

# COMPETITION POLICY IN TURKEY\*

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## ABSTRACT

We review the enforcement of competition policy and the activities of Turkish Competition Authority during 1997-2000. Descriptive statistics are provided on the caseload handled, such as types of anti-competitive behavior investigated, breakdown of investigations by industry, violations found, and penalties imposed. Competition Authority has been stretched in terms of manpower as it has faced a flood of applications in addition to having to develop the necessary secondary legislation. The most salient cases handled concerned infringement of competition, while a rather lenient position was taken in authorizing mergers and acquisitions. The silence of the Turkish Competition Law regarding public undertakings is a potential source of problem for aligning competition policies with those of EU.

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## 1. Introduction

The objective of this paper is to review the implementation of Turkish Competition Law during the relatively short period of time that has passed since its enactment in December 1994.<sup>1</sup> The paper will focus on the activities of Turkish Competition Authority, drawing upon its annual reports and interviews with its staff.

Competition Board, the decision making organ of Competition Authority which is responsible for the enforcement of Competition Law, was not appointed until February 1997 and finally began its operations in November 1997. The enactment of the law and the establishment of Competition Authority have largely been due to Turkey's obligation under the Association Agreement between Turkey and the European Economic Community, the European Union (EU) as formerly called, to enact and implement a competition policy.<sup>2</sup> The Association Agreement requires that the parties should apply the provisions of Rome Treaty for the harmonization of their laws, tax rules, and competition policies. Pursuant to the agreement reached at the Association Council meeting of March 1995, Turkey and EU finally created a customs union starting January 1, 1996.<sup>3</sup> This agreement required that Turkey undertook all necessary measures to enact and effectively implement the competition law and policies of EU. Thus, enactment of Turkish Competition Law was a prelude on Turkey's part to the signing of the customs union agreement with EU. The lag between enactment of Competition Law and its enforcement is to a large extent a reflection of the ambivalence on the part of both Turkey and EU regarding Turkey's accession to EU and the stop-and-go nature of the progress that has been made in that regard.<sup>4</sup>

After a prolonged period of economic and political turmoil in the second half of 1970s, Turkey set on a course of market-oriented reforms at the end of 1979. The military regime that seized power in 1980 at the height of the crisis continued with the reform program, which was a fundamental break with the country's *étatist* past. Reform of the trade regime stood at the core of the reform program. This involved commitment to a more flexible exchange rate policy and abandoning of import substitution policies through promotion of exports as well as liberalization of imports. Another main objective of the 1980 reform was to reduce the size of the public sector and to allow more freedom to private initiative and markets in determining resource allocation in the economy. Privatization of state-owned enterprises and liberalization of financial markets were conceived as two very important aspects of this process.<sup>5</sup>

The 1980 reforms brought about profound changes in the incentive structure economic actors faced and in the way they did business. This was the case especially for the Turkish manufacturing industry, which had to go through a fundamental reorientation after decades of protection under import substitution policies. Cushioned by import restrictions and high tariff barriers, many sectors

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<sup>1</sup> *Law No. 4054 on the Protection of Competition*, published in the Turkish Official Gazette No. 22140, dated 14, 1994. The English version of Law No. 4054 can be found at the official website of Competition Authority: <http://www.rekabet.gov.tr/kanuneng.html> (November 20, 2001).

<sup>2</sup> The Association Agreement was signed in Ankara on September 12, 1963 and became effective on December 1, 1964.

<sup>3</sup> Decision No. 1/95 of the Association Council.

<sup>4</sup> For a review of the progress of EU-Turkey relations, see EU Commission (2001).

<sup>5</sup> For reviews of Turkey's liberalization policies, see Öniş and Riedel (1993), Togan (1994), and Togan and Balasubramanyam (1996).

of the manufacturing industry had been highly concentrated, and state-owned enterprises had dominated many important sectors. Export promotion policies created a new set of incentives for the manufacturing industry, and the share of manufacturing in exports has dramatically increased within a rather short period of time. One would have expected that more liberal import policies and export orientation of the 1980s would also transform the structure of the Turkish manufacturing industry and lead to less market concentration. However, the evidence available on the evolution of market concentration in Turkish manufacturing industries since 1980s point at the persistence of monopolization and high concentration in the Turkish manufacturing industry despite expectations of competitive pressure from foreign markets.<sup>6</sup>

Given the persistence of high concentration ratios in the manufacturing industry, the importance of instituting and implementing anti-trust mechanisms in Turkey become more apparent. In addition, anti-trust policies would have reinforced the process of privatising state-owned firms, which started in 1986, as many of the enterprises involved were large, if not dominant. The privatization experience of Turkey can be described at best as mediocre, as restructuring of most of the utility-like sectors, such as telecommunications and electricity, with large state-owned firms has not yet been accomplished.<sup>7</sup>

It can be argued that Turkey's meagre performance in terms of restructuring its manufacturing industry and privatization largely draws from its failure to institute and implement an effective competition policy. That improved performance in most of the sectors subject to liberalization and privatization will not come about without first instituting and implementing an effective competition policy was paid lip service in discussions, but largely ignored during development and enactment of legislation. This has contributed to failure in building consensus regarding privatization and liberalization in various sectors and to wasting of considerable economic resources through ill-conceived and incongruous privatization and liberalization legislation. A regulatory framework to oversee the industries that are likely to remain imperfectly competitive after privatization was not thought of before hand for most of the industries.

The importance of instituting a regulatory framework prior to liberalization and privatization of industries has finally been realized and legislation has been passed to this effect in years 2000 and 2001. Though the liberalization of the capital account and full convertibility of the Turkish Lira took place 1989, the Banking Regulation and Supervision Agency was established in 2000 to oversee the ailing banking industry and started its operations immediately. Also in 2000, a new act to liberalize the telecommunications sector was enacted and a Telecommunications Board was established to regulate the industry. Finally, two different acts were enacted for the liberalization of electricity and natural gas industries in 2001, and an Energy Authority was established to oversee the performance of both of these industries.

Had the competition policies been developed and implemented earlier, establishing and maintaining of competition in these very important sectors would have been much easier. At the same time, without a clarification of how competition policy and regulatory framework that is being developed to oversee the operation of these industries will interact, enhanced economic performance in these industries is not likely to come about. The relations between these newly founded bodies and the Turkish Competition Authority is going to be important issue and might call for amendments in Competition Law in order to clarify possible conflicts of authority and prevent overlapping jurisdictions.

This paper focuses on the activities of the Turkish Competition Authority, drawing upon its annual reports and interviews with its staff. The plan of the paper is as follows. Section 2

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<sup>6</sup> See Katircioğlu et al. (1995), Yalçın (2000), and Metin-Özcan et al. (2000).

<sup>7</sup> For a detailed review of Turkey's privatization experience between 1986 and 1998, see Karataş (2001).

summarizes the main elements of Turkish Competition Law and discusses the structure of Competition Board and its enforcement powers. Section 3 briefly describes the aspects of the Turkish manufacturing industry relevant for this study and reports data on the evolution of concentration ratios and import penetration in Turkish manufacturing industry in the post-1980 period. Section 4 analyses the caseload and activities of Competition Authority during 1997-2000 and provides descriptive statistics on the industry incidence of investigations, the types of behavior that were investigated, and violations that were found and penalties imposed. Section 6 provides a discussion and some conclusions.

## **2. Turkish Competition Law and the Powers of Competition Authority<sup>8</sup>**

### **2.1. Turkish Competition Law**

Law No. 4054 on the Protection of Competition constitutes the legal framework to protect and further competition in Turkey. As mentioned above, although the law has been enacted in December 1994, Competition Board could only be appointed in February 1997, and Competition Authority finally started its operations in November 1997 after completing its organization. Thus, the year 2000 constituted the third operational year for Competition Authority.

