

**ROLES OF UNFAIR COMPETITION AND PROTECTION OF COMPETITION RULES IN THE
ATTAINMENT OF SOCIAL MARKET ECONOMY IN TURKEY***

**TÜRKİYE’DE SOSYAL PİYASA EKONOMİSİNİN SAĞLANMASINDA HAKSIZ REKABET İLE
REKABETİN KORUNMASINA İLİŞKİN DÜZENLEMELERİN ROLÜ**

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ÖZET

Türkiye Cumhuriyeti Anayasası karma ekonomiyi benimsemiş olup, Anayasa'nın 2. maddesi de Türkiye Cumhuriyeti'nin bir sosyal hukuk devleti olduğunu ifade etmektedir. Sosyal devlet olmak, bu niteliğin, diğer alanların yanı sıra ekonomiye de yansıtılmasını gerektirir. Dolayısıyla, Türkiye Cumhuriyeti Devleti Anayasası'nın rekabet politikası bağlamında sosyal piyasa ekonomisini tercih ettiğini söylemek yanıltıcı olmayacaktır.

Rekabet hukuku ve haksız rekabet hukuku hükümleri, piyasa aktörleri ve toplum refahı için piyasanın rekabet ihlallerine karşı korunması hedefinde birleşmekte ve bu amaç açısından birbirlerini tamamlayıcı özellik göstermektedir. Rekabet hukuku, rekabet ortamını ihlallere karşı korurken, haksız rekabet hukuku, dürüstlük kuralına aykırı ticari davranışları yasaklamak suretiyle adil rekabet ortamının sağlanmasına hizmet eder. Türk hukukunun, rekabet hukukuna ve haksız rekabet hukukuna ilişkin hükümlerine genel olarak bakılması, söz konusu düzenlemelerin aynı amaca yöneldiğinin anlaşılması için yeterlidir.

Sosyal piyasa ekonomisi üzerine inşa edilmiş bir sistemde, rekabet hukuku ile haksız rekabet hukuku hükümlerinin işbirliği, özgür rekabet ortamının sağlanması ve korunması açısından büyük önem taşımaktadır.

Anahtar Kelimeler: *Karma ekonomi, sosyal piyasa ekonomisi, devlet müdahalesi, rekabetin korunması, haksız rekabet, rekabet serbestisi*

ABSTRACT

Turkish Constitution embraces a mixed economy, and Article 2 of the Turkish Constitution states that the Turkish Republic is a social law state. The latter characterization requires, among other things, the enactment of laws that are able to project the “social” aspect of the State to the economy. Consequently, it would not be misleading to assert that the constitutional regulation of Turkey indicates the preference of social market economy as the institutional order of competition.

Competition and unfair competition law rules are complementary to each other with the aim of protection of competition against infringements, to the benefit of market agents and public welfare. While competition law protects freedom of competition against breaches, unfair competition law protects fair competition against unfair commercial practices. A bird's eye view of the rules regarding Protection of Competition and Unfair Competition in Turkish Law is sufficient to realize that they comprise of provisions that have consentaneous aims.

In a system established upon social market economy, competition law and unfair competition law together play a significant role in the attainment of freedom of competition and maintenance of competitiveness of the market.

Keywords: *Mixed economy, social market economy, state intervention, protection of competition, unfair competition, freedom of competition.*

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I. INTRODUCTION

Competition is the subject of both law and economics. Competition and market, as economic phenomena, have also become the subject matter of law as a result of the introduction of laws that aim to protect competition.¹

In order to realize the Customs Union, which has been the most important stage of Turkey's full membership process to the EU, the first law with regard to competition has been enacted in Turkey on 7 December 1994, along with other legal arrangements concerning intellectual property. Thus, aside from the unfair competition law rules in the Commercial Law, competition law has been regulated by a separate and independent law.²

It has been accepted that both competition and unfair competition laws serve to the constitution of free and fair, in other words, undistorted competition in the market. Especially in Turkish Law, competition law and unfair competition law are often confused by the actors of the market.³ The reason for this is, above all, the misunderstanding of the aims, perspectives and provisions of the two fields of law.

