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BUSINESS FORUM : BENEFITS OF PRIVATE SECTOR FROM COMPETITION POLICY:
THE TURKISH EXPERIENCE

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BENEFITS OF PRIVATE SECTOR FROM COMPETITION POLICY: THE TURKISH EXPERIENCE*

With respect to objective(s) of competition policy, distinct areas of concern can be defined. While some of these are to promote competitive processes and to prevent concentration of economic power, some others are to achieve fairness in distribution of wealth, protect consumers and small enterprises[1], to create unified markets and to remove artificial barriers to trade[2], to enhance international competitiveness[3]. However after a long history of evolution of competition rules, we have come to a point that promoting economic efficiency has become the dominating policy objective[4]. In line with this, most of the academic debates on this issue focus on economic efficiency.

In the general reasoning of the Turkish Competition Act[5] (hereinafter "the Act"), adaptation of the Act is primarily associated with efficiency and consumer welfare[6]. Protecting small firms via removing artificial barriers to entry and lowering the possibility of state intervention etc. are considered to be secondary objectives of the Act. By listing several objectives for the competition rules, the aim must be to provide political and public support behind the Act[7].

It is not difficult to demonstrate consumer benefits from the application of competition rules. By means of competition policy, consumers may enjoy lower prices and higher quality and increased variety of goods and services etc. On the other hand, highlighting its role in promoting the development of the private sector is not that easy. As a matter of fact, competition authorities may be perceived to bring a serious burden on firms by giving penalties to them, prohibiting some of their practices, imposing some obligations and conditions on them etc. Besides legal uncertainty caused by a possible intervention by the authority, has a cost to firms. Nevertheless, effective enforcement of competition rules yields significant benefits for producers as well as consumers including the following:

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[1] "After decades of agonizing interpretation, a sort of working compromise has been reached, so that the goal of antitrust is to preserve a competitive process even at the cost at times of the disappearance of less efficient small businesses." (Pitofsky, 1979). Likewise, Posner (1976) claims that "the antitrust enforcement is an inappropriate method of trying to promote the interests of small business as a whole. The best overall policy from the standpoint of small business is *no* antitrust policy, since monopoly, by driving a wedge between the prices and the costs of the larger firms in the market, enables the smaller firms in the market to survive even if their costs are higher than those of the large firms." If the policy is seen to be a legal instrument for protecting small firms, instead of hindering practices yielding economic inefficiency and lessening total surplus, impeding practices by big firms creating efficiencies may be the outcome.

[2] As in the EU experience.

[3] See Rodger and MacCulloch (1999)

[4] According to Bork (1993), the only legitimate goal of American antitrust law is the maximization of consumer welfare. Hovenkamp (1985) demonstrates that Chicago school of antitrust encourages productive efficiency but recognizes maximizing net allocative efficiency as the exclusive goal of the antitrust laws.

[5] Numbered 4054

[6] "The TCA seeks its ultimate objective as promoting efficient markets and consumer welfare …" (OECD Policy Brief, 2005)

[7] Fight against inflation is the most remarkable example of these.

- Competition policy forces firms to be more efficient via eroding short run profits gained by exercising market power, and thus cost and dynamic efficiencies[8] are improved in the medium and long run.

- By hindering artificial price increases through collusions or abusive practices, firms in downstream markets can enjoy lower input prices.

- Competition authorities enable or facilitate market entry by prohibiting strategic behaviours deterring entry. That is, an entrepreneur who may give up investing in a new market in the absence of competition rules may enter the market being aware of the facts that any anti-competitive practice deterring entry is prohibited under competition rules, and any potential damage caused by such a practice can be compensated.