As per the requirements of customs union agreement with EU, Turkish Competition Law is to a large extent an adaptation of the EU competition law. Turkish Competition Law prohibits a very wide range of activities that are listed under three headings: agreements and concerted practices that restrict competition; abuse of dominant position and monopolization; and mergers and acquisitions.<sup>9</sup> In its letter, Competition Law applies to all sectors of the economy; that is, it applies to Turkish economy as a whole. Competition Law is silent, however, with regard to public undertakings in that it does not contain a clause like Article 90 of Treaty of Rome, which explicitly brings public undertakings within the scope of competition law. Decision No. 1/95 of the Association Council on customs union explicitly requires that by the end of the first year after the customs union goes into effect, Turkey shall comply with the provisions of Article 90 of Rome Treaty. Though it is observed that Competition Authority endeavored to interpret public undertakings as falling within the scope of Turkish Competition Law, its efforts have been hindered by conflicts with other existing legislation regarding public undertakings. As of this date, there has not been any amendments to Turkish Competition Law to clarify this issue.

#### ***Article 4: On restriction of competition through agreements and concerted practices***

The definitions given in Turkish Competition Law for practices that prevent, restrict or distort competition and the examples cited to clarify each type of practices are almost identical to Article 85 of European Community Treaty. According to Article 4 of Turkish Competition Law, agreements and concerted practices among firms that aims to, directly or indirectly, prevent, distort or restrict competition in a certain market for goods and services are unlawful and prohibited. Tacit or explicit collusion through price fixing, limiting output, market sharing, market foreclosure, tying are a few examples from the list of activities prohibited by Article 4. That is, both horizontal and vertical agreements are subject to scrutiny of Turkish Competition Law. Although the list is not exhaustive, it is explicitly stated in Article 4 that all agreements that are likely to restrict

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<sup>8</sup> For a more detailed review of the legal aspects of the Turkish Competition Law, see Öz (1999).

<sup>9</sup> What are called *unfair competition practices*, such as false advertising, deception, unfair practices, abuse of economic dependency and trademark, copyrights do not fall within the scope of Competition Law; they are subject to regulations of the Turkish Commercial Act instead.

competition and that are concluded to this end are prohibited. In cases where the existence of an agreement cannot be proven, Turkish Competition Authority can take action against undertakings if price changes or supply and demand balance in the relevant market in which these undertakings operate exhibit features of markets where competition is prevented, distorted, or restricted (the concerted practice presumption). In such cases the burden of proof lies with the undertakings concerned.

#### ***Article 5: Exemptions from Article 4***

Article 5 lists types of horizontal and vertical agreements that are exempted from the application of Article 4. These relate to agreements in which there is a presumption that economic efficiency will thereby be enhanced. Vertical and horizontal agreements that improve production and distribution of goods or provision of services, that promote technological progress and innovation, in which consumers receive a fair share of the ensuing benefit, and that do not eliminate competition in a significant part of the relevant market, and that do not restrict competition more than what is necessary for achieving the said benefits, can be exempted from application of Article 4 for a maximum of five years.

The exemption may be an individual one or granted to a group. So far Competition Authority has issued several block exemptions with regard to following type of vertical agreements: *The Block Exemption Communiqué on the Exclusive Distribution Agreements No. 1997/3*; *The Block Exemption Communiqué on the Exclusive Purchasing Agreements No. 1997/4*; *The Block Exemption Communiqué Regarding Distribution And Servicing Agreements In Relation To Motor Vehicles No. 1998/3*; and *The Block Exemption Communiqué Regarding Franchise Agreements No. 1998/7*. These block exemptions are parallel to regulations adopted by EU. Competition Authority is currently working on several communiqués regarding technology transfer agreements and R&D agreements.

#### ***Article 6: On abuse of dominant position***

Article 6 of Turkish Competition Law prohibits the abuse of dominant power in markets. This provision is almost identical to Article 86 of EC Treaty. Article 6 defines *dominant position* as “the power of one or more undertakings in a particular market to act independently of their competitors and customers, and to determine economic parameters such as price, supply, and the amount of production and distribution”. As such, Article 6 is immediately applicable to network industries that are currently undergoing privatization and/or extensive regulatory changes.

#### ***Article 7: On mergers and acquisitions***

Article 7 of Turkish Competition Law prohibits mergers and acquisitions that aim to create or strengthen a dominant position and result in inhibiting competition in the markets for goods and services. Subsequently issued *The Communiqué on Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 1997/1*, lists the types of mergers and acquisitions that require notification to Competition Authority and its authorization for validity.

*The Communiqué No. 1997/1* imposes two different groups of criteria. Qualitative criterion identifies whether the type of transaction is a merger, acquisition or a joint venture. Quantitative criterion determines the thresholds in terms of the total market share or total turnover of the resulting undertaking. If the total market share of the resulting undertaking exceeds 25 percent of the relevant market, or the total turnover of the undertakings that take part in the action exceeds 25 trillion TL (in 1997 prices), an authorization by Competition Authority must be obtained.

The privatization cases also fall under Competition Authority's jurisdiction. Before an actual privatization transaction can take place, Competition Authority has to issue an authorization to the effect that privatization does not distort competition in the relevant market for goods and services.

## **2.2. Turkish Competition Authority and Competition Board**

Competition Authority is the only administrative body responsible for implementing Turkish Competition Law. Competition Authority comprises a Competition Board of 11 members, the Office of the Chairman, and the Service Department.

Competition Board is the decision-making organ of Competition Authority. The members of the Board are appointed by the Council of Ministers for a term of six years. The Council of Ministers makes the appointments from among the candidates nominated by: the Ministry of Trade, the Ministry that oversees the Under-Secretariat of the State Planning Organization, the Court of Appeals, the Council of State, the Council of Higher Education, and the Turkish Union of Chambers and Exchanges.

Competition Law grants full financial and administrative autonomy to Competition Authority (Article 20 of the Law). That is, Competition Authority is an "independent administrative authority", and as such it is not subject to instructions and orders of any other governmental body, including the Council of Minister that appoints the members of Competition Board.

Competition Board has been granted extensive powers of examination and investigation regarding issues that pertain to infringement of Competition Law. It can act upon a notification or a complaint by any concerned party, by the request of the Ministry of Trade and Industry, and upon its own initiative. Competition Board also has the power to issue negative clearances to the effect that a particular transaction, if undertaken, will not violate the Competition Law.<sup>10</sup>

Competition Authority has to be consulted regarding any changes in the legislation concerning competition policies (article 27 (g) of Competition Law). To this end, a memorandum issued in 1998 by the Prime Ministry General Directorate of Personnel and Principles instructed all ministries to receive the opinion of Competition Authority about draft laws, by-laws, regulations and communiqués regarding issues that fall under the scope of duty of Competition Authority.<sup>11</sup>

Basic means that the Competition Board is empowered with in implementing Competition Law are the authority to request information from related parties and on-the-spot examination (Articles 14 and 15). Article 14 states that "...The Board, in carrying out the duties assigned to it by this Law, may request any kind of necessary information from all public institutions and organizations, undertakings and associations of undertakings. The officials of these authorities, undertakings and associations of undertakings are obliged to provide the requested information within the term specified by the Board".

Article 15, on the other hand, specifies Board's powers during on-the-spot examinations: "...The Board, when carrying out the duties assigned to it by this Law, may perform examinations in the premises of undertakings and associations of undertakings, where deemed necessary. To this end, it may examine books, any kind of papers and documents of undertakings or associations of undertakings and may take their copies if necessary, may request written or oral statement on particular issues, and may perform on-the-spot examinations concerning any kind of assets of undertakings".

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<sup>10</sup> The Board reserves the right to revoke its negative clearance at any time it deems necessary.

<sup>11</sup> However, compliance with this memorandum is wanting, as it has been observed that for various regulations the opinion of Competition Authority has either not been asked at all or asked at the last stage of regulations (for example, the Sugar Act and the Telecom Act, both enacted in 2001).