II. ECONOMIC SYSTEMS, LAW AND FREEDOM OF COMPETITION

Constitutional law determines the degree of freedom in a country, and consequently characterizes the economy. Civil rights protection rules and general regulatory legislation together establish an

institutional order of competition, which may then be categorized within market economy, social market economy or socialist/communist state-directed economy.⁴

It has been asserted that Turkish Constitution had embraced mixed economy, and thus there is a need for an amendment to the Constitution to establish a more competitive environment and provide entrepreneurs more freedom.⁵ EU Commission has confirmed in the Progress Report of 2016 that Turkey could be accepted as a functioning market economy.

Article 2 of the Turkish Constitution states that the Turkish Republic is a social law state. This characterization requires, among other things, the enactment of laws that are able to project the "social" aspect of the State to the economy.⁶ Moreover, when "fiscal and economic provisions" of the Constitution are taken into consideration, it could be observed that the State is equipped with both regulatory and supervisory functions in the economy. Consequently, it would not be misleading to assert that the constitutional regulation of Turkey indicates the preference of social market economy as the institutional order of competition.

The term "social market economy" may strike as an oxymoron at first sight: Market economy connotes an economic system in which goods and services are made, sold, and shared, and prices set by the balance of supply and demand.⁷ Hence, there is no room for state intervention in such a system. However, experiences have shown that an application of a pure market economy is not feasible, since the system had proven to be insufficient in preventing the emergence of obstacles that would hamper its operation as well as achieving and maintaining social justice. Social market economy materializes as a tool to remedy the shortcomings of market economy system and to ensure its functioning in accordance with social justice, while providing a fair share to all from national income.⁸

1 **Immenga, Ulrich & Mestmäcker**, Ernst-Joachim (Editör) (2012) Wettbewerbsrecht: Band 1. EU/Teil 1, 5. Aufl., München, Verlag C.H. Beck, D. Der "stärkerwirtschaftliche Ansatz" in der Leitlinienpolitik der Kommission, Nr. 1.

2 Provisions regarding competition law has been laid down in Art. 31 of Decision 1/95 of Turkey – EC Association Council Art. 31 *et seq.* These provisions are almost the same with the fundamental competition law provisions of the European Community Law at the time (Art. 81 *et seq.* EC Treaty, Art. 101 *et seq.* TFEU). Art. 39 of Decision 1/95 obliges Turkey to enact provisions that include prohibitions parallel to those in Art. 81 and 82 EC Treaty (Art. 101 and 102 TFEU) in its domestic law. Moreover, it has been stated in Art. 35 of Decision 1/95 that, "any practices contrary to Articles 32, 33 and 34 shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community and its secondary legislation". See; **Pinar**, Hamdi (2006), "Fikri Mülkiyet Hakları ve Rekabet Hukuku" *Rekabet Dergisi*, Issue 23, p. 57 *et seq.* Consequently, TCA and Council of State have taken into consideration the principles derived from EU case law. Nevertheless, the decisions of the CJEU are of course not binding for Turkey, for it is not yet a Member State. See; **Gürzumar**, Osman Berat (2006) *Zorunlu Unsur Doktrinine Dayalı Sözleşme Yapma Yükümlülüğü*, Ankara, Seçkin Yayıncılık, p. 38, note 18.

3 **Türkkan**, Erdal (2009) *Nasıl Bir Rekabet Vizyonu?*, Ankara, Rekabet Kurumu, p. 263.

4 **Dornis**, Tim W. (2017) *Trademark and Unfair Competition Conflicts, Historical-Comparative, Doctrinal, and Economic Perspectives*, Cambridge, United Kingdom; New York: Cambridge University Press, p. 275, 276.

5 For discussions, see; **Tan, Turgut**: *Ekonomik Kamu Hukuku Dersleri*, Ankara 2010, p. 28 *et seq.*

6 **Türk**, Hikmet Sami (1985), "Sosyal Piyasa Ekonomisinde Rekabetin Düzenlenmesi" *BATİDER*, V. XIII, Issue 2, p. 123.

7 *Cambridge Dictionary* (<https://dictionary.cambridge.org>)

8 **Türk**, s. 120.

