

Telecommunication Sector in Turkey

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Introduction

In today's business world, economic systems have been very complex and integrated and in such a business setting, the presence and sustainability of the competitive environment is crucial for two main reasons:

- Competition helps to protect the benefit and the interests of the public, in other words the customers
- Competition keeps the companies alert and pushes them to improve and to innovate which also supports the interests of the customers in the long run.

An economic setting that has been purified from its defects and the presence of a well executed competition policy is a must for developing countries as well as the developed economies. Competition is sustained and managed by the regulatory authorities of the governments due to its importance in the well being of the economic systems.

This paper has been prepared in order to analyze the competition authority in Turkish economy focusing on the implications for telecommunication industry. The paper also considers the relationship between the telecom industries' regulatory authority – Telecommunication Institution- and the Competition Authority and the division of responsibility between the two regulatory institutions. Since economic liberalization is rather new in the Turkish economy, the paper also

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analyzes the implications and impacts of the Competition Authority during and after the liberalization process.

Telecommunication Industry

To make a definition of the industry, telecommunication industry can be considered as a sub segment of “Information and Communication Technologies (ICT)”.¹ According to the studies conducted by the International Data Corporation (IDC), the components of the industry are as follows;

- Hardware
 - Fixed and mobile infrastructure
 - Terminal devices
 - User stations
- Services
 - Fixed and mobile telecommunication
 - Leased – line
 - Cable TV

Another classification studied by Icoz (2003) asserts that telecommunication industry should be analyzed in 3 main components which also make sense considering the organizational structures of the telecommunication companies:

- Primary services (voice and data)
- Value added services
- Telecommunication devices

Telecommunication industry has traditionally shown the signs of a natural monopoly at least up to the last decade where liberalization has occurred in many economies. Natural monopoly has been defined by Posner (1999) as the fulfillment of all demand by a single company with minimum cost in a specific market. The main reason why telecommunication industry has been regarded as a case of natural monopoly is that there is a need of huge investment in other words high fixed costs (entry barriers) for another company to enter to the market.²

Liberalization in the Telecommunications Industry

Telecommunications industry has started with private companies in the middle of 19th century.³ However, later state ownership in the industry has created a feeling that the industry was actually started

1 (Saygi, 2002)

2 (Çakal, 1996)

3 (Cawley, 2002)

by the state-owned-enterprises. Later, the companies have been consolidated into cooperation in order to form monopolistic organization structures. This situation has lasted up to 1980's. Later, Agreement on Basic Telecommunications (ABT) has proposed liberalization in the industry. Technological advances have also made it possible to argue that telecommunications industry does not actually show signs of perfect natural monopoly due to the fact that in some cases it is even possible for the companies to reach the end users without the necessity of using fixed lines.⁴ The reasons of liberalization have been put forward by OECD publication about telecommunication industry as follows:

- Lower prices
- Positive effect on revenue and profitability
- Network development and improvements
- Increased availability of product and services alternatives
- Increased service quality
- Increased efficiency
- Net benefits for the society⁵

Sustaining the Competitive Environment in Telecommunications Industry

Despite the fact that telecommunications industry has been liberalized, it does not necessarily mean that markets are perfectly competitive. This places more importance on the responsibility of the Competition Authority in order to make sure the markets are day by day more competitive. The most significant tackle is that the nature of the industry promotes the concentration of the market more on the leader operator in the market. The reasons that promote this situation are as follows:

- Network externalities push the customer to prefer the operator with the widest coverage and widest network.
- Especially for local fixed lines sunk costs are still very high.
- Pioneer operator enjoys some advantages in the market due to its position of being first in the market like reaching economies of scale or having high number of subscribers or increased experience in financial management or vertical integration.