- Competition policy has a disciplinary role on the international competitiveness of industries and firms by challenging them within domestic markets. According to Clarke and Corones (1999), "in a country like Australia vigorous domestic competition can enhance the ability of local firms to enter and prosper in highly competitive overseas markets by engendering the skills, vigour and fortitude necessary to do." The authors argue competition ought to be protected even at the expense of efficiency, in some cases at least, so as to promote exports or to enter the overseas markets. Likewise, referring to Porter's study, Oz (1999) states "the home base plays a critical role in that firms tend to build up competitive advantage in industries for which the local environment is the most dynamic and challenging." According to Porter, there are four determinants of competitive advantage, namely factor conditions, demand conditions, related and supporting industries, and firm strategy, structure and rivalry, which shape home environment, and are influenced by governments (Oz, 1999). Thus the author claims governments have an important but indirect role in the development of an industry. Oz applied Porter's framework to Turkey and reached some important conclusions. This study calls for special attention in the areas of factor creation mechanism and building on the entrepreneurial strengths of Turkish businessmen. Regarding the latter area, the author emphasizes "promoting new business formation, regulating competition via antitrust laws, and encouraging and facilitating international involvement of Turkish firms are amongst the most prominent areas that can be improved in this respect."

The benefit list can be extended, however we consider these enough to conclude that competition policy has an important role in promoting private sector development. The rest of the paper will be on Turkish experience regarding application of substantive provisions of the Act and competition advocacy role in the light of some cases and their reflections on the markets.

1. Application of Substantive Provisions of the Act

Substantive provisions of the Act are laid down in articles 4, 6 and 7. Under articles 4 and 6, which are in line with articles 81 and 82 of Rome Treaty; "agreements, concerted practices and decisions of associations of undertakings restricting competition" and "abuse of dominant position" are prohibited. Article 7 is on merger control. The Turkish Competition Authority (hereinafter "TCA") has power to perform investigations on cases associated with the said

[8] Cost efficieny means that output is produced at minimum opportunity cost. The rate of introduction of new products and more advanced production processes are the results of an industry's dynamic efficiency.

substantive provisions. At the end of the investigation, the Competition Board[9] may oblige undertakings or associations of undertakings concerned to terminate the infringement and impose fines up to 10% of last year's annual turnover on them, if it is concluded that parties infringed the Act.

1.a. BIRYAY I and II Decisions[10]

The cases are concerning complicating activities of rival newspaper/journal (hereinafter "paper") publishers and distributors through exclusive agreements, fixing distribution commission rates and fees, and sharing demands of rival publishers via establishing a joint venture by Dogan and Bilgin Groups which involved in both paper publication and distribution markets.

Parties were

- YAYSAT, paper distributor controlled by Dogan Group which was the leader undertaking in paper publication market,

- BBD, paper distributor controlled by Bilgin Group which was the second big player in paper publication market,

- BIRYAY, joint venture whose parent companies were YAYSAT and BBD.[11]

In BIRYAY I, Multimedya, a paper publisher, brought a complaint to the TCA, asserting that YAYSAT and BBD shared the demands of rival paper publishers through BIRYAY, and BIRYAY prevented market entry and complicated the activities of competitors including Multimedya. The Competition Board initiated an investigation on the complaint and decided to handle the negative clearance/individual exemption application by the parties simultaneously.

BBD and YAYSAT were jointly dominant in paper distribution simply because all the distribution of paper was handled by these firms (see Table), and new entry to distribution level was unlikely.

Table: Market Shares in Paper Distribution

Market Share in Distribution (%)		**1996**	**1997**	**1998**
Newspaper	YAYSAT	55	60	65
	BBD	45	40	35
	Total	**100**	**100**	**100**
Magazine	YAYSAT	70	67	67
	BBD	30	33	33
	Total	**100**	**100**	**100**

BIRYAY didn't have enough human resources and assets to handle paper distribution, and acted as a common sales organization fixing sales conditions and engaging in demand management. YAYSAT and BBD were performing the distribution function, as they had done before establishing BIRYAY, on behalf of the joint venture.

[9] The decision making organ of the TCA.
[10] Respectively 17.7.2000 dated, 00-26/292-162 numbered, and 14.12.2000 dated, 00-49/529-291 numbered.
[11] YAYSAT and BIRYAY, distribute papers of Dogan, Bilgin Groups and those of competitors charging them a commission over the price of the paper and sometimes a fixed fee.

YAYSAT and BBD terminated distribution contracts with competitor publishers and transferred those contracts to BIRYAY. Afterwards BIRYAY concluded new contracts imposing stricter conditions (such as higher commission rates) on the customers. Consequently competition between YAYSAT and BBD was completely prevented, and BIRYAY began to act as a monopolist.