The initial definition of social market economy does not attain its “social” characteristic through the imposition of artificially social elements such as favoring particular groups in society in an otherwise free market system. The “social” aspect manifests itself through the functions of economic competition and technological progress leading to economic growth processes that allow a socially just distribution of income increases.⁹ However, during the progression of the system, solidarity concept has also arisen as one of the system’s basic principles, bringing in its wake an obligation to establish mechanisms that support the disadvantaged who cannot sufficiently participate in market processes.¹⁰ Thus, in a social market economy, the rules of economy must be complemented with legal rules in order to achieve a properly functioning system.¹¹

There are two main risks inherent in a market economy: 1. The abuse of the right to compete (unfair competition), 2. Restriction or elimination of competition through economic concentration. The laws step in to prevent either of these from happening. For the prevention of the first risk, the State prescribes certain rules and then recedes, expecting the market players to abide by them, and if/when the rules are breached, then it acts as an impartial mediator to resolve the conflict. This constitutes the essential content of the legal rules on unfair competition. The second risk requires the State to take on a more active role, where it constantly supervises the behaviors of market players to determine whether the rules are being followed, and where it interferes to the process if need be.¹² Legal rules regarding the protection of competition enable the State to fulfill this duty.

Freedom of competition is a ‘freedom’ bounded by the law. The right to compete freely does not include a right to compete unfairly.¹³ In this case, freedom of competition could only be realized through conducts that have been allowed by the law. Thus, whether a conduct is a fair competitive conduct must be determined through a consideration

of the spirit of the Constitution,¹⁴ the contemporary economic order and especially the proxies of cartel law.¹⁵

While the determination of the competitive order requires a macroperspective as presented above, in case of unfair competition law, macrostructures are only indirectly relevant. Unfair competition law concerns itself with the evolution of competition within macrostructures, hence, with the concrete individual market activities of market players.¹⁶

III. LEGAL PROVISIONS REGARDING COMPETITION

Competition, being the subject matter of economics, has also become a topic of law as a result of the enactment of provisions regarding its protection. Competition theory is comprised of the presence, conditions and functions of competition in market economy, whereas the science of law considers competition as an economic phenomenon, and aims to establish or correct the competitive process itself, its conditions or its effects through normative criteria. Thus, unlike economics, the law comes forward with legal rules which aim to protect competition.¹⁷

9 **Ahrens**, Joachim (2008) *Transition Towards a Social Market Economy: Limits and Opportunities* PFH Forschungspapiere/Research Papers, Private Fachhochschule Göttingen, No. 2008/01, p. 2.

10 **Ahrens**, p. 3.

11 **Türk**, p. 121.

12 **Türk**, p. 123, 124, 127.

13 **Callmann**, Rudolf (1968) “Unfair Competition and Antitrust: Coexistence Within Complementary Goals”, *Antitrust Bulletin*, V. 13, Issue 4, p. 1339.

14 In *Lüth* decision of German Constitutional Court (1958), fundamental rights and liberties have been for the first time taken into consideration in private law, and this has been regarded as “the reflection effect” (*Ausstrahlungswirkung*). Provisions regarding fundamental rights and liberties had in essence been foreseen to protect individuals against the state. Nevertheless, it has been stated in the decision that general provisions in private law, such as good faith (Art. 2 of Turkish Civil Code, Art. 54 of TCL), may not be interpreted in a manner that would restrict fundamental rights and liberties (for instance, freedom of thought), thus should be interpreted in accordance with the Constitution. In the interpretation of general provisions of all fields of law, the spirit of Constitution must be taken into consideration, and consequently, their application must also be brought in line with it [Köhler, Helmut & Bornkamm, Joachim & Feddersen, Jörn (Editör) (2017) *Beck’sche Kurz-Kommentare*; Band 13a, *Gesetz gegen den unlauteren Wettbewerb: UWG mit PAngV, UKlaG, DL-InfoV*, Aufl. 35, Verlag C.H. Beck, Einleitung Nr. 1.45]. The most recent example to this is Benetton I (2000) and II (2003) decisions of German Constitutional Court. The facts in these cases were the utilization of advertisement campaigns by the Italian company Benetton, of fear, pity, violence and sexual connotations, which had no relevance to its textile products. German Constitutional Court has, due to an individual communication, reviewed the decisions of German BGH which had concluded that the advertisements were infringing unfair competition law and prohibited them. The Court has decided that the BGH judgments were against the law for they infringed freedoms of thought and press. (For the decisions, see; <https://www.bundesverfassungsgericht.de/suche.html> - s.e.t. 16.4.2014).

