

**Intergovernmental Group of Experts on Competition Law  
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**Roundtable on:  
Prioritization and resource allocation as a  
tool for agency effectiveness**

**Contribution  
by  
Turkey**

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Competition Authorities have limited resources in terms of human capacity, time and budget. These resource limitations bring along allocation problems and may oblige Competition Authorities to be selective in choosing the tasks to be pursued to ensure optimal usage of scarce resources. The manner of competition authorities in prioritizing the tasks may dramatically enhance the quality of the output and increase efficiency and effectiveness in operations. Accordingly, prioritization has become an important issue for the Turkish Competition Authority (TCA) as well as most of the competition authorities around the world.

The Act no 4054 on the Protection of Competition (the Competition Act) obliges the TCA to respond to every complaint and notification. This requires a decision to be taken for every complaint, even for the ones that at the first sight don't raise any competition concerns. Since the TCA does not have any discretion in cases where there is a complaint and great majority of the TCA's proceedings are started via complaints, a significant part of resources is consumed on responding to this kind of complaints.

In practice, the TCA overcomes this issue by allocating few resources to less important cases. The TCA prioritizes among complaints by adjusting the emphasis given to each case although it has to respond every complaint. The heads of all departments and vice-presidents meet monthly within the scope of "General Administrative Committee" to fine tune the enforcement duties within the framework of priorities that has been set and share these priorities with the Presidency. Each enforcement department has its own budget and it is mainly the responsibility of the head of the department to allocate its money and personnel according to the goals it set, which in fact merge at the end with the goals of the Authority. In addition, the Competition Board has the power to initiate an investigation ex-officio, so it could direct the enforcement activities according to its sectoral prioritizations.

In addition, the TCA sets its priorities according to its strategic plan and annual work plans, which are supposed to be prepared by the newly established Department of Strategy, Regulation and Budget and finalized by the top management and the

Competition Board. Starting with the year 2013, a Strategic Plan will be drafted annually to set the goals and priorities of the Authority for the relevant year.

Although the TCA does not have any formal document to set forward the principles for prioritization and resource allocation due to its obligations under the Competition Act, in the 2011 and 2012 annual reports of TCA, it is explicitly stated that TCA aims to prioritize relatively high impact cases over others. Introduction of the Communiqué on the Application Procedure for Infringements of Competition by the second half of 2012 may be seen as an important step taken towards this aim.

The Communiqué sets the required information that the complaints should carry in order to be responded. The purpose of issuing the Communiqué is to identify a minimum standard for making complaints to the TCA. For example, the Communiqué states that ambiguous claims that do not point specific undertakings or specific type of infringements are not going to be responded. This limitation intends to deter misuse of complaint rights by the undertakings or consumers and to decrease misuse of resources for complaints which do not raise serious competition concerns. With the Communiqué in force, the Authority's job is much easier as it gained some flexibility in terms of responding complaints.

Another tool at the service of the TCA for effective resource allocation and prioritization is changing notification thresholds for mergers and acquisitions. With the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (Communiqué no 2012/4) that replaced the former one and took into force in 2011, the TCA increased notification thresholds. This policy change was the signal of the TCA's will to decrease the number of M&A notifications which do not have potential to create competitive concerns and allocate more of its resources to matters which have more impact on the overall economy. Previous threshold was 25 million TL total turnover of merging parties, which is quite low compared to the size of Turkish economy. With the new Communiqué, two thresholds came into force. First threshold is that the merging parties should have 100 million TL (~42,5 million EUR) combined annual turnover in terms of their sales in Turkey and also at least two merging parties should have 30 million TL (~13 million EUR) annual turnover. The other threshold is that one merging party should have at

least 500 million TL (~213 million EUR) worldwide annual turnover and at least one other party should have 5 million TL (~2,2 million EUR) annual turnover in Turkey. Compared to the former threshold new thresholds are much higher. This change definitely aimed to decrease the amount of mergers and acquisitions notifications.

Last year the TCA conducted a review of this change in thresholds and monitored how this change affected the number of notifications. The review showed that the second global turnover threshold, mentioned above, actually resulted in increased notifications, which wholly did not raise any competition concerns. 113 of the cases were notified as a result of this second global threshold and all of these cases were cleared in Phase 1 review without any condition set upon the parties. The main issue identified was the low set threshold of 5 million as most of the notifications were about big multinational companies buying small firms located in Turkey. After both internal and external consideration, the TCA made another change and increased the 5 million TL turnover threshold to 30 million TL effective through 01.02.2013. In this way the TCA expects a decrease in notifications in the mentioned nature.

On the advocacy side, the TCA can set goals and prioritize more freely since there is no legally binding provision in the Competition Act. In 2012 annual report of the TCA, the prioritized matters in competition advocacy are highlighted. TCA prioritize increasing awareness about regulatory impact analysis among public policy and law makers and communicating its positive effects on the economy and to promote competition culture in business world and government agencies. This priority setting reflects the importance the TCA gives to competition distortions arising from regulations and regulatory bodies' activities.

In this regard, TCA's "Competition Report" project aims to raise public awareness on competition and to promote competition culture. At the beginning of 2012, the TCA published its first Competition Report, highlighting regulatory and other barriers to competition in 11 sectors (these are electricity, natural gas, air, road, rail and maritime transportation, broadband internet, digital platform, banking, pharmaceuticals and FMCG retailing sectors). In this respect, these 11 sectors are given special emphasis in advocacy actions. The Report was announced to public and shared with related government agencies. The 2013 Competition Report has a

broader subject but again regulatory barriers to competition and regulatory impact analysis constitute the essence of the report. Themed “the effects of public interventions on competition”, the 2013 Competition Report analyzes the effects of state-owned enterprises, regulations, public procurement and state subsidies on competition. This work of TCA has been shared with Ministries and other government agencies.

In conclusion, although legal provisions in the Competition Act do not allow the TCA to prioritize between complaints received, the TCA exercise its power to set its prioritizations and allocate resources accordingly. By doing this, the TCA aims to increase agency effectiveness and to allocate its resources to enforcement matters with significant competition concerns and high impact on the economy.