The Law empowers the Board to levy fines (Articles 16 and 17). Those who are specified, by a Board decision to have committed behaviour prohibited in Articles 4 and 6 of Competition Law, and those who have failed to comply with regulations regarding notification filing of written and oral statements (Article 11 sub-paragraph (b)) are liable to pay fines in the amount up to ten percent of the gross income that had been generated since the end of the previous financial year by real and legal entities involved in the punishable undertaking, associations of such undertakings, or members of their associations.

In case legal entities, undertakings, or associations of undertakings are punished with the foregoing fines, real persons involved in management bodies of these legal entities are also personally punishable with fines up to ten percent of those fines.

Competition Board's decisions can be appealed to the Council of State. In case of an appeal, the fines do not become due until after the Board's decision is upheld at the Council of State and becomes final.

In addition to fines imposed by the Competition Authority, Article 57 of Competition Law allows for those who suffered from the actions of violators to seek compensation in civil courts. Article 58 of Competition Law explicitly stipulates that the judge may determine a compensation up to three times the net substantial damages suffered by the injured party. Upon the request of a party, the judge can apply the compensation principles of Competition Authority regardless of whether a case is brought before Competition Authority or not.

### **3. Market Structure, Import Penetration, and Foreign Direct Investment (FDI) in Turkish Manufacturing Industries**

Before turning to the activities of Turkish Competition Authority, it will be useful to briefly summarize the evolution of the aspects of Turkish manufacturing industry relevant for our investigation starting from the 1980 reforms until as recently as available data allows.

As already mentioned in the Introduction, revamping of the trade regime stood at the core of the reform process the Turkish economy has been undergoing since 1980. Vigorously followed export promotion policies, as well as more gradually introduced import liberalization policies, had a profound impact on the manufacturing industry. The State Institute of Statistics data reveal that the share of manufacturing in exports has gone up from 36% in 1980 to 79.1% in 1987 and stood at 91.4% in 2000. Studies available on the impact of trade liberalization on concentration of the manufacturing industries, however, suggest that highly concentrated structure of Turkish manufacturing industries have persisted throughout this period.<sup>12</sup> This has important consequences regarding the implementation of competition laws and policies in Turkey. Table 1 below tabulates CR4, the rate of market concentration as calculated by the shares of the 4 largest enterprises in total sales, in the manufacturing industry for the period 1980-1998.<sup>13</sup> Table 1 also tabulates import penetration ratios, calculated as the ratio of imports to apparent consumption (domestic production plus imports minus exports), for the same industries over 1981-1998.

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<sup>12</sup> See Katircioğlu et al. (1995), Metin-Özcan et al. (2000), and Yalçın (2000). We note that Forouton (1991), using private manufacturing data over the 1977-1985 period, found that import penetration led to a reduction in the gross profit margins.

<sup>13</sup> Appendix Table 1 at the end of the paper lists the manufacturing industry classification (ISIC Rev. 2) used in Table 1.

In addition to import penetration ratios, nominal protection rates are also important in judging the competitive pressures that an industry faces. In the Additional Protocol to the Association Treaty signed in 1970, Turkish imports from the European Community were divided into two lists. There was a 12-year list for industrial products that Turkey was likely to reach international competitiveness relatively faster, and the rest of the manufactured goods were placed on a 22-year list. With the customs union that went into effect in 1996 Turkey has reduced the nominal protection rates in trade with EU for all of the commodities in the 12- and 22- year lists. For commodities that were not included in the 12- and 22-year lists but covered under the European Coal and Steel Community agreement, a separate Free Trade Agreement was signed in 1995 between Turkey and EU, which stipulated that trade of commodities covered under the agreement would be gradually liberalized over a period of three years. Thus, by 1999 the nominal protection rates for all industrial products when traded with EU have been reduced to zero. It has been calculated that while the average nominal protection rates with EU had been calculated as 10.22% as of 1994, they have fallen on average to 1.34% by 1999.<sup>14</sup> Moreover, the EU-Turkey customs union agreement requires Turkey to adopt the Customs Union Tariff of EU against third country imports by January 1, 1996, and all of the preferential agreements EU has concluded with third countries by the year 2001.<sup>15</sup> Thus, by the year 2001 Turkey's nominal protection rates for manufactured imports have been eliminated for EU and reduced substantially for third countries.

An important aspect of Turkish imports that has a bearing on whether imports play a disciplining role for imperfectly competitive sectors is that the share of imports for production purposes has historically been higher than the share of imports for consumption purposes. If imports of a certain product for production purposes dominate its imports for consumption purposes, the negative effect on average price-cost margins may be overwhelmed by the positive effect that imports for production purposes may have on price-cost margins.<sup>16</sup> According to State Institute of Statistics data, the shares of investment goods, intermediate goods, and consumer goods in total imports in 1982 were 26.9%, 71.6%, and 2.1%, respectively. The respective shares changed to 22.9%, 69.1%, and 8.0% in 1985; in 1989 they changed to 24.3%, 66.8%, and 8.7%, respectively; and in 2000 they were 20.9%, 65.8%, and 13.3%, respectively. Table 2 below presents the share of imported intermediate goods utilized by manufacturing sectors.

**<INSERT TB 2 HERE>**

Table 3 provides data on inward FDI to Turkey for the 1980-2000 period, detailing total FDI realizations as well as the shares of manufacturing, agriculture, mining, and services in terms of amount of total FDI authorizations granted. Table 3 reveals that total FDI inflows to Turkey have been rather modest. This has bearing on the possible disciplining impact of entry of foreign firms into imperfectly competitive production sectors.

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<sup>14</sup> See Togan (1997).

<sup>15</sup> For certain products that fell under Common Customs Tariff of EU but deemed as 'sensitive' for Turkey, there was a grace period of up to five years for Turkey to adopt its tariffs against third countries. This period has now expired.

<sup>16</sup> Katırcıoğlu et al. (1995) cite this as an explanation for why import penetration may have a positive effect on price-cost margins, an indicator of market power, which is suggested by some their findings.



#### **4. The Enforcement of Competition Law in Turkey<sup>17</sup>**

##### ***Resources for the enforcement of Turkish Competition Law***

As of the end of year 2000, the number of staff at Competition Authority stood at 307. Out of the total, 44 were economists, 33 were lawyers, 74 were classified as “other professionals”, and 166 were support personnel. The relatively small share of specialists (economists and lawyers) and the relatively high share of support personnel among the staff is noticeable, and brings to mind the question of whether Competition Authority has enough administrative capacity to deal with the caseload it has faced. Table 4 below displays the evolution of Competition Authority’s budgets since its inception in 1997.

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##### ***The caseload of Turkish Competition Authority***

Table 5 below presents data on the caseload handled by the Turkish Competition Authority during 1997-2000. Some 1,254 petitions were filed during this period of time. This is a substantial number of cases. Of this total, 674 or 53.7% were regarding infringement of competition (Articles 4 and 6), 250 or 19.9% were regarding mergers and acquisitions (Article 7), and 330 or 26.4% were applications for exemptions and negative clearance (Article 5). The striking fact is that of these 527 or 42% were found outside the scope of Competition Law. In the early years after its adoption, misunderstandings regarding the scope of Competition Law, on the part of the industries involved as well as the general public, seem to have resulted in a considerable burden on the administrative capacity of Competition Authority.<sup>18</sup>

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##### ***Cases on infringement of competition***

According to Table 5, out of 285 petitions regarding infringement of competition that were found within the scope of the Law, only 95 were found worthy of investigation, while 137 petitions were refused consideration. As of the end of year 2000, investigation was pending for 53 cases of infringement of competition.

Of the 95 cases decided during 1997-2000 regarding infringement of competition, 35 involved Article 4 (on agreements and concerted actions that restrict competition), 31 involved Article 6 (on abuse of dominant position), while 29 involved both Article 4 and Article 6. Table 6 below displays the breakdown of infringement of competition cases heard according to the relevant article of Competition Law over the period 1997-2000.