15 **Köhler & Bornkamm**, Einleitung Nr. 1.27.

16 **Dornis**, p. 276.

17 **Immenga & Mestmäcker**, D. Der “stärker wirtschaftliche Ansatz” in der Leitlinienpolitik der Kommission, Nr. 1.

A. AIMS OF PROVISIONS REGARDING COMPETITION¹⁸

Great significance is ascribed to the aims of legal provisions in their interpretation.¹⁹ Consequently, once the aim of a provision is appropriately determined, its interpretation would also be more accurate. To begin with, the relationship between competition and unfair competition law must be truly determined from the perspective of their aims: competition and unfair competition law rules are complementary to each other with the aim of protection of competition against infringements, to the benefit of market agents and public welfare.²⁰ Thus, protection of free competition and protection of fair competition in a market economy is not contradictory.²¹ The difference in method between the two fields should not be perceived as a result of contrasting aims, for the ultimate aim of both fields is to establish and maintain free and fair competition in the market. Despite this well-settled stance in competition law, the Turkish doctrine, inappropriately speaks of “contrasting aims” while explaining the relationship between fields.²² While competition law protects freedom of competition against breaches, unfair competition law protects fair competition against unfair commercial practices.²³

Competition law and unfair competition law, despite the difference in their methods, essentially guard competition,²⁴ which is a task not only considered as a means but also as an end in itself.²⁵

Court of Justice of the European Union (CJEU) has underlined in many of its decisions that the aim of competition law provisions is not only to protect the interests of competitors or consumers, but also to protect market structure, and thus the competitive process itself.²⁶

Competition law does not take into consideration the existence of a direct damage to consumers as it intervenes to infringements such as cartel agreements or abuse of dominant position. Interests of consumers as participants of the market would be protected through the constitution of an undistorted competitive system.²⁷ Consequently, competition law and unfair competition law must be regarded as parts of a comprehensive competition regulation that is directed towards free, fair and undistorted competition.²⁸

Competition law aims, politico-economically, the realization of an economic order in which market economy and competition is present; and socio-politically, the establishment of a free platform for all participants of the market.²⁹ Hence, it prohibits cartel agreements between undertakings and abuse of dominant position. Since unfair competition laws purpose is the establishment of fair and undistorted competition in the market to the benefit of all participants, conducts of undertakings in a competitive environment constitute the subject matter of both laws, and rules of competition and unfair competition law could be applied simultaneously in numerous instances.³⁰

All in all, competition law and unfair competition law comprise of provisions that have consentaneous aims, and in order to realize these, the provisions must be interpreted and applied in a manner that would prevent the emergence of contradictory criteria or values.³¹

18 **Pinar**, Hamdi (2014) “Rekabet Hukuku ile Haksız Rekabet Hukuku İlişkisi” *Rekabet Dergisi*, V. 15, Issue. 2, p. 66-69.

19 **Immenga & Mestmäcker**, D. Der “stärker wirtschaftliche Ansatz” in der Leitlinienpolitik der Kommission, Nr. 5.

20 Also see, **Ertan**, Füsün Nomer (2016) *Haksız Rekabet Hukuku* (6102 sayılı Türk Ticaret Kanunu’na Göre), İstanbul, On İki Levha Yayıncılık, s. 5, 6.

21 **Köhler**, Helmut (2005) “Zur Konkurrenz lauterkeitsrechtlicher und kartellrechtlicher Normen”, *WRP*, p. 645.

22 **İnan**, Nurkut (1999) “Rekabet Hukukunun Diğer Disiplinlerle İlişkisi” *Rekabet Kurumu Perşembe Konferansları*, V. 1, p. 10; **Erdem**, Ercüment (2002) “Rekabet Hukuku ve Haksız Rekabet İlişkisi” *Ömer Teoman’a 55. Yaş Günü Armağanı*, V. 1, p. 385.

23 **Köhler & Bornkamm & Feddersen**, Einleitung Nr. 6.11.

