these assessments, the TCA reached the conclusion that the transaction would lead to a lessening of competition as a result of strengthening of a dominant position. However, the TCA authorised the transaction as it accepted the failing firm defense brought forward by the parties but only on several conditions to maintain the competitive structure of the market.

12. The *Cevahir Shopping Mall* decision¹³ is another example of cases in which the TCA dealt with two sided markets. This time, the issue was an allegation of an abuse of a dominant position. In this case, it was claimed that Cevahir Shopping Mall charged local retailers much higher than their foreign counterparts for rental space which led to the former's not being able to compete with the latter. Article 6 of the Competition Act states that "*The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited...*". Following this provision, the Article lists some exemplary abusive cases one of which is "*making direct or indirect discrimination by offering different terms to purchasers with equal status for the same and equal rights, obligations and acts*". Therefore, the TCA set out to examine whether the practice of Cevahir Shopping Mall constituted an infringement in accordance with this provision of Article 6 of the Competition Act. In the end, the TCA concluded that this was not the case. Part of this conclusion was based on the determination that the two sided character of the market rendered the mentioned practice a rational competitive business strategy. In the decision, it was first mentioned that, reputable retailers with a brand image and a loyal customer base provided the shopping malls with the potential of more profits in the long term as they attracted more customers to the shopping mall. Based on this premise, it was considered to be rational for a shopping mall to offer more favourable conditions to foreign retailers with a wider customer base so as to increase the number of its visitors. Therefore, this case shows that the TCA is of the view that the business strategies and their effects on the consumers must be evaluated with regard to both sides of the market when it comes to the analysis of cases relating to abuse of dominant position as well.

¹³ Dated 15.6.2006 and numbered 06-447540-142.