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<sup>17</sup> This section uses in part information provided in the Annual Reports filed by Competition Authority for OECD. Except for the one for year 2000, these reports can be reached at the OECD official website (referenced in the References section of the paper). While this study was under preparation we had access to a working draft of the annual report for the year 2000, kindly provided to us by the staff of Competition Authority. The report has now been finalized and published.

<sup>18</sup> According to Barros and Mata (1996), during 1984-93, the 10-year period following the adoption of a competition law in Portugal, only 55 investigations were launched. Fingleton et al. (1996) note that during 1992-95, the Czech competition office received 767 petitions, while the Hungarian competition authorities received 257, those in Poland received 535, and those in Slovakia received 512.

Table 6 reveals that Competition Authority made increasingly more decisions over the years. This reflects both the increases in number of applications over the years as well as a learning curve effect regarding decision making capacity on the part of a newly founded agency. Competition Authority posts the complete texts of its decisions on its official website (<http://www.rekabet.gov.tr>) after they are finalized (after the decision of the Council of State in case of an appeal), albeit with a delay.<sup>19</sup>

**<INSERT TB 6 HERE>**

Table 7 below provides the breakdown by sectors of petitions filed for the infringement of competition. Food Products and Beverages (79); Transportation (63); Chemical Products (31), Petrochemicals, Petroleum Products, Fertilizers (31); Cement, Construction Equipment (29); Health, Education, Sport, and Self-Employment Activities (28) were the top 5 industries with the highest number of petitions regarding violations of competition.

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According to Table 1 market concentration in the food manufacturing sector (ISIC code 311) has remained relatively low over the years, with a CR4 of about 10%, while the concentration in the beverage industries (ISIC code 313) have been high, with a CR4 of about 40%. Import penetration figures for food manufacturing and beverages industries have been around 10% and 1%, respectively. Transportation is a service industry that is subject to a myriad of regulations at both local and national level and thus susceptible to emergence of anti-competitive practices. As Table 1 indicates, chemical products, petrochemicals, and petroleum products (ISIC codes 351-354) involve industries that are among the most concentrated manufacturing industries in Turkey, with CR4's considerably above 50%. These industries are characterized by large scale production units and by the presence of state-owned firms. Import penetration is either low (around 5 % for 353 and 354 products), or when high it is high (around 60% for 351 products) due to intermediate good nature of imports (Table 2). Health, Education, Sport, and Self Employment Activities are outside the manufacturing industry. As for the cement industry, the concentration ratio has typically been rather low.<sup>20</sup> It can be argued that, judging from the concentration of production, one would not have expected excessive complaints of anti-competitive behavior from the consumer side in this sector. On the other hand, cut-throat competition could also have led to complaints from rival firms.

### ***Fines imposed and collected***

Examination of publicly available decisions of Competition Authority reveals that Competition Authority has not shied away from using his power to levy fines regarding

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<sup>19</sup> Decisions regarding infringement of competition can be viewed (in Turkish) at <http://www.rekabet.gov.tr/rekabetihalleri.htm> (November 18, 2001). Out of 95 cases regarding infringement of competition that were decided during 1997-2000, there is information available for 71 cases. In addition to complete texts for 48 decisions that have already been finalized, there is summary information regarding 23 that are in the appeals court.

<sup>20</sup> The ISIC Rev. 2 code that includes cement is 369. Four-digit concentration ratios reported by State Institute of Statistics reveal that CR4 for cement industry (ISIC Rev 3 code 2694) was about 29% in 1998 (see <http://www.die.gov.tr/ENGLISH/SONIST/IMALATYOG/90420011e.htm> (November 18, 2001).)

infringement of competition cases.<sup>21</sup> Out of 48 publicly available final decisions regarding infringement of competition for the period 1997-2000, a total of fines equivalent to about \$6.94 millions were imposed in 12 cases. The highest amount of fine levied in a single case was equivalent to about \$2.14 millions. One of the firms penalized in this case was subjected to a fine equivalent in amount to about \$672,654, the highest amount levied against a single party during the period under concern.<sup>22</sup> These are considerable amounts of fines to levy for any competition authority which is at the early stages of competition policy enforcement.<sup>23</sup> However, in case of an appeal the fines imposed do not become due until after the decision of the Council of State. The appeal stage took as long as nearly 17 months in some cases. Given the chronically high inflation rates in Turkey, this has eroded considerably the due amount of fines in real terms.<sup>24</sup>

### ***Cases on mergers and acquisitions***

Regarding mergers and acquisitions, Table 5 reveals that out of 115 petitions that were found within the scope of Competition Law, 103 were permitted, 10 were granted conditional permission, and only 2 were denied authorization. Decisions regarding 16 out of 115 petitions found within the scope of the law were pending as of the end of year 2000. These figures can be taken as an indication that Competition Authority have chosen to be rather lenient regarding mergers and acquisitions during initial years of competition law enforcement.

Table 8 displays the distribution by sector and type of activity of applications regarding mergers and acquisitions. Table 8 reveals that applications regarding mergers and acquisitions were spread over quite a few sectors. The highest number of applications were made in chemical products, oil products, fertilizers sectors (31). Five of these applications involved mergers, 17 involved acquisitions, 3 involved joint ventures, and 6 involved privatizations.

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### ***Requests for exemptions and negative clearances***

As for petitions requesting exemptions and negative clearances, we observe from Table 5 that out of 311 cases found within the scope of Competition Law only 99 or 31.8% have been finalized so far, with decisions for 212 cases pending as of the end of year 2000. Exemption was granted in 17 cases investigated, and conditional exemptions were granted for 27 cases. Negative clearances were granted in 36 of the cases heard.

Table 9 displays the distribution by sectors of applications for exemptions and negative clearance during 1997-2000. The highest number of applications were made in the following industries: Land Vehicles, Aircraft, Sea Vessels, and Railway Carriers (55); Food Products and Beverages (51); Chemical Products, Petrochemicals, Petroleum Products, Fertilizers (41); Glass and Glass Products (38); and Electricity, Gas, Water (35). The Land Vehicles, Aircraft, Sea

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<sup>21</sup> See <http://www.rekabet.gov.tr/rekabetihalleri.htm> (November 18, 2001). The decisions are available only in Turkish.

<sup>22</sup> This was a case against a regional cement cartel. The complete text (in Turkish) for the case can be found at [http://www.rekabet.gov.tr/99-30-276-166\(a\).doc](http://www.rekabet.gov.tr/99-30-276-166(a).doc) (November 18, 2001).

<sup>23</sup> Hoekman and Djankov (1997) note that the maximum fine that could be imposed according to Bulgarian competition law for abuse dominant position was equivalent to \$500.

<sup>24</sup> The average amount of erosion of fines for the 12 cases in which fines were imposed was about 50% in dollar terms.

Vessels, and Railway Carriers industries are very highly concentrated<sup>25</sup>. While the Glass and Glass Products industry (ISIC code 362) has witnessed a steady decline of concentration since 1980, during which time import penetration ratios were steadily increasing, CR4 for the industry stood at 40.6% in 1998. Electricity, Gas, and Water are utility sectors. As reported above, the number of exemption/negative clearance petitions decided by Competition Authority have been rather limited so far.

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## **5. Selected Cases, Exemptions, and Special Regulatory Regimes**

We will now discuss some selected cases involving exclusions from the application of Competition Law in the case of public undertakings and in sectors that are subject to regulation.

### **5.1. Public Entities**

Turkish Competition Law does not include an explicit provision on the issue of public undertakings. This is a crucial issue as state owned or state controlled enterprises still play a non-negligible role in certain sectors of the Turkish economy, and they will continue to do so until the privatization and liberalization policies are effectively implemented.

Though in its various communiqués Competition Authority has chosen to interpret the silence of the Law on this matter as being inclusive for the public undertakings and heard actions brought against state-owned enterprises and other public undertakings, its decisions reflect the ambiguity of Competition Law regarding this matter.