Following a disagreement between the publisher of Aksam newspaper and BIRYAY on distribution terms, the publisher established a distributor named DBD to distribute Aksam. DBD achieved to access final sales points (kiosks) in the beginning, but then BBD and YAYSAT urged kiosks to make a choice between Group[12] papers and Aksam. Kiosks refrained from selling Aksam since they had to be provided with a wide range of papers and DBD was distributing only a single newspaper and a few journals. Therefore, kiosks had to conclude exclusive agreements with BIRYAY prohibiting sales and display of rival papers, and DBD was driven out of the market. This manifests market foreclosure effect of such exclusive agreements at the distribution level.

The Competition Board, held that BIRYAY, which didn't physically engage in distribution and merely coordinated competitive behaviours of its parent companies, was not a full function joint venture, thus creation of BIRYAY fell out of the scope of Communiqué on Mergers and Acquisitions[13]. The Board assessed the joint venture agreement under articles 4 and 5 of the Act[14] and rejected to grant an individual exemption decision expressing that it was not necessary to establish such a joint venture to yield claimed efficiencies, and as regards the last condition of individual exemption[15], the establishment of BIRYAY and its practices eliminated whole competition in the duopolistic market.

After evaluating these facts, the Competition Board

- held that BBD and YAYSAT, infringed article 4 of the Act through BIRYAY by;

  (i) sharing paper distribution market,

  (ii) fixing distribution commission rates and fees,

  and fined them under article 16 of the Act[16],

- held that BBD, YAYSAT and BIRYAY infringed article 6 of the Act[17] by;

  (i) complicating the activities of competitor publishers and distributor,

  (ii) engaging in activities aiming at distorting competition in the paper publication market by means of exploiting financial, technological, and commercial advantages that stem from dominant position in the paper distribution market,

[12] Dogan and Bilgin Groups controlling YAYSAT and BBD.
[13] Numbered 1997/1
[14] Titles of the said articles are "Agreements, Concerted Practices and Decisions Limiting Competition" and "Exemption" respectively.
[15] Not eliminating competition in a significant part of the relevant market
[16] Article on administrative fines
[17] Article on abuse of dominant position

and fined them under article 16 of the Act,

- rejected to grant negative clearance, and obliged them to delete anti-competitive provisions (i.e. obligation imposed on small shareholders[18] of BIRYAY not to compete with the joint venture) from the agreement creating BIRYAY,

- concluded that contracts containing provisions of exclusivity between paper distributors and final sales points yielded market foreclosure effect extensively, and thus such agreements would not benefit from exemptions granted under relevant communiqués on block exemption, declaring that even in the absence of such a contractual provision any behaviour that amounted to exclusivity in practice would be treated the same,

- taking importance of kiosks in paper sales into account, decided to notify this decision to the relevant authority so that kiosks leased by municipalities would be obliged to sell papers from all publishers under reasonable terms[19].

Before the completion of the first investigation, two complaints that were very similar to those in BIRYAY I were received and a second investigation (BIRYAY II case) was initiated against BIRYAY. According to the complaints by Ulusal Basın, publisher of a newspaper named Star, and Izmir Chamber of Groceries and Kiosks, BBD and YAYSAT attempted to complicate the activities of Medya (a new distributor controlled by Ulusal Basın) and to hinder sales of Star (a newspaper distributed by Medya) in kiosks and groceries, and kiosks could not sell Star because of their contracts with YAYSAT and BBD including an exclusivity provision.

After acquiring 20% equity of BBD, Uzan Group began publishing Star. Star was being distributed under the same conditions applicable to Sabah, a newspaper of Bilgin Group. When Star launched a "price war" dropping its price from 130.000 TL to 50.000 TL, BBD asked to charge Star a fixed fee for distribution. Then Uzan Group founded its own distribution company, named Medya, and accessed final sales points through it. As in Aksam case (BIRYAY I), YAYSAT and BBD urged kiosks not to sell Star.

At the end of the investigation, the Competition Board decided that YAYSAT and BBD abused their joint dominant position by engaging in practices aiming at hindering sales of Star and complicating activities of Medya.

As summarised above, in both of the cases, Dogan and Bilgin Groups distorted competition in paper publication and distribution markets. The Competition Board's intervention has provided consumers with a serious benefit that they can purchase any paper in all final sales points. In the meantime, existing and potential competitors also enjoyed the decision in several ways, which are detailed below;

- Competitor publishers have been charged lower commission rates and fixed fees for distribution.