24 **Köhler & Bornkamm & Feddersen**, Einleitung Nr. 6.13; **Immenga & Mestmäcker**, D. Der “stärker wirtschaftliche Ansatz” in der Leitlinienpolitik der Kommission, Nr. 5; **Berger**, Mathis (1995) “Über das Verhältnis zwischen dem Gesetz gegen den unlauteren Wettbewerb und dem Kartellgesetz” *Aktuelle Fragen zum Wirtschaftsrecht zur Emeritierung von Walter R. Schlupe*, p. 49 *et seq.*

25 **Aşçıoğlu Öz**, Gamze (2000) *Avrupa Topluluğu ve Rekabet Hukukunda Hâkim Durumun Kötüye Kullanılması*, Rekabet Kurumu Yayınları, Lisansüstü Tez Serisi No: 4, 2000, p. 19; **Erdem**, s. 379 *et seq.*; **Jung**, Peter & **Spitz**, Philippe (2010) *Bundesgesetz gegen den unlauteren Wettbewerb (UWG)*, Bern, Stämpfli Verlag, Art. 1, Nr. 6.

26 CJEU C-8/08 *T Mobile Netherlands decision* (4.6.2009), Nr. 38; CJEU C-501/06 *GlaxoSmithKline decision* (6.10.2009), Nr. 63; CJEU C-52/09 *TeliaSoneraSverige decision* (17.2.2011), Nr. 24.

27 **Immenga & Mestmäcker**, D. Der “stärker wirtschaftliche Ansatz” in der Leitlinienpolitik der Kommission, Nr. 5 *et seq.*; **Köhler & Bornkamm & Feddersen**, Einleitung Nr. 6.11.

28 **Emmerich**, Volker (2009) *Unlauterer Wettbewerb*, 8. Aufl., München, Verlag C.H. Beck, p. 57.

29 **Emmerich**, Volker (2008) *Kartellrecht*, 11. Aufl., München, Verlag C.H. Beck, p. 3 *et seq.*

30 **Emmerich**, *Wettbewerb*, p. 56 *et seq.*

31 **Köhler & Bornkamm & Feddersen**, Einleitung Nr. 6.11-13.

B. REGULATIONS REGARDING UNFAIR COMPETITION AND PROTECTION OF COMPETITION IN TURKISH LAW

1. Unfair Competition Regulations in Turkish Law

Turkish Commercial Code Nr. 6762 of year 1957 has been entirely renewed by the coming into force of the Turkish Commercial Code Nr. 6102 on 1 July 2012 (TCC). The preference of the lawmaker was, as it had been in the previous Code, to enact laws regarding unfair competition within TCC (Art. 54 – 63), rather than collecting such rules in a separate Code. Unfair competition laws of the TCC are adapted from the “Federal Law Against Unfair Competition” (Gesetz gegen den unlauteren Wettbewerb –UWG-, dated 1988) code of Swiss law. Therefore, the rules in the previous TCC of 1957 has also been amended, since those laws referenced the former Swiss unfair competition code’s rules (Bundesgesetz vom 30. September 1943 über den unlauteren Wettbewerb).

Unlike the two-separate-article arrangement of the Swiss UWG, the TCC foresees both the aim and the principle of the unfair competition rules in one article, namely, Art. 54 TCC. While this article describes unfair competition as behaviors breaching the good faith principle, Art. 55 TCC exemplifies these instances, parallel to the Swiss reference law, under six sub-categories. Other rules include those that prescribe various opportunities for the party that is injured or in danger of being injured as a result of unfair competition, such as, legal responsibility for the violator (Art. 56 TCC), interim injunction and confiscation at customs (Art. 61 TCC) and conditional penal sanctions (Art. 62 TCC).

2. Protection of Competition Regulations in Turkish Law

Law on the Protection of Competition Nr. 4054 has been enacted on 7.12.1994, as a part of the preparation process to Customs Union between the EU and Turkey (31.12.1995). The Law has essentially adopted the principles of Art. 85, 86 EEC (now Art. 101, 102 TFEU) and Regulation (EEC) 17/62 (now Regulation (EC) 1/2003). Later on, various block exemption regulations have also been implemented to Turkish law, in accordance with the developments in EU law.