#### ***The Union of Chambers and Exchanges of Turkey (TOBB) Decision***

TOBB is an umbrella organization of chambers of commerce, industry, and maritime trade, as well as of various commodity exchanges in Turkey. A special law, Law No. 5590, created TOBB in 1950. Under Turkish Law, professional organizations are considered as “public legal” persons established to serve common needs of members of a profession. A petition filed with Competition Authority claimed that additional letter of guarantee that TOBB required in issuing a certain kind of international transportation licence constituted discrimination and restricted competition. In its decision regarding the case Competition Board qualified TOBB as an “association of undertaking” and ruled that the case fell under the scope of Competition Law. However, Competition Board held that the licensing service referred to in the case was not part of TOBB’s essential duties listed in Law No. 5590, but a duty it carried out on behalf of Turkish State which, under international law, is obligated to regulate international transport licensing.

#### ***Turkish Sugar Factories Incorporated (TŞF A.Ş.) Decision***

In a case brought against TŞF A.Ş., it was claimed that TŞF A.Ş., in violation of economic efficiency and profitability considerations, sold its output below cost, leading to financial distress for private sugar producers in the cities of Amasya, Konya and Kayseri. It was claimed that pricing behavior of TŞF A.Ş. pushed the private producers out of the market, and as such constituted abuse of dominant position and violated the Competition Law. Competition Board found that TŞF A.Ş.

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<sup>25</sup> See the 4-digit concentration ratios reported by the State Institute of Statistics for ISIC rev. 3 codes 3530, 3599, 3591, and 3520, which are all close to 100% <http://www.die.gov.tr/ENGLISH/SONIST/IMALATYOG/90420011e.htm> (November 18, 2001).

was indeed in dominant position in the relevant market as defined in Article 3 of Competition Law. However, claims of violation of Article 6 were refused owing to the reason that TŞF A.Ş. did not determine freely its activities in the relevant market and, in particular, due to the reason that sales and procurement prices of sugar-beet and sales price of sugar were determined by Prime Ministry and relevant ministries on the basis of laws and by-laws and taking public interest into account.

## **5.2. Privatization**

Most privatization transactions fall under article 7 of Competition Law (Mergers and Acquisitions) and related communiqués issued by Competition Board (the Communiqué Concerning Mergers and Acquisitions that Require Authorization by the Competition Board - Communiqué No: 1997/1). But, since it was later understood that the said communiqué did not cover adequately all privatization transactions, an additional communiqué was issued that required approval by Competition Board before tender transactions (Communiqué Regarding the Methods and Principles to be Pursued During the Course of Pre-Notifications and Applications for Authorization Made to the Competition Authority in order that Acquisitions via Privatization to be Judicially Valid - Communiqué No. 1998/4). Later an amendment was made to this Communiqué by the Communiqué numbered 1998/5, and transfers to be made by public institutions and organizations other than Privatization Administration were also covered by the Communiqué. The said communiqué and its amendment regarding pre-notification and pre-approval by Competition Board of privatization transactions aimed at preventing possible anti-competitive consequences of privatization decisions before they come into effect. It can be argued that with the said regulations, at least on paper, Competition Authority has a central role in the privatization process, and thus likely anti-competitive effects of privatization are mitigated.

### ***The POAŞ Case***

The privatization process of Petroleum Office Inc. (POAŞ) serves as an example to illuminate the curious role Competition Authority has played in privatizations. The privatization of POAŞ, which is a public oil distribution company, was initiated before Competition Authority was empowered through *The Communiqué No. 1998/4* to authorize privatization transactions. In 1998, Privatization Administration asked Competition Authority to evaluate the validity of 3 offers that were received at the time. At the same time, the Privatization High Council gave POAŞ to one of the three bidders, and Competition Authority was informed about the decision. Competition Board gave a conditional authorization for the transaction. An appeal to the Administrative Court against the decision of the Privatization High Council resulted in the cancellation of the POAŞ decision. In 1999 the privatization process started anew. Upon examining the applications of four separate joint venture firms Competition Board has concluded that the sale of POAŞ to any of the groups would not create a new or strengthen an existing dominant position.

### ***The İGSAS Case***

In the case of Toros Fertilizer acquisition of publicly owned İstanbul Fertilizer Industry (İGSAS), Inc, Competition Board did not grant authorization to the acquisition on the grounds that Toros Fertilizer would gain a dominant position in the nitrogenous fertilizers market and as this would lessen competition substantially.

### **5.3. Banking Industry**

In addition to various new regulations regarding the sector, a new independent regulatory agency, the Banking Regulation and Supervision Agency (BRSA), has been established to regulate and supervise the banking sector. BRSA also has the authority to transfer banks in difficulty to Savings Deposits Insurance Fund (SDIF). The SDIF in turn has the authority to transfer banks in difficulty to other banks, or to a new bank to be established, or merge them with another bank. Through the provision "...under the condition that the market share in terms of total assets of banks to be transferred or merged not exceed 20 percent, articles 7, 10, and 11 of Competition Law No: 4054, regarding the protection of competition shall not apply...", the power of Competition Board is limited with regard to mergers and transfers carried out by the SDIF. After the new economic program adopted in May 2001 under the auspices of IMF, an amendment to the Banking Act on May 5, 2001 extended the said provision to all mergers and acquisitions in the banking sector. This amendment de facto puts mergers and acquisitions in the banking sector out of scope of Competition Law.

### **5.4. Telecommunications Industry**

The Telecommunications Act No. 4502 of January 27, 2000, established a new independent regulatory agency, Telecommunications Authority, to regulate the industry. Act No. 4502 was later revised by Telecommunications Act No. 4673, passed on May 23, 2001. Though the independent Telecommunication Authority has far-reaching powers in regulating the industry, including the authority to regulate prices, authorization of licences to operate in the telecommunications industry will continue to be issued by Ministry of Transportation.

With different agencies having regulatory power over the telecommunications sector, it remains to be seen how competition rules will be implemented in the telecommunications sector. In particular, it is not clear whether the Telecommunications Authority has the right to perform investigations similar to those undertaken by Competition Authority regarding anti-competitive behavior in the industry.

#### ***Turkcell Investigation***

Although Competition Authority had ruled against a petition that claimed collusive behavior on the part of the cellular phone service duopoly in 1999, on January 13, 2000 it initiated an investigation against Turkcell Communication Services, Inc., one of the service providers whose number now increased to three, on the grounds that Turkcell had been abusing its dominant position. This investigation has recently been finalized and Competition Board found Turkcell guilty of abusing its dominant position. Pending an appeal, the decision imposed a penalty of 7 trillion TL, which is slightly below 1 percent of Turkcell's gross revenues generated in 1999.<sup>26</sup>

#### ***Turk Telekom Investigation***

Another investigation, which is currently undergoing, concerns Turk Telekom, the former state monopoly in the telecommunications industry that will retain its legal monopoly rights over basic services for national and international voice telephony provided over the fixed

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<sup>26</sup> The case is appealed to the Council of State. The decision was announced to the public, but since Turkcell appealed the to the Council of State, the text of the Competition Board's decision has not been made publicly available. Information on the case was compiled form national newspapers and interviews with the staff of Competition Authority.

telecommunications network until December 31, 2003. Turkish Telecom is accused of abusing its dominant position in relation to firms providing Internet services over the fixed network that it controls.

## **5.5. Electricity and Natural Gas Industries**

Two recent acts (the Electricity Market Act and the Gas Market Act, both enacted in 2001) created an independent Energy Authority to regulate and oversee electricity and natural gas markets that are to be deregulated, liberalized, and privatized. As in the telecommunications sector, the jurisdiction of Competition Authority and Energy Authority seems to overlap. Competition Authority was consulted during preparation of the acts that aim at restructuring the energy markets. The powers of Competition Authority regarding anti-competitive behavior in these markets are retained, at least in the letter of these acts.