- Kiosks have been selling any paper, as exclusivity provisions were deleted from the contracts with distributors. This issue points out that entry to publication and distribution

[18] Other than YAYSAT and BBD
[19] Kiosks leased by municipalities make almost half of paper sales.

markets is easier now since artificial entry barriers against access to final sales points were removed.

- Municipalities that were informed about the Board's decision have leased kiosks with the condition that they sell all papers from all publishers under reasonable terms.

- By the date of investigation, the Press Act envisaged that all papers were distributed and sold under reasonable terms. However this provision was not effective in practice. While a draft for revising the Act was being prepared, the TCA informed the Prime Ministry about the decision. Thanks to this, the subject of the said provision was made clear. That is, distributors were obliged not to conclude a contract including exclusivity provision and to refrain from any action that amounts to exclusivity in practise.

- No further complaint has been received from the said markets. This may be considered as an indicator that the Competition Board was successful in intervening in these markets, and markets have been functioning more competitively afterwards.

1.b. Benkar Decision (Acquisition of Benkar by HSBC) [20]

Benkar, was the first undertaking to launch in Turkey in 1998 the shopping cards' system with its brand of the famous "Advantage Card", allowing payment in installments. This type of card which is similar to credit cards provides its holder the opportunity to pay in portions the amount of the spending made in the retail shops in which the Card is valid. Due to the high rates of inflation at that time, payment by installments has been perceived as highly favorable by Turkish consumers, and this new product had become widespread in Turkey in a very short period of time. In the following period, the banks entered into this market, and similar cards providing similar payment opportunity were introduced.

Advantage Card diffused in the market within a very short period of time due to the advantage of being first it not only increased the number of card holders significantly, but also concluded membership contracts with many shops, becoming quite widespread particularly in the textile shops. The contracts between Benkar and member shops in the Advantage Card system stipulated non-compete obligation on the buyer with an indefinite duration. In other words, they contained provisions hindering the shops from working with the other cards allowing installment payment other than Advantage. Upon the application of Benkar in 2001 to form a joint venture, the TCA inspected that the market share of Benkar was around 65% in the market for "installment payment cards". It was concluded that Benkar was a dominant firm in the market, and the restrictive provision in the membership contracts protected Benkar from the competition of the rivals, hindering particularly new entries into the market. Market-analysis made during the examination showed that, in this specific case, even if the non compete obligation was limited to a duration of 5 years, which is maximum time limit for the non compete obligations according to the block exemption communiqué, the agreement could still not benefit from the exemption since that obligation had resulted in an excessive restriction of competition while not providing any benefits neither to consumers nor to distribution of the service. Upon this view, the Competition Board obliged Benkar to remove the restrictive provision from the Advantage Card Contract, in order to make it possible for

[20] 15.08.2003 dated, 03-57/671-304 numbered

the member shops to conclude agreements with other undertakings to employ their installment payment cards.

However, in violation of the Board's decision, Benkar did not remove the provision restricting the use of other installment cards in the member shops. It continued to exert pressure on the member shops in order to avoid working with other cards. Consequently, the Competition Board decided to launch an investigation against Benkar. In the subsequent period, Benkar was acquired by HSBC, and thus the investigation was transferred to HSBC as the successor. At the end of the investigation, the Board concluded that although HSBC was not anymore in a dominant position in the relevant market, while the leader of the market, the said provision in the member shop contracts still violated the Act, and that HSBC, which acquired Benkar, continued the practice through implementing the contracts in a way to infringe the decision of the Board. However before the completion of the investigation, HSBC consented to the removal of exclusivity provisions from the agreement. In conclusion, the Board imposed a heavy fine on HSBC for non-compliance to the obligation brought by its former decision and prohibited agreements including exclusivity provision in this market.

Thanks to the decisions of the Board, it has been possible to prevent both Benkar and the other banks and financial institutions from concluding contracts containing exclusivity. That has contributed to the process of the introduction of new rival cards considerably, which has facilitated and enabled new entries such as Disbank, Akbank, Vakifbank, Finansbank Tekstilbank, and existing rivals such as Yapi Kredi Bank, Garanti Bank to increase their market shares. As a result, both the market has enlarged and competition has enhanced.