All these factors may lead the dominant operator to abuse its power in the market to kick other operators out of the market. So, the competition authority is important in both to regulate the market and both

⁴ (Boylaud & Nicoletti, 2000)

⁵ (Intven, Oliver & Sepulveda, 2006)

to determine and execute the rules of competition. Lack of the proper control and regulation of the competition authority may lead the leader and dominant operator to abuse its power in the following ways:

- To prevent or make it harder for the competitors to reach to a necessary resource
- To apply excessive prices for the competitors
- To apply fatal prices to the customers
- To finance competitive services with the income of uncompetitive services (cross-funding)
- Bundling of some product or services to gain advantage in new customer acquisition process.⁶

Turkish telecommunication industry has been liberalized as of January 1, 2004 for voice and data transfer. The competition has developed firstly in long distance telecommunication services since the initial investment requirements are relatively low in this segment of the business. The most important function of the Competition Authority in Turkey regarding the long distance telecommunication services is that pricing of the operator must be monitored with care. Secondly, the Competition Authority must ensure that the operator do not force the customer to purchase some products or services in bundle. In Turkey, the Turkish Telecom has forced the customer to buy a fixed line in order to get an ADSL connection. This is a very basic violation of the competitive environment because all fast Internet applicants needed to buy a fixed line which has monthly fixed payments.

Another area of competition is the cable-TV segment. In cable TV, Turkish Telecom is a monopoly. The business model asserted by Turkish Telecom is based on revenue sharing but it is not competitive and it is not working properly. This makes it harder for the competitors to invest in the market.⁷

Telecommunication Institution and Competition Authority

The cooperation protocol in between the Telecommunication Institution and Competition Authority started in 16th September, 2002⁸. It can be said that there is a healthy cooperation and communication in between the Institution and the Authority. Competition Authority recalls Telecommunication Institution's opinions for the cases in telecommunication sector, while Telecommunication Institution takes opinion from Competition Authority about the regulations that may affect the market. Although there had not been any problem about the

⁶ Telecommunication Board, Public Announcements, http://www.tk.gov.tr/Basin_Duyurular/Bulten/basin38.doc

⁷ Mumcu, Ayşe and Zenginobuz, Unal, 2001, "Competition Policy in Turkey"

⁸ OECD, 2002, Reviews of Regulatory Reform in the Telecommunications Industry in Turkey, *f/n* 33

implication of the legal cases and cooperation process in between two authorities, a Cooperation Protocol was signed in between two sides in order to provide better and more effective cooperation.

The main target in Cooperation Protocol is to improve a better environment for competitive market by defining the authorities and assigned position of each institution. In this sense, complaints and notifications of businesses can be commented with more defined authorities.

According to Mumcu, “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”⁹

Turkish Competition Law can only be done and implemented by the Competition Authority in Turkey. The regulating body of Competition Authority is the Competition Board who are appointed by the Council of Ministers. However, Competition Authority is not dependent on the Council of Ministers although it is appointed by it. Competition Authority is an independent institution and have full freedom on its duties. This is provided by Competition Law in Turkey, and is for full competition within the sectors.

As OECD stated, competition law of Turkey, in other words, the Law on the Protection of Competition 4054 of December 1994 is being applied in the telecommunication sector.

The main tasks of Telecommunication Authority, as it is created in January 2000 as an applicant agency of legal procedure are, according to OECD:

- “– To implement a frequency plan and to supervise compliance with it by telecommunications and broadcasting operators.
- To implement and to issue concession agreements, licenses, and general authorizations.
- To establish regulation on tariff, contracts between service providers and users, interconnection, and other issues within its mandate, and to monitor their implementation and compliance.
- To impose administrative fine of up to 3% of the annual turnover of an operator found to be in breach of certain regulation and license conditions.
- To determine and implement performance standards of telecommunications system and equipment.
- To investigate any relevant matters including anti-competitive behavior, either upon its own initiative (*ex officio*) or upon complaints, and to require necessary information and documents.

9 OECD report, //n 33

- To take necessary measures to protect consumer interests.
- To provide opinions to all decisions of Competition Authority in telecommunications, before they are made, including those on mergers and acquisitions.
- To determine guidelines and procedures regarding interconnection including determination of responsible operators for providing interconnection, to monitor the compliance, and to determine specific conditions and tariffs of interconnection agreements in case parties involved failed to reach them within three months.
- To determine methods to decide tariffs including those of leased lines, and price caps.”¹⁰

In legal procedure level of decisions of Authority, it can be said that the only way to challenge for the decisions of Telecommunication Authority is the Supreme Courts in the country. There cannot be a way on the first instance court basis objection. On the other side, as it was mentioned for several times, the Competition Authority and Telecommunications Institution have to cooperate regarding the Law 4502 in Competition Law.