## **6. Discussion and Conclusions**

Empirical assessments of enforcement of anti-trust legislation in countries that have adopted competition legislation relatively recently, mostly the former centrally planned economies that are in transition to a market economy, have concluded that most enforcement cases concern abuse of dominance and most of these involved allegation of unfair trade practices and were basically contract enforcement problems. The issue of hard-core cartels were almost never addressed. Moreover, it was concluded that remedies for flagrant violations of competition laws were not sufficiently prohibitive to ensure that firms had a strong enough incentive to abide by the law.<sup>27</sup>

Enforcement of Turkish Competition Law seems to have fared relatively better on these grounds, at least based on the available evidence for the short period of time that has passed since its inception. Unfair trade practices are outside the scope of Turkish Competition Law. Some of the investigations carried out by Competition Authority involved collusive practices, and the amount of fines that were imposed in certain cases can certainly be classified as prohibitive. This having been said, however, there certainly is much room for improvement.

As already mentioned in the Introduction, the adoption and implementation of a competition policy is an obligation that Turkey has undertaken in its Customs Union Agreement with EU. As far as Turkey is concerned, it is a fact that the customs union with EU is primarily seen as a stepping-stone for full membership. Thus the pace with which obligations under the Customs Union Agreement are carried out reflects to a considerable extent the progress made on the membership front. The delay between the enactment of Competition Law in 1994 and the establishment and the starting of operations of Competition Authority at the end of 1997 can be viewed as an indication of this dependence.

One consequence of the impact of EU on Turkish Competition Law is that it is largely compatible with the competition policies and rules of EU. There are, however, some exceptions, such as the silence of Turkish Competition Law on the extremely important issue of public undertakings. The evidence regarding application of the Law on public undertakings can be described at best as mixed. Many public undertakings are shielded from the application of Competition Law by special legislation. Moreover, liberalization, privatization, and regulation in a number of very important sectors, including the network industries such as telecommunications and electricity industries, are yet to be accomplished. The impact of Competition Law on the evolution

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<sup>27</sup> Fingleton et al. (1996).

of this process has certainly been less than satisfactory, and the role of Competition Authority less than clearly defined.

Obviously, Turkey's obligation under the Customs Union Agreement with EU concerns not only the adoption of a competition law that is compatible with that of EU, but also its effective enforcement. Though adopting a competition law and establishing a competition authority are important in and of themselves, they only constitute a first, and typically a non-controversial, step towards its enforcement. Full enforcement of Turkish Competition Law will be a much more controversial issue. Turkish Competition Law has not grown from domestic roots but it has been a response to outside pressures. This very fact reflects upon the pace with which it is being internalized and becomes a way of doing business in the Turkish industry. In an economy where a long history of state intervention has created many vested interests, favored players, and a culture of doing business that is largely based on soliciting special treatment from the central government, it will be difficult to establish that a competition law exists, and that it will be applied to *all* economic agents, including the state itself, without any exception.

The way Turkish Competition Authority has been established and empowered is quite satisfactory on paper. It is construed as an independent agency with full financial and administrative autonomy. Autonomous administrative bodies are a novelty in the Turkish public administration structure and whether they are indeed compatible with the overall structure as well as the Turkish legal system is subject to debate.<sup>28</sup>

Competition Authority is by law endowed with its own sufficient financial resources and enjoys complete autonomy regarding personnel decisions. As already referred to, Competition Board is the sole decision-making unit of Competition Authority and its members are appointed by the Council of Ministers from among candidates chosen from a number of public bodies. The members are appointed for renewable terms of six years, which is thought to shield the members from political influence. Whether a Board like this will in fact be independent of political influence depends critically on whether its members are appointed on the basis of merit or political affiliation. Since the Board enjoys complete independence in its decisions and actions, the composition of the Board becomes a crucial factor. The evidence on Turkey's experience with appointments of this sort is at best mixed. The recent controversy during the Summer of 2001 regarding appointment of members for a similarly independent Telecommunications Board is an example of how the composition of such boards incites political haggling instead of search for most meritorious anti-trust enforcers.

So far, Competition Authority has built a respectable group of staff to work on the cases that fall under its jurisdiction. But as the case load is likely to increase very fast very soon, more staff will definitely be needed. The composition of the staff currently employed raises some concern regarding whether enough specialists are being employed.

A review of the cases opened and decided by Competition Authority during its first three years leaves the impression that it has been rather cautious in enforcing Competition Law. This is especially the case in terms of authorizations for mergers and acquisitions. This is perhaps prudent, since the implementation of such a wide ranging law, which involves enforcing behavior that is radically different from the way economic actors had been used to behave, requires time and patience. It can be argued that Competition Authority has needed this time to form its organization and develop its staff base in order to be better placed to tackle cases of greater magnitude and importance.

Competition Authority needs the necessary courage and political backing to take hard actions against serious anti-competitive behavior by "big" players in the industry. There have been several

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<sup>28</sup> See Tan (2000).



cases so far where Competition Authority acted vigorously against not so small firms. However, there have not been enough cases so far to judge how the Turkish Competition Authority's vast powers on paper will reflect on competition law enforcement in cases that involve serious infringements by powerful firms.

The performance of the Turkish Competition Authority during the relatively short period of time since its inception in 1998 has definitely been promising. That a lot remains to be done regarding its organizational development and maturity is of course evident, given its short history and the difficulty of the task it has undertaken.

It has to be also noted that the period during which Competition Authority has been operative, namely since 1998, Turkish economy has been going through, perhaps what one can call, a continuous "crisis" situation. Both the South East Asian crisis in 1997 and the Russian crisis in 1998 adversely affected the Turkish economy. In 1999 the country lived through two major earthquakes that devastated several industrial provinces around Istanbul. At the end of 1999 government signed a stand-by agreement with the IMF and started a major anti-inflationary program that also involved various structural reforms. The year 2000 saw gradual worsening of current account deficits, delays in implementing the structural reforms, a banking crisis in Fall, and finally the peg on the Turkish Lira had to be abandoned when the crisis worsened in February 2001. Such severe macroeconomic imbalances do not constitute a favorable background for implementing and enforcing a newly enacted competition policy. A more active competition policy enforcement would have probably caused further disturbances or not be credibly implemented, and in either case the credibility of both Competition Law and Competition Authority would have been jeopardized.

Turkey's (admittedly limited) experience with enforcement of competition policy confirms the experiences in other countries in that one needs to have competition already instituted in the economy for a competition authority to do its work properly. In Turkey this has been evident in the cases of privatization and instituting regulatory frameworks in a number of formerly natural monopoly industries. Competition laws are more easily applied and more effective in protecting competition that is already instituted in industries and not for instituting competition itself. More generally, one needs a solid institutional framework comprising rule of law, a well-functioning legal system, respect for well-defined property rights, and so on, that will support a well-functioning market economy before competition policies can be expected to live up to their promise.