1.c. Turkcell Decision[21]

This case is concerning impeding the rival operator and some distributors operating in the cell phone market and driving them out of the market by Turkcell, who was in a dominant position in the Turkish GSM market.

Turkcell was implementing a system where the sales of a telephone (the machine) was made conditional upon the sales of a Turkcell line. That is to say, in order for a subscriber to buy a certain telephone, that subscriber had to register with a Turkcell line. In sales campaigns, in which 98% of total cell phone sales were performed due to the subsidy provided on cell phones by Turkcell to promote sales, products were sold sim-locked, which means that specific product could not be used with any other GSM line other than Turkcell, and sales fee for line and sim-card was not demanded from distributors. Assessing the implementation through the agreements containing exclusivity, the Board reached a conclusion that:

- Some specific brands of cell phones were bounded to be sold with Turkcell line and not with the rival operator's line, since distributors of cell phones are simultaneously the exclusive dealers of Turkcell,

- dealers' being forced to work with Turkcell because it had a larger market share brought about the activities of the rival operator to be impeded,

- the opportunity of usage of any brand of cell phone with any operator was eliminated,

[21] 20.7.2001 dated, 01-35/347-95 numbered.

- agreements including exclusivity provision complicated the activities of existing rival named Telsim and deterred potential entry,

and thereby competition was significantly restricted.

With these legal grounds, the Board found that there was an infringement of article 6 in that Turkcell impeded the activities of the rival operator by coercing the distributors not to undertake sales campaigns with the rival operator and not to sell cell phones along with the rival's line since they were dealt exclusively with and economically dependent to Turkcell. Additionally, Turkcell applied dissimilar conditions in favor of its exclusive distributors and extended its power by means of advantages with its dominant position in the GSM market to the cell phone market, in which its subsidiary was active, and thereby infringed article 6 of the Act. In conclusion, since the lines of rival operators could not be sold with most brands under exclusivity conditions as a result of which competition would significantly be restricted in the market, it was decided that exclusivity clauses could not be envisaged through agreements and practices.

Following the Board's decision, exclusive campaigns were abandoned. Therefore, the distributors of cell phones, which were exclusive dealers of Turkcell before, have been able to sell the phones along with the rival operators' lines. This means that the entry barrier for some brands of cell phones and potential operators was eliminated. From the consumers' perspective, any brand of cell phone can now be used with any operator line. Decrease in prices of cell phones due to the vigorous competition parallel to the changing structure of the market and entry of new brands, as a result of which Turkcell ceased subsidizing cell phones, might have contributed this movement. Yet, both the rival operators and the distributors other than the ones dealing exclusively with Turkcell were not driven out of market in the short run thanks to the decision.

2. Competition Advocacy

Competition advocacy is a concept that tells us the ability of competition authorities to affect and to actively participate in designing the policies of economy and regulations to improve industry competitiveness and thereby to create opportunity for undertakings to be able to compete and to enhance their market performances in such an environment. Competition advocacy that keeps undertakings aware of and out of potential infringements may sometimes be more effective than enforcement.

Thanks to competition advocacy, markets can be restructured so as to be more competitive after privatization and liberalization processes or at least more transparency and public awareness during these processes could be maintained. In this regard, by means of competition advocacy, competition authorities can eliminate or minimize the negative effects of "rent-seeking"[22] behaviors which are common especially in developing and in transition countries.

[22] Rent seeking behavior is "expenditure of resources in order to bring about an uncompensated transfer of goods or services from another person or persons to one's self as the result of a "favorable" decision on some public policy[…] Examples of rent-seeking behavior would include all of the various ways by which individuals or groups lobby government for taxing, spending and regulatory policies that confer financial benefits or other special advantages upon them at the expense of the taxpayers or of consumers or of other groups or individuals

Competition laws outlaw the practices of undertakings which reduce consumer welfare and result in inefficient use of resources. However, this is not valid under all circumstances. Sometimes distortion of competition may be derived from public policies and practices of public authorities. In fact, public intervention in a market may facilitate the restrictive practices of private parties in some cases. Hence, the power of competition authorities should be carried beyond application of substantive provisions of competition acts.