Art. 1 of Law Nr. 4054 forbids agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services. The aforementioned law, which has adopted a normative system regarding block exemptions, has formulated individual exemption in Art. 5. According to the said article, the four conditions of individual exemption are; efficiency, benefit of the consumer, proportionality and non-elimination of competition. Art. 6 of the Law on the Protection of Competition prohibits the “abuse” of dominant position rather than the state of “being” in dominant position, parallel to Art. 102 of Treaty on the Functioning of the European Union (TFEU). Art. 7 lays down the rules for the control of concentrations. There are also secondary regulations regarding mergers and acquisitions that require permission. The Law further includes rules on the operation of the Turkish Competition Authority and its procedures, as well as penal and civil liabilities in cases of violation of the principles of competition.

C. FUNCTIONAL COOPERATION BETWEEN COMPETITION LAW AND UNFAIR COMPETITION LAW

Competition law and unfair competition law have a functional common ground. Both branches of law are directed to the same phenomenon, namely, competition, and they interact in the prevention of abusive conducts.³² Both protect public and private interests through different perspectives, and thus, complement each other.³³ Competition law protects free competition on a macro level, whereas unfair competition law performs the same task on a micro level. Consequently, competition law and unfair competition law serve to the supervision of market structure, and unfair commercial practices,

³² Piper, Henning & Ohly, Ansgar & Sosnitza, Olaf (Editör) (2010) Gesetz gegen den unlauteren Wettbewerb, 5. Aufl., München, Verlag C.H. Beck, Einleitung D, Nr. 71; Berger, s. 49; Köhler & Bornkamm & Feddersen, Einleitung Nr. 6.12.

³³ Consequently, some authors have asserted that a market law converging the regulations in both fields should be enacted. See; Baudenbacher, Carl (2001) Lauterkeitsrecht, Basel, Helbing Lichtenhahn Verlag, Art. 1, Nr. 65 *et seq.*

respectively.³⁴ Hence, in many countries, the fields are regarded as being independent and regulated by separate laws.³⁵

Boycott practices are situated in the intersection of competition law and unfair competition law, whereas unfair law prohibition of deceptive advertising which would not by any means affect market structure, and competition law prohibition of concentrations, which would never be a subject matter of unfair competition remain outside the scope of the intersection.³⁶

The interplay between the fields could be exemplified through an analogy of a soccer game, though it would be a simplistic analogy that is not capable of covering any of the fields in every respect.³⁷ In the context of a soccer game, competition law rules would ensure the score of the game being a result of the teams' performance, instead of it being a predetermined one through the agreement of the teams (game-fixing). On the contrary, unfair competition law rules would be those that should be observed by the players during the game, which are supervised by the referee (e.g. fault, playing with hand). From this perspective, it is evident that game-fixing between clubs constitutes a subject matter for competition law, for the clubs have attempted to determine the score in advance by way of an agreement, instead of leaving it to factors such as power, talent and chance, and thus, distorting the free competitive structure of the league. Conversely, corrupting a player of the opposing club,³⁸ and for instance, making him give away a goal would be a conduct that infringes fair competition rules, thus falling within the scope of unfair competition law rules. By the same token, individual disobedience of the players to the rules would also give way to the application of rules of unfair competition. If a player faults, plays with hand, attempts to deceive the referee through throwing himself on the floor at the penalty area of the opposing team, he would only be acting against the good faith principle. In the end, the aim of both fields is the realization of the game in a platform

where the conditions of free and fair competition apply, and the result of the contest being one that would be undoubtedly accepted by all actors of the market.

D. COMPETITION OF RIGHTS

Both fields of law have a few common, intersecting areas. For instance, a call for boycott by an undertaking could be the subject of both competition and unfair competition law. The rules of unfair competition law could be applied simultaneously in the case of call for boycott,³⁹ while they could also be applied in some other areas where competition law would not be concerned for the lack of the existence of a dominant position. Thus, provisions of both fields could be regarded as being complementary to, but also in competition with each other. As a result, it could be stated that the provisions of one field do not prevent the application of the provisions of the other, but instead, the rights enfranchised by both fields would compete.⁴⁰ Consequently, it is possible to utilize the protections foreseen in both laws, if a conduct satisfies the conditions of infringement in both competition and unfair competition law.⁴¹

E. QUERY OF AN INTERDEPENDENCE BETWEEN INFRINGEMENT OF COMPETITION LAW AND UNFAIR COMPETITION

Another discussion regarding the interplay between the two laws is whether the infringement of Competition Law would also be considered as an infringement of Article 55(e) of TCC.