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**Table 1: 4-Firm Concentration Ratio (CR4) and Import Penetration (IP) for 3-digit ISIC Manufacturing Sectors in Turkey, 1980-1998 (%)**

<b>CR4 &lt; 30% (as of 1980)</b>										
Sectors	1980		1981-1988		1989-1993		1994-1997		1998	
	CR4	IP	CR4	IP	CR4	IP	CR4	IP	CR4	IP
311	10.2		11.6	6.7	13.0	9.0	14.4	14.0	9.77	10.2
312	22.1		23.3		18.7		18.2		21.9	
321	12.7		9.2	4.7	8.5	9.5	7.5	21.2	4.7	25.3
322	21.3		19.2	1.1	5.6	1.4	6.0	4.2	6.5	6.0
323	21.6		18.3	12.5	27.0	39.4	24.1	40.5	21.7	32.4
331	19.9		17.1	4.8	20.5	4.7	30.6	10.7	32.5	16.0
352	21.2		22.6	13.6	22.7	17.9	20.4	24.5	19.3	28.8
356	25.4		21.0	3.9	20.4	11.2	20.0	15.2	16.3	18.3
369	17.0		18.5	5.2	19.5	5.6	19.5	6.4	16.6	6.2
381	16.3		14.9	26.8	18.8	36.7	16.7	44.8	11.5	45.2
383	15.0		24.9	33.6	29.7	34.4	24.4	0.48	30.2	57.7
<b>30% &lt; CR4 &lt; 49% (as of 1980)</b>										
Sectors	1980		1981-1988		1989-1993		1994-1997		1998	
	CR4	IP	CR4	IP	CR4	IP	CR4	IP	CR4	IP
314	46.4		64.9	5.3	59.6	12.1	64.5	11.3	58.9	13.0
332	37.5		47.4	7.3	44.9	8.8	40.6	17.5	43.9	18.7
341	47.4		37.0	12.0	25.6	21.5	22.6	32.8	17.7	38.6
342	36.5		38.4	3.0	50.1	4.6	60.0	5.5	40.2	4.8
372	47.2		49.0	21.0	46.8	26.2	45.4	39.3	36.1	40.1
382	33.4		38.0	51.2	44.8	51.1	42.2	61.7	34.3	65.6
384	35.8		35.7	29.8	47.8	27.6	41.0	39.9	37.3	39.3
385	32.2		34.7	86.9	45.1	72.2	56.8	69.8	55.7	73.2
390	42.3		37.9	21.2	29.3	45.2	29.2	66.8	24.0	63.0
<b>50% &lt; CR4 (as of 1980)</b>										
Sectors	1980		1981-1988		1989-1993		1994-1997		1998	
	CR4	IP	CR4	IP	CR4	IP	CR4	IP	CR4	IP
313	55.8		45.4	0.8	33.0	0.7	34.6	1.5	38.6	0.8
324	63.1		49.3	3.1	37.1	11.2	36.5	28.7	36.6	32.1
351	49.2		41	40.4	49.9	47.3	57.4	58.8	48.9	62.1
353	100		99.2	3.0	98.1	4.3	98.3	5.0	97.8	4.3
354	54.7		68.9	1.7	74.6	2.4	63.4	7.4	60.1	7.7
355	71.5		70.7	6.5	71.5	14.4	74.8	17.8	72.6	20.8
361	79.6		62.0	1.6	58.8	3.3	59.4	4.9	58.0	5.4
362	72.1		61	4.7	51.9	10.1	56.9	17.6	40.6	18.9
371	54.8		43.5	18.8	35.7	22.5	31.5	26.7	34.7	26.7

Source: CR4 data for periods 1980, 1981-1988, 1989-1993, 1993-1997 are taken from Metin-Özcan et.al. (2000); 1998 data is obtained from SIS. Import penetration measures are calculated using The World Bank Trade and Production Database. < <http://www1.worldbank.org/wbiiep/trade/tradeandproduction.html>> (November 18, 2001).

**Table 2: Percentage of intermediates utilized by sector Y that are imported**

<b>Sector Y</b>	
311/312	15,5
353/354	76,3
313/314	10,0
312	22,5
322	32,6
323	12,1
331/332	9,2
341/342	34,6
351/352/ 355/359	36,8
361/362/369	20,5
371	48,3
372	14,7
381	18,9
384	18,2
382	32,1
383/385	25,5
390	48,5
Total Intermediate	21,9

Source: *The World Bank Trade and Production Database.*

<<http://www1.worldbank.org/wbi/trade/tradeandproduction.html>> (November 18, 2001.)

**Table 3: FDI Inflows to Turkey And Share of Sectors in Authorized FDI**

<b>YEARS</b>	<b>Total Realizations (million US \$)</b>	<b>MANUFACT (%)</b>	<b>AGRICUL. (%)</b>	<b>MINING (%)</b>	<b>SERVICES (%)</b>
1980	35	91,5	0,0	0,0	8,5
1981	141	73,0	0,3	0,3	26,4
1982	103	59,0	0,6	1,2	39,2
1983	87	86,6	0,0	0,0	13,4
1984	162	68,5	2,2	0,1	29,2
1985	158	60,9	2,7	1,8	34,5
1986	170	53,2	4,6	0,2	42,0
1987	239	44,9	2,0	0,2	53,0
1988	488	59,8	3,3	0,7	36,2
1989	855	62,8	0,6	0,8	35,8
1990	1.005	65,2	3,5	2,5	28,7
1991	1.041	55,7	1,1	2,0	41,2
1992	1.242	70,0	1,8	1,0	27,1
1993	1.016	76,0	1,0	0,6	22,4
1994	830	74,9	1,9	0,4	22,7
1995	1.127	67,9	1,1	2,1	28,9
1996	964	16,7	1,7	0,2	81,5
1997	1.032	51,9	0,7	1,6	45,7
1998	976	61,8	0,3	0,8	37,0
1999	817	66,1	1,0	0,4	32,5
2000	1.719	36,4	2,0	0,2	61,4
<b>TOTAL</b>	<b>16.119</b>	<b>55,2</b>	<b>1,6</b>	<b>0,9</b>	<b>42,2</b>

Source: Undersecretariat of Foreign Trade, Republic of Turkey Prime Ministry. <http://www.foreigntrade.gov.tr/ead/SEKTOR/SEKTOR.HTM> (November 18, 2001.)

**Table 4: Trends in Competition Policy Resources in Turkey (1997-2000)**

<b>Years</b>	<b>Person-year</b>	<b>Budget (TL)</b>	<b>Budget (US \$)</b>
2000	307	12,859,000,000	21,210,280
1999	297	21,000,000,000	49,000,000
1998	259	9,800,000,000	37,600,000
1997*		2,700,000,000	

\* Competition Authority commenced its operations on November 5, 1997.

Source: Turkish Competition Authority. Annual Reports on Competition Policy Developments in Turkey, 1998-2000.

**Table 5: The Case Load of Turkish Competition Authority**

<b>Applications for the Infringement of Competition</b>						
		<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>TOTAL</b>
<b>Applications</b>		22	177	220	255	674
<b>Decisions Finalized</b>	Decided upon investigation	5	5	32	53	95
	Applications refused	1	36	38	62	137
	Applications that were found outside the scope of the Law	3	3	236	147	389
	Total	9	44	306	262	621

<b>Applications for Mergers and Acquisitions</b>						
		<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>TOTAL</b>
<b>Applications</b>		8	59	80	103	250
<b>Decisions Finalized</b>	Permitted	1	25	31	46	103
	Conditional Permission	-	6	1	3	10
	Not Permitted	-	-	1	1	2
	Applications that are not within the scope of the Law	4	21	43	51	119
	Total	5	52	76	101	234

<b>Applications for Exemptions and Negative Clearance</b>						
		<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>TOTAL</b>
<b>Applications</b>		-	245	44	41	330
<b>Decisions Finalized</b>	Exempted	-	1	11	5	17
	Issued Negative Clearance	-	11	17	8	36
	Conditional Exemptions	-	-	21	6	27
	Applications that are not within the scope of the Law	-	-	15	4	19
	Total	-	12	64	23	99

Source: Second Annual Report, 2000, Competition Authority.

**Table 6: Breakdown of Cases Decided Regarding Infringement of Competition According to Relevant Article of the Law (1997-2000)**

Years	Article 4	Article 6	Article 4 & 6	TOTAL
1997	2	3	-	5
1998	3	2	-	5
1999	9	10	13	32
2000	21	16	16	53
<b>TOTAL</b>	<b>35</b>	<b>31</b>	<b>29</b>	<b>95</b>

Source: Second Annual Report, 2000, Competition Authority.