Competition advocacy by the TCA has two dimensions (OECD, 2005). First, article 27(g) of the Act empowers the Board to opine with respect to competition policy aspects of government legislation and regulations. Besides a communiqué issued by prime ministry in 1998 urges other agencies of the government to consult with the TCA in advance about proposed regulations and decisions that may have implications for competition policy. In this regard, TCA has performed a role as a consultant to the government and to sector regulatory agencies. Secondly it endeavors to increase public recognition and acceptance of competition principles.

In privatization processes as long as the privatization concerned is under scope of the relevant communiqué, the Competition Board's participation occurs at two stages. In the first stage, i.e. preliminary notification, the Board is asked for opinion as an advisory board in designing a privatization plan for an industry or asset before announcing the tender conditions to public. The Board forms its view by taking account of a wide range of factors such as what kind of competition concerns may arise after the particular transaction, what will happen to the actual or legal privileges that particular public undertaking may have. The second stage is the same as the procedure at which an ordinary merger is assessed under the merger provisions of the Act, and at this stage the Board acts as a law enforcement agency.

2.a. The Opinion submitted to EMRA

In 2004, Energy Market Regulatory Authority (hereinafter "EMRA") consulted with the TCA on the draft of "Regulation on Distribution and Customer Services in Natural Gas Market" and amended it concerning the advice of the TCA. Later on, EMRA added a provision to this regulation and issued it. That additional provision envisaged accepting the 'letters of guarantee' of ten biggest banks in procurements related to the distribution of natural gas. Receiving some banks' and Association of Banks' complaints on this issue, the TCA examined the case and decided that setting such a clause leads to discrimination among the banks in terms of the letters of guarantee and distorts competition in the banking industry. The EMRA took the decision of the TCA into consideration and annulled that provision. As a result, the artificial barrier to entry for the players of the market other than ten biggest banks was eliminated.

2.b. Privatization of Turk Telekom

The privatization of Turk Telekom, which is a monopoly over fixed telephony services, and infrastructure, and also wholesale internet services, is an opportunity for establishing a competitive market structure. This fact obliges that a number of measures be taken in relation to privatization. As a matter of fact, taking necessary measures is compulsory with a view to preventing disputes which may arise later, and as regards the requirements of momentum and

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with which the beneficiaries may be in economic competition." (Auburn University glossary of political economy terms available at http://www.auburn.edu/~johnspm/gloss/rent-seeking_behavior)

legal certainty needed by the liberalization process to which privatization is also expected to contribute.

With regard to the privatization of Turk Telekom, the Competition Board in its preliminary opinion concluded that performing privatization in the line of the following would be beneficial for ensuring that a more competitive market structure be created in the future:

- The infrastructure of cable TV be rendered a separate legal personality together with all rights related to the ownership and operation of this infrastructure, such that it shall be completed within the period of one year at the latest, following the transfer transaction of Turk Telekom, and the control of this legal personality be transferred,

- the service provision activities of TTNet, internet service provider, be made to have a legal personality which is separate from the other business units, such that it shall be completed within the period of six months at the latest, following the transfer date of Turk Telekom,

- the undertaking which is dominant in the market for GSM mobile telecommunications services not be allowed to participate in a tender alone; the likelihood for this undertaking to participate in a tender within any consortia be only possible in case this organization does not have a direct or indirect controlling right over Turk Telekom; the likelihood for persons or groups who or which directly or indirectly control this undertaking to participate in Turk Telekom tender alone, together and/or separately within any consortia be only possible in case after the tender, they transfer, to a person outside their economic whole, all means granting a controlling right in this undertaking and/or any undertakings having a direct or indirect controlling right over this undertaking,

- the inequality which arises between Turk Telekom and operators making use of infrastructures, in favor of Turk Telekom against other infrastructure users arising from Special Communications Tax be relieved prior to the transfer.

The Board's decision on the structural separation between the cable TV infrastructure and fixed lines can be considered as an integral part of privatization policy accompanied by a suitable liberalization policy. Accordingly, the cable TV infrastructure and all the property and management rights relating to this infrastructure were kept out of the scope of this privatization. By separating the cable TV infrastructure, a potential rivalry has been created between two alternatives infrastructures regarding broad band internet services. Thereby internet service providers (ISPs) potentially have two competing infrastructures to be used in their activities targeting ultimate internet users. The potential competition between these infrastructures is expected to result in lower input prices for ISPs. It is believed that the envisaged structural separation would enable and help the introduction of full competition in the telecommunication markets.