Article 55(e) of TCC, which is among the provisions regulating unfair competition law, states that disobeying business conditions, especially those that are imposed, either by law or agreement, to all competitors, or those that are considered commonplace in a certain profession or region, would constitute a behavior contrary to good faith, and consequently an unfair conduct (e.g. disobedience to the rules set by relevant professional organizations regarding the implementation of discounts to sales at certain periods of the year).

34 **Piper & Ohly & Sosnitza**, Einleitung D, Nr. 71.

35 Nevertheless in some countries both fields are regulated under one single market law. See; **Baudenbacher**, Art. 1, Nr. 65 *et seq.*

36 **Piper & Ohly & Sosnitza**, Einleitung D, Nr. 71.

37 **Piper & Ohly & Sosnitza**, Einleitung D, Nr. 71.

38 For details regarding the corruption of operation personnel within the framework of unfair competition law, see; **Şenocak**, Kemal (2001) "İşletme Personelinin Ayarılması Meselesinin Haksız Rekabet Hükümleri Çerçevesinde (TTK m. 56 vd.) Değerlendirilmesi" AÜHFED, V. 50, Issue 2, p. 193 *et seq.*

39 For details, see; **Şenocak**, Kemal (2009) "Haksız Rekabet Açısından Boykot" BATİDER, V. 25, Issue 1, p. 67 *et seq.*

40 **Baudenbacher**, Art. 1, Nr. 68; **Piper & Ohly & Sosnitza**, Einleitung D, Nr. 72.

41 **Piper & Ohly & Sosnitza**, Einleitung D, Nr. 73.

The Court of Cassation has regarded certain infringements of environmental and food laws as unfair competition in accordance with Article 55(e) of TCC. However, the answer to the question of whether unfair competition constitutes an infringement of competition law differs from the position taken by the Court of Cassation in cases concerning environmental and food law infringements, for the latter aim environmental protection or food safety, and not the regulation of the market. Additionally, those infringements could also lead to competitive advantage of infringers. Consequently, it would not be problematic in this context that unfair competition law rules are applied to protect especially competitors, among other participants. Conversely, as regards the competition law rules that aim to protect the free market structure, their infringement would not always lead to an infringement of unfair competition law, within the scope of Article 55(e) of TCC. As previously mentioned, competition law and unfair competition law are two laws of which the purpose is to establish free and fair competition in the market, and in cases of infringement of Competition Law, the sanctions include both administrative fines and a possible demand of damages by the aggrieved party. There are more serious sanctions foreseen for the infringements Competition Law, compared to unfair competition law rules in the TCC. Hence, it would be more appropriate to demand damages in accordance with the Competition Law, once the infringing party is sanctioned with an administrative fine.

IV. CONCLUSION

Turkey, pursuant to the Constitution of 1982, has a system based on the principle of market economy. The Constitution contains provisions that lay down fundamental principles required for the presence of a free and fair competition in a market economy. Besides the constitutional principles, laws have also been enacted through the actions taken in accordance with the requirements of the Customs Union, which has been the most significant step towards Turkey's accession process to the EU. For this purpose, along with legal arrangements regarding intellectual property, the first law with regard to competition law has been enacted in Turkey on 7 December 1994, and in 2012, Turkish Commercial Code has been entirely renewed. Thus, Turkey has

virtually established the legal infrastructure for the attainment of free and fair competition.

In addition to the existence of competition, freedom of competition must also be present in the market, and in a system established upon social market economy, competition law and unfair competition law together play a significant role in the acquisition of abovementioned constituents. In Turkish Law, the source of competition law is the law of the EU, hence, the EU standards and criteria must be taken into consideration in the application of rules of competition law. It is inevitable that troubles will arise in the application of new provisions, and the confusion of market actors with regard to the scopes of application of competition and unfair competition laws is one of these.

The approach to be adopted with respect to the two laws' application must be the complementary nature of competition and unfair competition law rules that aim to protect competition from infringements in the market, to the benefit of all participants and the public, for the attainment and maintenance of a free and fair market structure.

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