**Table 7: Distribution by Sectors of Applications for the Infringements of Competition**

SECTOR	1998	1999	2000	TOTAL
Printing and Publishing, Reproduction of Records, Cassettes and Similar Media	10	12	10	32
Food Products and Beverages	19	25	35	79
Land Vehicles, Aircraft, Sea Vessels and Railway Carriers	1	9	2	12
Transportation	19	26	18	63
Electricity/Electronics	1	1	2	4
Financial Services	4	7	7	18
Electricity/Gas/Water	3	5	3	11
Agricultural and Livestock Breeding, Forest Products	8	3	3	14
Cement, Construction Equipment	17	6	6	29
Office Equipment and Computer	3	4	2	9
Chemical Products, Petrochemicals, Petroleum Products, Fertilizers	8	11	12	31
Medical Instruments, Optical Instruments	1	1	1	3
Mine and Mining	2	4	3	9
Health, Education, Sport, and Self-Employment Activities	17	11	0	28
Telecommunications	2	4	2	8
Tobacco Products	0	1	0	1
Glass	1	0	0	1
Iron and Steel	1	0	0	1
Tourism	0	1	1	2
Textiles and Ready Made Clothes	0	2	1	3
Furniture, White Goods, Toys, Sports Equipment, Musical Instruments, Jewellery	0	0	1	1
Plastic and Rubber Products	0	1	0	1
Machinery and Equipment Manufacturing	0	3	2	5
Pulp, Paper and Paper Products	0	0	1	1
Others	3	4	3	10
<b>Total</b>	<b>120</b>	<b>141</b>	<b>115</b>	<b>376</b>

Source: Second Annual Report, 2000, Competition Authority; and Competition Policy in OECD Countries: Annual Report filed by Turkey [http://www1.oecd.org/daf/clp/ANNUAL\\_reports/1998-99.htm](http://www1.oecd.org/daf/clp/ANNUAL_reports/1998-99.htm) (November 18, 2001.)

**Table 8: Distribution by Sector and Type of Activity of Applications Regarding Mergers and Acquisitions**

SECTORS	MERGERS			ACQUISITION			JOINT VENTURE			PRIVATIZATION			TOTAL		
	98	99	00	98	99	00	98	99	00	98	99	00	98	99	00
Printing and Publishing, Reproduction of Records, Cassettes and Similar Media	0	0	0	0	1	1	0	0	0	0	0	0	0	1	1
Agricultural and Livestock Breeding, Forest Product, Water Products	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0
Chemical products, oil products, fertilizers	0	1	4	4	2	11	1	2	0	2	2	2	7	7	17
Electricity, gas, water	1	0	0	2	0	4	0	0	0	2	0	0	5	0	4
Construction, cement and other construction materials	1	0	0	6	1	1	1	0	0	0	0	0	8	1	1
Iron-Steel	0	0	0	0	0	1	0	0	0	1	0	1	1	0	2
Office equipment and computer	0	0	0	1	0	1	0	0	0	0	0	0	1	0	1
Food and beverages	1	0	0	7	5	7	2	0	0	0	0	0	10	5	7
Textile and ready-made clothing	0	0	0	3	3	0	0	1	1	0	0	0	3	4	1
Machinery and equipment manufacturing	0	1	0	6	1	2	0	0	0	0	0	0	6	2	2
Financial services (banking, insurance etc.)	1	0	1	4	4	0	0	1	1	2	0	0	7	5	2
Land vehicles, aircraft, sea vessels and railway carriers	1	0	0	2	2	5	0	1	1	1	0	0	4	3	6
Telecommunications	0	1	0	0	0	2	0	0	0	0	0	0	0	1	2
Metals other than iron	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Glass and glass products	0	0	0	1	0	1	0	0	0	0	0	0	1	0	1
Paper and paper products	0	0	0	2	0	0	0	0	0	0	0	1	2	0	1
Tobacco Products	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0
Fired Clay and Ceramics	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0
Medical and Optic Equipment	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0
Furniture, White Good, Jewellery	0	0	0	0	0	0	0	1	0	0	0	0	0	1	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Tourism	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0
<b>TOTAL</b>	<b>5</b>	<b>3</b>	<b>5</b>	<b>43</b>	<b>22</b>	<b>37</b>	<b>6</b>	<b>6</b>	<b>3</b>	<b>9</b>	<b>1</b>	<b>5</b>	<b>63</b>	<b>32</b>	<b>250</b>

Source: Second Annual Report, 2000, Competition Authority; and Competition Policy in OECD Countries: Annual Report filed by Turkey [http://www1.oecd.org/daf/clp/ANNUAL\\_reports/1998-99.htm](http://www1.oecd.org/daf/clp/ANNUAL_reports/1998-99.htm) (November 18, 2001.)



**Table 9: The Distribution by Sectors of Applications for Exemption and Negative Clearance**

<b>SECTOR</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>TOTAL</b>
Printing and Publishing, Reproduction of Records, Cassettes and Similar Media	6	5	4	15
Food Products and Beverages	30	18	3	51
Land Vehicles, Aircraft, Sea Vessels and Railway Carriers	39	10	6	55
Transportation	4	1	0	5
Electricity/Electronics	6	1	0	7
Financial Services	2	2	1	5
Electricity/Gas/Water	33	1	1	35
Agricultural and Livestock Breeding, Forest	1	0	0	1
Cement, Construction Equipment	7	3	1	11
Office Equipment and Computer	0	0	0	0
Chemical Products, Petrochemicals, Petroleum Products, Fertilizers	38	2	1	41
Optical Instruments	0	0	0	0
Mine and Mining	0	0	0	0
Health, Education, Sport, and Self-Employment Activities	0	1	0	1
Telecommunications	0	0	1	1
Tobacco Products	0	0	0	0
Glass and Glass Products	34	4	0	38
Iron and Steel	0	0	0	0
Tourism	0	0	0	0
Textiles and Ready Made Clothes	4	6	0	10
Plastic and Rubber Products	2	1	0	3
Machinery and Equipment Manufacturing	2	4	3	9
Fairs	0	0	0	0
White Goods	6	3	0	9
Cellulose, Paper and Paper Products	3	3	2	8
Fired Clay and Ceramics	0	1	0	1
Jewellery	1	0	0	1
Toys	1	0	0	1
Others	1	0	0	1
<b>Total</b>	<b>220</b>	<b>66</b>	<b>23</b>	<b>309</b>

Source: Second Annual Report, 2000, Competition Authority; and Competition Policy in OECD Countries: Annual Report filed by Turkey [http://www1.oecd.org/daf/clp/ANNUAL\\_reports/1998-99.htm](http://www1.oecd.org/daf/clp/ANNUAL_reports/1998-99.htm) (November 18, 2001.)

**Appendix Table 1: Manufacturing Industry Classification According to International Standard Industrial Classification of All Economic Activities**

311	Food manufacturing
312	Manufacture of food products not elsewhere classified
313	Beverage industries
314	Tobacco manufactures
321	Manufacture of textiles
322	Manufacture of wearing apparel, except footwear
323	Manufacture of leather and products of leather, leather substitutes and fur, except footwear and wearing apparel
324	Manufacture of footwear, except vulcanize or moulded rubber or plastic footwear
331	Manufacture of wood and wood cork products, except furniture
332	Manufacture of furniture and fixtures, except primarily of metal
341	Manufacture of paper and paper products
342	Printing, publishing and allied industries
351	Manufacture of basic industrial chemicals
352	Manufacture of other chemical products
353	Petroleum refineries
354	Manufacture of miscellaneous products of petroleum and coal
355	Manufacture of rubber products
356	Manufacture of plastic products not elsewhere classified
361	Manufacture of pottery, china, and earthenware
362	Manufacture of glass and glass products
369	Manufacture of other non-metallic mineral products
371	Iron and steel basic industries
372	No-ferrous metal basic industries
381	Manufacture of fabricated metal products except machinery and equipment
382	Manufacture of machinery (except electrical)
383	Manufacture of electrical machinery, apparatus, repairing, appliances and supplies
384	Manufacture of transport equipment
385	Manufacture of professional, scientific measuring and photographic and optical goods
390	Other manufacturing industries