Another condition brought by the TCA was about the dominant GSM firm. It not allowed entering the bidding on its own. Hence, the possibility that the dominant firm would strengthen its market position by acquiring the control of Avea (the rival GSM operator controlled by Turk Telekom) was eliminated. This provision also created a ground for competition between GSM and fixed telephony markets parallel to future technological changes.

Finally, the decision on reorganizing TTnet, the internet service provider owned by Turk Telekom, as a separate legal personality enables both the TCA and the sector specific authority to supervise and detect the anticompetitive pricing activities of the monopoly power targeting ISP market (i.e. price squeeze) in a clear way.

2.c. Regulation of Alcoholic Beverages and Tobacco Markets

Before the initiation of double processes of liberalization and privatization, TEKEL, a public monopoly until early 1990s in the alcoholic beverages and tobacco markets, had a dual role in these markets. On the one hand, it was a player in these markets; on the other hand, it was the regulator of these markets. This dual role of TEKEL created the problem of conflict of interests. It had certainly a privileged position against its competitors as the regulator of them. Together with this problem; pricing policy of TEKEL, which did not reflect true costs, was criticized as it allowed TEKEL to have a relatively advantageous position vis-à-vis its competitors.

The problem of conflict of interests was solved by the Act No. 4733 which gave an end to all regulatory powers of TEKEL. The main purpose of the Act was to restructure TEKEL in order to prepare it for privatization, and to establish a Regulatory Body to fulfill the regulatory powers of TEKEL together with other duties assigned to it. The Tobacco and Alcoholic Beverages Board was established to transfer the regulatory powers of TEKEL. In this way, an important problem for these sectors was eliminated with a view to create a more competitive market structure. In this process the Competition Board gave its opinion to the relevant institutions including the Parliament about making these functions separate.

3. Conclusion

As mentioned above, competition policy has an important role in promoting private sector development. In the context of application of substantive provisions of the Act and competition advocacy, Turkish experience demonstrates benefits of firms from competition rules. In these cases, the TCA removed artificial barriers to entry in the form of strategic behaviours, and have contributed appreciably to the design and review of some regulatory legislations affecting competition, and eliminated sales cartels. Owing to the TCA intervention, while some undertakings succeeded in entering new markets and others which were under the threat of exclusionary practices by firms with economic power survived in the markets, and undertakings in downstream markets enjoyed reasonable input prices/conditions. We believe that competitive environment strengthened by effective enforcement of competition rules within the domestic market will provide a suitable base in order to flourish in the global markets.

It is apparent that the benefits of private sector from competition law should be assessed in a systematic way. In this connection, competition authorities should follow up the markets, where they conduct investigations or intervene through competition advocacy, and observe the reflections of the interventions on the parameters of competitiveness. Finally results of such analysis should be made publicly available to promote competition culture and to strengthen the public support behind the policy as a part of competition advocacy.

References

Bork, R. H. (1993), The Antitrust Paradox: A Policy At War With Itself, The Free Pres, New York.

Clarke, P. and S. Corones (1999), Competition Law and Policy: Cases and Materials, Oxford University Press, Oxford.

Hovenkamp, H. (1985), "Antitrust Policy After Chicago". Michigan Law Review, vol. 84.

OECD (2005), Peer Review of Turkey's Competition Law and Policy, DAF/COMP/GF(2005)4.

Oz, O. (1999), The Competitive Advantage of Nations: The Case of Turkey Assessing Porter's Framework for National Advantage, Ashgate Publishing Ltd, Aldershot.

Pitofsky, R. (1979), "The Political Content of Antitrust", University of Pennsylvania Law Review, vol. 127.

Posner, A. R. (1976), Antitrust Law: An Economic Perspective, the University of Chicago Pres, Chicago and London.

Rodger, B. J. and A. MacCulloch (1999), Competition Law and Policy in the European Community and United Kingdom, London, Cavendish Publishing Ltd.