It is the point that, these developments in legal area are in question right after the liberalization process in Turkey.

According to OECD report in 2002, a company should have four things to provide telecommunication services: authorization agreement, a concession agreement, a telecommunication license, or general authorization issued by the Telecommunication Authority. In this sense, Authorization Agreement means the contract in between Turk Telekom and Telecommunications Authority which sets out the related authorities, rights and obligations in sector. Concession Agreement is the contract between TA and any operator about telecommunication infrastructure. Telecommunication License is the permission that is given by TA for operating and establishing provision of services in country. General Authorization is the permission that is given by the Telecommunication Authority to provide telecommunication services in Turkey.

Another point about the legislation procedure of sector in Turkey is about the privatization of Turk Telekom. Although the competition law allows 100 % foreign disposal for Turk Telekom, there had been only 45 % of it. It is because of the fact that telecommunication and energy sectors are critical for a country, so that more than 49 % of the monopoly cannot be offered to the foreign buyers. Not surprisingly, Turk Telekom and the foreigner shareholders of it have to obey the Turkish Laws in Turkey.

¹⁰ Öztürk, E., “Türk İdare Sisteminde Rekabet Kurumunun Yeri ve Diğer Bağımsız İdari Otoritelerle Karşılaştırılması”, 2003

Regarding the Law 406 (Article 12 as amended by Article 7 of Law 4502), public roads, highways and so on are available for the telecommunication operators in order to lay the cables of services without any payments.

As it is needed to sum the legal aspects in Turkey right after the liberalization process in the country, not only for telecommunication sectors but for all:

“In the WTO agreement on basic telecommunications concluded in February 1997, Turkey committed itself to liberalizing the basic telecommunication services market by the year 2006. As the market will be fully liberalised by the end of 2003 at the latest, this commitment will be realized two years or earlier than the scheduled deadline in this respect, which is commendable. In addition, Turkey committed in the same agreement to allowing up to 49% foreign ownership for services which require a concession agreement. This commitment has been complied with as seen earlier except that foreign participation in Turk Telekom is allowed only up to 45%.”¹¹

The situation of the telecommunication sector in Turkey can be summarized with the words of OECD in the review about reform in Turkey:

Turkey is determined to develop its telecommunications sector in a fully competitive environment and has been putting in place or is preparing necessary regulation to eventually develop competitive telecommunications markets. It is important that the full benefits of competition are realized and passed on to users. The efficient working of the market will allow this to happen, but in the shorter term as the telecommunications market is transformed from a monopoly to a competitive market, effective regulation will play a key role. In this context, as well, having good benchmarking data is important for effective regulation and the Telecommunications Authority needs to improve on its ability to obtain and publish such data.

The Impacts of Competition Authority After Liberalization

The main aims of the Competition Authority are to hinder the agreements, decisions and implications that obstruct the competition in good and service markets, and to hinder dominant entrepreneurs to abuse the power they have; to protect the competition in market by providing required arrangements and auditing. It uses this authority in telecommunication sector either, not surprisingly.¹²

11 Competition Authority, <http://www.rekabet.gov.tr/dosyalar/tezler/tez16.pdf>

12 <http://www.rekabet.gov.tr/dosyalar/kararlar/kararen114.doc>

Competition Authority interested in the competitive problems directly, and provided its own solutions regarding the aim and function of it, since the year 1997 that institution came into activity.¹³

However, when the country turns its system into more liberal one, the authority and functions of the Competition Authority (CA) do not end up, quite the contrary increase. But, the most important question became about the placement of the CA in country and in market. In other words, which field to apply competition rules, which field to regulate becomes arguable.

Sectoral regulative authorities provide universal requirements for service and minimum quality criteria. Additionally, it hinders the factors that may obstruct the liberal market within a country. In this sense, the competition rules and sectoral regulations are seem in conflict. For example, significant market power can perform a price that is approved by the regulative authority. However, that price may be a kind of destructive element within the market; thus it is required an intervention of competition law. To clarify these confictions, it is needed to state the aims and authorities of sectoral regulative and competition authority clearly. They are needed to cooperate with each other, when an issue is risen in the market, and have to have a common point to create a more efficient market.

It can be said that during and after the liberalization period of the market, it is required sectoral regulations can be vital in order to establish a competitive structure within a market. Competition Authority is expected to attend this process by giving opinion. If the dominant position of significant market power continues, although the mutual consultation during the period, then the Competition Authority is obliged to intervene the issue, and regulate the problem. For example, Competition Authority has been made lately decision about the Acquisition by Vodafone Holding Inc in telecommunication sector. Borusan Holding Inc. - Borusan Technological Investments Holding Inc. - Borusan İstikbal Trade Inc. - Borusan Birlik Consulting and Organization Services Inc. – Borusan Insurance Agency Inc. Vodafone Holding Inc. 14Acquisition by Vodafone Holding Inc. of the shares corresponding to 100% of the issued capital of Borusan Telekom ve İletişim Hizmetleri A.Ş. (Borusan Telekom and Communication Services Inc.) within the agreement for purchasing shares signed between Borusan Holding Inc., Borusan Teknolojik Yatırımlar Holding A.Ş. (Borusan Technological Investments Holding Inc.), Borusan İstikbal Ticaret A.Ş. (Borusan İstikbal Trade Inc.), Borusan Birlik Danışmanlık ve Or-

13 Geradin, D. & M. Kerf (2003), *Controlling Market Power in Telecommunications: Antitrust vs. Sector-Specific Regulation*, Oxford University Press, New York

14 <http://www.ozkan.av.tr/english/telecom.htm>

ganizasyon Hizmetleri A.Ş. (Borusan Birlik Consulting and Organization Services Inc.), Borusan Sigorta Acenteliği A.Ş. (Borusan Insurance Agency Inc.) and Vodafone Holding Inc. has been authorized as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 1997/1 and thus in decreasing competition significantly.

Additionally, as well as the markets access to a more competitive structure, then only competition rules will be adequate to improvement and continuum of system in market. In some fields that requires scarce source equipment such as frequency and number allocation, and the fields that are obliged with universal service liabilities are always needed to regularize. Beside these fields, a sectoral regulation has to be eliminated, as the competitive market structure is well established within the country.¹⁵

The Interaction of the Telecommunication and Competition Law

It is essence of a liberalized market to decrease the regulatory rules and let the market perform in its own dynamics. And whenever a problem occurs, competition authority is there to intervene, not the government directly. As it can be guessed, prices are justified by the production costs and any other options like indicated prices by the monopolies, creates problems within the sector. In this sense, one of the most important aims of the competition law is to limit the regulations with the places that are appropriate; then this will obstruct the inefficiencies that may be risen from the regulations.

In this sense, the interaction in between the telecommunication sector and competition law can be stated as that it created or helped to create a more liberalized environment for production, consumption and circulation of the telecommunication products. The Telecommunications Authority, on the other hand, may request the opinion of the Competition Authority in order to ensure that the standard reference tariffs or interconnection and roaming agreements do not undermine free competition. Telecommunications Authority and Competition Authority, however, realized that more detailed principles should be set out in order to clarify their respective jurisdictions and co-operation. They, therefore, signed a Protocol of Co-operation, which to a certain extent decreased the risk of forum-shopping and increased means of co-operation between the two Authorities¹⁶ In other words, as it was indicated for several times, not only for Turkey, but also for Europe either, there had been serious monopolistic production for telecom-

15 Geradin, D. & M. Kerf (2003), *Controlling Market Power in Telecommunications: Antitrust vs. Sector-Specific Regulation*, Oxford University Press, New York

16 <http://www.ozkan.av.tr/english/telecom.htm>

munication until the end of 80s. And it cannot be said that full competition has settled down in the countries yet. This is to say that the competition law is very important in terms of many sectors, but telecommunication is on a special point for the consumers, regarding the huge amount of demand and consumption, after the basic physical products. And monopoly creates so real pressure on the consumers and on the country that it totally obstructs the competition in whole country. In this sense, the liberalization process of the telecommunication sector is one of the most important indicators for a country to reflect the competition process at all.